

(2015) 03 AHC CK 0046
In the Allahabad High Court
Case No : Writ C. No. 11489 of 2015

Rajendra Singh

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 10-03-2015

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21, 21(1), 21(4), 21(4A), 22

Citation : (2015) 3 ADJ 357 : AIR 2015 All 93 : (2015) 3 AWC 2397 : (2015) 127 RD 439

Hon'ble Judges : S.B. Singh, J.; Arun Tandon, J.

Bench : Division Bench

Advocate : Hans Pratap Singh, for the Appellant

Final Decision : Dismissed

Judgement

1. Petitioner before this Court seeks a writ of mandamus directing the respondent No. 2 to extend the period for transportation of sand/moram lying on Gata No. 114 at Village Chandaut, Tehsil Sarila, District-Hamirpur.

2. Brief facts as are born out from the records of the present writ petition are: the Sub-divisional Magistrate, Sarila, District-Hamirpur alongwith other officers of mines department had found illegal storage of sand and moram of about 3,000 Cubic Meter by the petitioner. The sand was seized and was given in Supurdagi of the petitioner.

3. It is the case of the petitioner that he had purchased the sand from a lease holder after making payment of consideration (which allegations are wholly vague and not supported by any evidence). It is further his case that an offence was committed by him by storing sand, in view of Section 4(1A) of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act 1957). The petitioner made a representation on 13.08.2014 before the respondent No. 2, District Magistrate, Hamirpur for compounding the offence. He offered to pay royalty and the cost of the sand in accordance with law and for

release of the sand in his favour. Since the application was not considered, the petitioner filed Writ Petition No. 47730 of 2014, *Rejendra Singh v. State of U.P. and others*. The writ petition was disposed of vide order dated 06.09.2014, permitting the petitioner to make a fresh application before the respondent. The application was directed to be disposed of in accordance with law specifically in the light of Section 23-A of the Act 1957 by means of reasoned and speaking order.

4. The District Magistrate, Hamirpur in compliance of the order passed by the High Court, referred to above, has proceeded to pass an order for releasing 3000 Cubic Meter of sand/moram on payment of Rs. 2,25,000/- as royalty, Rs. 11,25,000/- as costs of the sand and compounding fees of Rs. 25,000/-. (Total money demanded was Rs. 13,75,000/-) with the conditions that on deposit of the said money, the sand may be released in favour of the petitioner and he may transport the sand within one month thereafter.

5. The petitioner states that he has deposited the entire money in treasury on 09.10.2014. For certain reasons, he could not transport the collected sand within the period of one month. The petitioner, therefore, made an application for extension of time for removal of the collected sand on 02.12.2014, which application has not been considered. He has therefore approached this Court by means of this petition.

6. Counsel for the petitioner with reference to the provision of Section 23A read with Section 21(4) and (4A) of the Act 1957 submits that the District Magistrate should have extended the period for transportation of the seized sand which had been released in his favour as noted above.

7. We have heard learned counsel for the parties and have gone through the contents of the present writ petition.

8. We may record that sub-clause (1-A) of Section 4 of the Act 1957 prohibits transportation, storage or cause to be transported or stored any mineral otherwise than in accordance with the provisions of the Act 1927 and the rules framed thereunder. Section 21 of the Act 1957 make the contravention of the provision of Section 4(1A) of the Act 1957 as punishable with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees or with both. Section 23A of the said Act provides that the offence committed under this Act may be compounded by the person authorized under Section 22 to make a complaint to the court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify. Sub Section 2 of Section 23A provides that once the offence has been compounded under Sub-section (1) of Section 23A against the offender, no proceeding or further proceeding, as the case may be, shall be taken against the offender, and, if the offender is in custody, he shall be released forthwith.

9. Section 4(1-A), Section 21(1) and Section 23A read as follows:

"4(1A) No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder."

"21. (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both."

"23A. Compounding of offences.--(1) Any offence punishable under this Act or any rules made thereunder may, either before or after the institution of the prosecution, be compounded by the person authorised under Section 22 to make a complaint to the Court with respect to that offence, on payment to that person, for credit to the Government, of such sum as that person may specify:

Provided that in the case of an offence punishable with fine only, no such sum shall exceed the maximum amount of fine which may be imposed for that offence. (2) Where an offence is compounded under Sub-section (1), no proceeding or further proceeding, as the case may be, shall be taken against the offender in respect of the offence so compounded, and the offender, if in custody, shall be released forthwith."

10. What logically flows from the simple reading of Section 4(1-A), Section 21(1) and Section 23A is that the offender can get the offence committed under Section 21 compounded by tendering the money demanded by the person authorised for such compounding under Section 23A. What consequence flow because of such compounding are contained in Section 23A sub-clause 2 which provides that no further proceedings shall be taken against the offender and that the offender if is in jail, shall be released forthwith. We may record that the statute provides for no other consequence because of compounding of the offence as is apparent on simple reading of Section 23A of the Act 1957.

11. We may clarify that compounding of offence under Section 23A does not in any way reflect upon the tools, machinery etc. involved in the offence including the minerals in any manner, nor Section 21A confers any power upon the District Magistrate to release/deal with the goods, including minerals, vehicle, plant and machinery etc. involved in the illegal activity in any manner.

12. The tools, machinery, mineral, vehicles etc, which are used/part of the illegal activity are dealt with under Section 21 sub clause 4, of Act 1857, which reads as follows:

"(4) 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 any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf." 13. Thus the minerals, tool, vehicle including the plant and machinery etc. referable to Section 24, have

necessarily to be seized by the officer or authority specifically empowered in this behalf.

14. After such seizure the minerals, tool, vehicle etc. are made liable for confiscation by an order of the Court Competent to take cognizance of the offence under Sub-section (4A) of Section 21 of the Act 1957 and have to be disposed of in terms of the directions to be issued by the said Court only. For ready reference, Sub-section 4A of Section 21 of the Act 1957 is quoted here under:

"(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court." 15. In our opinion, the Act of 1957 contains a complete procedure for dealing with the commission of the offences; penalty to be imposed, compounding of the offences and disposal of the seized goods.

16. The Act contemplates compounding of an offence by authorized officer only, which in the facts of the case, would be the District Magistrate. But so far as the confiscation and disposal of the minerals, tool, vehicle etc. is concerned, the same is controlled by Section 21(4) read with Section 21(4A) of the Act 1957.

17. The procedure contemplated in respect of minerals, tool, vehicles involved in an offence under Section 21(4) and Section 21(4A) is:--

"(a) the mineral, tool, vehicle etc. have to be seized by the officer/authority empowered for the purpose;

(b) The mineral, tool, vehicle etc. have to be confiscated under an order of the Court, Competent to take cognizance of the offence under Sub-section (1) of Section 21;

(c) The mineral, tool, vehicle etc. have to be disposed of in accordance with the direction of such Court;"

18. It is the competent court only, which can direct the disposal of the seized goods including the mineral plant and machinery etc.

19. In our opinion, the District Magistrate has no power whatsoever to deal with the seized minerals, tool, vehicle, plant and machinery etc. used in illegal activities as per the Act of 1957. The District Magistrate is not competent to release seized minerals, plant, machinery, vehicles etc. used offence under Section 21 of the Act 1957.

20. We may record that the High Court while deciding the earlier writ petition filed by the petitioner being writ petition No. 47730 of 2014 had only recorded that the application to be made by the petitioner for compounding under Section 23A, may be disposed of. There was no direction in the order of the Court for release of the seized minerals. What is surprising for us to notice is that the

District Magistrate in garb of the order dated 06.09.2014 passed by the High Court, has decided to release the minerals without disclosing as to under which statutory provision he is issuing the order in that regard. The order of the high Court has been made an instrument for release of the seized minerals when under law the seized minerals had necessary to be placed before the Court concerned for confiscation and for its disposal.

21. Counsel for the petitioner placed reliance upon a Division Bench Judgement of the High Court in the case of Chandar Bhushan Misra and Another Vs. State of U.P. and Others, for suggesting that the District Magistrate while compounding an offence under Section 23A of the Act 1957 also has the power to release/dispose of the seized minerals and it is not necessary that such seized sand be confiscated by the Court, competent to take cognizance of the offence, and for appropriate order being made for its disposal under Section 21(4A).

22. We may record that in the writ petition it is the case of the petitioner that he had purchased the minerals from a lease holder and that he had committed an offence of illegal storing of the same. It is also admitted by the petitioner that the sand was seized and thereafter given in the Suppurdagi of the petitioner by the Seizing Authority (Ref. para 3 of the writ petition).

23. Seizure of sand as admitted to the petitioner can only take place in exercise of powers under Section 21(4) of the Act 1957. There is no other provision for seizure under the Act. Once seizure under Section 21(4) is admitted on record then the disposal of such seized mineral can only be effected under an order of the Competent Court in view of the provision of Section 21(4A) of the Act 1957.

24. We also find that under the Act 1957 no power has been conferred upon the District Magistrate or for that purpose on any other authority to dispose of the seized good except upon the Court under Section 21(4A).

25. We may record that in the facts of the case there is no finding by the District Magistrate that the sand was raised and transported by a person legally entitles to do so. There can be no storage of minor-mineral at a place different from the mine without it being raised and thereafter being transported to the place where it is stored. Therefore, in respect of stored minor-minerals unless it is specifically established by material evidence that the minor-mineral was raised and thereafter transported by a person legally entitles to do so to the place where it is stored, the same, i.e. sand has to be seized under Section 21(4) and thereafter confiscated and disposed of as per Section 21(4A) of the Act 1957.

26. The judgment in the case of Chandar Bhushan Misra (supra) is on the facts of that case. The facts of the case in hand are much different to those of Chandar Bhushan Misra. It has been repeatedly held by the Hon"ble Supreme Court that a little difference in the facts or additional facts may make a lot of difference in the precedential value of a judgment (Reference Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others, , which has recently been followed in the case of Rajveer Singh v. Chaudhary Devi Lal, reported in AIR 2008 SCW 5817.

27. Accordingly, we hold that the release of the mineral (sand) in the facts of the case as directed by the District Magistrate, itself is without authority. The seized minerals have to be placed before the court concerned for confiscation and disposal in view of Section (4A) of the Act 1957.

28. Let necessary be done within four weeks from today. The petitioner is at liberty to make an application before the competent Court for disposal of the sand so seized. The application shall be considered in accordance with law by the court at the earliest.

29. We further direct that a copy of this order may be forwarded to the State Government for necessary information to all the District Magistrates to act strictly in accordance with provision applicable and not to release any seized tool, plant, machinery, vehicles, mineral etc., which are involved in an offence under Section 21 of the Act 1957. Confiscation and disposal of such plant and machinery, tool, mineral, vehicle, etc. must be effected only under the order of the competent Court as provided under Section 21(4A) of the Act.

30. For such reasons, the relief as prayed in this petition can not be granted to the petitioner. The writ petition is accordingly dismissed with the observation made.