

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 3967 of 2023(O&M)
Date of Decision:29.03.2023

M/s Super Fine Grit Udyog and another

.....Petitioner

Versus

State of Haryana and others

..... Respondents

**CORAM:- HON'BLE MRS.JUSTICE LISA GILL
HON'BLE MRS. JUSTICE RITU TAGORE**

Present: Mr.Hari Ram Nath, Advocate
for Mr.Arun Avasthy, Advocate
for the petitioner.

Mr. Ankur Mittal, Addl.AG., Haryana
with Mr. Saurabh Mago, AAG., Haryana.

LISA GILL, J(Oral).

Prayer in this writ petition is for direction to respondents no. 1 to 4 to activate E-Raawana Portal of the petitioners and to re-inspect the crusher plant of the petitioners.

It is pleaded that petitioner no.1 is a proprietary firm with its GST registration no. 06ABVFS0589C1TZ at village Silkho, Sub-Division Tauru, District Nuh authorizing it to run the business of crusher/grinding unit. Petitioner was granted crushing license from 30.01.2002 to 30.01.2005 which was renewed regularly for a period of three years thereafter. Mines and Geology Department, Haryana, started E-Rawaana Portal on 01.01.2020 with crusher owners as well as contractor & Mineral Dealer License (MDL)

owners being asked to register themselves on the said portal, so that E-Rawaana can be generated for sale and purchase of mineral. It is stated that total crushing capacity of 25,000/- Metric Tonne (for short – ‘MT’) of the petitioner was reduced by the Mining Department to 3750 MT on 16.05.2022 allegedly without any notice or information to the petitioners. Due to this, petitioners could not upload their product material, as a result of which uploading quantity of 3264.880 MT was left out on the portal. Joint team comprising of members from Mines and Geology Department, Panchayat Department and Police Department were constituted to check all the stone crushers in July 2022 by the Deputy Commissioner, Nuh. The abovesaid joint team inspected and measured the stock lying with the petitioners, wherein it was revealed that 4552 MT mineral was in excess/illegal as 8882 MT mineral was found on the crusher site with only 3830 MT reflected on the E-Rawaana Portal. It is stated that this inspection/search was conducted by the joint team without any notice to the petitioners.

Show cause notice dated 22.07.2022 and 18.08.2022 were issued to the petitioners by the Mining Officer, to explain their position and deposit the penalty within three days of receipt of notice. Reply to the show cause notice was submitted by the petitioners with the submissions that deactivation or closing down of the online portal of the petitioners was unjustified and arbitrary. It was stated that difference of 4552.060 MT was appearing due capacity of the petitioners being reduced by the Mining Department prior to 16.05.2022.

It is submitted that without passing of any specific order by the competent authority, E-Rawaana Portal of the petitioners was deactivated in

an unjustified manner on 14.10.2022. Representation dated 20.10.2022, it is stated was submitted by the petitioners before respondent no.2-Director General/Director, Mines and Geology Department, Govt., of Haryana, but no action was taken by respondent no.2. It is stated that petitioner has maintained complete record of E-Rawaana Portal of recent months and difference in the quantity i.e., 4552.060 MT has been duly explained before the department, but still in an unfair and unjust manner, E-Rawaana Portal of the petitioners was deactivated leading to filing of the present writ petition.

While noting contentions on behalf of the petitioners that pursuant to reply filed by the petitioners to show cause notice dated 27.07.2022, no specific order had been passed by the prescribed authority, but E-Rawana Portal was illegally deactivated, learned counsel for the respondent-State, on advance notice was asked to seek instructions in this respect on 27.03.2023.

Learned counsel for the respondent-State on 14.03.2023 apprised the Court that order dated 13.03.2023 had subsequently been passed by the Director Mines and Geology, Haryana, whereby it is concluded that stone crusher was having excess mineral than that of actual stock as per E-Rawaana portal, which was procured illegally from unauthorized sources and directed that till the time of default the E-Rawaana Portal of the petitioners would remain suspended. Copy of order dated 13.03.2023 passed by the Director, Mines and Geology, Haryana, furnished in Court today is taken on record subject to just exceptions.

Director, Mines and Geology, Haryana, while noting that pursuant to inspection by the joint team on 21.07.2022, show cause notice dated 22.07.2022 and 18.08.2022, were issued by the Mining Officer to the

petitioners. Reply on its behalf was admittedly received, however Mining Officer, Nuh forwarded the matter to Director, Mines and Geology, Haryana, with a request to deactivate the E-Rawaana Portal of the crusher. E-Rawaana Portal was deactivated on 14.10.2022. It is stated in order dated 13.03.2022 that petitioners after deactivation submitted reply along with bills/e-Rawaana bills, which were not updated on E-Rawaana Portal, while explaining that capacity of stone-crusher was exhausted, due to which complete information could not be uploaded. Gist of bills sent to the IT Cell for examination as detailed in the impugned order, are reproduced as under:-

Sr. No.	Details	No. of Bills
A	No. of bills entered after date of inspection (21.07.2022) till date of suspension of generation of e-rawaana (14.10.2022)	141
B	No. of bills which have not been entered on e-rawaana portal but are of prior to the date of inspection	23
C	No. of bills entered on portal prior to the date of inspection	16
D	No. of bills which have been entered by some other crusher unit (mineral purchased by other entity)	07
E	No. of bills already entered	01

It is stated that opportunity of personal hearing was afforded to the petitioners, however on finding variation between the stock of the mineral physically present as well as stock present on E-Rawaana Portal, it is concluded by the Director, Mines and Geology, Haryana, that petitioners failed to justify as to why bills pertaining to month of January 2022 to July 2022, were not entered on the E-Rawaana Portal within time. Director, Mines and Geology, Haryana, found that the stone-cursher was having excess mineral than that of actual stock as per E-Rawaana Portal, which was

procured illegally from unauthorized sources of mineral. Accordingly, it is held that petitioner was found indulging in illegal mining/procurement of illegal mined mineral/ misuse of E-Rawaana Portal. It is thus ordered that in terms of Rule 104 of the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals and Prevention of illegal Mining Rules, 2012 (for short 'the State Rules), action on recovery of penalty/fine as per Rules should be initiated by the Mining Officer, Nuh immediately and till the time of default, E-Rawaana of the petitioners, should remain suspended.

Learned counsel for the petitioner points out that license of the petitioners expired on 30.01.2023. He applied for renewal thereof. Haryana State Pollution Control Board, has granted consent to operate 24.01.2023, Annexure P-2, from 24.01.2023 to 31.03.2027. It is submitted that suspension of E-Rawaana Portal of the petitioners is in complete violation of the applicable rules and by passing of order dated 13.03.2023, renewal of the petitioners license is also under cloud. It is vehemently argued that deactivation of the E-Rawaana Portal without any application of mind is apparent on record causing grave prejudice to the petitioners.

Learned counsel for the respondent-State, per-contra submits that present writ petition is rendered infructuous after passing of order dated 13.03.2023 which is an appealable order. He submits that in case, an appeal is filed by the petitioners, same would be decided within ten (10) days.

Heard learned counsel for the parties.

At this stage, it is relevant to refer to the relevant provisions applicable in the present scenario. Rule 95 of the State Rules, defines default and breach and the same is reproduced as under:-

“95. A mineral dealer shall be held to be committing a default or breach of the conditions of license in the following events,

(1) Default

- (i) failure to display the details of license on a sign board as stipulated under rule 89;
- (ii) failure to file the monthly return of stocks as prescribed under rule 90;
- (iii) failure to maintain the up-to-date registers prescribed under rule 90;

(2) Breach

- (i) accepting minerals, in raw or processed form, from unauthorised and unexplained sources;
- (ii) storing and stacking minerals that do not tally with the entries in opening and closing balance stock register;
- (iii) permitting the sale of mineral, in raw or processed form, without issuing a valid mineral transit pass;
- (iv) loading of mineral in a carrier without issue of a mineral transport permit;
- (v) operating the Stock-yard without a valid license;
- (vi) repeatedly found committing the defaults.”

Consequences of default and breach are provided in Rule 96 (1) and (2) of the State Rules, which are reproduced as under:-

“(1) Default

- (i) Where a licensee is found to be committing a default, he shall be directed to remedy or rectify such default within a period of fifteen days in the first instance;
- (ii) in case of a second default, he shall be suitably directed to rectify the default and shall also be liable to a fine, which may extend up to Rs. 10,000/-; Returns to be filed with the Department. Checking of unauthorised dealings in mineral.

Inspection and verification of stocks. Checking of accounts. Noncompliance or violation of the terms and conditions of the license. Consequences of conditions of default and breach.

- (iii) A third time default or the continuation of the first or second default, in spite of opportunities given to rectify the same, would amount to a 'breach' and dealt with accordingly.

(2) Breach

Where a licensee is observed to be in breach of the conditions of license, the licensing authority may take any or all of the following actions:

- (i) suspension of the license with stoppage of receipt or purchase or sale of any mineral in raw or processed form in or from the stockyard. The dealer shall be holding the inventory of stocks, duly assessed at the time of suspension of license, till such time the suspension order is revoked. The period of suspension may continue up to a period of three months or till such time the breach condition is rectified, whichever is earlier;
- (ii) temporary seizure of the stocks till such time the stocks are reconciled with the records and established to have been accepted from legal sources;
- (iii) forfeiture of the stocks and their disposal by the competent authority and termination of the dealer license;
- (iv) cancellation of license with provision for a ban for 5 years to grant any fresh license to the individual/firm/ company."

Procedure for dealing with default and breach of conditions as well as the competent authority to take action is detailed in Rule 97 of the State Rules, which is reproduced as hereunder:-

“97. (1) An officer authorised by the Licensing Authority shall be competent to take action in matters amounting to ‘default’ conditions.

(2) Where the officer-in-charge of the district concerned is of the view that a licensee has committed ‘breach’ of the license conditions, he shall immediately report the matter to the Director alongwith such supporting material, as may be required.

(3) The Director, either on his own motion or on the report of a subordinate officer or on the complaint of any public person, shall be competent to take action in the breach cases. In cases where the Director is satisfied that immediate interim action is required to stop any eventuality of the continuity of any breach condition, he may pass such interim orders as considered appropriate. A show cause notice would be issued to the licensee in order to enable him to present his defence and an opportunity of personal hearing granted, if so requested, before passing a final order.

(4) Whenever any person is found storing any mineral or its products in contravention of the provisions of these rules, the authority under these rules may seize the mineral or its products together with any carrier used in committing such offence and shall be liable for punishment under rule 104 of these rules.

(5) Any authority seizing illegally extracted, transported or stored mineral or its products, tools, equipments and carrier under these rules shall give a receipt of the same to the person from whose possession such things are so seized and shall have the authority to prefer complaints in courts having jurisdiction to try such offence. (6) All properties seized under these rules shall be liable to be confiscated by an order of the court trying the offence, if the amount of fine and other sum imposed are not paid within a period of one month from the date of order.”

Learned counsel for the respondent-State, has sought to justify deactivation of the e-Rawaana Portal on the ground that as per Rule 97 (3) of the State Rules, Director Mines and Geology, Haryana, has the power to take immediate interim action which may be required to stop any eventuality of continuation/continuity of any breach condition. Perusal of Rule 97 (3) of the State Rules, reveals that the Director either on his own motion or on the report of a subordinate officer or on complaint of any public person, is competent to take action in breach cases.

Doubtlessly, Director is vested with power to take immediate interim action in a situation where it is necessary to put a stop to continuation of any of the breach condition/s. It is further provided that a show cause notice would be issued to the licensee in order to enable him to present his defence and provide an opportunity of personal hearing, if so requested, before passing a final order. However, plain language of Rule 97 (3) of the State Rules, envisages application of mind to a situation by the Director before passing any interim order which may be required to take care of an emergent situation. It is incumbent upon the Director to pass interim order as considered appropriate before taking any action/ in the present case for deactivation of the e-Rawaana Portal. The rule in question provides that before taking any interim action, satisfaction of the Director is a sine qua non. Such satisfaction can only be gathered if a specific order is passed by the authority. It is noted that suspension of E-Rawaana portal does entail serious consequences for the dealer/licensee, therefore, it is essential that reasons for the same should be forthcoming.

It is to be noted, at this stage that learned counsel for the State was asked to inform whether there is even a noting on the relevant official

file which would indicate application of mind by the Director before the action of deactivation of e-Rawaana Portal of the petitioners was carried out. No such document was placed before us and neither any such satisfaction claimed to have been recorded.

In our considered opinion, Rule 97(3) of the State Rules, commands the authority to record its satisfaction for any immediate interim action as may be required in a particular situation. Any action taken *de hors* recording of such satisfaction would be violative of the abovesaid rule. Petitioner, in this case is admitted to have submitted its reply to the show cause notice, however, interim action for deactivation of the e-Rawaana Portal of the petitioner was taken without passing any specific order thereon.

We are, however, presented with a situation where final order in the interregnum has been passed by the Director, Mines and Geology, Haryana, on 13.03.2023. Order dated 13.03.2023, is admittedly an appealable order in terms of Rule 109 of the State Rules.

Therefore, in the given facts and circumstances, we do not consider it appropriate to undertake the exercise of examining the merits of the controversy. We thus relegate the petitioner to its remedy of appeal in terms of Rule 109 of the State Rules. In case, an appeal is filed by the petitioners within the next seven (07) working days, the same be considered and decided by the competent authority in accordance with law after affording due opportunity of hearing to all concerned within the next ten (10) working days. In the meanwhile, no coercive steps shall be taken for recovery of penalty/fine.

Before parting with this order, we deem it appropriate to direct that in situations where interim orders are required to be passed to deal with

any emergent situation in terms of Rule 97(3) of the State Rules, competent authority shall pass specific orders to this effect, recording its satisfaction regarding necessity of passing of immediate interim orders.

Writ petition is disposed of accordingly. Pending application, if any, stands disposed of accordingly.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

March 29, 2023.
s.khan

Whether speaking/reasoned : Yes/No.
Whether reportable : Yes/No.