

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
115**

CWP-21881-2022

Date of decision: 28.09.2022

RAKESH KUMAR CHOUDHARY

.....PETITIONER

Versus

STATE OF PUNJAB AND OTHERS

.....RESPONDENTS

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE ALOK JAIN**

Present: Mr. Gurminder Singh, Sr. Advocate,
with Mr. R.P.S.Bara, Advocate,
for the petitioner.

Mr. Navdeep Chhabra, Sr. Deputy Advocate General, Punjab,
for the State.

AUGUSTINE GEORGE MASIH, J. (ORAL)

Learned senior counsel for the petitioner has referred to Rule 68 of the Punjab Minor Minerals Rules, 2013, to contend that after receipt of the reply to the show cause notice, which has been issued by the Director and on consideration thereof, in case the Director is of the opinion that the mining license issued to the contractor is to be cancelled, an opportunity of hearing of show cause and a representation is to be given to such contractor, which, in the present case, has not been given.

Reference in this regard is made to the first show cause notice dated 02.05.2022 (Annexure P-14) and the response thereto filed on 05.05.2022 (Annexure P-15), in pursuance whereof an order dated

06.05.2022 (Annexure P-16) has been passed by the competent authority granting opportunity to the petitioner to make payment in instalments, as detailed therein, which, the learned senior counsel for the petitioner contends, amounts to the reply being considered. In pursuance of a default on the part of the petitioner, the license had to be cancelled and fresh show cause notice was required to be served upon the petitioner. The second show cause notice has not been served upon the petitioner and, therefore, the action of the respondents in cancelling the lease of the petitioner is unsustainable.

Learned counsel for the State on instructions from Sh. B.Srinivasan IAS, Director, Mining, with reference to a communication dated 17.06.2022 from the Executive Engineer, Drainage-cum-Mining Division, Ropar, has made an effort to indicate that it is the second show cause notice which has been served upon the petitioner. He further contends that since the condition, as has been laid down in response to the reply which has been filed by the petitioner on 05.05.2022 (Annexure P-15), has not been fulfilled, therefore, the original notice would revive and thus, the final order has been passed on 17.06.2022.

This order dated 17.06.2022 passed by the Executive Engineer, Drainage-cum-Mining Division, Ropar is not in consonance with the statutory requirement. What was mandated was, in case there has been a default on the part of the petitioner, a fresh show cause notice for cancellation of the lease should have been issued, which, in our considered view, has not been done by the State. The mandate of the statute and the requirement of the rules having not been fulfilled, the action on the part of the respondents is unsustainable.

It may be added here that an application under Section 9 of the Arbitration and Conciliation Act, 1996 has already been preferred where the petitioner has invoked the arbitration clause, as provided for in the terms of agreement, wherein some of the orders and the original notice of recovery have been stayed.

Be that as it may, the fact remains, as of now, is that there has been no second show cause notice issued to the petitioner and, therefore, the action, without following the said procedure, cannot sustain. Therefore, the order dated 16.08.2022 (Annexure P-24) and the subsequent order dated 24.08.2022 (Annexure P-28), as has been passed by the authority cancelling the lease of the petitioner, are set aside. However, liberty is granted to the respondents to proceed in the matter in accordance with Rule 68 of the Punjab Minor Minerals Rules, 2013.

Writ petition stands allowed in above terms.

(AUGUSTINE GEORGE MASIH)
JUDGE

28.09.2022
PJ

(ALOK JAIN)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*