

CWP No. 4211 of 2023 (O&M) 1 2023:PHHC:047632-DB

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CWP No. 4211 of 2023(O&M)
Date of Decision:29.03.2023

M/s Rajiv Kumar Trading Company

.....Petitioner

Versus

State of Haryana and others

..... Respondents

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

Present: Mr.R.S.Khosla, Sr. Advocate
with Ms. Bhavti Pujara, Advocate
for the petitioner.

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

LISA GILL, J(Oral).

Petitioner in this writ petition claims to be a proprietorship concern engaged in the business of sale of minor minerals at District Yamuna Nagar, Haryana.

Present writ petition has been filed as the petitioner is aggrieved of deactivation of its e-Rawaana Portal which is stated to be in violation of the provisions of the Haryana Minor Mineral Concession, Stocking and Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (for short 'the State Rules').

It is stated that the petitioner was granted Mineral Dealer License (MDL) No. DMG/HY/MDL-1111 dated 12.05.2020 by respondent no.2-Director General, Mines and Geology, Department, Govt., of Haryana. License was granted for the purpose of stock and sale of minerals. Said license, valid from 12.05.2020 to 12.05.2025 was granted for the purpose of

stock and sale of minerals. Petitioner was registered with the e-Rawaana Portal system of Mines and Geology Department, Haryana. It is stated that petitioner was conducting its business in consonance with and in terms of the applicable rules and conditions of the license. Minerals were purchased by the petitioner only from authorized mining contractors of the department and all purchase was made through e-Rawaana Portal account of petitioner as was the sale of minerals.

It is stated in communication dated 20.01.2023, Annexure P-5, from Assistant Mining Engineer, Mines & Geology Department, Yamuna Nagar to the Director, Mines & Geology Department, Haryana, Panchkula that owner of vehicle, registration number of which is mentioned therein, complained that e-Rawaana was issued by the petitioner on 01.01.2023 for his vehicle whereas said vehicle had never been loaded with mineral from District Yamuna Nagar. Similar complaint qua petitioner was received from owner of another vehicle. Statedly, illegal practice of e-Rawaana to vehicles which were physically not present and showing dispatch/sale of minerals were being issued by the petitioner, which resulted in registration of FIR No. 269 dated 09.12.2022.

It is stated that in an unjustified manner, a case was registered on 09.12.2022 under Sections 120-B, 420 IPC, at Police Station Buria, District Yamuna Nagar. As per FIR, secret information was received to the effect that petitioner was selling boulder, gravel and sand by loading minerals in vehicles from a place other than the place fixed at village Mukarampur, whereas issuance of e-Rawaana Pass as well as loading of minerals in vehicles is shown to be done at village Mukarampur and subsequently e-Rawaana Pass is cancelled. Inspection was carried out by the department on 09.12.2022 and FIR registered with the allegations that e-

Rawaana Portal system of the Mining Department was being misused and petitioner was indulging in unlawful enrichment by causing loss to the State Exchequer. Premises were inspected by the CM Flying Squad. Respondent no.3 i.e., the Assistant Mining Engineer, vide communication dated 16.12.2022 requested for closure/deactivation of e-Rawaana Portal of the petitioner. Another FIR i.e., FIR No. 9 dated 10.01.2023, under Sections 420, 468, 471 IPC was registered at Police Station Buria, District Yamuna Nagar, wherein allegations of misuse of registration details of vehicles of the complainant therein were raised.

Show cause notice dated 27.01.2023, Annexure P-6, was issued by the Director, Mines and Geology, Haryana. It is stated that reply to said notice was submitted by the petitioner on 30.01.2023 along with complete details of purchase of minerals by the petitioner from authorized mining contractors. However, without any order being passed, petitioner received communication dated 17.02.2023 through e-mail from respondent no.2 declaring that e-Rawaana Portal of the petitioner was terminated by the Mines and Geology Department. E-mail as received by the petitioner reads as under:-

“Hi Rajiv Kumar,

Your account for Mines & Geology portal has been terminated by Mines and Geology department. Please find the remarks below

Remarks:

e-Rawaana has been suspended as per order of W/DMG.

Mines and Geology Department, Haryana.”

Learned counsel for the respondent-State was asked to seek instructions on 01.03.2023 in regard to the averments that e-Rawaana portal of the petitioner had been suspended/terminated without affording an

opportunity of hearing to the petitioner and without passing of any specific order.

Formal notice of motion was issued on 02.03.2023 while observing that it *prima facie* appears that interim measures had been taken without there being any specific order on record. Stand of the respondents that opportunity of hearing would be provided to the petitioner on 09.03.2023 and final order shall be passed on 11.03.2023, was noted. It was observed on 02.03.2023 that in case, necessary order is not passed by 11.03.2023, impugned communication dated 11.03.2023 would automatically stand stayed. In the interregnum, order dated 10.03.2023 was passed by the Director, Mines and Geology Department, Haryana, cancelling the MDL of the petitioner and directing Assistant Mining Engineer, Yamuna Nagar, to take action accordingly.

It is stated in order dated 10.03.2023 that before suspension of e-rawaana, show cause notice was issued to the petitioner and opportunity of personal hearing was afforded to it on 09.03.2023. It is further stated that sole basis of suspension of e-rawaana was not the FIR, but the factual information brought to the knowledge of the Director, Mines and Geology Department, Haryana by Assistant Mining Engineer about the breach by the MDL holder and that counsel for the petitioner had failed to answer the issue raised in show cause notice. MDL of the petitioner was, thus, cancelled.

Consequent to passing of order dated 10.03.2023, application seeking amendment of the writ petition has been filed with a prayer for challenging said order as well.

Learned counsel for the petitioner argues that cancellation of petitioner's MDL vide order dated 10.03.2023 is in complete violation of the applicable Rules. It is vehemently argued that at the first stage, E-Rawaana

portal of the petitioner was suspended without any application of mind and without passing of any specific order in this respect. In order to perpetuate grave prejudice to the petitioner, impugned order dated 10.03.2023 has been passed. The manner in which authorities have proceeded, it is stated, is to be deprecated, therefore, impugned order should be set aside.

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.

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 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 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 cancellation of MDL of the petitioner. 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 cancellation of MDL of the petitioner 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 an 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 termination/suspension of e-Rawaana portal of the petitioner was taken without passing any specific order thereon.

However, in the present case, in the interregnum, final order has been passed by the Director, Mines and Geology Department, Haryana, on 10.03.2023, which is admittedly an appealable order in terms of Rule 109 of the State Rules.

In the given facts and circumstances, we do not consider it appropriate to undertake the exercise of examining the merits of the controversy as has been urged before us by learned counsel for the petitioner. 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 petitioner 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/s, if any, is/are disposed of accordingly.

Copy of this order be conveyed to the Director, Mines & Geology Department, Haryana, Panchkula.

(LISA GILL)
JUDGE

(RITU TAGORE)
JUDGE

March 29, 2023.

s.khan

Whether speaking/reasoned : Yes/No.

Whether reportable : Yes/No.