

252**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRM-M-1201-2023 (O&M)****Date of decision:03.10.2023**

Rajak

....Petitioner

versus

State of Haryana and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr.Arun Avasthy, Advocate for petitioner.

Mr. Karan Garg, AAG, Haryana.

ARUN MONGA, J.

Left completely marooned and paralyzed by the action of Mining Officer seizing his commercial vehicle, followed by inaction of the Director, Mines, of the State of Haryana, petitioner is before this court, pleading that for lack earning from the vehicle, he and his family are on the verge of death by starvation.

2. Petitioner's sole source of income and his only means of livelihood, a ten wheeled truckbearing Registration No. RJ-05-GB-5128, has been impounded/seizedby an order of a mining officer, on the allegation that at the time of surprise check on 28.10.2022, the vehicle was found loaded by 35 metric tons of stone/mineral material without permit and e-Rawana (transit pass) was not displayed on the vehicle (it is supposed to be put up on the front windscreen), thus violating Rule 102 of Haryana Minor and Mineral Stocking Transportation Rule, 2012 (MMTR- for short). Petitioner seeks quashing of the impugned revision order dated 21.11.2022 (Annexure P-5), passed by the learned Additional Sessions Judge, Nuh, whereby anorder passed by JMIC dismissing an application for the release of his vehicle was upheld.

3. Pleaded case of the petitioner is that he owns the vehicle in question, which is used for transporting stone and stone materials (*Rori*) to earn for the support his family.

On October 28, 2022, on an inspection by mining department officials it was found that

the petitioner's vehicle was carrying 35 MT of stone material/minerals, allegedly without a valid transit pass. This, despite the driver having a valid E-Ravana (Transit pass) , which was shown, but it was not considered. A copy of the E-Ravana (Transit pass) with a photo of the vehicle is also attached with petition as Annexure P-2. Besides, no weighment of the material was conducted by the department. The petitioner's vehicle was seized and charged for violating provisions of MMTR. The vehicle was impounded and sent to Ferozpur Jhirka police station. The petitioner was not even provided an opportunity to contest this seizure. No formal complaint or First Information Report (FIR) has been filed by the mining department.

3.1. Petitioner pleads that vehicle impounded is the only source of his income for the survival of the family. If the vehicle is not released, the petitioner and his family will face severe financial hardship and potential hunger. The vehicle is at high risk of damage beyond repairs in its current location at the police station and turning into a piece of junk leading to irreparable financial losses.

3.2. The petitioner's vehicle was thus unlawfully seized and charged by the respondent's officials on October 28, 2022, under Rule 102 MMTR as per impugned seizure order and notice, Annexure P-3. Petitioner was unsuccessful in getting his vehicle released from the courts below, as well as mining officials. Hence the instant petition.

4. While taking away his vehicle, a seizure memo dated 28.10.2022 (Annexure P-3) under Rule 104 of MMTR was handed to the petitioner, relevant extract of which reads as below :

“6. Legal Note:-

a. That no F.I.R. has been registered in this case

Note- The aforesaid vehicle was intercepted by Head Constable Harmendra and Constable Shri Dhram Pal with staff from mining department and AVT Staff during road checking. In aforesaid vehicle, there was no any kind of picture loaded with mineral materials, stones. The aforesaid vehicle is kept in Police Station Firozpur Jhirka with help of dial-112 by order of mining officer aforesaid vehicle is seized under mining act as per order of mining officer.

b. *It is a compoundable case and can be compounded on payment of applicable Royalty, Price of Mineral and Fine along with Compensation of Damage to Environment as laid by Hon'ble NGT vide order dated 19.02.2020 passed in M.A. No. 16/2020 in O.A. No. 44/2016. Rates of penalty to be imposed as per NGT order are:-*

<i>Sr. No.</i>	<i>Category of Vehicle</i>	<i>Penalty Amount</i>
<i>1.</i>	<i>Vehicle/Equipment/Excavators with showroom value more Rs. 4 lacs than Rs. 25 lacs and less than 5 years old.</i>	<i>Rs.4 lacs</i>
<i>2.</i>	<i>Vehicle/Equipment/Excavators with showroom value more than Rs. 25 lacs and more than 5 years but less than 10 years old.</i>	<i>Rs. 3 lacs</i>
<i>3.</i>	<i>For the remaining vehicles older than 10 years /Equipments/Excavators which are otherwise legally permissible to be operated and not covered by Serial 1 and 2.</i>	<i>Rs.2 lacs</i>

- c. *be allowed by Hon'ble Court as per sub-rule No. 106 of State Mining Rule 2012 and also keeping in view the above order of the Hon'ble NGT, New Delhi that this office has to recover the amount of compensation which includes the cost of mined materials or royalty and recovery of compensation of damage to environment as per order dated 19.02.2020 above. If, any Hon'ble Court entertains the Superdari application of this/these vehicles, then the above orders of Hon'ble NGT may please be considered comprehensively.*
- d. *An appeal against the above Seizure Order shall lie with the Director General, Mines and Geology Department, Haryana under 109 (1) of the State Mining Rules, 2012.*
- e. *Owner/driver is hereby advised to immediately deposit the royalty, penalty and price of mineral along with Environment compensation in compliance of order dated 19.02.2020 of Hon'ble National Green Tribunal within a week from the date of seizing of vehicle."*

5. The aforesaid memo clearly states that no FIR has been filed in the case. The vehicle was intercepted during a road check, but there is no allegation of any evidence of it being overloaded. . Memo states quantity loaded is 35 MT, whereas as per transit permit, Annexure-P/2, issued to petitioner by Department of Mines, Govt. of Rajasthan, permitted quantity is 38.02 Metric Ton. Then where is the violation ? Memo is silent about it. The memo though outlines the conditions under which the vehicle could potentially be released, involving the payment of royalties, fines, and compensation for environmental damage as per rates of penalty stipulated by the National Green Tribunal's order dated February 19, 2020, but actually, no penalty is either calculated therein, determined otherwise or its total quantum conveyed to the vehicle owner. Yet, memo states as vaguely as can be possible (see sub clause “c” of memo, *ibid*) that department

“has to recover the amount of compensation which includes the cost of mined materials or royalty and recovery of compensation of damage to environment “.

6. Completely hapless and helpless, petitioner first approached the learned Sub-Divisional Judicial Magistrate, Ferozepur Jhirka, seeking release of his vehicle on *sapurdari*. However, his application was dismissed vide order dated 04.11.2022 (Annexure P-4). Reasoning prevailed on the mind of the SDJM essentially was that since there was neither an FIR registered against the petitioner nor was any application filed by the mining department before the Court for confiscation of the petitioner's vehicle, therefore, *sapurdari* application was not maintainable. It was thus dismissed, without addressing its merits.

7. Subsequently, the petitioner filed a revision petition which also met a similar fate as the learned Additional Sessions Judge upheld the order passed by the learned Sub-Divisional Judicial Magistrate. Vide revisional order dated 21.11.2022 it was held that, in the absence of any FIR or any judicial proceedings directing the confiscation of the vehicle, the application for the release of the vehicle on *sapurdari* was rightly dismissed by the Court below.

8. The petitioner then filed a representation/appeal dated 21.12.2022 (Annexure P-6) before the Director General/Director (the Appellate Authority), Department of Mines and Geology, Government of Haryana, seeking the release of his vehicle. However, till date, no action has been taken on the same. Neither any order for the release of the truck has been passed nor rejection conveyed, leaving the petitioner high and dry and remediless.

9. The aforesaid appeal was filed sometime in November/December 2022, and it has been 10 months since then, with no orders passed. Consequently, the petitioner's counsel contends that on one hand, the petitioner's vehicle has completely deteriorated and is getting ruined beyond repairs and turning into junk, rendering it unusable with each passing day. It is parked unattended in the open space at Police Station Ferozepur Jhirka. On the other hand, the petitioner and his family members are living in

sheer penury and dying of hunger/malnutrition. Said vehicle is stated to be the only source of livelihood.

10. The petitioner's counsel points out that while the entire family of the petitioner is starving, the competent appellate authority is sitting on the appeal/representation of the petitioner without passing any appropriate orders thereon, which is mandated under Rule 109 of the Rules of 2012.

11. At this stage, it may be relevant to have a look at the powers vested with the mining officers to impound the vehicle in question *vis-à-vis* the appellate remedy.

12. The relevant rules are reproduced below:-

“SECTION 102: Consequences of violation.

Wherever a carrier is found to be transporting any mineral, in whatever form, without a valid mineral transit pass as required under rule 98, and/ or a valid mineral transport permit as required under rule 99, he would be dealt with as under,

(i) Where a carrier is found to be indulging in violation of the rules for the first time, the said mineral would be liable to be forfeited along with the impounding of the vehicle, which may be released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall not be less than Ten Thousand rupees;

(ii) Wherever a carrier is found to be indulging in such violation for the second time, the said mineral would be liable to be forfeited along with the impounding of the vehicle for a minimum period of three days and released only upon realisation of the payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall not be less than fifteen thousand rupees;

(iii) Wherever a carrier is found to be indulging in such violation for the third time, the said mineral would be liable to be forfeited alongwith the impounding of the vehicle for a period of minimum ten days, and for relase shall entail payment of price of the mineral and the applicable royalty for the mineral being transported and, in addition, a fine which shall be twenty five thousand rupees;

(iv) Wherever a carrier is found to be indulging in such violation for the fourth time or more, the officer concerned shall register an FIR and handover the carrier along with the mineral to the police. The penalty, fine and punishment for the offence shall be as provided under Section 21 of the Mines & Minerals (Development & Regulation) Act, 1957.

SECTION 106: Offences cognizable only on written complaint

No court shall take cognizance of any offence punishable under these rules except upon a complaint in writing made by the Director or any other officer authorised

by him to the Police in this behalf within three months of the date on which said offence is alleged to have been committed.

109. Appeals. (1) Unless otherwise provided, an appeal against an order passed by the Officer-in-Charge '[District Level Environmental Committee) shall lie with the Director;

(2) An appeal against the order passed by the Director shall lie before the Administrative Secretary of the Department;

(3) No order under these rules shall be passed by the competent authority against any person unless he has been issued a show cause and given a reasonable opportunity to make a representation.”

13. Having perused the aforesaid rules, what transpires in the case at hand is that since it is not a case where an FIR has been registered against the petitioner, it thus falls either under sub-rule 1 or sub-rule 2 or 3 of 102. At the most, these rules provide that for a first violation, a fine of not be less than Rs. 10,000/- shall be imposed. Alternatively, in the case of a second violation, the fine shall not be less than Rs. 15,000/- and, in case of third violation fine shall not be less than Rs. 25,000/-.

14. In the overall context, it is unfathomable, as to how, while keeping the vehicle seized, the appellate authority is sitting over the appeal, in which, in the worst case scenario, all that is envisaged is a fine of not less than Rs. 10,000/- or Rs. 15,000/- or Rs.25,000/- , as the case may be, since the seizure memo does not state anything, much less specify which provision of the Rules has been violated. Yet, on the other hand, the petitioner has been driven to the wall and made to suffer for almost one year, being deprived of his livelihood due to the seizure of his vehicle and subsequent high headedness of the officials of the department.

15. I do not find any substance in the insipid and frivolous argument of learned State counsel that the appellate authority may not have received the representation/appeal preferred by the petitioner. Pertinently, same is also annexed with the instant petition as Annexure P-6. To say the least, notice of the present petition was accepted in the Court on 15.03.2023, when time was sought by the learned State Counsel to file a reply to the petition. However, the carelessness and nonchalant attitude of the respondent-State/mining department is reflected from the fact that, despite ample opportunities given

even thereafter i.e. matter was taken up subsequently 3-4 times for hearing, but each time was adjourned at the request of state counsel seeking time to file reply. Be that as it may, till date no reply has been filed so far. Factual averments contained in the petition and annexures appended therewith, remain uncontroverted and are deemed as admitted. There is proof appended by the petitioner that the said representation/appeal was duly e-mailed to the Director, as well as sent by speed post. In addition, having received notice of this petition from this court, the respondents were fully aware that the said representation/appeal could have been dealt with during the pendency proceedings before this court. Yet, they chose to completely overlook the same and a bald argument has been raised that the appellate authority may not have received the representation/appeal preferred by the petitioner. Such a defense of the department, that they never received such an appeal, appears to be complete moonshine.

16. Given the complete inaction of keeping the appeal/representation pending, a cost of Rs. 1 lakh was though being imposed, for driving the petitioner to the cost of needless litigation, but on the oral request of learned State counsel, taking a lenient view, same is waived in course of dictation of the instant order.

17. Before parting, to avoid future situations as the case in hand, it is considered desirable that certain Guidelines are framed by this Court for Mining Officers in Vehicle Seizure Cases. Same are as below :-

I. Fair and Transparent Inspection Process:

- a. Ensure that inspections and checks conducted by mining officers are fair, transparent, and well-documented.
- b. Conduct surprise checks in accordance with established procedures and rules.
- c. Clearly state the specific violations alleged, including the specific reasons to show such violations..

II. Proper Documentation:

- a. Document all findings during inspections, including the condition of the vehicle, the quantity of minerals being transported, and the violations observed.
- b. Provide a written report of the inspection findings to the vehicle owner or its driver as the case may be, specifying the alleged violations and also explain the same, in a language they understand.

III. Respect Legal Rights:

- a. Respect the legal rights of vehicle owners and operators, including the right to due process and a fair hearing.

- b. Ensure that vehicle owners are informed of their rights and the steps they can take to contest any actions taken against them.

IV. Handling of Overload Violations:

- a. In cases of alleged overload violations, ensure that the evidence is properly collected and recorded.
- b. Clearly specify the alleged overloaded quantity of the mining material and provide evidence to support the claim.
- c. Follow established penalty guidelines for overload violations, as per relevant mining rules and regulations, and specify the quantum of the likely penalty and the mode of calculations.

V. Appellate Process:

- a. Inform vehicle owners of their right to appeal any seizure or penalty imposed.
- b. Provide clear guidance on the appellate process, including where and how to file an appeal.
- c. Ensure timely processing of appeals to prevent unnecessary delays.

VI. Humanitarian Considerations:

- a. Take into account the potential humanitarian consequences of vehicle seizures.
- b. Consider the livelihood of the vehicle owner and their family, especially if the vehicle is their primary source of income.
- c. Endeavor to expedite the release of seized vehicles when appropriate.

VII. Communication and Responsiveness:

- a. Maintain open communication with vehicle owners and their legal representatives.
- b. Respond promptly to any written appeals or representations submitted by vehicle owners.
- c. Ensure that the appellate authority reviews and addresses appeals in a timely manner.

VIII. Determination of Tentative Penalty in the Challan/Seizure Memo:

- a. The mining officer should calculate and determine a tentative penalty payable by the offender in the seizure memo/challan.
- b. The mining officer should also apprise the offender of his right to contest the penalty so determined.
- c. This enables the offender to make an informed choice/decision regarding payment to avoid vehicle seizure or contest it after the vehicle's seizure.

IX. Duty of the Mining Officer to Seek Court Order for Confiscation of Vehicle Upon Failure to Pay Penalty:

- a. If there is no FIR or complaint before a competent court, and the penalty is not paid within 30 days of vehicle seizure, the mining officer shall promptly, but not later than next 7 days, move an application to the competent court for confiscation of the vehicle.
- b. If no such application is moved, written reasons for not doing so must be recorded in the file.

These guidelines are aimed to ensure transparency, fairness and adherence to legal procedures in mining-related penalty imposition and vehicle seizures, while also taking into consideration the humanitarian aspects and the livelihood of the affected individuals and families.

18. Adverting to the case in hand, none of the above has been complied with. As an upshot, exercising the inherent powers under Section 482 of Cr.P.C., the vehicle in question is directed to be released to its registered owner on *superdari* on furnishing bonds to the satisfaction of Illaqa/Duty Magistrate on usual terms and conditions. The impugned orders passed by the Courts below, stand modified to that extent. It is further directed that the pending appeal/representation of the petitioner be decided expeditiously by the Director/Appellate authority, preferably within one month.
19. Petition is accordingly disposed of.
20. Pending application(s), if any, shall also stand disposed of. Director of the Mining, Haryana shall circulate copy of the instant order to all the mining officers in the State and also sensitize them about the guidelines *supra*.

(ARUN MONGA)
JUDGE

03.10.2023
'D'vir

Whether speaking/reasoned:	Yes
Whether reportable:	Yes