

(2020) 01 GUJ CK 0143

In the Gujarat High Court

Case No : R/Special Civil Application No. 19971 Of 2019

Jetharam Dalaram Vanzara

APPELLANT

Vs

State Of Gujarat

RESPONDENT

Date of Decision : 17-01-2020

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21, 226
Code Of Criminal Procedure, 1973 — Section 451
Mines And Mineral (Regulation And Development) Act, 1957 — Section 21(4A)
Gujarat Mineral (Prevention Of Illegal Mining, Storage And Transportation) Rules, 2017
— Rule 12, 12(1), 12(2), 12(3), 12(5), 12(6), 12(7), 18, 22

Citation : (2020) 01 GUJ CK 0143

Hon'ble Judges : A.Y. Kogje, J

Bench : Single Bench

Advocate : J S.Sadhwani, Nidhi Vyas, BH Kher, Deep S Chachan

Final Decision : Allowed

Judgement

A.Y. Kogje, J

1. RULE. Learned Assistant Government Pleader waives service of rule on behalf of the respondent-state.

2. This present petition is filed under Articles 14, 19, 21 and 226 of the Constitution of India with following prayer:

"A. This Honourable Court may be pleased to admit and allow this Special Civil Application ;

B. This Honourable Court may be pleased to issue an appropriate writ, order or direction for releasing the machines being Hitachi Machine No. SY140C-9 Serial No. 18SEYD1425C441 and R140LC-9 Serial No.Q401D01431 seized by the respondent no.2 on such terms and conditions as this Honourable Court may deem think fit;

C. Pending admission, final hearing and disposal of this petition, releasing the

machines being Hitachi Machine No. SY140C-9 Serial No. 18SEYD1425C441 and R140LC-9 Serial No.Q401D01431 seized by the respondent no.2 on such terms and conditions as this Honourable Court may deem think fit.

D. Grant such other and further relief as thought fit in the interest of justice."

3. The petition pertains to release of machines which appears to have been seized under the provisions of Gujarat Mineral (Prevention of Illegal Mining, Storage and Transportation) Rules, 2017 (herein after referred to as Rules of 2017) for it being involved in transporting mineral / illegal mining. Machines are of following description:

Two Machines being (1) Hitachi Machine No. SY140C-9, Serial No.18SEY014250441 and (2) Hitachi Machine No.R140LC-9, Serial No.Q401D01431

4. Learned Advocate for the petitioner under instructions submitted that the petitioner is ready and willing to comply with the provisions and also ready and willing to pay the penalty amount without the compounding penalty and also ready and willing to undertake before this Court that forthwith, the amount that may be specified by the Authority after completion of entire proceedings at the departmental level or upon the completion of the trial, if any.

5. Learned Advocate for the petitioner submitted that the machines being seized under the provisions of Rules of 2017. The Rules itself provide for the release of vehicle upon the compliance of the certain conditions. Learned Advocate mainly relies upon the provisions of Rule-12, sub-rule (5) and Rule-12, sub-rule (7). It is submitted that after the seizure of the vehicle, the petitioner has been issued show cause notice for compounding of the offence under Rules of 2017 by paying stipulated amount towards the penalty for the offence as well as penalty towards compounding charges. As per the show cause notice, the petitioner is called upon to total penalty of Rs.4,00,000/- for two machines.

6. Learned Advocate for the petitioner draws attention of this Court to the Oral Order in Letters Patent Appeal No. 397 of 2018 dated 18-04-2018 in case of Zaverbhai Nanubhai Devani v/s. State of Gujarat and Letters Patent Appeal No. 1322 of 2018 in case of Kikubhai Maganbhaia Dhodi v/s. State of Gujarat dated 26-10-2018 to submit that the respondent Authorities again continue the seizure of the machines and under the provisions of the Rules of 2017, must release the machines.

7. "It is submitted that the petitioners are the owners of the machines Hitachi Model No.SY140C-9, Serial No.18SEY014250441 and Hitachi Machine No.R140LC-9, Serial No.Q401D01431. The petitioners are not engaged in the occupation either of transport or mining sand. The petitioners had given their vehicles on rent for which a rent agreement was entered with the respondent no.3 herein and accordingly, the respondent no.3 had taken these machines on rent from the petitioners. The said agreement has been entered into 7th

September, 2019. It is submitted that the petitioners came to know about the seizure of their vehicles vide letter dated 22nd October, 2019 from the respondent authorities."

8. Learned AGP opposing the petition and submitted that the machines were found involved in the illegal mining activity and therefore, the Department has acted as per the provisions of Rules of 2017 and as the petitioner is not ready and willing to compound the offence, the vehicle can not be released. It is submitted that machines were seized on 20-09-2019 and Show cause notice issued on 22-10-2019.

9. It is also submitted that the petitioner should be relegated to the alternative remedy as provided under the Rule-18. In view of the alternative remedy provided for, the Court may not exercise jurisdiction under Article-226 of the Constitution of India.

10. The Court has considered rival submissions of the parties.

11. Rule-12 of the Rules of 2017, Clause- 12(1), 12(2), 12(3), 12(5), 12(6), 12(7) provides as under:.

"12. Seizure of property liable to confiscation.-

(1) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or other thing (hereinafter referred to as "property") shall be liable to be seized by the Government in the manner specified in sub-rule (2) of this rule.

(2) Every Authorized Officer seizing any property under these rules shall photograph the property and place on such property a mark in such manner as may be prescribed, indicating that the same has been so seized and shall:

(a) issue a notice in Form J informing the person from whom the property is seized of the property so seized;

(b) conduct:

(i) an investigation and if he is satisfied that a compoundable offence has been committed in respect of the property, he may, subject to receipt of a compounding application, order payment of such amount for compounding the offence as may be deemed appropriate; or

(ii) a preliminary investigation and shall produce the property seized before a court empowered to determine commission of such offence, if compounding is not permissible under rule 22 or if no application for compounding is received pursuant to clause (a) above, upon the expiry of fifteen days from the date of seizure or upon completion of the investigation, whichever is earlier.

(3) Where any property seized under sub-rule (1) is produced before a court

under sub-clause (ii) of clause (b) of sub-rule (2) and the court is satisfied that offence has been committed in respect thereof, the court may order confiscation of the property under sub-section (4A) of Section 21 of the Act.

(5) Upon expiry of fifteen days from the date of seizure of the property under sub-rule (2) and prior to:

(a) payment for compounding the offence under sub-clause (i) of clause b) of sub-rule (2); or

(b) completion of the investigation by the Authorised Officer under sub-clause (I) of clause (b) of sub-rule (2); or (c) a determination under sub- rule (3), the furnishing of guarantee. Authorised Officer may release the property on the= a noninterest bearing security deposit or a bank

(6) The bank guarantee issued under sub-rule (5) shall be valid for an initial period of one year and shall be renewed from time to time until payment for compounding the offence under sub-clause (i) of clause (b) of sub-rule (2) or a determination under sub-rule (3), as applicable, is made. The noninterest bearing security deposit or bank guarantee shall be for an amount equivalent to ten times of the market value of the mineral seized or for such other amount as may be specified by the Government through a notification, subject to a minimum of rupees two lakh:

Provided that, if upon a determination under sub-rule (3), a penalty for an amount exceeding the amount of non-interest bearing security deposit or bank guarantee is levied and the penalty amount is not paid, then the penalty amount may be recovered in the same manner as if it were an arrear of land revenue.

(7) The property seized under this rule shall be kept in the custody of the Authorised Officer, any other third party, nearest police station or Government premises until:

(a) payment for compounding the offence is maid; or

(b) a bank guarantee is provided pursuant to sub-rule (5); or

(c) an order of the court directing its disposal is received by the Authorised Officer."

12. Interpreting this aforementioned provisions, this Court in Letters Patent Appeal No. 397 of 2018, wherein Para-10, 11 and 12 are 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.

13. The submissions of alternative remedy was also considered by this Court in Letters Patent Appeal No. 1322 of 2018, wherein Para-10 and 11 are 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.

14. Therefore, considering the aforesaid position of law, the Rules categorically provides for the release of vehicle by the Authorized Officer, the moment person allegedly whose vehicle is involved in illegal mining activity furnishes the Bank

guarantee or the security deposit as specified in Sub-rule (7) of Rule-12. Authorized Officer is obliged to release the vehicle. It is found that in many cases, the application by the petitioner are not even accepted by the Department nor the Department produce the vehicle with appropriate report before the Magistrate concerned. Thereby leaving with no option to such person but to file petition before this Court. As the petitioners are ready and willing to pay the penalty amount and at the same time to safe guard interest of the State as well, the Court deems it fit the release the two Machines being (1) Hitachi Machine No. SY140C-9, Serial No.18SEY014250441 and (2)Hitachi Machine No.R140LC-9, Serial No.Q401D01431 on complying with following conditions:

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

(b) to deposit total an amount of Rs.4,00,000/- i.e. Rs.2,00,000/- for each machine towards the penalty quantified by the Department;

(c) to furnish the Bank guarantee for total an amount of Rs.4,00,000/- i.e. Rs.2,00,000/- for each machine, for a period of one year;

(d) 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 is open for the Department to invoke the Bank guarantee;

15. The petition is allowed in the aforesaid terms. Rule is made absolute with no order as to costs. Direct service is permitted.