

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16905 of 2022

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Rajesh Kumar, Son of Shri Ramdutta Prasad Sharma, Resident of 132, C.D.A. Colony, East of Shiv Mandir, Shastri Nagar, L.B.S. Nagar, Police Station- Sashtri Nagar and District- Patna, Bihar 800023.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Principal Secretary, Department of Home, Government of Bihar, Patna.
3. The District Magistrate, Arwal.
4. The Superintendent of Police, Arwal.
5. The Mineral Development Officer, Arwal.
6. The S.H.O. Karpi Police Station, Arwal.
7. The Officer-in-charge, Shahar Telpa O.P., Police Station- Karpi, Arwal.
8. Navendu Singh, (Fathers name not known to the petitioner), Mineral Development Officer, Arwal, District Mining Office in the District of Arwal Pin Code- 804401, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s	: Mr. Avinash Chandra, Advocate
For the State	: Mr. Gyan Prakash Ojha, GA-7
For the Mines Department	: Mr. Naresh Dixit, Spl. P.P Mines

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 16-08-2023

Heard learned counsel for the parties.

2. The petitioner has filed the instant writ application praying therein for setting aside the order dated 20.10.2022 passed by the Mineral Development Officer, Arwal vide memo no.1134; to release the truck of the petitioner in his favour besides other reliefs.

3. The case of the petitioner in brief is that the



petitioner happens to be the registered owner of a truck bearing registration no. BR01-GA-9950, which was loaded with and was carrying stone chips from a quarry in Aurangabad having a valid mineral transit pass/challan issued on 3.8.2022 at 9:18 a.m. and which was valid for 24 hours. It is alleged that the vehicle in question was stopped on way to its destination, a demand for illegal gratification was made by the police officials concerned and on the driver of the vehicle resisting the said demand, was falsely implicated in the case alleging that the vehicle was over-loaded. The respondents took the truck in their possession. The truck was weighed, however, on refusal of the respondents to release the vehicle after measurement of the weight, the petitioner moved this Court by filing CWJC no.13054 of 2022 praying therein for a direction to the respondents to release the truck of the petitioner and for other reliefs.

4. By order dated 18.10.2022 (Annexure-12) CWJC no.13054 of 2022 was disposed of on a submission made by learned Spl.P.P. Mines that the petitioner's request for release of the vehicle in terms of the circular of the State Government allowing weightage to the extent permissible of excess weight of the goods over and above the laden weight of the vehicle will



be considered and decided within the next five working days.

5. Learned counsel for the petitioner submits that subsequent thereto order contained in memo no.1134 dated 20.10.2022 was issued under the signature of the Mineral Development Officer, Arwal, according to which in terms of Rule 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) (Amendment) Rules, 2021 ('the Rules' in short) it was held that the State Government had suffered a loss of Rs.2,05,525/- and as such the petitioner should deposit the said amount within a period of three days so that steps can be taken for release of the vehicle. It is against this order that the instant writ application has been preferred.

6. Learned counsel for the petitioner submits that even prior to passing of the order dated 18.10.2022, the respondents had quantified the penalty, which would be evident from the contents of letter dated 9.9.2022 addressed to the petitioner. Immediately after passing of the order dated 18.10.2022, the order impugned dated 20.10.2022 was passed asking the petitioner to deposit the amount of penalty for release of the truck. Learned counsel for the petitioner submits that the order imposing penalty and the entire procedure adopted by the respondents is bad for non-application of mind and material



error in measuring the weight of the vehicle in question which is evident on the face of it. While at the time of loading of the vehicle the volume of the material loaded was 608.75 cubic ft., the gross laden weight was 35.60 mt. tonnes. At the time of the vehicle being intercepted while the volume of the material loaded increased to 660 cubit ft., the gross laden weight reduced to 35.17 mt. tonnes. Thus, it is submitted that in view of the apparent error, the order imposing penalty on the petitioner is unsustainable and be set aside.

7. Learned Spl.P.P. Mines appearing for the respondents Mines Department submitted that the vehicle in question was intercepted by the police officials for overloading of stone chips and was taken in possession. On the same being weighed and finding the weight to be beyond the permissible limit of 35 mt. tonnes, the penalty was imposed. There is no illegality in the order imposing penalty, the same having been done strictly in accordance with Rule 56.

8. It may be noted here that this Court having heard the submission made on behalf of the petitioner as to how there could be an increase of volume and at the same time reduction of the weight of the laden goods, by order dated 4.1.2023 directed the respondents to file a supplementary counter



affidavit explaining the procedure in measuring the volume of the goods as also directed for release of the vehicle upon the petitioner's furnishing security. The vehicle was accordingly released. Order dated 4.1.2023 is being reproduced herein below:-

“Shri Naresh Dikshit, learned Special Public Prosecutor, Mines, states that subject to the outcome of the present petition and without prejudice to the respective rights and contentions of the parties, more so in view of the submissions made by the petitioner, for there could not have been any increase of volume with the reduction of the weight of the laden goods, the vehicle in question would be released within next 24 hours upon petitioner's furnishing a security.

Let supplementary counter affidavit explaining the procedure with the department in measuring the volume of the goods be filed positively within a period of three weeks.

Rejoinder thereto as also the counter affidavit already filed be filed within a period of four weeks thereafter.

List this case on 1st of March, 2023.”

9. Although a supplementary counter affidavit was filed on behalf of the respondents Mines Department, however, the same does not answer the query made by this Court in its order dated 4.1.2023. Once again by order dated 4.4.2023, this Court



considering the above contention raised by learned counsel for the petitioner adjourned the case giving liberty to the Mines Department to file a detailed counter affidavit. No further counter affidavit was filed.

10. Having heard learned counsel for the parties, this Court finds that the order impugned dated 20.10.2022 was passed by the District Mines Officer, Arwal, imposing the penalty of Rs.2,05,525/- on the allegation that the vehicle in question was carrying 52 cubic ft. stone chips more than the permissible limit. At the same time, this Court finds from the records of the case that at the time of loading the volume of the material loaded was 608.75 cubic ft. and the gross laden weight was 35.60 mt. tones. On the vehicle being intercepted and measurements being taken, the volume of the material loaded went up to 660 cubic ft. while the gross laden weight of the vehicle came down by 430 kgs to 35.17 mt. tones. The respondents having been confronted with this anomaly did not have any reply to the same and thus no further counter affidavit was filed. The consequential benefit of this discrepancy will have to go in favour of the petitioner.

11. In view of the facts and circumstances stated herein above, the fact with respect to the volume of the material loaded



going up and at the same time gross laden weight of the vehicle coming down, the penalty imposed on the petitioner by order contained in memo no.1134 dated 20.10.2022 under the signature of the Mines Development Officer, Arwal cannot be sustained and the same is quashed.

12. Consequently, the respondents shall make the petitioner free from the security furnished for release of the vehicle pursuant to the order dated 4.1.2023.

13. The writ application is allowed.

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N/A
Uploading Date	16.08.2023
Transmission Date	N/A

