

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(Cr) No. 153 of 2015

M/s. Shree Balaji Metalik ... Petitioner
Versus
1. The State of Jharkhand
2. Superintendent of Police, Chaibasa
3. Maheshwar Prasad Singh, Assistant Sub Inspector of Police,
Barajamda Outpost, Gua, Chaibasa
... Respondents

CORAM : HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

For the Petitioner : Mr. Kalyan Roy, Advocate
For the Respondents : Mr. Rahul Kumar Singh, J.C. to S.C. (L&C)

Order No. 13

Dated 18th November, 2016

Heard Mr. Kalyan Roy, learned counsel for the petitioner and Mr. Rahul Kumar Singh, learned J.C. to S.C. (L&C) for the respondents.

In this application, the petitioner has prayed for a direction upon the respondents to remove the lock from the factory gate which was put in connection with Gua (Barajamda) P.S. Case No. 09 of 2014 (G.R. No. 99 of 2014).

It has been submitted by learned counsel appearing for the petitioner that the petitioner's factory was registered under the Commercial Taxes Department, Jharkhand and in 2009 it was also granted Emission Consent Order under the provisions of the Air (Prevention and Control of Pollution) Act, 1981. Learned counsel further submits that the petitioner had the necessary requisites/ requirements granted by the authority to run the factory premises, but subsequently on account of a raid conducted by the police, a case was instituted against the petitioner for the offences punishable u/s 414, 420, 467, 468 and 120B of the Indian Penal Code, Rule 7,8 and 9 of the Jharkhand Mineral Dealer's Rules, 2007; Section 38/41 of the Air (Prevention and Control of Pollution) Act, 1981. Learned counsel further submits that neither under the provisions under the Mines and Minerals (Development and Regulation) Act (MMDR Act for short) nor under the provisions of Jharkhand Mineral Dealer's Rules, 2007 nor under the provisions of the Air (Prevention and Control of Pollution) Act, 1981, the Assistant Sub Inspector of Police has power to make search and seizure under the factory premises and in absence of necessary authorization to the informant, he could not have by any stretch of imagination supposed to make a raid in the factory premises and put a lock on the gate of the factory premises. Learned counsel further submits that on account of lock having been put on the gate of the factory premises, the petitioner is subjected to huge loss and now as charge-sheet has also been submitted in the present

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case, no fruitful purpose will be served in keeping the factory premises locked. It has also been submitted that the petitioner has also preferred a separate application before this Court being Cr.M.P. No. 1651 of 2014 for quashing the entire criminal proceeding in connection with this case, which is still pending.

Learned J.C. to S.C. (L&C) for the respondents has submitted that the Assistant Sub Inspector of Police did have the power under the MMDR Act and in terms of Section 100 of the Cr.P.C. to conduct search and seizure. It has been submitted that the illegal activities were going on in the factory premises which needed urgent action and therefore the informant had raided the factory premises and since no document could be produced with respect to the fines and iron ore kept in the premises, a case was instituted and lock was put upon the said premises to prevent further illegal activities. The present application is devoid of any merit and is liable to be dismissed.

The averment made in the instant application suggests that initially the petitioner company was known as M/s. Singh Metalik but subsequently on 05.06.2007 it was purchased by one Vijay Kumar Jain and the company was registered as M/s. Shree Balajee Metalik. It appears that the company has been given registration certificate by the Commercial Taxes Department, Jharkhand and necessary steps are being taken for grant of consent to operate certificate. A raid was conducted in the factory premises by the police officials which resulted in institution of Gua (Barajamda) P.S. Case no. 09 of 2014 containing the allegations that iron ore and fines were illegally kept in the premises for which no document has been produced by the officials of the factory. After investigating, charge-sheet has also been submitted by the police. The contention has been made by the learned counsel for the petitioner that the Assistant Sub Inspector of Police was never authorized under law to conduct search and seizure in terms of the provisions of MMDR Act or under the provisions of Jharkhand Mineral Dealer's Rules, 2007 or under the provisions of the Air (Prevention and Control of Pollution) Act, 1981. Section 24 of the Air (Prevention and Control of Pollution) Act, 1981 gives power to authorized persons of entry and inspection. The said provisions clearly denotes that only a person empowered by a State Board in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place for the purpose of performing any of the functions of the State entrusted to him, which has been subsequently denoted in the sub sections. Rule 23(B) of the Mines and Minerals (Development and Regulation) Act, 1957 authorizes a Gazetted Officer of the Central or a State Government duly authorized by the

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Central Government or a State Government in this behalf by general or special order if he has reason to believe that any mineral has been raised in contravention of the provisions of the Act or rules made thereunder or any document or thing in relation to such mineral is secreted in any place or vehicle, he may search for such mineral, document or thing and the provisions of Section 100 of the Code of Criminal Procedure, 1973 shall apply to every such search. Rule 9 of Jharkhand Mineral Dealer's Rules, 2007 also gives power to the officer authorized by the Government or competent officer to enter and inspect any premises, where the mineral is kept or stored or transported. Rule 9 of the Jharkhand Mineral Dealer's Rules, 2007 apart from giving power to an authorized officer also gives power to competent officer to conduct search and seizure. The competent person has been defined u/s 2(C) of the Rules which means a Gazetted Officer authorized by the Deputy Commissioner of any any district and District/ Assistant Mining Officer of the district.

None of the provisions, as enunciated above indicate that the Assistant Sub Inspector of Police is empowered under law to conduct search and seizure in the factory premises. Nothing has been brought in the counter affidavit or any supplementary counter affidavit in support of contention of the learned counsel for the respondent State that the Assistant Sub Inspector of Police was duly authorized and was competent enough to raid the premises and then subsequent efforts in locking the same.

Such circumstances therefore does indicate that all the provisions for whose violation, the F.I.R. was instituted gets diluted in view of the raid conducted by a person who was not authorized under the Act and the Rules, as stated above. Moreover, as has been submitted by the learned counsel for the parties, charge-sheet has also been submitted by the police. The factory premises have been locked since last more than 2 years. The question whether the documents were available with the petitioner or not can be subject of investigation or the subject of trial and for that purpose only coupled with the findings given above, the respondents authorities does not have any valid ground to lock the premises. Accordingly, the respondent authorities are directed to remove the lock from the gate of the factory premises immediately and forthwith after making inventory of all the articles which are kept inside. This exercise should be completed within a period of four weeks from the date of receipt/ production of a copy of this order.

This application stands disposed of.

(R. Mukhopadhyay, J.)