

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4415 of 2024

Prakash Kumar S/o Rambabu Ray, R/o Semra, Raepur Binganwan, Bhojpur,
Bandhu Chapra, P.S.-Barhara, District-Bhojpur, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Mines and Geology Department, Bihar, Patna.
2. The District Magistrate, Bhojpur, Bihar.
3. Superintendent of Police, Bhojpur, Bihar.
4. SHO Koilwer P.S. Bihar.
5. Investigating Officer, Koilwar P.S. Case No. 241/2023.
6. Axis Bank Limited, Patna.

... .. Respondents

Appearance :

For the Petitioner	:	Mr. Rana Vikram Singh, Advocate
For the State	:	Mr. Manoj Kumar Yadav, GA-10
For the Mines Deptt	:	Mr. Naresh Dikshit, Spl. PP
	:	Ms. Shruti Singh, Advocate
For the Bank	:	Mr. Dayanand Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT
Date : 24-11-2025

Heard learned counsel for the petitioner, learned
counsel for the Mining Department and the State.

2. The present writ petition has been filed for
the following reliefs:-

*“(i) For issuance of writ in the nature of
certiorari for quashing/setting aside of the
order dated 19.10.2023 passed in
Confiscation Case No.294/2023 holding it
to be not maintainable and bad in the eyes
of law.*

*(ii) For issuance of appropriate writ / direction /
order to Respondents directing them to*



release of vehicle of make and model Schwing Stetter XCMG XE220C Hydraulic Excavator SSI No. 155, PIN No. XUGE220BCLKA02990, Engine No.397797 (hereinafter referred to as Vehicle / Excavator') seized 397797 in connection with Koilwar P.S. Case No.241/2023 dated 27.04.2023 registered under Section 379, 411, 34 Indian Penal Code, 1860, Section 11, 39(1), 56(1), 60(3) of Bihar Mineral (Concession, Prevention of illegal Mining. Transportation and Storage) Amendment Rules, 2021, Section 4 and 21 of Mines and Minerals (Development and Regulation) Act, 1957 and Section 3 and 4 of Prevention of Damage to Public Property Act, 1984 and subsequently confiscated vide order dated 19.10.2023 passed by District Magistrate, Bhojpur in Confiscation Case No.294/2023 after imposing reasonable fine in accordance with the provisions of Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Amendment Rules, 2021 as the vehicle is lying in the custody of Koilwar Police Station thereby causing irreparable injury to the Petitioner.

- (iii) For issuance of appropriate writ in the nature of mandamus thereby directing the Respondents to not sell / auction the Vehicle till the pendency and disposal of*



the instant application.”

3. It is the case of the petitioner that he has been imposed a penalty by the Mining Department for alleged illegal excavation of sand for which FIR bearing Koilwar P.S. Case No. 241 of 2023 dated 27.04.2023 was registered. Before imposition of the penalty, neither show-cause notice has been served upon the petitioner nor the petitioner was afforded an opportunity of being heard and mechanically the impugned order of confiscation dated 19.10.2023 was passed by the District Magistrate, Bhojpur at Ara.

4. It has been submitted by Mr. Rana Vikram Singh, learned counsel for the petitioner that since the impugned order of penalty has been imposed in complete violation of principles of natural justice i.e. without issuance of show-cause notice and without hearing the petitioner, the same is fit to be quashed and consequently, the confiscation proceeding initiated by the Collector is also bad in law.

5. The Learned counsel for the State and the Mining Department have not been able to show anything in support of the fact as to whether the petitioner was given any chance of hearing.

6. Mr. Dayanand Singh, learned counsel for



Bank which has financed the vehicle of the petitioner, has appeared and he has submitted that the respondent- Axis Bank has financed the Poclain machine in question and the total outstanding balance amount as on today is Rs.18,06,984/- (Rupees Eighteen Lakhs Six Thousand Nine Hundred Eighty Four Only).

7. I have considered the submissions of the parties and gone through the records of the case.

8. Recently, the Hon'ble Supreme Court in the case of *Krishnadatt Awasthy v. State of M.P. & Ors.*, reported as (2025) 7 SCC 545 has emphasized on the imperativeness of principles of natural justice, particularly, before an administrative authority acting as a quasi judicial function and has held as under:-

“43. The opportunity of hearing is considered so fundamental to any civilised legal system that the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds [Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545].

44. *It has been argued before us that if the failure to provide hearing does not cause prejudice, observing the principle of natural justice may not be necessary. In this context, a three-Judge*



Bench of this Court in S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] speaking through Chinappa Reddy, J. considered such arguments to be “pernicious” and held that “[t]he non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary”. The Supreme Court, however, has drawn out an exception where “on the admitted or indisputable facts only one conclusion is possible, and under the law only one penalty is permissible, then the Court may not compel the observance of natural justice” [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 : (1981) 51 Comp Cas 210; Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529 : 2000 SCC (L&S) 965].

45. *Professor I.P. Massey [I.P. Massey, Administrative Law (8th Edn., 2012).] has commented on this shift as under:*

“Before the decision of the highest Court in S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379], the rule was that the principles of natural justice shall apply only when an administrative action has caused some prejudice to the person, meaning thereby that he must have suffered some “civil consequences”. Therefore, the person had to show something extra in order to prove “prejudice” or civil consequences.



This approach had stultified the growth of administrative law within an area of highly practical significance. It is gratifying that in Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379], the Court took a bold step in holding that a separate showing of prejudice is not necessary. The non-observance of natural justice is in itself prejudice caused. However, merely because facts are admitted or are undisputable it does not follow that the principles of natural justice need not be observed.”

46. *In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717], the Supreme Court observed that where an enquiry is not convened by any statutory provision and the only obligation of the administrative authority is to observe the principles of natural justice, the court/tribunal should make a distinction between a total violation of the rule of fair hearing and violation of the facet of that rule. In other words, a distinction must be made between “no opportunity” or “no adequate opportunity”. In the case of the former, the order passed would undoubtedly be invalid and the authority may be asked to conduct proceedings afresh according to the rule of fair hearing. But in the latter case, the effect of violation of a facet of the rule of fair hearing has to be examined from the standpoint of*



prejudice.

47. In *Dharampal Satyapal Ltd. v. CCE* [*Dharampal Satyapal Ltd. v. CCE*, (2015) 8 SCC 519 : (2015) 33 GSTR 1], this Court dealt with the prejudice question as under: (SCC p. 540, para 42)

“42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority. This was so held by the English Court way back in the year 1943 in *General Medical Council v. Spackman*



[1943 AC 627 (HL)]. This Court also spoke in the same language in Board of High School & Intermediate Education, U.P. v. Chitra Srivastava [Board of High School & Intermediate Education, U.P. v. Chitra Srivastava, (1970) 1 SCC 121]”

48. In a more recent decision in State of U.P. v Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706] , the position of law was summarised as under: (SCC pp. 748-49, para 42)

“42. ...42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does



not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.

42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.

42.5. The “prejudice” exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice.”

9. It is a cardinal principle of law that no one should be condemned before being heard, which is also an integral part of the principles of natural justice. Considering the aforesaid decision of the Hon’ble Supreme Court in the case of



Krishnadatt Awasthy (supra), it is clear that the principles of nature justice must be adhered to strictly. The doctrine of *audi alteram partem* has three basic essentials. *Firstly*, a person against whom an order is required to be passed or whose rights are likely to be affected adversely, must be granted an opportunity of being heard. *Secondly*, the authority concerned should provide a fair and transparent procedure and *lastly*, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

10. In my opinion, the petitioner should have been issued proper notice and should have been given a chance of hearing in the confiscation proceeding. Since before passing the impugned order of penalty neither show-cause notice has been issued to the petitioner nor he was heard, vitiates the entire proceedings.

11. In view of the above and also considering the decision rendered in the case of ***Krishnadatt Awasthy (supra)*** coupled with the fact huge penalty has been imposed upon the petitioner in complete violation of principles of natural justice, the amount of penalty imposed and the confiscation proceeding arising out of the said penalty proceedings cannot be sustained.

12. Accordingly, the order dated 19.10.2023 by



which the District Magistrate, Bhojpur at Ara has confiscated the excavator machine of the petitioner and the order of penalty of Rs. 18,06,984/- (Rupees Eighteen Lakhs Six Thousand Nine Hundred Eighty Four Only) are hereby quashed.

13. The matter is remitted back to the Mining Department for fresh consideration in accordance with law, that is, after giving show-cause notice and hearing the petitioner before imposition of any penalty within eight weeks from the date of communication of a copy of this order. If the order of the Mining Department goes against the petitioner, the confiscation proceeding can be initiated against the petitioner by the District Magistrate.

14. Since no fruitful purpose will be served in keeping the vehicle seized, therefore, considering the law laid down by the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai vs. State of Gujrat*** reported as ***2002 (10) SCC 283***, during pendency of the matter before the concerned authority, the below mentioned excavator shall be released in favour of the petitioner by way of interim relief subject to the following conditions:

- i. *The petitioner shall furnish the security of Rs. 30 lakhs (not in the form of bank guarantee) before the Mining Officer / competent authority at the time of release of*



the excavator i.e. Schwing Stetter XCMG XE220C Hydraulic Excavator SSI No 155 PIN No. XUGE220BCLKA02990, Engine No. 397797, as mentioned in the prayer portion of the present writ petition.

- ii. The petitioner shall furnish all the necessary papers/documents of ownership before the concerned/competent authority.*
- iii. The petitioner shall undertake, in writing, that the aforementioned excavator, shall neither be alienated nor be transferred/sold in favour of any third party during the pendency of the proceeding and that the same shall be produced as and when called upon or required in the proceeding or otherwise.*
- iv. If any jurisdictional objection is taken by the petitioner, that shall also be considered by the authority concerned. The petitioner will also cooperate with the authorities till the final disposal of the proceeding.*
- v. The petitioner will cooperate in the proceeding and if the petitioner does not cooperate in the proceedings before the Mining Officer, the Mining Officer may proceed ex parte.*
- vi. The petitioner shall produce "No Objection Certificate" issued by the respondent-Axis Bank in his favour for the aforesaid interim release of his vehicle as the learned counsel for the Axis Bank has submitted that the*



Bank is ready for interim release of excavator in favour of the petitioner, if he deposits an amount of Rs.5 Lakhs in his finance account maintaining in the Axis Bank.

15. It goes without saying that the petitioner will continue to pay the future installments to the Axis Bank. In case, the future installments are not paid by the petitioner to the Axis Bank, the Axis Bank has liberty to avail all remedies available under law.

16. with the aforesaid directions this writ is allowed.

(Sandeep Kumar, J)

vinita/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.12.2025
Transmission Date	

