

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1579 of 2022

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

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Dhiraj Kumar, S/O Shailendra Kumar, R/O Village- Jamua, Post- Kadirganj,
P.S- Kadirganj O.P, District- Nawada

... .. Petitioner/s

Versus

1. State of Bihar Through District Magistrate, Nawada Bihar
2. Commissioner-Cum-Principal Secretary, Mines and Geology Department,
Government of Bihar, Patna Bihar
3. Special Secretary-Cum-Director, Mines and Geology Department, Bihar,
Patna Bihar
4. Mines Inspector, District Mines Office, Nawada Bihar
5. Station House Officer, Town Police Station, Nawada Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Indradeo Prasad, Advocate
For the State	:	Mr.Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P.
		Mr. Brij Bihari Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

6 09-02-2024 Heard learned counsel for the petitioner, learned GA-

7 for the State and learned AC to Spl.P.P. for the Department of

Mines.

2. Petitioner in the present writ application has questioned the seizure of his 14 wheeler truck bearing Reg. No. BR-27G9201 by the Mines Inspector, office of District Mining Officer, Nawada on 22.09.2022. The solitary allegation against the petitioner is that when the truck was intercepted and checked by the Mining Officer, he took a view that the vehicle was overloaded by 100 CFT of sand. Instead of permitted quantity of

700 CFT, allegedly the truck was loaded with 800 CFT.

3. Learned counsel for the petitioner has basically raised his grievance with respect to the manner in which the vehicle in question has been seized. It is his submission that no doubt a Mining Inspector is authorized to stop and check any carrier, transport or vessel in terms of Rule 59 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the 'Rules of 2019'), the power being drastic in nature must be exercised with due circumspection and care and it should be exercised only in the manner provided by the Rules of 2019. Learned counsel submits that Rule 59 confers power upon certain class of officers mentioned therein to enter, inspect, search and seize any minor mineral, material, conveyance etc. but according to sub-rule (2) of Rule 59, the search and seizure is to be carried out in accordance with the provisions of Section 100 of the Code of Criminal Procedure, 1973.

4. It is further submitted that under Rule 60 of the Rules of 2019 any officers mentioned in Rule 59 may stop any carrier, vehicle or vessel carrying minor minerals, to check for verification of the contents and under sub-rule (2) of Rule 60 the officer who forms any prima-facie opinion about the load of the

career, vehicle or vessel he may require the driver of the career, vehicle or vessel to take such career, vehicle, vessel to the nearest weighbridge and get the contents weighed at the expense of the driver or the owner of such vehicle/carrier/ vessel. Under sub-rule (3) of Rule 60, it is provided that if any person who refuses to obey the lawful command of such Mining Officer, he shall be prosecuted under these Rules.

5. Learned counsel has drawn the attention of this Court towards the specific statements made in the writ application wherein it is stated that on 22.09.2022 when the vehicle in question loaded with 700 CFT of sand and carrying a valid challan reached at Prajatandra Dwar, Nawada the Mining Inspector, District Mining Officer and others carried a search of the vehicle and without following the established procedure of law as contained in Rules of 2019 they seized the vehicle and handed over the truck to the Town Police Station, Nawada.

6. It is stated that the transport challan dated 22.09.2022 contains the name of the customer as Kuldeep Prasad Yadav who had earlier made complaint against the Mining Inspector and District Mining Officer, Nawada for their alleged act of extortion of money and the complaints are said to be pending. The said Kuldeep Prasad Yadav is the uncle of the

petitioner and it is his case that the truck in question has been seized by way of a revenge for the complaint lodged by the uncle of the petitioner.

7. Learned counsel submits that sub-rule (2) of Rule 59 and sub-rule (2) of Rule 60 have been completely violated in this case. No vehement of truck was taken and by way of a conjecture and surmise only the truck was seized saying that it was overloaded by 100 CFT of sand. It is further submitted that no FIR or any complaint case has been lodged in connection with the alleged seizure but the vehicle in question is lying in the police station for last more than 1 ½ year.

8. A counter affidavit has been filed on behalf of the respondent nos.1 to 4. It has been sworn by the Mineral Development Officer, Nawada. It is stated that the vehicle of the petitioner was loaded with 800 CFT of sand, therefore a compounding fee/penalty is about Rs.2,43,000/- which the petitioner is liable to pay as per the provisions of Rule 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021 (hereinafter referred to as the 'Rules of 2021'). A demand notice has been issued to the petitioner to deposit Rs.2,43,000/- but even after due period the petitioner did not turn up for deposit of the

amount, therefore, the respondent has recommended before the Collector, Nawada for confiscation of the vehicle. In the counter affidavit, it is admitted that the petitioner and his associates had earlier made complaints before the various forums including before the Public Grievance Officer, District Vigilance Cell etc.

9. Annexure- 'A' to the counter affidavit has been placed before this Court to show that the petitioner is involved in illegal transportation of sand and whenever his vehicles are seized, he indulges in making false allegations against the officials of the Department. Instances have been given to the two FIRs which were lodged against the petitioner being Kadirganj OP Case No.234 of 2023 and Kadirganj OP Case No.842 of 2023 and in both the cases the petitioner has deposited the penalty/compounding amount.

10. About Kuldeep Prasad Yadav, it is further stated that he is himself involved in illegal mining activity and once the vehicle was seized in this connection and he has deposited the penalty/compounding fee of Rs. 2,97,750/-.

11. Having heard learned counsel for the petitioner and the State as also on perusal of the records, this Court is of the considered opinion that the consideration of this Court in the present case would be limited to the facts of this case. In the

present, the fact is that the vehicle in question has been seized on the solitary allegation that it was carrying 800 CFT of sand instead of 700 CFT. In the counter affidavit, however, there is no averment that the Mining Officer has arrived at this figure of 800 CFT after following the procedure as prescribed under sub-rule (2) of Rule 60 of the Rules of 2019 (as amended vide Amendment Rules, 2021).

12. Learned counsel for the State submits that the overload was assessed by the Mining Inspector as it appears from his report contained in letter no. 965 dated 15.04.2023 but it is not disputed that the said report nowhere contains the basis on which the said assessment has been made. To that extent, it is an admitted position that at least the counter affidavit and the annexures thereto nowhere declare that the Mining Inspector has followed sub-rule (2) of Rule 60. Admittedly, it is not a case that the driver of the vehicle refused to obey the command of the Mining Officer. No FIR has been lodged in connection with this case and the State has not brought on record any seizure list duly prepared by following the provisions of Section 100 Cr.P.C.

13. In the case of **Chandra Kishore Jha v. Mahavir Prasad & Ors.** reported in (1999) 8 SCC 266, the Hon'ble

Supreme Court has categorically held that if a statute provides something to be done in a particular manner, that thing should be done in that manner alone otherwise not at all. This Court, therefore, finds that if the pleadings available on the record are to be looked into, the seizure in this case is not satisfying the conditions mentioned above which are by way of safeguards provided against any chance of an illegal seizure.

14. Further, this Court finds that the vehicle in question is lying in the premises of the police station for last 1½ year and at this stage only a confiscation proceeding has been recommended. This Court has been informed by learned counsel for the State that no confiscation order has been passed as yet. In such circumstance, a question will further arise whether a confiscation proceeding may at all be initiated in a case where the very seizure of the vehicle is found to have been done without following the established procedure of law. This question would, however, be required to be considered and decided by the Collector who is the confiscating authority under Rule 56 of the Rules of 2019. The petitioner is granted liberty to raise all such issues which are available to him before the Collector in the confiscation proceeding.

15. In view of the conclusion reached by this Court on

the basis of the materials on record that the seizure of vehicle in this case has been done without following the established procedure of law, this Court directs the Collector, Nawada to pass an order for release of the vehicle in question on such terms and conditions which may be found fit to preserve the ongoing confiscation proceeding, however, such conditions shall not be onerous in nature and it should not result in an order that the vehicle remains as it is. For this purpose, an appropriate order shall be passed within two weeks from today.

16. In case, the petitioner challenges the initiation of the confiscation proceeding, the same shall also be decided within eight weeks.

17. Since the seizure of the vehicle has been done in contravention of the procedures established by law, for the purpose of release the petitioner shall not be compelled to deposit the fine/compounding fee.

18. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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