

**HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR.**

DIVISION BENCH

PRESENT

SHEEL NAGU & ANAND PATHAK, JJ.

(WP.11693.2020)

Surendra Kumar Shivhare

Vs.

State of M.P. & Ors.

Shri N.K. Gupta, learned Sr. Advocate with Shri S.D.Singh Bhadoriya, learned counsel for petitioner.

Shri Ankur Mody, learned Additional Advocate General for the State.

WHETHER REPORTABLE : Yes

Law Laid Down:

(1) The power u/R.20(2) M.P. Sand (Mining, Transportation Storage and Trading) Rule, 2019 cannot be exercised without affording reasonable opportunity of being heard to the alleged illegal transporter on three aspects i.e. (i) whether material alleged to be unlawfully transported is sand or not (ii) whether the illegal transporter holds valid Electronic Transit Pass (ETP) or not and (iii) whether sand being transported is in excess of the amount of sand permissible in ETP.

(2) Proviso placed at the end of Rule 20(3) of 2019 Rules applies to Rule 20(2) also.

Significant Paragraph Numbers: Paras 6, 7, 8.

ORDER
(09.03.2021)

Sheel Nagu, J.

1. The instant petition filed u/Art.226 of the Constitution assails Annexure-P/1 dated 27/7/2020 passed by respondent No.2-Collector, Guna by which while exercising power u/Rule 20(2) of M.P. Sand (Mining, Transportation Storage and Trading) Rule, 2019 (for brevity “2019 Rules”), respondent No.2 confiscated the seized vehicle (Truck bearing registration No.MP33-H-1610) and minerals of petitioner and also imposed penalty of Rs. 50,000/-for having indulged in illegal mining and transportation of sand.
2. Briefly stated facts of the case are that petitioner is the registered owner of the vehicle in question which was seized in connection with illegal mining and transportation of dust of *Gitti* (boulders) on 21/7/2020 and offence was registered u/Ss. 379, 414 IPC & Ss. 4(A), 21 (1) of the Mines & Minerals (Development and Regulation) Act, 1957.
3. Following two questions arise in this case for consideration of this court:-

“(i) Despite availability of alternative remedy of appeal u/R.22 of 2019 Rules, should this court in exercise of writ jurisdiction entertain/decide the legality and validity of impugned order P/1 dated 27/7/2020 passed by respondent No.2-Collector Guna inflicting penalty of Rs.50,000/- against petitioner without affording reasonable opportunity

of being heard by issuance of show-cause notice by passing of impugned order or not?

(ii) Other ancillary question which arises is about interpretation of R.20 of 2019 Rules in particular the proviso placed at the end of sub-rule (3) of R.20 in as much as to whether this proviso relates exclusively to R.20(3) or it also relates to R.20(2) of 2019 Rules ?”

3.1 It would be appropriate to reproduce R.20 of 2019 Rules *in toto* for answering the aforesaid two questions which is as follows:-

“20. Penalty and Compounding of cases of Illegal Mining.-

(1) On receipt of information about illegal mining, the Collector or Officer authorised for this purpose, shall seize mineral, vehicle, machine, tools etc. and case shall be submitted, before the Collector. During the pendency or before taking final decision of the registered case, if any application for compounding the case is received, the Collector may dispose of the case after applicant depositing an amount equal to 25 times of royalty of the excavated mineral. During this period, if application/consent is not received, Collector shall impose penalty, 50 times of the royalty of mineral excavated. On deposit of compounding amount or penalty amount, the seized mineral, vehicle, machines, tools, may be released:

Provided that if penalty amount imposed is not deposited by the illegal extractor, then Collector or Officer authorised for this purpose may confiscate and auction the seized mineral, vehicle, machines and tools.

(2) *Penalty and compounding of cases of illegal*

transportation- *In case of registered cases of illegal transportation, transportation without valid e-tp and transportation with quantity more than the quantity entered in e-tp, the Collector may dispose off cases after deposit of compounding fees or amount of penalty by the illegal extractor, as under:-*

No.	Type of Vehicle	Transportation without valid Transit Pass		Transport with Transit Pass but quantity is more than quantity entered in Transit Pass	
		Compoundi ng Fees	Amount of Penalty	Compoundi ng Fee	Amount of Penalty
1.	Tractor-trolley	10,000/-	25,000/-	5,000/-	10,000/-
2.	Two axle (6 wheeler vehicle)	25,000/-	50,000/-	10,000/-	20,000/-
3.	Dumper (hydraulic 6 wheeler vehicle)	50,000/-	1,00,000/-	25,000/-	50,000/-
4.	3 axle (10 wheeler vehicle)	1,00,000/-	2,00,000/-	50,000/-	1,00,000/-
5.	4-6 axle (More than 10 wheeler vehicle)	2,00,000/-	4,00,000/-	1,00,000/-	2,00,000/-

Provided, compounding fees or amount of penalty in case of transportation of mineral by 4 wheeler vehicle (Matador, 407, 608 etc) carrying mineral more than the quantity of tractor-trolley, shall not be less than 1.5 times of the amount fixed for tractor-trolley.

(3) Compounding and Penalty in cases of Illegal Storage-

The Collector, for disposal of registered cases of illegal storage of sand upon receipt of any application/consent from the date of registration of the case, during the pendency of the case or before

taking the final decision, may compound the case after depositing amount equivalent to 25 times of royalty of the stored mineral. If during this period any application/consent is not received then the Collector may impose penalty of amount 50 times of the royalty of the mineral stored:

Provided, no such order shall be passed against the person interested, unless the opportunity of being heard is given to him.”

3.2 It is not disputed at the bar by counsel for the rival parties that prior to issuance of impugned order, the Competent Authority i.e. Collector, Guna, while exercising his power u/R.20(2) of 2019 Rules did not issue any show-cause notice to petitioner.

4. The contention of learned counsel for State while defending the impugned order P/1 is that proviso placed at the end of R.20(3) relates exclusively to R.20(3) which is crystal clear by its very placement. Thus, it is submitted by State that if the legislature intended to provide reasonable opportunity of being heard prior to passing of impugned order u/R.20(2) of 2019 Rules then same proviso would have been placed immediately after R. 20(2). Not having done so, the intention of legislature is clear of not providing any such prior opportunity of being heard to the person against whom order u/R. 20(2) of 2019 Rules is being passed.

5. *Per contra*, learned Sr. counsel for petitioner has submitted that proviso placed at the end of R.20(3) is a proviso qualifying all the sub-rules, (1)(2) & (3) of R.20 of 2019 Rules irrespective of its

location. More so, it is the contention of learned Sr. Counsel Shri N.K. Gupta that assuming without admitting that legislature did not provide for prior opportunity of being heard before passing the order of penalty, the said element of prior opportunity ought to be treated to exist by implication since the order of penalty casts consequence of adverse nature.

5.1 Reliance is placed on the decision of Apex Court in case of in **“Sahara India (Firm), Lucknow Vs. Commissioner Of Income Tax, Central-I And Another [(2008) 14 SCC 151]”**, where Apex Court has held that :-

“19. Thus, it is trite that unless a statutory provision either specifically or by necessary implication excludes the application of principles of natural justice, because in that event the court would not ignore the legislative mandate, the requirement of giving reasonable opportunity of being heard before an order is made, is generally read into the provisions of a statute, particularly when the order has adverse civil consequences for the party affected. The principle will hold good irrespective of whether the power conferred on a statutory body or tribunal is administrative or quasi-judicial.”

5.2 Said decision in **Sahara India (Firm), Lucknow (supra)** has subsequently been followed in **Kesar Enterprises Ltd. Vs. State of U.P. And Others [(2011) 13 SCC 733]**.

6. A bare perusal of R.20(2) of 2019 Rules elicits that same relates to the subject of penalty and compounding in cases relating to illegal transportation of sand. This Rule empowers Collector to

finally decide cases of illegal transportation of sand either by deposit of compounding fee or amount of penalty.

6.1 Thus, it is obvious by the very terminology used that Collector can pass an order of compounding/refusing to compound depending upon the voluntary act of the illegal transporter of seeking compounding. If illegal transporter does not come forward to seek compounding, then the only option left with Collector is to impose penalty in terms of the table contained in Rule 20.

6.2 So far as cases of compounding are concerned, Collector merely has to inform the illegal transporter about registration of case and right available to him to compound the offence. If illegal transporter comes forward seeking compounding then Collector has to pass an order in terms of the table in Rule 20 with no discretion available to Collector to either refuse compound or to reduce or enhance the compounding fee prescribed .

6.3 However, as regards the cases where illegal transporter fails to come forward despite being intimated about his right to compound the offence, the Collector is left with no option but to pass an order of penalty in terms of the table in Rule 20. Thus, the Collector in such cases where penalty is imposed also does not have any discretion in regard to imposition of penalty and the quantum thereof.

6.4 Pertinently, there may be cases registered u/R.20(2) of 2019

Rules for illegal transportation of sand where alleged illegal transporter may come forward and contend that the mineral actually being transported was either a mineral other than sand to which 2019 Rules do not apply or the transportation of sand was being done with valid Electronic Transit Pass (ETP in short) within permissible limit of quantity which is not in variance to the quantity shown in ETP.

7. In regard to these three factors i.e. mineral being transported is actually sand or not and whether the alleged offender holds a valid ETP and the quantity being transported is not more than the quantity permissible by the ETP, the Collector has to conduct an enquiry howsoever summary, which necessarily should contain all the trappings of the concept of reasonable opportunity.

7.1 The concept of reasonable opportunity essentially has three ingredients i.e. (i) Communicating the allegations to the person against whom they are made in precise and concise manner to enable him to respond; (ii) To give him reasonable opportunity to respond to the allegation which may be a few days or more depending upon the attending factual scenario; (iii) Reply orally or in writing if submitted by person concerned should be taken into consideration before deciding on the question of seized mineral is sand or not and existence of a valid ETP and that the quantity of sand is not more than the quantity mentioned in the ETP.

8. After following the concept of reasonable opportunity *qua* the said three aspects as explained above, the Collector will be well within his powers u/R.20(2) of 2019 Rules to pass an order of penalty in terms of the contents of the table u/R. 20.

8.1 The fallout of above discussion is that an enquiry u/R. 20 (2) is necessary in regard to the aforesaid three factors i.e. mineral being sand or not and whether alleged offender holds valid ETP and the quantity being transported is more than the quantity mentioned in the ETP or not. Such enquiry cannot be unilateral and has to be subject to affording of reasonable opportunity in regard to these three aspects.

9. Accordingly, this Court holds that concept of reasonable opportunity contained in proviso placed at the end of R. 20(3) is squarely applicable *qua* Rule 20(2) of 2019 Rules also.

10. From the above factual matrix, it is evident that impugned order Annexure-P/1 dated 27/7/2020 passed by respondent No.2-Collector, Guna has been passed without affording reasonable opportunity of being heard in regard to aforesaid three aspects.

11. Consequently, this Court is left with no option but to allow this petition with following directions:-

- (1) The impugned order Annexure-P/1 dated 27/7/2020 passed by Collector, Guna/respondent No.2 is quashed.
- (2) Competent Authority, respondent No.2-

Collector, Guna, is at liberty to pass a fresh order after affording reasonable opportunity to petitioner as explained above.

(3) No cost.

(Sheel Nagu)
Judge
09/03/2021

(Anand Pathak)
Judge
09/03/2021

(Bu)