

(2020) 08 GUJ CK 0308

In the Gujarat High Court

Case No : R/Special Civil Application No. 10025 Of 2020

Diamond Metals

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 27-08-2020

Acts Referred:

Constitution Of India, 1950 — Article 226

Gujarat Mineral (Prevention Of Illegal Mining, Transportation And Storage) Rules, 2017
— Rule 12, 12(2)(b)(ii), 12(7)

Code Of Criminal Procedure, 1973 — Section 451

Citation : (2020) 08 GUJ CK 0308

Hon'ble Judges : Bhargav D. Karia, J

Bench : Single Bench

Advocate : Kruti M Shah

Final Decision : Disposed Of

Judgement

Bhargav D. Karia, J

1. Heard learned advocate Ms.Kruti M. Shah for the petitioner and learned Assistant Government Pleader Mr.Soaham Joshi for the respondents - State through video conference.

2. Rule returnable forthwith. Learned Assistant Government Pleader Mr.Soaham Joshi waive service of rule on behalf of the respondents - State.

3. By way of this petition under Article 226 of the Constitution of India, the petitioner has prayed to issue appropriate writ, order or direction to the respondent no.2 to immediately release the vehicle i.e. Truck/Tractor bearing registration no. GJ-17- UU-4780.

4. Brief facts of the case are that the petitioner is owner of vehicle i.e. Truck/Tractor bearing registration no. GJ-17-UU-4780. On 2nd August, 2020, the respondent no.2 authority seized the vehicle of the petitioner and issue seizure memo. On 6th August 2020 notice came to be issued upon the petitioner stating

that there is overload of 1.74 metric ton of black trap (Rabal) and the authority demanded total of Rs.1,08,920.80. The petitioner therefore, approached this Court with a prayer to release the vehicle in question.

5. Learned counsel for the petitioner submitted that the action of respondent no.2 of detaining and seizing the vehicle is illegal, against the provisions of law, without jurisdiction and without giving proper opportunity of hearing to the petitioner. She submitted that no illegal mining, transportation or storage was committed by the petitioner because there was valid delivery challan issued by the authority. She submitted that no seizure memo was issued for the said vehicle which is illegal and against the provisions of law. She further submitted that the respondent authorities have wrongly applied the provisions of the Gujarat Mineral (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017(for short " the Rules of 2017") as the petitioner has not committed any offence under the said Rules. She further submitted that as per Rule 12 of the Rules of 2017, respondent no.2 has to commit the charge of the vehicle to the concerned Magistrate in 15 days after the seizure, however, not steps as prescribed in law has been taken by the respondents authorities. She further submitted that the petitioner is in the business of transportation and the vehicle involved is the only source of income of the present petitioner and the petitioner is suffering huge losses due to the vehicle not being released by the respondents authorities. She further submitted that there is no weighing scale near the place from where the mineral was loaded in the vehicle and therefore, it is not possible to load exact weight of the minerals in the vehicle. She therefore, prayed to release the vehicle forthwith.

6.Per contra, learned Assistant Government Pleader Mr. Soaham Joshi has supported the action of the respondent authorities in seizing the vehicle along with the goods. It was submitted that Chapter-V of the Rules of 2017 provides powers to the respondent authorities to inspect, confiscate and release the vehicle seized. In particular, he relied upon Rule 12 of the Rules of 2017 which provides for the procedure and manner in which the vehicle is confiscated. He submitted that for the purpose of release of vehicle, as per the provisions under the Rules of 2017, bank guarantee is required to be furnished by the petitioner. Relying upon Rule 22 which provides for compounding of offences and Schedule III of the Rules of 2017 which provides for compounding fees for different category of vehicles, he submitted that under the Rules itself, there is a classification with respect to the compounding fees for each category of vehicle and the same is required to be taken into

consideration while determining the compounding fees for releasing the vehicle. He submitted that upon inspection of the vehicle involved, it came to the notice of the authority that the vehicle was loaded with black trap (Rabal) and upon perusal of the delivery challan as well as weighment slip of the vehicle, it was found that the vehicle was overloaded by 1.74 metric tons. He submitted that therefore, the respondent authorities have issued show cause notice and seized

the vehicle along with the goods. He relied upon decision of this Court in Special Civil Application No. 3540/2018, 3398/2019 and 3397/2018 and submitted that this Court in number of orders have directed the petitioner to deposit the amount towards penalty which is quantified by the department as well as further directed to furnish bank guarantee. He further submitted that some of the aggrieved petitioners had preferred Letters Patent Appeal No.768/2019 and other allied matters wherein Division Bench of this Court has dismissed the Letters Patent Appeal and confirmed the orders passed by the learned Single Judge. He therefore, submitted that the petitioner is required to pay amount towards compounding fees and penalty apart from furnishing the bank guarantee.

7. Having considered the submissions made by the learned advocate for both the sides as well as Rule 12 of the Rules of 2017, it is clear that it categorically provides for release of vehicle by the authorised officer as the person whose vehicle is alleged to have been involved in illegal mining activity furnishes the bank guarantee or the security deposit as specified in sub-rule(7) of Rule 12 of Rules of 2017, the authorised officer is obliged to release the vehicle.

8. Interpreting Rule 12 of the Rules of 2017, Division Bench of this Court in Letters Patent Appeal No. 397/2018 as observed as under :

"10. From the aforesaid provisions coupled with the facts of the present case, it is clear that after the seizure of the truck, notice was issued. However, thereafter, the respondent authority has not followed the provisions contained in Rule 12(2) (b) (ii) of the Rules of 2017. As per the said provision, if the application for compounding of offence is not received, the vehicle so seized shall be produced before the Court empowers to determine commission of such offence, upon expiry of 15 days from the date of seizure or upon completion of investigation, whichever is earlier.

11. In the present case, after completion of 15 days from the date of seizure, when application for compounding of offence is not submitted by the petitioner, it was the duty of the respondent authority to produce the said vehicle before the concerned Court. In absence of production of such vehicle before the competent Court, the petitioner has lost his right to file an application under Section 451 of the Code of Criminal Procedure, 1973, for release of the vehicle.

12. Thus, in view of the aforesaid discussion, we are of the view that the respondent authorities have failed to justify the reason for seizure of the truck in question. When the respondent authorities have failed to follow the procedure prescribed under the Rules of 2017, we are of the view that this is fit case where the action of seizure of the truck in question taken by the respondent authorities is required to be quashed and set aside and direction is required to be given to the respondent authorities to release the truck in question forthwith."

9. The submission of alternative remedy was considered by the Division Bench in Letters Patent Appeal No. 1322/2018 as under :

"10. In the case of Nileshbhai Somabhai Raval V/s State of Gujarat, the learned Single Judge of this Court has passed an order on 25.9.2018 in Special Civil Application No.10635 of 2018 wherein the learned Single Judge observed that though there was an alternative remedy of filing appeal and revision under the Rules, the petition is required to be entertained in the facts of the said case and the learned Single Judge directed the respondent authority to release the vehicle forthwith.

11. Keeping in view the provisions contained in Rules of 2017 and the order dated 18.4.2018 passed by the Division Bench of this Court in Letters Patent Appeal No.397 of 2018, if the facts as discussed hereinabove are examined, we are of the view that the respondent authorities have failed to follow the procedure prescribed under Rules of 2017 and till date the offence is not registered against the petitioner. Further no request is made to compound the alleged offence nor the petitioner has shown willingness to pay the compounding fees and therefore the respondent authority was duty bound to produce the vehicle in question before the competent Court after a period of 15 days from the date of seizure. Till date, the vehicle is not produced before the competent Court. Thus, the order passed by the respondent-Collector is required to be set aside. In the facts and circumstances of the present case, as discussed hereinabove, the petition filed under Article 226 of the Constitution of India is required to be entertained on merits and petitioner cannot be relegated to file an appeal before the appellate authority. Accordingly, the order passed by the learned Single Judge is required to be set aside."

10. In view of the aforesaid position of law, the authorised officer was required to release the vehicle in accordance with Rule

12 of the Rules of 2017. But it is found that in many cases, the applications filed were not even accepted by the respondents nor appropriate report before the Magistrate concerned was furnished after seizure of vehicle and therefore, there was no option for such persons, but to file the petition before this Court.

11. In view of the aforesaid fact situation, as as the petitioner is ready to deposit amount of Rs.8,920/-, it would be in the interest of justice if the vehicle in question is ordered to be released after complying with the following conditions :

a) The petitioner shall file an undertaking before this Court that the petitioner shall forthwith comply with the directions contained in the outcome of the proceedings under Rule 12 of the Rules of 2017 and Mines and Mineral (Regulation and Development) Act, 1957.

b) The petitioner shall deposit Rs.8,920/- towards the penalty quantified by the department.

c) If the petitioner and or the vehicle is found again violating the provisions of Rules of 2017 and Mines and Mineral (Regulation and Development) Act, 1957, it would be open for the department to take appropriate action in accordance with

law.

12.It is, however, clarified that this petition is restricted only to the confiscated vehicle in question and the same would not apply to the goods, which are also confiscated along with the vehicle. It would be open for the respondent authorities to dispose of the goods through auction in accordance with law.

13.Subject to above conditions, the petition is allowed. Respondent authorities are directed to release the vehicle bearing registration no. GJ-17-UU-4780 on compliance of the above-stated conditions by the petitioner.

14.The petition is disposed of. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.