

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.647 of 2023

Arising Out of PS. Case No.- Year-0 Thana- District- Samastipur

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Ajad Hussain @ Azad Hussain Son of Hasim Miya, Resident of Village-
Barka Ganw, PS- Barkagaon, Dist- Gopalganj, Bihar- 841436.

... .. Petitioner

Versus

1. The State of Bihar Through The Chief Secretary, Government of Bihar, Patna, Bihar.
2. The Additional Chief Secretary-Cum-Mines Commissioner, Patna, Bihar.
3. The District Magistrate-Cum-Collector, Samsatiopur, District- Samstipur Bihar.
4. The District Mining Officer, Samastipur, Distt- Samstipur Bihar.
5. The Mines Inspector, Samsastipur Distt- Samstipur Bihar.
6. The Station House Officer, Bangra Ps , Ps- Banghara Police Station, Dist- Samstiopur, Bihar.

... .. Respondents

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Appearance :

For the Petitioner/s	:	Mr. Saket Anand, Advocate Mr. Gaurav, Advocate
For Mines	:	Mr. Naresh Dikshit, Advocate Ms. Kalpana, Advocate
For the Respondent/s	:	Mr. Utsav Anand, JC to Mr. N. Dikshit Mr. Gyan Prakash Ojha, GA7 Mr. Abhishek, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 23-01-2024 Heard learned counsel for the petitioner, learned

Special Public Prosecutor for the Department of Mines and

learned A.C. to learned G.A.7 for the State.

2. Petitioner in the present case is seeking the

following reliefs:-

*A. For issuance of appropriate writs(s), order(s),
direction(s) in the nature of mandamus directing and
commanding the respondent - authorities to release the
vehicle i.e., a Diesel Tata Truck, bearing registration No.*

BR-06GB-3399, in favour of the petitioner, which is seized by Respondent No. 5 vide letter no. 02 camp M. Samastipur, dated 17.12.2022 while routine inspection and further kept the seized vehicle under the custody of Respondent no. 6 under actions prescribed in Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021.

B. For issuance of appropriate writs(s), order(s), direction(s) in the nature of mandamus directing and commanding the concerned respondent to cancel/quash the proceedings initiated against the petitioner by the respondent no. 5 on 17.12.2022 as per Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021.

C. Any other relief(s) for which the petition is found entitled to.

3. It is the case of the petitioner that he is a bonafide owner of one Tata Diesel Truck and is engaged in business of transportation of goods from one State to another. The certificate of the registration of vehicle has been brought on record.

4. It is stated that the petitioner was transporting stone chips of 10 mm-20 mm from dealer M/s. Dada Jeetu Buildcon Pvt. Ltd., Mouza - Deshipokharia, Gorakhpur, Uttar Pradesh, which is about 600 kms. The petitioner got a challan in Form-D as per Section 23-C of the Mines & Minerals (Development & Regulation) Act, 1957. The validity of challan started from 02:57:03 PM of 16.12.2022 till 17.12.2022 at 02:56:57 PM. It is stated that the truck of the petitioner got stuck in a massive jam

for two hours and nineteen minutes at Sahebganj on NH-33. Further, after mere movement for nine minutes, the said truck again got stuck for seven hours and twenty seven minutes and again the truck stopped due to traffic for one hour and nine minutes at Govindpur Toll Plaza, Govindpur on 17th December from 12:19 PM - 01:28 PM. The said truck got stuck again for around one hour on 17th December from 02:58 PM to 03:54 PM at Asian Highway 42, Samastipur, after the lapse of its transport challan, then again after travelling for just three minutes, the truck again got stuck in the massive jam for one hour and thirty minutes.

5. It is stated that the Mines Inspector, Samastipur seized the truck of the petitioner through seizure memo vide Annexure '4' to the writ application and kept it under the custody of S.H.O., Bangra Police Station, Samastipur and till date the said truck is lying in the premises of Bangra Police Station, Samastipur without any proper shedding and the vehicle is deteriorating with each passing day as no action has been taken by the concerned authorities.

6. Learned counsel for the petitioner submits that after loading of the goods in the truck, the said truck got stuck in the traffic jam and that resulted in the delay. In support of his

submissions, he has relied upon a copy of G.P.S. locations of the said truck of 16.12.2022 from 01:55 PM to 17.12.2022 till its seizure. It is submitted that the authorities of the Department of Mines are not justified in the seizure of the truck on the ground of expiry of challan. They were required to look into the fact that the vehicle got stuck in the traffic jam.

7. A counter affidavit has been filed of behalf of the respondent nos. 3 to 5. The Department of Mines through its Mineral Development Officer, Samastipur has taken a plea that during routine inspection on 17.12.2022 at 7 PM, the twelve wheeler truck of the petitioner was intercepted carrying 650 CFT of stone chips. On perusal of challan it appeared that the challan had expired and the vehicle was carrying stone chips beyond the period stipulated in the challan, therefore, the same was illegal transportation of minerals. It is further stated that the challan shows permission to transport only 600 CFT of stone chips, whereas at the time of seizure the vehicle was carrying 650 CFT of stone chips. It is submitted that from the weighment receipt of the vehicle as contained in Annexure 'R/1' of the counter affidavit, it would appear that the vehicle had an overload of about 48 CFT.

8. As regards the plea of the petitioner that the G.P.S.

is showing the movement of the truck, it is stated that under the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the 'Rules of 2019') as amended in 2021, there is no provision for such exemption and as such the petitioner's vehicle is liable to be charged with compounding/penalty fee as prescribed in the Rule 56. Learned counsel for the Department of Mines submits that a proposal/recommendation has been sent to the competent authority i.e., Collector, Samastipur for confiscation of the vehicle of the petitioner, however, in course of hearing it has been informed that for the present, the confiscation proceeding has not been initiated.

9. A supplementary counter affidavit has been filed today on behalf of respondent nos. 4 and 5. The same and one plea has been reiterated by the answering respondents.

10. Having heard the learned counsel for the petitioner, the Department of Mines and the State as also on perusal of the records, this Court finds that there is a specific case of the petitioner that he got stuck in the traffic jam at various places and that would be evident from the G.P.S. locations of the truck as contained in Annexure '4' to the writ application, neither in the counter affidavit nor in the

supplementary counter affidavit, the Department has denied the statements of the petitioner. The Department has not even questioned the G.P.S. location shown in Annexure '4' to the writ application. The only plea of the Department is that because under the Rules of 2019, as amended in 2021, there is no provision of exemption of such period, the vehicle is liable to be charged with compounding/penalty fee. This Court is of the considered opinion that such a plea taken by the Department of Mines is liable to be rejected at the outset. The authorities of the Department are liable to take into consideration the hardships which would arise by implementation of the rules as it is without applying a judicious mind. If such implementation results in harassment to a person engaged in transportation, the well said principle of law that law bends before justice would come into play. The authorities of the Department cannot keep their eyes shut and charge a person with illegal transportation on the ground of expiry of challan without looking into the explanations which are being furnished by them. In this case, the petitioner has been able to demonstrate that the challan had expired in course of transportation because of the huge traffic jam at various places, a fact which has not been controverted by the official respondents. This Court would therefore reject this

ground taken by the respondents.

11. So far as the second ground is concerned, it is the case of the official respondents that the vehicle was found overloaded by 48 CFT of minerals. There is a statement in the counter affidavit that in course of routine inspection, the vehicle was intercepted by the Mines Inspector on 17.12.2022 at about 7 PM. The mines officials forwarded the vehicle to the concerned Police Station vide Annexure '4' to the writ application. Annexure '4' contains only one remark "challan failed" and the time recorded on this is 7 PM, therefore, it is evident from Annexure '4', which is a document signed by the Inspector of Mines, Samastipur, that when the vehicle was intercepted and seized, it was only one ground that the challan had failed and then the vehicle was sent to Bangra Police Station. In the counter affidavit filed on behalf of the official respondents, though a plea has been taken that the vehicle was overloaded by 48 CFT, but there is no statement that the weighment of the vehicle had taken place in presence of the petitioner or the driver of the vehicle. The weighment receipt which has been brought on record with the supplementary counter affidavit shows that the weighment had taken place on 17.12.2022 at 17:52 hrs. There is no signature of the driver of the vehicle on

the weighment receipt and in the counter affidavit there is no statement that weighment had taken place in presence of the driver of the vehicle. In the supplementary counter affidavit, however, it has been belatedly stated that when the vehicle was intercepted, weighment was done in the presence of driver but this statement loses its credibility for two reasons, firstly, that in the counter affidavit itself it is stated that the vehicle was intercepted at 7 pm and then the forwarding letter of the Mines Inspector to the Police Station shows only one ground for seizure of the vehicle and the time shown thereon is 7 PM, therefore the claim of the official respondents at a belated stage that the vehicle was weighed at 17:52 hrs is not duly supported by the materials on the record and it loses its credibility.

12. Although, a submission has been made on behalf of the Department of Mines that the matter be sent to the District Magistrate where confiscation proceeding has been recommended, but in view of the discussions made hereinabove, this Court is of the considered opinion that the seizure of the vehicle is not for any legal and valid reasons. The action of the Department in seizure of the vehicle cannot sustain the test of reasonableness and it is evident to this Court that the seizure has been done in a mechanical manner and in complete disregard to

the spirit of law. It is sheer harassment to the petitioner. In the background of the fact situation of this case, this Court would further take a view that the recommendation for initiation of a confiscation proceeding itself is bad in law. While making such recommendation having a drastic consequence the competent authority has acted in a mechanical manner. It is well settled that drastic powers should be exercised with more circumspection and care.

13. In this case, vehicle has remained under seizure for more than two years and sending the matter to the District Magistrate would amount to compelling the petitioner to continue with the litigation for few more years. The vehicle is losing its worth with every passing day.

14. In result, this Court is persuaded to hold that the recommendation sent for confiscation of the vehicle in question is not proper and without following the procedures established by law. This Court directs release of the vehicle within a period of three days from the date of receipt/production of a copy of this order.

15. This writ application is allowed.

(Rajeev Ranjan Prasad, J)

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