

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 14846 of 2022

Pritish Kumar Mohapatra

.....

Petitioner

Mr. Sourya Sundar Das, Senior Advocate
being assisted by Mr. Pranab Kumar Ghose, Advocate

-versus-

***The Secretary, Department of Steel and
Mines, Government of Odisha,
Bhubaneswar and others***

....

Opp. Parties

Mr. Dillip Kumar Mishra,
Additional Government Advocate

**CORAM:
JUSTICE K.R. MOHAPATRA**

**ORDER
14.10.2022**

Order No.

5. 1. This matter is taken up through hybrid mode.
2. Petitioner in this writ petition calls in question the action of seizure of the Excavator, i.e., KOBELCO Acera Geospec “SUPPER” SK 210 HDLC Hydraulic Excavator bearing Machinery No.YQ12-83918 of the Petitioner by the Additional Tahasildar, Balasore-Opposite Party No.6 vide Seizure List dated 3rd May, 2022 (Annexure-2) and Show Cause Notice No.3187 dated 10th May, 2022 issued by the Tahasildar, Balasore-Opposite Party No.5.
3. Case of the Petitioner in brief as reveals from the pleadings of the writ petition is that one Karunakar Das has been awarded with long term lease of Kasaba Dahapada Sand Quarry in the district of Balasore in a public auction. Pursuant to the grant of long term lease, registered lease deed dated 19th February, 2018 has been executed, which is valid till 2023. On 3rd May, 2022, the

Additional Tahasildar, Balasore seized the aforesaid Excavator of the Petitioner (being authorized to be used by said Karunakar Das) vide Seizure List under Annexure-2 in exercise of power under the provisions of the Odisha Minerals (Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 (for short, '*OM Rules*'). Subsequently, the Tahasildar, Balasore- Opposite Party No.5 issued show cause notice dated 10th May, 2022 to said Karunakar Das on the allegation that during surprise visit of the Tahasildar, Balasore with Revenue Supervisor and R.I, Nagram on 25th April, 2022, it was detected that three Poclain Machines bearing No.SK210HD KOBELCO-1, No.SMART 215L HYUNDAI-1 and No.EX-110 TATA HITACHI-1 without wheel chain were standing on the leasehold area of said Karunakar Das. It appeared to them that Poclain Machines were being used in sand operational quarry area. Hence, said Karunakar Das was directed to appear before Tahasildar, Balasore on 13th May, 2022 for hearing and show cause as to why penalty of Rs.15.00 lakh (Rs.5.00 lakh for each of the machineries) shall not be imposed on him. It was also stated therein that the aforesaid three machines were being used in aforesaid leasehold area violating conditions of lease agreement and in contravention of Odisha Minor Minerals Concession Rules, 2016 (for short, '*OMMC Rules*'). The case record reveals that said Karunakar Das has already filed his show cause on 13th May, 2022.

4. Mr. Das, learned Senior Advocate assailing the action of Opposite Party Nos. 5 and 6 submits that Annexure-2 is issued in Form 'N' under Rule 12 (2) of OM Rules. The State Government has made the said Rules in exercise of power conferred on it by

Section 23-C of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, 'MMDR Act'). Section 21 of the MMDR Act provides for imposition of penalties. He refers to Sub-section (4) of Section 21 of the MMDR Act, which reads as follows:

“21. Penalties.—

xx xx xx

(4) *Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.*

xx xx xx”

(emphasis supplied)

He also refers to Rule-12 of the OM Rules, 2007, which provides that:-

“12. Seizure and Confiscation.—

(1) The Competent Authority or any other officer specially authorized in this behalf by the Government shall seize under Sub-section (4) of Section 21 of the Act, any mineral(s) raised, transported, or caused to be raised or transported, stored, sold supplied, distributed, delivered for sale or processed without any lawful authority and also the tool(s), equipment(s), vehicle(s), or any other thing(s) used for said purpose.

(2) After seizing any property under Sub-rule (1), he shall keep such property under his custody with proper official seal and with detailed information in Form-N indicating that the same has been seized by him and shall, except where the offender agrees in writing to get the offence compounded, either produce the same before the Competent Authority having jurisdiction or make a report of such seizure to the court competent to take cognizance of the offence and the Court will try the offence on account of which the seizure has been made.

(2A) *In case the offender applies in writing for compounding the offence, the officer who has seized the property shall, if he is the Competent Authority, proceed under rule 16 and, if he is not the Competent*

Authority, he shall make a report in writing to the Competent Authority along with all records.

(3) Upon receipt of any report under Sub-rule (2), the court shall, except where the offence has been compounded, take such measures, as may be necessary, for arrest and trial of the offender and disposal of the property according to law.

xx xx xx"
(emphasis supplied)

Competent Authority has been defined under Rule-2(1)(b) of the OM Rules, which reads as under:-

"2. Definitions –

(1) In these rules, unless the context otherwise requires -

xx xx xx
(b) **"Competent Authority"** means officers
as mentioned in Schedule-1 appended to these rules;
xx xx xx"

Entry-15 of Schedule-1 of the said Rules provides that Mining Officer, Baripada is 'Competent Authority' having jurisdiction over Mayurbhanj, Balasore and Bhadrak districts.

4.1 Mr. Das, learned Senior Advocate therefore submits that neither the Additional Tahasildar, Balasore nor the Tahasildar, Balasore is competent to seize the aforesaid Excavator of the Petitioner. Therefore, the action of seizure of the Excavator is without jurisdiction and is not sustainable. Initiation of the proceeding being without jurisdiction, notice issued for imposition of penalty of Rs.5.00 lakh in respect of the aforesaid Excavator is also not sustainable.

4.2 It is, however, submitted by Mr. Das, learned Senior Advocate that pursuant to the show cause notice dated 10th May, 2022, said Karunakar Das has already submitted his reply on 13th May, 2022, which is under consideration.

5. Referring to Counter Affidavit filed by the Additional Tahasildar, Balasore, Mr. Das, learned Senior Advocate submits that the long term lease was settled in favour of said Karunakar Das in terms of Sairat Lease Case No.1/2015-16 for a period of five years. Thus, the sand quarry is operational from the financial year 2018-19 up to end of financial year 2022-23. The lease will only expire on and from 31st March, 2023. The seizure list under Annexure-2 clearly discloses that the Excavator was seized without wheel chain. Thus, it is apparent that the Excavator was not in operation at the time of seizure. There is also no material on record to show that the Excavator was in operation at the time of seizure. Thus, the allegation that said Karunakar Das was excavating sand by using the said machinery is not sustainable. It also appears from the counter affidavit that in order to save their skin the Opposite Party Nos. 5 and 6 have resorted to utter falsehood by manipulating documents, i.e., purported allegation of villagers made to the Collector, Balasore (Annexure-B/4 to the Counter Affidavit). It is his submission that at the top of Annexure-B/4, i.e., the date has been manipulated by erasing the year intentionally. There are also several manipulations and overwriting in Annexure-B/4. It is apparent from Annexure-B/4 that the allegation was in respect of one Satrughna Chand with regard to Sairat Case No.2/2015-16, but by scoring through the name of Sri Satrughna Chand, name of said Karunakar Das has been inserted. But, said Karunakar Das was settled with the lease in Sairat Case No.1 of 2015-16. From the above, it apparent that responsible public officer like Tahasildar and Additional Tahasildar, Balasore, in order to justify their illegal action, have dared to manipulate documents before this Court. Hence, appropriate proceeding should be initiated against the said

Officers. He, therefore, prays for setting aside the action of seizure under Annexure-2 as well as notice for imposition of penalty and prays for releasing the Excavator of the Petitioner forthwith.

6. Mr. Mishra, learned AGA refuting the above, submits that issuance of Form 'N' under Annexure-2 is an inadvertent one, as the Tahasildar, Balasore was on leave due to her serious illness. The Deponent, who is the Additional Tahasildar of the Balasore Tahasil and in charge of the Tahasildar at the relevant time, has seized the Excavator of the Petitioner vide Annexure-2 by utilizing the old form, i.e., Form 'N' (seizure list) on demand of IIC, Sahadevkhunta PS. Use of inappropriate form will itself not make the action of the authority illegal. On a conjoint reading of Annexures-2 and the notice to show cause issued against said Karunakar Das, it is manifest that aforesaid three Excavators were in use to excavate sand from the quarry area, which is violative of terms and conditions of the lease agreement. The seizure of the machinery was made under Rule 51(1)(ii) of the OMMC Rules and penalty was imposed in exercise of power under Rule 51(1)(i) of the said Rules. Thus, neither the seizure nor the notice for imposition of penalty can be held to be illegal or without jurisdiction. Rule 51 of the OMMC Rules deals with penalties. For ready reference, Rule-51 (1) (i) and (ii) are reproduced hereunder.

“51. Penalties :-

(1) (i) Whenever any person is found extracting or transporting any minor mineral or on whose behalf such extraction or transportation is being made otherwise than in accordance with these rules, shall be presumed to be a party to the illegal extraction or removal of such minor minerals and every such person shall be punishable with simple imprisonment

for a term which may extend to two years or with fine which may extend to five lakh rupees or with both and in case of a continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.

(ii) The Collector or Sub-Collector or Tahasildar or Director or Joint Director or Deputy Director or Mining Officer or Senior Inspector of Mines or Divisional Forest Officer or Assistant Conservator of Forest or Range Officer or Police Officer not below the rank of Sub-Inspector of Police may seize the minor minerals and its products together with all tools, equipments and vehicles used in committing such offence within their respective jurisdiction.

xx xx xx"

Thus, in terms of Rule 51 (1) (ii), the Additional Tahasildar, Balasore is competent to seize the Excavator of the Petitioner. Further, show cause notice is only a notice to show cause and not the final order for imposition of penalty. Since said Karunakar Das has already filed reply to the said show cause notice and the matter is sub-judice, the prayer for setting aside the imposition of penalty should not be entertained. He further submits that there are ample materials on record to show that the Excavator in question was used for illegal mining in contravention of the provisions of law as well as terms and conditions of the lease agreement. Hence, the writ petition is devoid of any merit.

7. Heard learned counsel for the parties at length. Perused the materials on record and provisions of law, as aforesaid. Annexure-2 clearly discloses that it was issued in Form 'N' under Rule 12(2) of OM Rules, 2007. Column-4 deals with the provisions of the Rules under which the property is seized. Narration at Column-4 as well as the provision under which the 'Seizure List' (Annexure-2) is issued, clearly reveal that the Excavator of the

Petitioner was seized under the provisions of MMDR Act and OM Rules, 2007. Thus, the contention of Mr. Mishra, learned AGA to the effect that it was an inadvertent mistake and the seizure was made under the old form 'N', is not sustainable. Rule 2(1)(b) of OM Rules defines the 'Competent Authority'. It provides that Competent Authorities are the Officers mentioned in Schedule-1 appended to the said Rules. Entry-15 of Schedule-1 of said Rules provides that the Mining Officer, Baripada is the Competent Authority having jurisdiction to exercise power under Rule 12 of the said Rules in respect of Mayurbhanj, Balasore and Bhadrak districts. Although it is submitted that the seizure list was prepared under old Form 'N' of OMMC Rules, but no material to that effect is produced by the learned AGA in support of his submission. Law is well-settled that the validity of an order passed by a statutory authority must be judged on the reasons and grounds mentioned therein. It cannot be supplemented by assigning reasons to justify the action. The order should be read as it is to test its veracity. On the face of it, Annexure-2 appears to have been issued under the provisions of OM Rules. Thus, no explanation contrary to the description in Annexure-2 can be accepted to justify the action of seizure. In the case of ***Mohinder Singh Gill v. Chief Election Commr.***, reported in (1978) 1 SCC 405, Hon'ble Supreme Court held as under:-

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Gordhandas Bhanji [Commr. of Police, Bombay v. Gordhandas Bhanji, AIR 1952 SC 16] :

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

Orders are not like old wine becoming better as they grow older.”

In view of the above, the submission of Mr. Mishra, learned AGA cannot be accepted. It is more so, because, perusal of the show cause notice dated 10th May, 2022 does not disclose about the seizure of the machineries under OMMC Rules. It only describes alleged illegal mining by using aforesaid Excavators. Thus, any explanation in the counter affidavit justifying the action of seizure under Annexure-2, is not acceptable. Accordingly, the action of seizure under Annexure-2 is without jurisdiction, cannot be sustained. Hence, the seizure of the aforesaid Excavator under Annexure-2 is set aside.

8. So far as show cause notice for imposition of penalty is concerned, this Court is of the considered opinion that since said Karunakar Das has already filed his reply to the said notice and the matter is still sub-judice, it would not proper to express any opinion on the same.

9. On perusal of Annexure-B/4 to the counter affidavit, it appears that there are apparent manipulations / over-writings in the said grievance petition. If the allegation made by Mr. Das, learned Senior Advocate, is correct, then the Officer concerned

has to face prosecution for the same. But, sufficient materials are not available on record to take a decision to launch prosecution. It is, however, open to the Petitioner to bring the same to the notice of the Competent Authority to take appropriate action, if any, against the erring Officer.

10. In view of the above, the writ petition is allowed in part directing release of Hydraulic Excavator bearing Machinery No.YQ12-83918 forthwith. The Tahasildar, Balasore and IIC, Sahadevkhunta, in whose custody the Excavator is lying, are directed to take appropriate steps to release the Excavator in favour of the Petitioner forthwith. The Petitioner may pursue his remedy with regard to notice for imposition of penalty in accordance with law.

11. Interim order dated 28th June, 2022 passed in IA No.7886 of 2022 stands vacated.

Issue urgent certified copy of the order on proper application.

(K.R. Mohapatra)
Judge