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THE HIGH COURT OF MADHYA PRADESH
MCRC-37312-2020
Banti Vs. State of MP

Gwalior, Dated : 05/10/2020

Shri Pradeep Katare, Counsel for the applicant.

Shri C.P. Singh, Counsel for the State.

Heard finally through Video Conferencing.

Case diary is not available. It is submitted by the counsel for the applicant that the case may be decided on the basis of the allegations made in the rejection order.

This first application under Section 439 of Cr.P.C. has been filed for grant of bail.

The applicant has been arrested on 09.09.2020 in connection with Crime No.408/2020 registered at Police Station City Kotwali Distt. Bhand for offence under Section 379 of IPC and Section 53 of Madhya Pradesh Gaud Khaniz Adhiniyam and Section 130/177 of the Motor Vehicles Act.

It is submitted by the Counsel for the applicant, that according to the rejection order, a dumper, which was loaded with sand, was seized and the driver was not in possession of e-TP or any document to show the payment of royalty. It is submitted by the counsel for the petitioner that the State has framed **Madhya Pradesh Sand (Mining, Transportation, Storage and Trading) Rules, 2019** and as per Rule 20 of the Rules, 2019, in case of illegal mining, the matter can be compounded on payment of penalty and royalty. It is submitted that

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in the light of the Rules, 2019, no offence is made out against the applicant and at the most, State can impose the penalty and recover the royalty as mentioned in Rule 20(2) of the Rules, 2019.

Per contra, the application is vehemently opposed by the Counsel for the State.

The only question for consideration, is as to whether in the light of Rules, 2019, can it be said that no person who is involved in the illegal transportation of illegally excavated sand, can be punished under the provisions of IPC or any other statute or not?

Rules 3, 6, 7, 12 and 19 of the Rules, 2019 reads as under:-

“3. Restrictions:- The following restrictions shall be applied with regard to mineral sand,-

(1) No vehicle shall cause to be transported the mineral sand from the sanctioned quarry or storage place without prescribed transit pass

(2) No Vehicle shall cause to be transported without substantial entry in Transit Pass (as quantity of mineral, date/time of transport, time to be taken to reach to destination place, etc.)

(3) No person, except the valid contractor, shall be permitted to store mineral sand for commercial purpose or for use in commercial construction, quantity more than the quantity specified in these rules

(4) The vehicles engaged in sand transportation without GPS or establishing of machine of equivalent technique as prescribed, shall be prohibited after the date of notification by the State Government.

(5) Extraction and removal of sand from the following area shall be prohibited as provided in sustainable sand mining guidelines, 2016 issued by Government of India,-

(a) within 200 meters from any bridge:

(b) within 200 meter upstream and

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downstream areas of any water supply scheme or water resources scheme;

(c) within 100 meter from edge of national highway and Railway line;

(d) within 50 meter from any canal, reservoir or building;

(e) within 50 meter from edge of state highway and 10 meters from edge of other village road;

(f) within fixed distance from any areas which has been built to control the flood;

(g) within 200 meter distance from the place of cultural, religious, historical, and archaeological importance or within the distance as provided in the Act/Rule;

(h) such areas which have been declared prohibited by Collector due to environmental or other reasons:

Provided that, on receipt of representation, permission to grant for mining within the limit of prohibited area may be considered, after getting NOC/Consent from the concerned administrative department.

(6) There shall be complete ban on mining, loading and storage of sand by machines from the sanctioned quarries in river Narmada. Sand mining, loading and storage from quarries having area upto 5.00 hectare situated on other rivers shall be done by the committee of local labourers and quarries having area more than 5.000 hectare, local labourers shall be given priority for sand mining, loading and storage. The use of machines for sand mining in other rivers may be given depending upon the requirement and approval in mining plan and environmental clearance.

6. Estimation of quantity available in declared sand quarries-

(1) The Collector, with the help of Corporation, shall make the quarry-wise estimate of mineable quantity of available sand, in demarcated and declared sand quarries

(2) The multiplication of the Area of declared quarry and its actual depth upto which sand is available (maximum 3 meter or water level whichever

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is less) shall be the mineable quantity of that sand quarry.

For Example :-

Area of quarry-4.000 hectare means 40000 square meter Actual depth-2.50 meter

Mineable Quantity- $40000 \times 2.5 = 1,00,000$ cubic meter per year.

(3) The Permission to mine, in sand quarries up to 3 meter depth from the surface or upto water level, whichever is less, shall be legal. Hence while estimating quantity maximum up to 3 meters depth shall be the base for estimation of mineable quantity,

(4) The sum of quantity of available sand in all the demarcated and declared sand quarries included in the group shall be the total mineable quantity of the group.

7. Fixation of the preliminary base price (upset price).

(1) The multiplication of quantity of available sand in each quarry of the group separately and the amount payable at the rate of Rs. 125 per cubic meter shall be the preliminary base price (upset price) of that quarry.

(2) For e-Tender, the sum of preliminary base price calculated separately for the quarries included in group, shall be the preliminary base price (upset price) of that group.

12. Statutory Permissions.- The statutory permissions/formalities for each sand quarry of the group may be obtained/completed, as per rule. All the statutory permissions (e.g. Mining Plan, Environmental Clearance, Water and Air Consent etc.) required for the operation of the sand quarry shall be obtained by the successful tenderer. The successful tenderer may start mining operation only after obtaining the statutory permissions as per rule 14. Excavation without statutory permission or excavation in excess quantity than permitted quantity in statutory permission, in such condition 100% cost of the excavated mineral and Amount of compensation towards environmental damage shall be recoverable from the contractor. The statutory permission are as

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follows:

(1) Mining Plan-

(a) The successful tenderer shall submit mining plan for approval to the Collector within a period of one month from the date of issuance of letter of intent. The Mining Plan shall be prepared by the Recognised Qualified Person (R.Q.P.), authorised by the Director.

(b) The mining plan shall consist of the location (latitude-longitude) of the mines, quantity of mineable sand available in the sand quarry and other issues, as provided for in Madhya Pradesh Minor Mineral Rules 1996.

(c) The Collector shall approve the mining plan on the basis of recommendations of the technically qualified officer (Post Graduate Degree Holder in Geology/Applied Geology) of the department posted in the district and in case if in any district technically qualified officer is not posted, in such case concerned Regional head or Director shall approve the mining plans.

(d) The mining plan shall be prepared only on the basis of actual quantity available/estimated and all the Mining operations shall be carried-out in accordance with the approved mining plan.

(2) Environmental Clearance- The successful tenderer after getting approved mining plan, within a maximum period of 15 days, shall submit application before the competent authority to obtain Environmental Clearance in accordance with notification issued by Ministry of Environment, Forest and Climate Changes.

(3) Water and Air Consent- The successful tenderer after getting environmental clearance within a maximum period of 7 days, shall submit application before the competent authority for obtaining the consent under the Water (Prevention of pollution and control) Act, 1974 and the Air (Prevention of Pollution and Control) Act 1981.

(4) Permissible Quantity- The mining shall be permitted upto mineable quantity fixed in mining plan, environmental clearance, water and air consent (whichever is less).

(5) The annual contract amount shall not be

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reduced in any case if there is reduction in mineable quantity in approved mining plan, environmental clearance, water and air Consent.

(6) All the above statutory permissions shall be obtained within a time limit. The corporation shall supervise for the permissions being taken for each group by the group contractor. In case of any delay, carelessness or lack of interest proceedings for cancellation of letter of intent may be initiated.

19. Amount to be Deposited.-

(1) The whole amount received from mineral sand shall be deposited online in an account maintained by the corporation.

(2) The amount deposited as above shall be transferred by the corporation at the end of the month under the heads prescribed in chapter 11 of these rules and the head wise details shall be sent to the Director and State Government.

(3) Interest for the delayed payment, at the rate of 24% per annum or at the rate decided by the State Government from time to time, shall be payable.”

By Rule 3 of the Rules, 2019, certain restrictions have been imposed with regard to mineral sand and it has been provided that no vehicle shall cause to be transported the mineral sand from the sanctioned quarry without the transit pass as well as without any substantial entry in the transit pass with regard to the quantity of mineral, date and time of transport, time to be taken to reach to the destination etc.. No vehicle engaged in sand transportation without GPS or establishing of machine of equivalent technique shall operate and the extraction and removal of sand from the area mentioned in Rule 3(5) of the Rules, 2019 shall be prohibited. Rule 6 of the Rules, 2019 provides for estimation of quantity available in declared sand

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quarries and Rule 7 provides for fixation of preliminary base price. Rule 12(2), (3) and (4) provides for environmental clearance, water and air consent and permissible quantity which can be excavated from the sanctioned quarries. Thus, it is clear that the mining of mineral sand is subjected to various restrictions imposed by the State under the Rules, 2019. Rule 20 of the Rules 2019 provides for penalty and compounding of cases of illegal mining.

It is the case of the petitioner that once the penalty is imposed and the royalty as mentioned in Rule 20 of the Rules 2019 is recovered, then the person involved in illegal mining cannot be prosecuted for committing any criminal offence.

So far as the exemption from prosecution for criminal offence is concerned, imposition of penalty and royalty has to be considered in the light of the Rules 6 and 7 of the Rules, 2019, which provides for the maximum quantity of sand, which can be excavated and the minimum base price of the such excavated sand. Further, from Rule, 12(2), (3) and (4) of the Rules, 2019, it is clear that the mining is subjected to environmental clearance, water and air consent as well as permissible quantity. In case of violation of any water and air consent, the pollution board can also register an offence.

So far as the recovery of penalty and royalty is concerned, at the most, it can be said that it is for the satisfaction of the civil

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liability. There is no bar in the Rules, 2019 to resort to the provisions of Penal Code or any other Statute.

The Supreme Court in the case of **State of M.P. vs. Rameshwar and others** reported in **(2009) 11 SCC 424** has held as under:-

“48. Mr. Tankha's submissions, which were echoed by Mr. Jain, that the M.P. Cooperative Societies Act, 1960 was a complete code in itself and the remedy of the prosecuting agency lay not under the criminal process but within the ambit of Sections 74 to 76 thereof, cannot also be accepted in view of the fact that there is no bar under the M.P. Cooperative Societies Act, 1960, to take resort to the provisions of the general criminal law, particularly when charges under the Prevention of Corruption Act, 1988, are involved.”

In the light of the above-mentioned judgment, it is clear that even in case of penalty or royalty has been assessed by the Collector under Rule 20 of the Rules, 2019, still a wrongdoer can be prosecuted for committing an offence punishable under the provisions of IPC and any other statute.

It is not the case of the applicant that he was transporting the sand excavated from allotted sand quarry.

Since the applicant was transporting the illegally excavated sand without payment of any royalty and without necessary documents like e-TP etc., accordingly, it is *prima facie* clear that the applicant has committed an offence under 379 of IPC and Section 53

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of Madhya Pradesh Gaud Khaniz Adhinyam and Section 130/177 of
the Motor Vehicles Act

No case is made out for grant of bail.

The application fails and is hereby **dismissed**.

(G.S. Ahluwalia)
Judge

Abhi