

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11469 of 2023

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Mukesh Kumar Son of Rajendra Mistry Resident of Village- Rabio Beldari,
Post- Bargawan, P.S.- Sirdala, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Minerals Department, Government of Bihar, Patna.
2. The Secretary, Mines and Minerals Department, Government of Bihar, Patna.
3. The S.H.O., Garkha Police Station, Saran.
4. The I.O. of Garkha Police Station Case No. 262/2023, P.S.- Garkha, District- Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Kant Singh, Advocate.
For the State	:	Mr. Abhinav Ashok, AC to GA-7
For the Mines	:	Mr. Naresh Dikshit, Advocate
	:	Mr. Brij Bihari Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 26-04-2024

Heard Mr. Krishna Kant Singh, learned counsel appearing on behalf of the petitioner; Mr. Abhinav Ashok, learned AC to GA-7 and Mr. Naresh Dikshit, learned counsel along with Mr. Brij Bihari Tiwari, learned counsel appearing on behalf of the Mines Department.

2. The petitioner has sought for the following relief(s), as prayed for in the para-1 of the writ petition, which are, *inter-alia*, reproduced hereinafter:

(i) For issuance of a writ in the nature of mandamus directing the concerned respondent authorities to forthwith release the Truck No.BR01GL-9422, Chasis No. MAT448022EAG06043 in favour of the petitioner who



is the valid owner of the said truck and the concerned respondent authorities have illegally seized the same in connection with Garkha P.S. Case No.262/2023 on the ground that the truck was overloaded and registered the said F.I.R. under section 379/ 411/34 of the I.P.C. and section 21 of the Mines and Minerals (Development & Regulation) Act and under Rule-56 of the Bihar Minerals Concession, Prevention of illegal (Mining, Transportation and storage) Rule 2019 as neither an F.I.R. is maintainable under the mines act nor the seizure of the truck is valid.

(ii) For further directing the concerned respondent authorities to compensate the petitioners for the damage cause to the truck in question as also the revenue loss which has occurred due to such seizure.

(iii) To further hold that the very seizure of the vehicle in question under the Mines Act is illegal.

(iv) For other necessary relief/reliefs to which the petitioner may be found entitled in the facts of the case.”

3. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was having valid challan which was valid from 07:06:31 A.M. of 22.05.2023 to 07:06:31 A.M. of 23.05.2023. The challan is annexed as Annexure 2 to the writ petition and it also mentions the total quantity of yellow sand loaded on the truck bearing Registration No. BR 01 GL 9422 and weight was measured as 433 CFT/17.32 MT. While the truck of the petitioner reached near Maiki Petrol Pump, the same was seized by the SHO, Garkha and Garkha P.S. Case No.262 of 2023 was registered for the offence to have been committed under Sections 379 and 411/34 of the Indian Penal Code read with Section 21 of the Mines And Minerals (Development and Regulation) Act, 1957 (hereinafter referred to



as 'the Act, 1957') and Rule 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the 'Rules, 2019').

4. Learned counsel appearing on behalf of the petitioner further submitted that from perusal of the F.I.R., it would appear that the seizing authority has not given any satisfactory reason to believe that an offence under the Act, 1957 has taken place and without arriving to such satisfaction, he has lodged the FIR illegally showing incorrect figure of sand. The petitioner is aggrieved by the assessed amount of sand and quantity as mentioned in the challan being carried on vehicle did not exceed, even though, due to some vexatious interest, the police officer has lodged the FIR against the petitioner. The vehicle was seized without determining the quantity of sand loaded on the vehicle. Learned counsel further submitted that seizure list prepared was not in presence of the petitioner. It is admitted that the truck was carrying all the requisite documents like insurance, pollution certificate and up-to-date registration certificate. The said fact is also admitted by the police officer who had seized the truck, having not found that there is violation of any of the provision of the Motor Vehicle Act.



Learned counsel, in this background, submitted that without physical assessment, the total quantity loaded on the truck bearing Registration No. BR 01 GL 9422 relating to the petitioner, could not have been determined by the Mines Inspector, without any weighing slip or having been scientifically measured in presence of the petitioner or independent witnesses. The inspection report also fails as the same don't give the details of witnesses, like name of father, residence etc., therefore, the entire seizure is vitiated in the eye of law, as such, the entire seizure is without jurisdiction and fit to be quashed.

5. *Per contra*, learned counsel appearing on behalf of the Mines Department submitted that the seizure was affected by the Police Officer and the seizure list was prepared by the Mines Inspector, who has failed to support the total quantity which has been mentioned in the seizure list, amounting 700 CFT to be excess to what was loaded at the time of issuance of challan is much more than 433 CFT. Petitioner has violated the provision of Section 21 of the Act, 1957 and as such, penalty under Rule 56 of the Rules, 2019 was imposed against the petitioner.

6. Having heard the rival submissions made on



behalf of the parties, as well as, I have perused the FIR relating to the petitioner, the Police Officer, who has exercised his jurisdiction to seize the truck has not acted in accordance with the provision of Section 100 of the Cr.P.C., which provides that before affecting seizure, it is incumbent upon the Authority to give a reason to believe that offence has been committed. In the present case, it is admitted by the parties that challan was issued for the truck, which was loaded with 433 CFT/17.32MT and any excess loading, which has been found by the Mines Inspector can not be relied in absence of scientific determination to have been made by him to substantiate the total quantity of 700 CFT, allegedly loaded on the truck belonging to the petitioner. Accordingly, I quash the seizure dated 22.05.2023.

7. Considering the aforesaid fact, I find it proper to direct the District Magistrate concerned to call for the records from the Office of the District Mining Officer and verify as to whether any scientific measurement / determination was made which called for imposition for penalty and pass an appropriate order in accordance with law within a period of six weeks after affording due opportunity of hearing and providing all those documents which are against the petitioner to enable him to defend himself. In the meantime, the District Magistrate must



not refrain releasing the truck after obtaining required Bank guarantee.

8. If the District Magistrate is of the opinion that the petitioner has violated the terms and conditions of the provisions of the Act, 1957 and Rules, 2019, he may pass an appropriate order in accordance with law against which the petitioner may avail remedy of appeal / revision or in alternative, seek to compound fine in terms of Rule 56 of the Rules, 2019.

9. The writ petitioner, accordingly, stands disposed of.

(Purnendu Singh, J.)

Mantreshwar/-

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	03.05.2024
Transmission Date	N.A.

