

2024:PHHC:157649-DB



IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(124 to 129)

**CWP-31148-2024 alongwith
CWP-31151, 31153, 31154, 31251 & 31226-2024
Decided on: 25.11.2024**

M/s Malwa Concrete Plant

.....Petitioner (s)

Versus

State of Punjab & others

.....Respondent(s)

**CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE MEENAKSHI I. MEHTA**

Present:- Mr.Harinder Sharma, Mr.S.S.Thakur, Advocates
for the petitioner (s).

Mr.Shekhar Verma, Addl.A.G., Punjab.

G.S. Sandhawal, J. :

1. The present judgment shall dispose of six writ petitions bearing CWP-31148, 31151, 31153, 31154, 31251 & 31226-2024 since common questions of fact are involved. Facts have been taken from CWP-31148-2024 titled *M/s Malwa Concrete Plant Vs. State of Punjab & others*.

2. Challenge in the writ petition, filed under Article 226/227 of the Constitution of India is to the order dated 01.10.2024 (Annexure P-6) wherein the appeal filed by the petitioner was dismissed by the Secretary, Mines & Geology, Punjab, Chandigarh-respondent No.1, on the ground that there was no remedy of second appeal to be filed before the State Government. Resultantly, the order dated 25.01.2023 was passed by respondent No.2, Superintending Engineer, Jalandhar, while deciding the appeal of the petitioner and partly allowing the same by giving the benefit of the amount quantified as royalty from the initial demand of Rs.1,43,60,203/- was reduced to Rs.1,01,79,809/-, which has been upheld.

Then, Form 'S' notice was issued under Rule 85(6) of the Punjab Minerals

& Mines Rules, 2013 (for short, the '2013 Rules') dated 25.01.2023 (Annexure P-3), wherein the amount was demanded in pursuance of the appeal having been partly allowed by the Mining Officer/Executive Engineer.

3. Counsel for the petitioner submits that since the demand was issued in Form 'S' under Rule 85(6) of the 2013 Rules, the petitioner has a right to file appeal as fresh cause of action arose and raised the argument that weighment slips submitted by the petitioner for the return period from May, 2021 to July, 2022, was wrong and reliance upon the letter dated 21.09.2022 (Annexure P-7) was illegal.

4. We are of the considered opinion that the argument raised is without any basis. The petitioner having availed his right of appeal had succeeded partly to a very large extent and got the demanded amount reduced by more than 1/3rd, to bring it down to Rs.1,01,79,809/- from Rs.1,43,60,203/-. Rule 87 of the 2013 Rules provides that an appeal would lie from the original order of assessment. The factual matrix is that the first demand was raised vide notice dated 01.09.2022 (Annexure P-1) by respondent No.3, the District Mining Officer-cum-Executive Engineer under Rule 85(6) of the 2013 Rules for a sum of Rs.1,43,60,203/- for the period from May, 2021 to July, 2022 on account of the fact that the total production of the mineral during the said period had been determined at 1,63,705 Metric Tons on which royalty was, accordingly, assessed and the amount was to be paid by 30.09.2022.

5. The Government had, in exercise of the powers of delegation under Rule 43, given the authority to hear and decide the appeals filed by the crushers and the Screening-cum-Washing Plants against the recovery

notices issued by the Executive Engineers-cum-District Mining

Officers under Rule 85 to the Superintending Engineers of Drainage-cum-Mining Circles working in the Water Resources Department vide notification dated 04.11.2022 (Annexure P-2). The said rule reads as under:

“43. Delegation. - The Government may, by notification in the official Gazette, direct that any powers exercisable by the Director under these rules may also be exercised, in such cases and subject to such conditions, if any, as may be specified in the notification, by an officer of the Government, as may be specified therein.”

6. The appeal having been filed before the appellate Authority, it had been directed that the Assessing Authority was to verify and scrutinize the returns to the concerned SDOs and the Appellate Authority took a decision that Punjab State Sand & Gravel Policy-2022 be kept in mind while taking into account the outstanding mining dues. Resultantly, it was noticed that the recoverable amount was lesser i.e. Rs.1,01,79,809/- as the material verified was lesser i.e. 1,41,178 Metric Tons and the petitioner was directed to pay the said amount, failing which, proceedings were liable to be initiated against the stone crushers as per the 2013 Rules by way of recovery of arrears of land revenue. Fresh Form ‘S’ notice as per the calculations were sought to be issued.

7. In pursuance of the raw material being requantified, the appeal was allowed and the demand was then quantified. Merely because a fresh demand notice in Form ‘S’ was issued, another appeal would not lie to the Secretary as the rule is crystal clear that an appeal would lie against every original assessment done and now, it does not lie in the mouth of the petitioner to claim for remedy of appeal which is not provided under the

2013 Rules and the claim that they have a right of appeal against the appellate order is untenable.

8. A perusal of the appeal would go on to show that it was filed under Rule 87(ii) of the 2013 Rules. The demand by way of Form 'S' notice was issued by the assessing authority which means a Mining Officer or any authorized officer asked to make assessment under the 2013 Rules. The assessing officer having made the assessment, in terms of the delegation given to the Superintending Engineer to decide the appeals, the same were decided. Merely because the raw material was re-quantified and reduced and Form 'S' was issued under Rule 85(6) of the 2013 Rules, would not give a right to contend that a second appeal would lie under Rule 87 (ii). Even otherwise, Rule 87(iii) provides that if the order is made by the Director, then the appeal lies to the Government and there is no provision under the said Rule to file a second appeal. In the absence of any such provision, the contention raised is baseless. Rule 87 reads as under:

“87. Appeals. - (1) An appeal from every original order of assessment of royalty under these rules shall lie -

(i) if the order is made by an assessing authority, to the State Geologist;

(ii) if the order is made by the State Geologist, to the Director; and

(iii) if the order is made by the Director, to the Government.

(2) No appeal shall be entertained, unless it is filed within sixty days from the date of communication of the order appealed against or such longer period as the appellate authority may allow for reasons to be recorded in writing.

(3) No appeal shall be entertained, by the appellate authority unless such appeal is accompanied by satisfactory proof of payment of the royalty and the price of minor minerals.”

9. Respondent No.1 had noticed the above-said provisions and

also placed reliance to Section 30 of the Mines and Minerals

(Development & Regulation) Act, 1957, which provides power of revision by the Central Government to differentiate that there was no similar provision in the case of minor minerals and the revision lay only where the minerals other than minor minerals was involved and had dismissed the second appeal on the ground of maintainability, not having jurisdiction. Nothing as such was brought to our notice that the order dated 25.01.2023 passed in appeal suffered from any such illegality or infirmity.

10. It is settled principle of law that right of appeal is a creature of statute and thus, apparently the appeal was not maintainable in view of the observations by a Three Judge Bench of the Apex Court in **B.N.Taneja (IFS) Vs. Bhajan Lal, 1988 (3) SCC 26**. Relevant portion of the judgment read as under:

“12. Right of appeal is a creature of the statute and the question whether there is a right of appeal or not will have to be considered on an interpretation of the provision of the statute and not on the ground of propriety or any other consideration. In this connection, it may be noticed that there was no right of appeal under the [Contempt of Courts Act, 1952](#). It is for the first time that under [section 19\(1\)](#) of the Act, a right of appeal has been provided for. A contempt is a matter between the court and the alleged contemnor. Any person who moves the machinery of the court for contempt only brings to the notice of the court certain facts constituting contempt of court. After furnishing such information he may still assist the court, but it must always be borne in mind that in a contempt proceeding there are only two parties, namely, the court and the contemnor. It may be one of the reasons which weighed with the Legislature in not conferring any right of appeal on the petitioner for contempt. The aggrieved party under [section 19\(1\)](#) can only be the contemnor who has been punished for contempt of court.”

11. Even otherwise, the appellate order was passed 1 year 10 months back and not having challenged the same before the competent

Court of jurisdiction and having filed an appeal which is not maintainable after a period of more than 5 months, we are of the considered opinion that the petitioners are not entitled for the liberty to challenge on merits now as the same had to be challenged before this Court at the earliest. Merely having filed an appeal which is not maintainable, the petitioners now cannot turn around and claim that the weighment slips had been submitted had not been considered while granting the benefit and the directions of the State that such weighment slips should not be considered as valid slips and procured and thus, cannot now be challenged at this belated stage.

12. Having got the benefit of the appeal, the second demand notice was only issued on account of the observations by the Appellate Authority to issue fresh Form ‘S’ notice, as per the verifications done and therefore, no fault can be found in the orders passed by the authorities below having allowed the appeal and reduced the amount by more than 1/3rd by keeping in mind the fact that the monthly returns were to be ordered to be verified by the concerned Sub-Divisional Officers and staff.

13. Resultantly, in view of the above discussion, we do not find any merit in the present set of writ petitions and the same are hereby dismissed.

(G.S. SANDHAWALIA)
JUDGE

25.11.2024
Sailesh

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned :	Yes	
Whether Reportable :	Yes	