

Court No. - 3

Case :- WRIT - C No. - 25003 of 2023

Petitioner :- Maa Vindhya Stone Crusher Company

Respondent :- State of U.P. and Another

Counsel for Petitioner :- Udit Chandra, Nitesh Patel

Counsel for Respondent :- CSC

Hon'ble Siddhartha Varma, J.

Hon'ble Shekhar B. Saraf, J.

1. The petitioner was granted a mining lease for 10 years commencing from 15.7.2016 and ending on 14.7.2026 for the purpose of mining and crushing stone. The petitioner for the purposes of conveyance etc. was also issued Form - MM-11 and regularly OTPs were provided for effective use of the MM-11 Forms.

2. On 17.7.2023, while the petitioner was still operating his mines as per the mining lease dated 15.7.2016 he received a notice on his E-mail Id where the allegation was that illegal mining had been done by him outside the area for which the mining lease was granted and, therefore, he had violated the Rules 3 and 58 of the Uttar Pradesh Minor Minerals. (Concession) Rules, 2021. This notice itself had raised a demand of Rs. 1,70,06,000/-. As the petitioner was finding the notice arbitrary, he filed the instant writ petition.

3. When the writ petition was filed, this Court had asked the learned Standing Counsel to take instructions. However, on 10.8.2023, this Court directed the petitioner to file a reply to the notice. This order was passed in the presence of the learned

Standing Counsel. The order dated 10.8.2023 itself says that the learned Standing Counsel was to inform the Court as to under what provision of law the OTP of the petitioner had been stopped. For the sake of convenience the order dated 10.8.2023 is being reproduced here as under:-

"Place this case on 21.8.2023 as fresh. On that date learned Standing Counsel may inform as to under what provision of law the OTP of the petitioner has been stopped without there being any order to that effect. In the meantime, the petitioner may reply to the notice.

If the petitioner files a reply, his right to challenge the show-cause notice shall still be there. "

4. The petitioner, it has been averred in the writ petition which was amended after 10.8.2023 that the petitioner had served the order of this Court along with the reply on the District Magistrate. It has been stated that after the order dated 10.8.2023 was loaded on the website of the High Court on 11.8.2023, he could serve the order only on 14.8.2023 as 12.8.2023 was a second Saturday and 13.8.2023 was a Sunday. It has been stated that on 14.8.2023 the District Magistrate did not accept the reply and informed the petitioner that since an order had already been passed on 14.8.2023 vis-a-vis the notice dated 17.7.2023 and the lease of the petitioner had been cancelled along with the order of blacklisting for two years, there was no requirement to take the reply. The petitioner, thereafter, filed an amendment application which was allowed. The order dated 14.8.2023, thus, is also challenged in this writ petition.

5. On 5.10.2023 when it was brought to the notice of the Court that the order of cancellation of the lease of the petitioner had been passed on 14.8.2023 without considering the reply, the Court had directed the District Magistrate, Sonbhadra, to file his personal affidavit. It may be stated that the petitioner had brought to the notice of the Court the fact that after the order dated 10.8.2023 was

passed, the petitioner had made all efforts to file the reply as early as possible. In fact, in the writ petition it has been categorically explained why the order of this Court was served only on 14.8.2023. It has been informed by the petitioner that when it came to knowledge of the petitioner that the District Magistrate on the 14.8.2023 itself had passed the order, he had challenged the same on the ground that the order was passed in gross violation of the principles of natural justice. The Court, upon being informed about the manner in which the order was passed, on 5.10.2023, had passed the following order :-

“A show cause notice was issued to the petitioner on 17th July, 2023 with regard to some illegal mining. It was emphatically stated in the show cause notice that either the petitioner pays the amount of Rs.1,70,00,000/ or he would show cause. While the show cause notice was yet to be replied to and a punishment was still awaited, the OTP of the petitioner with regard to the mining which he was doing in the area for which he had a valid lease was also stopped and, therefore, on the instant writ petition on 31.7.2023 the following order was passed by this Court:

"Instruction filed today, be kept on record.

The petitioner is a partnership firm engaged in the business of crushing stones and also holds for that purpose a mining lease for a period of ten years.

Allegation against the petitioner is that he had done illegal mining in an area which was not covered by his mining lease.

Learned Standing Counsel to take instructions in the matter as to whether when the allegation is yet to be proved with regard to the illegal mining in areas other than the areas in which the mining lease was granted to the petitioner can be stopped from mining on areas covered by his lease deed.

Put up this case on 07.08.2023 as fresh."

When on 10th August, 2023, the case was taken up the learned Standing Counsel was asked to explain as to why the OTP was stopped. We had also directed the petitioner to file reply to the notice which had been received by him on 17th July, 2023. After the order dated 10th August, 2023 was passed, the petitioner as per the allegations made in the writ petition approached the department to file a reply on 14th August, 2023. There was a time gap of two days as the order was obtained on the 11th and thereafter 12th and 13th were holidays. When the petitioner on 14th August, 2023, went to file the reply, he was supplied with the impugned order dated 14th August, 2023 (Annexure

No.8).

In the order now impugned, we find that apart from the punishment which was contemplated in the show cause notice, the petitioner's lease has also been cancelled and also he has been blacklisted. We are unable to understand as to why the District Magistrate, Sonbhadra was in such a haste to pass the impugned order. Even if the reply was not there a personal hearing was a must to the petitioner.

Put up this case as a fresh case on 9th October, 2023 at 12 noon.

On that date the District Magistrate, Sonbhadra may file his personal affidavit explaining the haste. It is made clear that if his personal affidavit is not filed on that date, we might consider the summoning of the District Magistrate, Sonbhadra personally. ”

6. In pursuance thereof, the District Magistrate filed his personal affidavit which was sworn on 8.10.2023 and in it the District Magistrate had stated that the order dated 10.8.2023 was not placed before him and he also apologized unconditionally for the fact that the order was passed without taking into consideration the order of the High Court dated 10.8.2023. Since the learned counsel for the petitioner read out the paragraph no. 10 and 11 of the personal affidavit of the District Magistrate, they are being reproduced here as under:-

“10. That, it is respectfully submitted that order dated 10.08.2023 was not placed before the deponent. It is further submitted that considering the past conduct of the petitioner for doing illegal mining, the lease has been cancelled.

11. That, the deponent being a responsible Government Officer has the highest regards for the majesty and the orders passed by this Hon’ble Court. The deponent has no intention to flout the orders passed by this Hon’ble Court in any manner whatsoever. However, if this Hon’ble Court comes to the conclusion that any act or omission on the part of the deponent is in violation of any of the orders passed by this Hon’ble Court, the deponent tenders his unconditional and unqualified apology for the same and begs to be pardoned.”

7. Learned counsel for the petitioner has stated that none of the averments made in the reply which the petitioner had given to the show cause notice had been considered by the District Magistrate.

In fact, he submits that under no circumstance could the reply of the petitioner have been considered as the District Magistrate saw to it that the order was passed before the petitioner could submit its reply. He has submitted that the order dated 10.8.2023 must have been communicated to the District Magistrate as the District Magistrate was very much represented through the learned Standing Counsel. However, very malafidely the impugned order was passed. Learned counsel for the petitioner, therefore, has submitted that the Court may set aside the impugned order as the same had been passed in gross violation of the principles of natural justice. He submits, relying on **1970 (1) SCC 121 : The Board of High School and intermediate Education, U.P. and others vs. Kumari Chitra Srivastava and others**, that the non-compliance of the principles of natural justice itself was enough to set aside the order. The Court had not to go into the fact as to whether the order was correct or not.

8. Learned counsel for the petitioner has also relied upon the judgement of this Court reported in **2017 (1) ADJ 240 : Ranveer Singh vs. State of U.P. and 7 others** and has submitted that it was incumbent upon the District Magistrate to have followed the law as has been laid down in the above mentioned case.

9. In reply, learned Standing Counsel, however, has supported the order of the District Magistrate and he has submitted that the petitioner was a chronic trespasser. He also made the Court go through the impugned order and has submitted that even if the petitioner was not heard there were suitable reasons given in the order itself for cancelling the lease of the petitioner.

10. Having heard the learned counsel for the petitioner and the learned Standing Counsel, this Court is of the view that if the

petitioner was deprived of the opportunity to place his side of the case and if the principles of natural justice were violated then the Court, without going into the actual order can set aside the same. This is also the view of the Supreme Court in the judgement reported in *1970 (1) SCC 121 : The Board of High School and Intermediate Education, U.P. and others vs. Kumari Chitra Srivastava and others*. The very fact, therefore, that the principles of the natural justice were not complied with is sufficient enough for this Court to intervene and set aside the order impugned. It may seem to a few that the observance of the principles of natural justice is a cumbersome process but we do find that in a civilized society if the rule of law has to be there then the principles of natural justice should compulsorily be followed.

11. From what has been stated above, we definitely find that the principles of natural justice were grossly violated. We find that the order of this Court dated 10.8.2023 was very clear to the effect that the petitioner had to reply to the notice. This order was passed in the presence of the learned Standing Counsel yet the District Magistrate had absolutely, not only flouted the order of this Court but had also, not cared to wait to get a reply of the petitioner. Therefore, we have no other option but to set aside the order impugned dated 14.8.2023.

12. Under such circumstances, the order dated 14.8.2023 passed by the District Magistrate, Sonbhadra, is set aside. The writ petition is accordingly **allowed**.

13. The petitioner may now submit his reply afresh within a period of one week and, thereafter, after giving a personal hearing to the petitioner, the District Magistrate shall adjudicate, following the principles laid down in **Ranveer Singh (supra)**, on the reply of

the petitioner within the next one month.

14. The petitioner be allowed to function so far as the lease vis-a-vis his land is concerned. For that purpose OTPs be generated for making Form MM-11 functional with immediate effect.

Order Date :- 21.11.2023

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(Shekhar B. Saraf, J.) (Siddhartha Varma,J.)