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WP-19844-2023

IN THE HIGH COURT OF MADHYA PRADESH  
AT INDORE

BEFORE

HON'BLE SHRI JUSTICE VIVEK RUSIA

&amp;

HON'BLE SHRI JUSTICE BINOD KUMAR DWIVEDI

ON THE 17<sup>th</sup> OF JUNE, 2025WRIT PETITION No. 19844 of 2023*CHETAN AND OTHERS**Versus**THE STATE OF MADHYA PRADESH AND OTHERS*

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Appearance:

*Ms. Mini Ravindran - Advocate for the petitioners.*

*Shri Vishwajit Joshi - Additional Advocate General for the respondent*

*/ State.*  
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ORDER

*Per. Justice Vivek Rusia*

Petitioners have filed the present petition challenging the orders dated 11.04.2022 and 13.04.2022, whereby the penalty of Rs.5,09,26,200/- has been imposed under Rule 53 of the M.P. Minor Mineral Rules, 1996 (hereinafter referred as "Rules, 1996").

02. The petitioners are owner of land bearing survey No.69/1 situated at village Kailodkartal which is adjacent to the Government land bearing survey No.271. On 19.06.2020 a joint survey was conducted by officers of Mining Department and police station-Tejaji Nagar. In respect of illegal mining, a panchnama was prepared, statement of witnesses were taken and the poclain machine and Dumper bearing registration No.MP09-HJ-2647



were seized on the ground of illegal mining activity on government land bearing survey No.271. Thereafter, an FIR bearing Crime No.278/2020 for the offences punishable under Section 353, 336 r/w Section 34 of IPC and Section 3 of Prevention to Damage to Public Property Act, 1984 was also registered against the petitioners against the allegations of hinderance and disruption in discharging of official duty by the Government Officers. Later on, the petitioners were released on bail by an order dated 02.11.2020 passed by this Court.

03. The respondent initiated the proceedings under Section 247(7) of the M.P. Land Revenue Code, 1947 (hereinafter referred as "MPLRC") against the petitioners alleging that they were found involved in illegal mining operation on government land. On the basis of the report submitted by the Mining Officer and other material, an order dated 07.11.2020 was passed imposing penalty of Rs.5,09,26,200/- on the petitioners under Rule 53 of Rules, 1996.

04. According to the petitioners, the aforesaid proceedings were drawn without issuing notice to them, an order of penalty has been passed without giving opportunity of hearing. The petitioner approached this Court by way of writ petition challenging the order dated 07.11.2020. Vide order dated 02.02.2021, the writ petition was allowed and matter was remitted back to the respondent to pass a fresh order after giving opportunity. The petitioners were given notice for appearance on 15.02.2021. The petitioners appeared and filed the reply on 22.02.2021 stating that they were not the owner of the poclain machine and Dumper, their names do not find place in the



panchnama, thus, on the basis of false allegations, the case has been registered against them. According to the petitioner, after filing reply, no date was given and after 1 year 2 months, the impugned order dated 13.04.2022 has been passed. None of the objections taken by the petitioners have been considered.

05. Ms. Mini Ravindran, learned counsel appearing on behalf of the petitioners submits that before passing the impugned order, no enquiry was conducted, the petitioners were not given the opportunity to lead evidence, the witnesses whose statements have been relied on were not brought before the Additional District Magistrate for deposition and the petitioner was not given any opportunity to cross-examine them, therefore, matter is liable to be remanded back to the respondent.

06. Shri Vishwajit Joshi, learned Addnl. Advocate General for the respondent / State submits that the petitioners have wrongly filed the writ petition before this Court, the order passed by the Additional District magistrate under Rule 53 of Rules, 1996 is appealable before the Commissioner, thereafter there is a remedy of filing of second appeal before the State Government. Hence, the writ petition be dismissed and petitioners be directed to file an appeal.

07. Ms. Ravindran, learned counsel for the petitioners has vehemently argued that there are various irregularity and illegality committed by the respondent while passing the impugned order. The order has been passed in violation of principle of natural justice. The witnesses have not been examined, therefore, the writ is not maintainable and the petitioners cannot



be relegated to the Appellate Authority.

08. *We have heard learned counsel for the parties and perused the entire record.*

09. Earlier also, the petitioner approached this Court by way of writ petition challenging the order dated 07.11.2020 passed by respondent No.2, whereby the penalty of Rs.5,09,26,200/- was imposed, at that time, it was found that the impugned order was passed without giving opportunity of hearing, therefore, the Writ Court entertained the writ petition and set aside the impugned order with a specific direction that the respondent No.2 will serve a copy of show cause notice to the petitioners and will give due opportunity to file reply and also opportunity of hearing and pass an order in accordance with law. If the petitioners make a request for supplying any document, then same will also be considered in accordance with law without any delay. At that time, the petitioners did not make any request for protection of witnesses and cross-examination. The petitioners had filed reply to the show cause notice and thereafter argued before the respondent No.2. In compliance of the direction given by this Court, the respondent No.2 has passed the order which is an appealable order before the Commissioner under Rule 57 of Rules, 1996. Thereafter, there is a provision of second appeal also before the State Government under Rule 57(3) of Rules, 1996.

10. Learned counsel has placed reliance on a judgment passed by the Hon'ble Apex Court in case of *Whirlpool Corporation v/s Registrar of Trade Marks, Mumbai and Ors.* reported in *(1998) 8 SCC 1*, in which it is held that



the power to issue prerogative writ under Article 226 of the Constitution of India is plenary in nature and is not limited to any other provisions of the Constitution. The High Court has a discretion to entertain the writ petition looking to the facts of the case. There is a self-restriction imposed on the High Court on which even effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. Only in 3 contingency namely when the writ petition was filed for enforcement of any fundamental right or where there has been violation of principle of nature justice or where other proceedings are wholly without jurisdiction or where the vires of an Act is under challenge. Therefore, in order to examine whether writ petition is liable to be entertained despite availability of the alternate remedy, it has to be seen whether the case would fall within the contingency which were carved out by the Hon'ble Apex Court in case of *Whirlpool Corporation (supra)*.

11. So far as the enforcement of fundamental right is concerned, there is an allegation against the petitioners about the illegal mining and this issue is liable to be decided by the authorities designated under the Act. The second aspect is whether there is any violation of principle of natural justice or not? The petitioners approached earlier this Court by way of writ petition and matter was remitted back to the authority with a direction to give opportunity of hearing to the petitioners. The petitioners submitted a reply and the authority has passed an order. As held above, the petitioners did not seek any opportunity to lead evidence. The petitioners have also not filed any application to summon the witnesses for cross-examination, thus, the limited



relief which the petitioners sought from the Writ Court about the filing of reply and opportunity of hearing that has been provided to the petitioners, therefore, there is no violation of principle of natural justice. The petitioners have not challenged any vires of the act in the writ petition, thus the petitioners case would not fall in any of the contingency which has been carved out in case of *Whirlpool Corporation (supra)* by the Hon'ble Apex Court. Hence, the writ petition is not maintainable.

12. In view of the above, this Writ Petition is **dismissed**. If appeal is filed by the petitioners, then same be considered and decided in accordance with law without being influenced by observation made by this Court on merit, if any.

(VIVEK RUSIA)  
JUDGE

(BINOD KUMAR DWIVEDI)  
JUDGE

Divyansh