

The High Court of Madhya Pradesh

WP.8093.2021

[Dharmendra Singh Parihar Vs. State of M.P. & Ors.]

Gwalior dated 05.08.2021

Shri Suresh Agrawal, learned counsel for the petitioner.

Shri MPS Raghuvanshi, learned Additional Advocate General for respondent/State.

Heard through video conferencing.

This petition assails the order of Collector, Bhind (M.P.) dated 26.02.2021 contained in Annexure P/1 confiscating the vehicle i.e. Tractor-Trolley bearing registration No.MP30-AB-3094 which was found involved in the offence of illegal transportation of sand on 08.04.2020.

A show-cause notice was issued to the petitioner on 17.08.2020 but petitioner did not respond to the same, neither appeared before Collector, Bhind (M.P.). As such the Collector, Bhind invoking powers u/R.53(2)(3) of M.P. Minor Mineral Rules, 1996 [“1996 Rules” for brevity] confiscated the vehicle in question.

Pertinently, by an interim order dated 09.07.2021, this Court had restrained respondents from finalizing the auction proceedings in respect of the confiscated vehicle. The interim order continues to subsist till date.

Jurisdictional issue of the Collector being bereft of any authority of law under 1996 Rules to confiscate the vehicle involved in illegal transportation of sand is raised herein.

It is submitted that with effect from 30.08.2019 when M.P. Sand [Mining, Transportation, Storage and Trading] Rules, 2019

["2019 Sand Rules" for brevity] came into effect, the provision of 1996 Rules so far as they relate to the minor mineral of sand stand repealed and therefore the power of confiscation which was available in 1996 rules is not available to the Collector under the 2019 Sand Rules which do not expressly prescribe confiscation of vehicle involved in illegal transportation of sand as one of the modes to deal with the offending vehicle.

The aforesaid issue is no more *res integra* in view of the decision rendered by this Court in the bunch of petitions including **WP.8613/2020 [Rajendra Singh Vs. State of M.P. & Ors]** decided on 03.08.2021. The relevant extract of said order in WP.8613/2020 is reproduced below for ready reference and convenience:

"11. Reverting to the factual matrix in the instant case and the question of law framed in para 4 (supra), it is seen that in all the cases at hand, the minor mineral involved is of sand and the offence is of illegal transportation of sand. The impugned orders challenged herein are all issued by the Collectors of the concerned districts by invoking Rule 53 of 1996 Rules, when the 2019 Sand Rules were in place.

11.1 Indisputably, the 1996 Rules so far as they relate to minor mineral of sand were repealed by the prevailing 2019 Sand Rules as is evident from the repealing clause Rule 27 which for ready reference and convenience is reproduced below:

"27. Repeal.- The provisions related to mineral sand contained in Madhya Pradesh Minor Mineral Rules, 1996, Madhya Pradesh (Prevention of Illegal mining, Transportation and Storage) Rules, 2006 and Madhya Pradesh Sand Rules, 2018 are repealed to the extent where it does not transgress to these rules."

11.2 It is pertinent to mention that the State does not dispute that the expression ".....does not....." found in the last line of Rule 27 is a typographical error for which the State has made a move to delete the said expression so as to bring the language employed in Rule 27 in conformity with

the object behind the said Rule.

11.3 The said repealing provision in Rule 27 repeals the earlier 1996 Rules, 2006 Rules & 2018 Sand Rules to the extent these rules transgress the 2019 Sand Rules as regards the minor mineral of sand.

11.4 Whether the subject matter of confiscation expressly available in the 1996 Rules can be borrowed and used in a case of mining offence registered under 2019 Sand Rules would depend upon the correct interpretation of expression “transgress” found in Rule 27 of 2019 Sand Rules.

(a) Expression “transgress” defined in different dictionaries of English language is as follows:

Oxford Advanced Learner's Dictionary (New Eighth Edition):

Transgress /verb ~ sth (formal) to go beyond the limit of what is morally or legally acceptable.

Collins Cobuild Advanced Illustrated Dictionary:

Transgress/ Verb-If someone transgresses, they break a moral law or a rule of behaviour.

New Webster's Dictionary And Thesaurus:

Transgress v.t. to overstep a limit; to violate law or commandment; v.i. to offend by violating a law; to sin.

Chambers 21st Century Dictionary (Revised Edition)

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Transgress/ Verb 1. to break, breach or violate (divine law, a rule, etc.) 2. to go beyond or overstep (a limit or boundary).

(b) Meaning of “transgress” is to overstep the limit prescribed. The limit in the present case is the one which is prescribed by the 2019 Sand Rules which does not vest any power of confiscation in the hands of Competent Authority in cases of illegal transportation of sand. Therefore, to exercise the power of confiscation the Competent Authority will have to travel beyond the statutory limits of 2019 Sand Rules and borrow the said power from the repealed Rules i.e. 1996 Rules or the 2006 Rules or the 2018 Sand Rules. This crossing over into a territory foreign to the 2019 Sand Rules would squarely fall within the expression “transgression”.

11.5 More so, the repealing clause u/R.27 of 2019 Sand Rules eclipses 1996 Rules, 2006 Rules & 2018 Sand Rules qua minor mineral of sand and therefore an eclipsed provision is obviously not available to be borrowed. This Court thus agrees with the contention of learned counsel for the petitioners that after repealing 1996 Rules, 2006 Rules & 2018 Sand Rules, the Competent Authority under 2019 Sand Rules cannot assume upon itself the power of confiscation which is expressly not provided under 2019 Sand Rules. Doing so would lead to transgression of the statutory limits prescribed by 2019 Sand Rules and this course is expressly prohibited by the repealing clause u/R.27 of 2019 Sand Rules.

11.6 The other submission of learned counsel for the State that to ensure preservation of ecology which is in jeopardy due to rampant and indiscriminate mining, transportation and storage of sand, the repealing clause u/R.27 ought to be read down to permit the Competent Authority to exercise power of confiscation even in cases of illegal transportation of sand, does not impress this Court. It is too far-fetched an argument which if allowed would lead to vesting the Competent Authority with penal provisions of confiscation in the absence of any enabling provision under the 2019 Sand Rules qua cases of illegal transportation of sand. This obviously would result in an incongruous situation where the cases registered under the 2019 Sand Rules would be governed by procedure under the repealed 1996 Rules, 2006 Rules & 2018 Sand Rules.

11.7 More so, this Court further agrees with the submission of learned counsel for the petitioners that confiscation entails serious adverse consequences of penal nature, power in regard to which cannot be assumed by the Competent Authority by implication or reading down of a provision, unless such power is expressly provided in the relevant Statute.

12. Moreover, the 2019 Sand Rules is a special law and therefore takes precedence over the said two rules 1996 Rules & 2006 Rules which fall in the category of general law since both these rules relate to all kinds of minor minerals whereas 2019 Sand Rules relate exclusively to minor mineral of sand.

13. Learned counsel for the petitioners have referred to various decisions which need not be gone into in view of the above discussion.

Conclusion:

14. Consequent upon the aforesaid, this Court has no manner of doubt that the orders of confiscation impugned in all the writ petitions passed by invoking repealed provisions

of 1996 Rules are untenable in the eyes of law and therefore have to fall.

15. Consequently, the impugned orders in all the writ petitions under consideration are quashed.

15.1 If the petitioners are in possession of the vehicles in question then they shall retain the possession and if any security/surety had been furnished earlier for retaining the possession of vehicles then the same stands discharged.

15.2 In case, in any of these writ petitions, if the possession of the vehicle is with the respondents then the same shall be released forthwith in favour of the petitioners.”

The ratio of aforesaid judgment in **WP.8613/2020 [Rajendra Singh (supra)]** shall apply *mutatis mudandis* to the facts of the present case.

In view of above, there is no scintilla of doubt that the order passed by Collector, Bhind (M.P.) vide Annexure P/1 dated 26.02.2021 is not sustainable in law and therefore the same stands quashed with direction that the vehicle in question be released forthwith in favour of petitioner.

However, it is made clear that release of vehicle shall remain subject to final outcome of criminal case pending before the criminal court of competent jurisdiction.

(Sheel Nagu)
Judge
05/08/2021

(Deepak Kumar Agarwal)
Judge
05/08/2021

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