

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

**PRESENT**

**DIVISION BENCH:**

**JUSTICE SHEEL NAGU & JUSTICE VISHAL MISHRA**

**(Writ Petition 19958/2020)**

**M/s Peethambara Granite Gwalior**

**Vs.**

**State of Madhya Pradesh**

---

Shri Pawan Kumar Dwivedi, learned counsel for petitioner.

Shri M.P.S.Raghuvanshi, learned Additional Advocate General for the State.

---

**WHETHER REPORTABLE : YES**

**Law Laid Down:**

(i) The object behind the power of suspension is to arrest and prevent the ongoing illegality/irregularity/misconduct from adversely affecting the pending enquiry initiated to ascertain the veracity of default.

(ii) This object would be defeated if suspension is preceded by following of principle of *audi alterm partem*.

(iii) Therefore the requirement of following principle of *audi aalterm partem* is abhorrent to the exercise of power of suspension.

(iv) The expression “by issuing show cause notice” found in Rule 53(7) of M.P. Minor Mineral Rules, 1996 does not mean that suspension is to be preceded by following of principle of *audi alterm partem* but the object of the Rule would stand satisfied if the order of suspension itself contains recital informing the defaulter/lease holder the reason for suspending quarrying operations.

**Significant Paragraph Numbers: Paras 4, 4.1,4.2,4.3.4.4, 5 & 6.**

---

**O r d e r**  
**(22/12/2020)**

***Sheel Nagu, J.***

Heard through video conferencing.

1. This petition filed u/Art. 226 of the Constitution assails the order dated 25/11/2020, P/1 passed by the Collector, Gwalior/respondent No.2 suspending quarrying operations undertaken by petitioner for a period from

22/9/2018 to 22/9/2028 vide agreement P/2. The reason assigned for suspension is discovery of violation of condition of terms of agreement and indulging in unlawful extraction of minerals. Provision of Rule 53(7) of M.P. Minor Mineral Rules, 1996 (for brevity 1996 Rules) has been invoked to issue the impugned order P/1.

2. On being confronted by this court as to the factum of petitioner having alternative efficacious remedy of preferring an appeal/review/revision u/R. 57 of 1996 Rules, learned counsel for petitioner submits that the impugned order violates the principle of natural justice (*audi alteram partem*) as the same could not have been passed without issuing of show cause notice as stipulated in mandatory terms u/R. 53(7) of 1996 Rules.

2.1 To adjudicate the aforesaid ground, it is essential to first textually & contextually analysis the contents of Rule 53(7) of 1996 Rules. For ready reference and convenience, Rule 53(7) is reproduced below:-

*“53(7) Action against contravention of conditions of extract trade quarry/quarry lease/permit or the provisions of this rule. - If during the enquiry of any illegal extraction/transportation a fact comes into the knowledge that any lease holder/contractor/permit holder, in order to evade the royalty from any sanctioned quarry lease/trade quarry/permit, area is involved in dispatching/selling of minerals in excess quantity by showing less quantity of minerals in transit pass/defective transit permit/blank transit permit, then the Collector of the concerned district may suspend the quarrying operation in such quarry lease/trade quarry permit by issuing show cause notice for violating the conditions of the agreement and after providing an opportunity of being heard may cancel the such lease/trade quarry/permit. The additional royalty may `be recovered after making the assessment of the quantity dispatched or sold in order to evade the royalty :*

*Provided that during the inspection if it is found that illegal minerals transporter by securing the transit pass from the lease holder in order to evade the royalty has made overwriting or tempered the pass then the*

*officer of the minerals department/Mineral Inspector  
may registered a case against the person concerned."*

2.2 A bare perusal of the aforesaid reveals that as and when the Collector during inquiry into illegal extraction/transportation, discovers that the lease holder/contractor/permit holder in order to evade royalty is involved in dispatching/selling of minerals in excess quantity by showing less quantity of minerals as mentioned in transit pass or permit, then said authority in it's discretion can suspend the quarrying operation by issuing show cause notice for violating the conditions of the agreement and thereafter can also cancel trade quarry/permit after affording reasonable opportunity of being heard.

3. Learned counsel for petitioner laid much stress on the expression "by issuing show cause notice" found in Rule 53(7) of 1996 Rules and urges that suspension is required to be preceded by issuing of show cause notice and since in the instant case no show cause notice was issued before passing impugned order P/1, the same is liable to be set aside.

4. A close scrutiny of Rule 53(7) elicits that power of suspension can be exercised on discovery of violation of conditions of agreement/lead deed. The use of expression "by issuing show cause notice", in juxtaposition to discovery of violation of condition of terms of agreement, does not mean that it is incumbent upon the competent authority to first issue show cause notice, calling upon the lease holder to show cause as to why the quarrying operation be not suspended and thereafter consider the reply of defaulter to go in for suspension. If that was the intention of the Rule Making Authority then the rule would have expressly provided that exercise of power of suspension can be made only after issuing of show cause notice and calling for a reply before passing order of suspension. The Rule Making Authority has chosen to confer the power of suspension and in the same breath has

made it incumbent upon the competent authority to issue show cause notice for violating the condition of the agreement/lease deed. Meaning thereby that power of suspension of quarrying operation and the obligation to issue show cause notice is exercisable simultaneously. Therefore the order of suspension can be passed informing the reasons for suspension, which would satisfy the requirement of issuance of notice to the defaulter u/R.53(7).

4.1 The requirement of following principle of natural justice (*audi alterm partem*) by affording of reasonable opportunity of being heard is expressly contemplated by Rule 53(7) before cancelling the lead deed/permit. The expression “providing opportunity of being heard”, is relatable to the power of cancellation and not to the power of suspension.

4.2 More so, the concept behind suspension is to arrest with immediate effect illegality/irregularity being caused by defaulting lease holder. If the exercise of power of suspension is required to be preceded by issuing of show cause notice and affording of reasonable opportunity of being heard, then the illegality being committed by defaulter would not be arrested and by the time the inquiry is held affording of reasonable opportunity of being heard, damage to the natural resources which are assets of the Nation would become irreparable leading to environmental degradation which often assume irreversible nature.

4.3 Thus, conceptually the power of suspension to be exercised in any field be it mines & mineral, service etc. does not depend upon following the principle of *audi alterm partem* as a condition precedent.

4.4 The aforesaid view of this court is bolstered by single bench decision of this court though relating to field of fair price shop, where in somewhat similar facts in *Writ Petition No.14421 of 2020 [Mahila Bahuddeshiya*

***Sahakari Sanstha Mdt., Morena Vs. State of M.P. and others]***, decided on

15/10/2020 it was held as under:-

*"3.2 A bare perusal of the aforesaid provision reveals that statute does not oblige the competent authority to afford an opportunity of being heard to the 5 society as a pre-requisite for passing order of suspension. The opportunity of being heard is a concept which is relatable to the proceedings for the purpose of cancellation of fair price shop. The concept of show-cause notice can never be relatable to the power of suspension. If the person/institution concerned is given an opportunity to respond as to why the shop may not be suspended, then grant of such opportunity would defeat the object behind the power of suspension which is an extraordinary power vested with competent authority to immediately stop continuance of irregularities and illegalities alleged in the process of distribution of essential commodities.*

*3.3 If opportunity is given to show-cause within 10 days and therefore to conclude proceedings regarding suspension within 3 months as contended by learned counsel for petitioner, it would lead to incongruous result of allowing the fair price shop to continue indulging in illegalities and irregularities.*

*3.4 Therefore, the intention behind Clause 16(3) of Control Order 2015 is best understood by taking que from object behind the Control Order 2015 which is to ensure uninterrupted supply of essential commodities to public at large. This is possible only when power is available to stop the mischief pending inquiry into veracity of the mischief/misconduct. Thus, a pre-hearing before suspension is abhorant to the object sought to be achieved by Control Order, 2015.*

*3.5 If the decision to suspend is required to be preceded by show-cause for grant of opportunity of being heard to the delinquent and thereafter considering reply and taking a call on the suspension then hearing would consume much time thereby allowing delinquent to continue indulging in illegalities in distribution of essential commodities. This can never be the object of Clause 16(3) of Control Order 2015. Reading of Clause 16(3) of Control Order 2015 shows invocation of the provision with harmony to the object behind the Control Order. Thus it is obvious that power of suspension is to be exercised without affording any prior opportunity of being heard. Period of 10 days for issuance of notice and then placing matter before competent authority to conclude proceedings within 3 months is relatable to the proceeding for cancellation if thought it best by competent authority to initiate.*

4. *From the above it is evident that exercise of power of suspension is not dependent upon following of principle of audi alteram partem.*”

5. In view of above, the impugned order Annexure-P/1 dated 25/11/2020 by Collector, Gwalior suspending quarrying operation of petitioner/lease holder on discovery of certain illegality/unlawful extraction is found to be passed in accordance with provision of Rule 53(7) of 1996 Rules.

6. Since the ground of violation of principle of *audi alteram partem* raised by petitioner does not appeal to this court as explained above, and petitioner has alternative statutory remedy of appeal/review/revision u/R. 57 of 1996 Rules and for involvement of disputed questions of fact, this court declines interference.

7. Accordingly, the petition stands dismissed with liberty to petitioner to avail statutory remedy of appeal/review/revision, as the case may be, under 1996 Rules.

No cost.

**(Sheel Nagu)**  
**Judge**

**(Vishal Mishra)**  
**Judge**

**(Bu)**