

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/SPECIAL CIVIL APPLICATION NO. 10614 of 2022

FOR APPROVAL AND SIGNATURE:

sd/-

HONOURABLE MR. JUSTICE A.S. SUPEHIA

1	Whether Reporters of Local Papers may be allowed to see the judgment ?	NO
2	To be referred to the Reporter or not ?	NO
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

DHANRAJSINH GAMBHIRSINH THAKORE

Versus

STATE OF GUJARAT

Appearance:

MR. JS SADHWANI(3893) for the Petitioner(s) No. 1
MR HARDIK MEHTA, AGP for the Respondents

CORAM: HONOURABLE MR. JUSTICE A.S. SUPEHIA

Date : 07/07/2022

ORAL JUDGMENT

- RULE.** Learned AGP waives service of notice of rule for and on behalf of the respondents.
- The present petition has been filed by the petitioner *inter alia*, seeking the following prayers.

"7. (B) Your Lordships may be pleased to issue an appropriate writ, order or direction directing the respondents herein to immediately unlock/reopen the online ATR Account No. QL. 1607046314 for Survey No. 27 private land of Mauje Govalibet, Taluka Jhagadia, District Bharuch and quash and set aside the show cause notice dated 25.3.2022 and 21.5.2022, as being issued without non application of mind.

(C) Pending final disposal of the present petition, Your Lordships may be pleased to issue an appropriate writ, order or direction directing the respondents herein to immediately unlock/reopen the online ATR Account No. QL 1607046314 for Survey No.27 private land of mauje Govalibet, Taluka Jhagadia, District : Bharuch."

3. The brief facts leading to the filing of the present petition are as under :-

3.1 The petitioner is the owner of private survey no.27 of Mauje Govalibet, Taluka Jhagadia, District Bharuch admeasuring 17,000 sq.mtrs. The petitioner, from time to time, had obtained quarry permits for the ordinary sand in question since 2010. The petitioner had thereafter applied for lease and the same was granted and the lease deed was executed on 04.09.2018. The petitioner has been carrying out the business of sand mining since initiation of the lease and about 12 families are connected with the said business and earning their livelihood from the said business.

3.2 The petitioner was issued Online Delivery Challan Account Code No. QL-1607046314 regularly. On 10.03.2022, there was an inspection at the lease area of the petitioner by the Flying Squad, Gandhinagar and on 25.03.2020, a show cause notice was issued to the petitioner stating that excess mining of 43,298.33 metric tonnes has been done. On the very day itself, the Online Delivery Challan Account Code has been locked. A reply was given by him to the said show cause notice on 18.04.2022 and request was made to open the lock but no action has been taken by the respondent authorities. After the reply, once again a show cause notice dated 21.05.2022 has been issued to the petitioner stating that he has done less mining of 9,442.01 metric tonnes and assuming that the said royalty passes have been misused elsewhere, the clarification has been sought. It is the case of the petitioner that inspite of various reminders for opening the QL Code of the petitioner, no action is being taken by the respondents and, therefore, the

present petition is preferred for opening of the QL Code at the earliest.

4. Learned advocate Mr.Sadhwani, appearing for the petitioner has placed reliance on the order dated 12.03.2021 passed in Special Civil Application No.13550 of 2020 in support of his submissions. He has submitted that the Coordinate Bench of this Court, after examining the provisions of sub-rule (4) of Rule 5 of the Gujarat Mineral (Prevention of Illegal Mining Transportation and Storage) Rules, 2017, (hereinafter referred as "the rules of 2017", for short) has ordered opening of the ATR account.

4.1 He has submitted that sub-rule (4) of Rules 5 of Rules of 2017 provides that the Authorised Officer shall issue a special security permit paper-sheet, which shall be used by the holder of a mineral concession or a trader to print the Transit Permit or the Delivery Challan, as the case may be. Proviso to sub-rule (4) of Rule 5 provides that the Government may, for the reasons to be recorded in writing, suspend issuance of transit permit as contemplated under sub-rule (2) or delivery challan as contemplated under sub-rule (3) to the holder of a mineral concession or to a trader, as the case may be, in cases (i) any dues or penalties have been levied by the Authorized Officer on such holder or trader and are outstanding; or (ii) the trader or the owner of the relevant carrier has not procured registration for storage or transportation of mineral, as the case may be. It is submitted that before locking the online ATR account of the petitioner and before suspending the transit permit, no show cause notice was issued to him and no order in writing has been passed by the respondent.

4.2 Learned advocate for the petitioner has further submitted that after the petitioner gave reply to the show cause notice dated 25.03.2022, another show cause notice dated 21.05.2022 has been issued stating that there is less mining done of 9442 tonnes and further clarification has been asked for within a period of 10 days. It is submitted that the petitioner has been carrying out the lease activities since 2010 and only on the basis of assumptions the less mining of sand is alleged. It is submitted that in fact, because of the increase of sand during floods, the said less mining is being shown and there is inflow of sand every year since last 12 years.

5. Per contra, learned Assistant Government Pleader Mr.Mehta has submitted that the writ petition does not require interference and prayers for seeking quashing and setting aside the show-cause does not require interference since the petitioner is involved in illegal activities and ultimately, it was found that he has shown less mining. It is submitted that initially it was found that the petitioner had done excess mining of 43,298.33 metric tonne, which was found when the inspection was carried out by the Flying Squad. Thus, he has submitted that the writ petition may not be entertained.

6. I have heard the learned advocates appearing for the respective parties.

7. The facts, which are established from the records, is that on 10.03.2022, there was an inspection at the lease area of the petitioner by the Flying Squad, Gandhinagar and on 25.03.2020, a show-cause notice was issued to the petitioner

stating that excess mining of 43298.33 metric tonne has been done and on the very same day, the online delivery challan account code of the petitioner has been locked.

8. Thus, simultaneously two actions are taken by the respondent authority on the very same day, first issuing of show cause notice and the second locking of the ATR account of the petitioner. It is specific case of the petitioner that such action is *de hors* of provisions of sub-rule (4) of Rule 5 of the Rules, 2017.

9. At this stage, it would be apposite to refer to the observations made by the Coordinate Bench in the order dated 12.03.2021 passed in Special Civil Application No.13550 of 2020. The Coordinate Bench, after examining analogous issue and the provisions of the sub-rule (4) of Rule 5 of the Rules, 2017 has observed thus : -

"8. At this stage, this Court would like to refer to the provisions contained in subrule (4) of Rule 5 of the Rules of 2017, which reads asunder:

"(4) The Authorised Officer shall issue a special security permit papersheet which shall be used by the holder of a mineral concession or a trader, to print the Transit Permit or the Delivery Challan, as the case may be. The special security permit papersheet shall be issued in such manner as may be specified by the Government. The Transit Permit or Delivery Challan shall be in triplicate and machine numbered with the book number and serial number thereof.

[Provided that Government may, for the reasons to be recorded in writing, suspend issuance of transit permit as contemplated under subrule(2) above or delivery challan as contemplated under subrule (3) above, to the holder of a mineral concession or to a trader, as the case may be, in case (a) any dues or penalties have been levied by the Authorised Officer on such holder or trader and are outstanding; or (b) the trader or the owner of the relevant carrier has not procured registration for storage or transportation of mineral, as the case may be.]"

9. From the proviso of the aforesaid Rule, it is clear that issuance of transit permit can be suspended for the reasons to be recorded in writing. It appears

that before locking the online ATR account of the petitioner and before suspending the transit permit, no show cause notice was issued to the petitioner and no order in writing has been passed by the respondent.

10. In almost similar type of cases, this Court has quashed and set aside the action taken by the respondents and direction was issued to the concerned respondent to unlock/open the online ATR account of the concerned petitioner. A copy of one of order is placed on record at Page No.2 of the compilation.

11. In view of the aforesaid discussion, the action of the concerned respondent authority of locking of online ATR account of the petitioner bearing No.QL1404030514 for issuance of Royalty Pass in respect of lease of ordinary sand situated at Survey No.356, 365, Panam River Mauje: Boriyavi, Taluka : Sehra, District: Panchmahal is quashed and set aside. The respondent No.3 is hereby directed to unlock/reopen the online ATR account of the petitioner forthwith. The impugned show cause notice issued by the concerned respondent authority is also quashed and set aside on the ground of nonapplication of mind. However, it is open for the respondents to issue fresh show cause notice to the petitioner and after giving an opportunity of hearing to the petitioner, it is open for the respondents to take appropriate decision in accordance with law."

10. Thus, the Coordinate Bench has quashed and set aside the show-cause notice issued by the respondent authorities on the ground of non-application of mind. Thus, the respondent authorities, at the first instance before locking the ATR account of the petitioner are supposed to give a show-cause notice and hearing and after considering such a representation or the defence of the petitioner, would have to pass the order suspending or locking the online ATR account of petitioner.

11. At this stage, it would also be apposite to refer to the observations of the Coordinate Bench passed in the order dated 03.09.2021 in Special Civil Application No.11841 of 2021, more particularly in paragraph Nos.8 and 9 of the said order. The Coordinate Bench has observed thus :-

"8. A perusal of the proviso clearly reveals that while the State Government has power to suspend online account for issuance of transit permit, such power could be exercised subject to the procedure to be

followed by the State. In the considered opinion of this Court, the proviso requires three distinct conditions to be fulfilled by the State i.e. (1) order for suspending (online account) for issuance of transit permit should be in writing with reasons, (2) there has to be an order passed by an Authorized Officer levying dues or penalties upon the trader or holder whose online account is suspended and (3) the dues or penalties levied are outstanding. It is only upon fulfillment of all of the three requirements that the Government would be entitled to exercise the power of suspending online account for issuance of transit permit.

9. In the instant case, while there appears there is no order in writing with reasons for suspending the online account and moreover, in the considered opinion of this Court, there also has to be a finding recorded in the order in writing that the dues are outstanding. Under such circumstances, since the State Government while suspending the online account has not fulfilled two of the three conditions referred to hereinabove as contemplated in proviso to Rule 5(4) of the Rules, 2017, therefore in the considered opinion of this Court, the action of the respondent in suspending the online account for issuance of delivery challan of the present petitioner cannot be sustained."

12. This Court has held that only on fulfillment of three requirements as mentioned in the proviso to the Rule 5(4), the power to suspend online account for Transit Permit can be exercised. Thus, the writ petition is allowed. The impugned show-cause notice and action of the respondents are quashed and set aside. The respondent No.3- Geologist is directed to unlock / re-open the online ATR account of the petitioner forthwith. It would be open for the respondent to issue a fresh show-cause notice to the petitioner and after giving an opportunity of hearing to the petitioner, it would be open for the respondents to take appropriate decision in accordance with law.

13. With the aforesaid observations and directions, the Writ Petition is allowed to the aforesaid extent. Rule is made absolute accordingly.

Sd/-
(A. S. SUPEHIA, J)

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