
Pawan Avinash Kumar Vs State Of Jharkhand through Principal Secretary

Writ Petition (C) No. 7529 Of 2023

Court: Jharkhand High Court

Date of Decision: Sept. 9, 2024

Acts Referred:

Mines and Minerals (Development & Regulation) Act, 1957 & Section 21(4A) #Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2017 & Rule 11(v)

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Rahul Kumar

Final Decision: Disposed Of

Judgement

Sanjay Kumar Dwivedi

1. Heard learned counsel appearing for the petitioners and learned counsel for the respondents-State.

2. The prayer in this petition is made for quashing of the order dated 25.07.2023, whereby the vehicles bearing Registration Nos. BR 53 G 3111, JH 04

T 2315 and JH 04 P 7393 respectively of the petitioners have been directed to be confiscated by the Deputy Commissioner, Dumka, in Confiscation

Case No. 10 of 2022-2023 arising out of Shikaripara P.S. Case No.132 of 2021, Shikaripara PS Case No.132 of 2021 and Shikaripara P.S. Case

No.132 of 2021, respectively, pending in the Court of learned C.J.M., Dumka.

3. Learned counsel appearing for the petitioners submits that the said vehicles were seized on the allegation of illegal transportation of stone chips. He

further submits that the case has been registered under different sections of I.P.C. and under the Mines and Minerals (Development and Regulation)

Act, 1957 and under Rule of the Jharkhand Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2017. He submits that the said

confiscation order has been passed on the strength of Rule 11(v) of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage)

Rules, 2017. He further submits that the said Rule 11(v) of the Jharkhand Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules,

2017 has been declared ultra vires by the Division Bench of this Court by order dated 02.07.2024 passed in W.P. (C) No.6788 of 2023. He further

submits that the confiscation only can be made by a court, who is competent to take cognizance in the light of sub-section 4A of the Section 21 of

Mines and Minerals (Development & Regulation) Act, 1957.

4. learned counsel for the respondent-Stte submits the stone chips were being carried out illegally by the said vehicles however, she does not dispute

that Rule 11(v) has already been declared ultra vires by the Hon'ble Division Bench of this Court

5. In view of the above, it transpires that the said Rule 11(v) has already been declared ultra vires and in view of subsection 4A of Section 21 of the

Mines and Minerals (Development and Regulation) Act, 1957, the Court having the power of taking cognizance can confiscate the vehicles in

question. Rule 11(v) has been declared ultra vires and on the basis of which, the Deputy Commissioner, Dumka has passed the order to confiscate the

said vehicles.

6. As such the order dated 25.07.2023, whereby the vehicles bearing Registration Nos. BR 53 G 3111, JH 04 T 2315 and JH 04 P 7393 respectively

of the petitioners have been directed to be confiscated by the Deputy Commissioner, Dumka, in Confiscation Case No. 10 of 2022-2023 arising out of

Shikaripara P.S. Case No.132 of 2021, Shikaripara PS Case No.132 of 2021 and Shikaripara P.S. Case No.132 of 2021, respectively, pending in the

Court of learned C.J.M., Dumka, is hereby, quashed.

7. So far as the release of the vehicles is concerned, the same shall be released in favour of the petitioners on the undertaking on the following terms

and conditions:

(i) The petitioners shall furnish indemnity bond to the satisfaction of the learned Court.

(ii) One of the sureties must be a resident and owner of a commercial vehicle of District Dumka (Jharkhand).

(iii) The petitioners shall not sale, mortgage or transfer the ownership of the vehicles on hire purchase agreement or mortgage or in any manner.

(iv) They shall not change or tamper with the identification of the vehicles in any manner.

(v) They shall produce the vehicles as and when directed by the learned trial court.

8. The aforesaid conditions are the subject to the final result of the criminal proceeding, which is pending before the Court of learned C.J.M., Dumka,

in connection with Shikaripara P.S. Case No.132 of 2021, Shikaripara PS Case No.132 of 2021 and Shikaripara P.S. Case No.132 of 2021,

respectively, respectively.

9. Accordingly, this petition is allowed in above terms and disposed of. Pending I.A, if any, stands disposed of.