
(2021) 07 UK CK 0028

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 1234 Of 2021

M/s Laxmi Stone Crusher

APPELLANT

Vs

State Of Uttarakhand And Others

RESPONDENT

Date of Decision : 05-07-2021

Acts Referred:

Uttarakhand Minerals (Prevention Of Illegal Mining, Transportation & Storage)
(Amendment) Rules, 2015 — Rule 13(1)

Citation : (2021) 07 UK CK 0028

Hon'ble Judges : Manoj Kumar Tiwari, J

Bench : Single Bench

Advocate : Parikshit Saini, V.D. Bisen, Pradeep Hariya

Final Decision : Allowed

Judgement

Manoj Kumar Tiwari, J

1. This writ petition has been filed M/s Laxmi Stone Crusher, through its partner. An order dated 04.09.2017 was passed against the petitioner by

District Magistrate, Haridwar, whereby petitioner was required to pay a sum of Rs. 21,67,350/- as penalty + 5 times the amount of royalty over the

R.B.M., which petitioner allegedly excavated illegally from within his premises. Against the said order, petitioner filed an Appeal, which has been

dismissed by Additional Secretary, Industrial Development Department, Government of Uttarakhand vide order dated 24.03.2021. These two orders

have been challenged in the present writ petition.

2. Learned counsel for the petitioner has drawn attention of this Court to Rule 13 (1) of Uttarakhand Minerals (Prevention of Illegal Mining,

Transportation & Storage) (Amendment) Rules, 2015, which provides that an Officer below the rank of S.D.M. shall not be competent to make

inspection. Learned counsel for the petitioner further submits that, in the present case, inspection was done by Tehsildar, therefore, the entire

proceedings based on such Inspection Report are vitiated.

3. Learned Brief Holder, however, submits that this plea was not taken by the petitioner even before the District Magistrate or before the Appellate

Authority. Learned Brief Holder has placed the Memo of Appeal, perusal whereof indicates that the plea, which has been taken by the petitioner now,

was not placed before the Appellate Authority.

4. Since the issue raised by the petitioner goes to the root of the matter, as inspection done by an Officer, who is not competent for the purpose, would

have no effect in the eyes of law. Thus, the proceedings drawn on the basis of such Inspection Report also cannot be sustained.

5. In such view of the matter, the writ petition stands allowed and the order dated 24.03.2021 passed by Additional Secretary, Industrial Development

Department, Government of Uttarakhand is set aside. The matter is remitted back to the Appellate Authority for decision afresh. Petitioner shall be at

liberty to raise the aforesaid plea by filing an affidavit. The Appellate Authority shall re-consider petitioner's Appeal and take appropriate decision

thereupon, in accordance with law, within four weeks.

6. Learned counsel for the petitioner undertakes to file appropriate affidavit before the Appellate Authority, within one week.

7. Till 05.08.2021 or till decision on petitioner's Appeal, whichever is earlier, recovery proceedings initiated against the petitioner shall be kept in

abeyance.

8. Let a certified copy of this order be issued within 24 hours.