

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Civil Writ Petition No. 31506 of 2019 (O&M)
Date of Decision: 26.02.2021**

Bachittar Singh

..... Petitioner

Versus

State of Punjab and others

..... Respondents

**CORAM: HON'BLE MR. JUSTICE JASWANT SINGH
HON'BLE MR. JUSTICE ASHOK KUMAR VERMA**

Present: Mr. Mansur Ali, Advocate for the petitioner.

Ms. Rameeza Hakeem, Addl. Advocate General, Punjab and
Dr. Malvika Singh, Assistant Advocate General, Punjab
for respondent Nos. 1 to 4 / State.

Mr. Gurminder Singh, Sr. Advocate, assisted by
Mr. Anandeshwar Gautam, Advocate
for respondent No. 5 – Rakesh Kumar Choudhary

Ms. Shubhra Singh, Advocate
for respondent No. 6 – CBI, Chandigarh.

*[The aforesaid presence is being recorded through video conferencing
since the proceedings are being conducted in virtual court]*

JASWANT SINGH, J.

Through the present petition, Bachittar Singh-petitioner, who is running transport business primarily in Rupnagar and ferrying materials from stone crushers has sought directions to State Authorities to remove illegal private check posts / *Nakas* collecting illegal royalty/tax installed by private respondent No. 5-Rakesh Kumar Chaudhary in view of Rule 74 of Punjab Minor Mineral Rules, 2013 and further official respondent Nos. 1 to 4 be directed to install check posts as per letter dated 11.10.2019 (**Annexure P-2**) written by the Secretary-cum-Director, Department of Mines and

Geology, Punjab to Deputy Commissioners of Hoshiarpur, Pathankot, Gurdaspur and Ropar.

[2] It is the case of petitioner that in Ropar district at various places numerous illegal check posts have been set up by private respondent No. 5 – Rakesh Kumar Chaudhary, who is collecting *Gunda Tax* through his men from the truckers and this is not only causing financial loss to the transporters but is also causing harassment to the truck drivers.

[3] After issuance of notice of motion, a reply / **affidavit dated 12.02.2020** was filed by Shri Rupinder Singh Pabbla, Executive Engineer-cum-District Mining Officer (Mining Division), Rupnagar. It has been stated in the affidavit that Mining Block-1, Ropar was put up for auction by the Government of Punjab on 04.07.2019 for extraction of Minor Minerals subject to terms and conditions. The auction was held on 29.07.2019 in which respondent No. 5 was the highest bidder and provisional acceptance was given to him vide letter dated 31.07.2019. The Government of Punjab decided to set-up check posts at Punjab borders to check illegal movement of mined sand and gravel. In this regard directions were also issued to the Deputy Commissioner, Ropar. The Deputy Commissioner, Ropar asked the Mining Officer vide letter dated 31.10.2019 to identify sensitive points in the District for installation of check posts and weigh bridges alongwith estimate.

On receipt of complaints by the Deputy Commissioner, Ropar regarding setting up of illegal check points and collection of Royalty and *Gunda Tax* by unscrupulous elements, he constituted a joint inspection team vide order dated 21.11.2019 which conducted raid at various places and

reported that no illegal check post and collection of royalty / *Gunda Tax* was found. It is further averred in the affidavit that setting up of check posts and weigh bridges by the State Government is already in progress.

[3.1] Simultaneously, Sh. Devinder Singh, Deputy Superintendant of Police, Sub-Division Anandpur Sahib, Rupnagar filed his **affidavit dated 19.02.2020** whereby it was stated that he was part of joint committee constituted by the Deputy Commissioner, Ropar vide order dated 21.11.2019 to conduct inspection. Inspection was conducted at Bharatgarh and Miapur areas to check setting up of illegal check posts/ *nakas* and collection of royalty / *Gunda Tax*. During inspection, statements of Ashu Rana and Deepak Gupta were recorded at Bharatgarh and Miapur respectively, who deposed that the area belongs to private respondent No. 5- Rakesh Kumar Choudhary and their duty was to prevent illegal mining activity. In case there was any, the same was to be reported to respondent No. 5. They further stated that rumours were being spread regarding collection of royalty from truck operators/drivers by illegal miners. Consequently, a report detailing these facts was submitted. Similar findings were reported by the joint committee that conducted inspection at Kanpur Khui and Ailgram. After the completion of inquiry, it was reported that there are no illegal check posts and collection of illegal royalty. FIR No. 88 dated 10.09.2019 was registered on the receipt of complaint of Govt. contractor Balwinder Singh Dhanoa regarding harassment to his drivers and employees by respondent No. 5 for collection of royalty / *Gunda Tax*. Investigation was conducted in which no illegal collection of royalty was found and therefore, cancellation report was prepared.

[3.2] Thus, in nutshell, it was denied by the State that any illegal check posts were either set up or *Gunda Tax* was being collected by unscrupulous elements on behest of private respondent No. 5 – Rakesh Kumar Choudhary.

[4] On 19.02.2020, after considering the variant stand taken by the writ petitioner and State of Punjab, a Co-ordinate Bench of this Court passed the following order:-

*“ Present: Mr. Mansur Ali, Advocate,
for the petitioner.*

Mr. Sahil Sharma, DAG, Punjab.

*Mr. Gurnoor Sandhu, Advocate,
for respondent No.5.*

Learned State counsel seeks to place on record reply by way of affidavit of Devinder Singh, PPS, Deputy Superintendent of Police, Sub- Division Anandpur Sahib, Rupnagar, on behalf of respondent No.2. Prayer is accepted. Same is taken on record. According to State counsel, there are no illegal check points/barriers near the mining sites. This contention is vehemently controverted by counsel for the petitioner.

As the stand of the petitioner and the State is at variance and the issue is purely factual in nature, we feel another report needs to be submitted by an independent authority. Secretary, District Legal Services Authority, Rupnagar, to visit the site(s) in question and submit a report in a sealed cover with regard to existence of illegal check points/barriers, if any, within three weeks from today.

Adjourned to 24.03.2020.

*-sd-
(RAJAN GUPTA)
JUDGE*

*-sd-
(KARAMJIT SINGH)
JUDGE ”*

19.02.2020

[4.1] In pursuance to the aforesaid interim order dated 19.02.2020, Secretary, District Legal Services Authority, Rupnagar, (who is a judicial officer of the rank of Chief Judicial Magistrate) visited the sites in dispute on three different dates by hiding his identity and interacted with local residents, drivers and passerby, clicked photographs and made short video clips which show setting up of illegal and unauthorized check points at Kahanpur Khuhi, Mora Wala Dhaba, Village Agampur, Village Mianpur & Village Bindrakh and Bharatgarh to Panjehra and Bharatgarh to Nalagarh road. It was found by him that royalty is collected by crusher owners from truck/ tipper drivers and a slip / parchi is issued to latter which is checked at these illegal check points. The persons manning these check-points are local youths who are paid ₹ 13000/- per month and ₹ 100/- per day as daily expenses. This was submitted by officer by way of **report dated 13.03.2020** containing photograph as well as a pen drive.

[5] Consequently, after hearing the arguments of counsel for the parties at some length on 11.08.2020 and considering the serious lapses on part of the State Government alongwith their attempt to conceal true facts from us, we had passed the following order:-

“ Present: Mr. Mansur Ali, Advocate for the Petitioner.

Mr. Sahil Sharma, Deputy Advocate General, Punjab.

*Mr. Gurminder Singh, Senior Advocate assisted by
Mr. Anandeshwar Gautam, Advocate for respondent No.5.*

[The aforesaid presence is being recorded through video conferencing since the proceedings are being conducted in virtual court]

CM-7344-CWP-2020

*The applicant/Petitioner is seeking directions to
respondent Nos.1 to 4/State of Punjab officials for removing illegal
Check Nakas.*

CM-7346-CWP-2020

The applicant/petitioner is seeking a direction for taking appropriate action against the official respondent Nos.1 to 4 with regard to their illegal stand taken before this Court, specially affidavit dated 17.02.2020 in the light of report dated 13.03.2020 submitted by CJM-cum- Secretary District Legal Services Authority, Rupnagar in compliance of the directions passed by this Court on 19.02.2020.

CM-7345-CWP-2020 & MAIN CASE

Prayer in the CM-7345-CWP-2020 is for directing the CBI to conduct an inquiry with regard to the connivance of the State Authorities with respondent no.5, in installing private nakas and illegally collecting Royalty/Monies in the light of report dated 13.03.2020 submitted by CJM-cum-Secretary District Legal Services Authority, Rupnagar.

The Report dated 13.03.2020 by CJM-cum-Secretary District Legal Services Authority, Rupnagar, submitted in pursuance of the directions issued by this Court by the Order dated 19.02.2020, is taken on record as Mark A (Page 324 onwards). The said Report establishes the existence and operation of the illegal and unauthorized check points, operated by private persons without any authority of law, at various locations with the instance where such illegal checkpoint is even nearby a Police Post.

Copies of the Report dated 13.03.2020 has been furnished to all the Counsels for the parties.

From the stand of the State and the aforementioned report, the factual position of the existence and operation of the illegal and unauthorized Nakas varies. We have no reason to doubt the report filed by the Secretary, District Legal Services Authority, Rupnagar supported by photographs and videoclips through pendrive.

*In view of the findings in the Report, **we are inclined to initiate action against the officials concerned who have failed to discharge their obligations under the Provisions of the Mines and Mineral (Regulation and Development) Act, 1957 and failed to preserve the supremacy and rule of law.***

*Before doing so, in the established exceptional circumstance, the stand of the State and its Authorities and looking at the dimension of the lawlessness involved, we deem it appropriate to invoke the jurisdiction of the High Court to **get the Preliminary Enquiry conducted through the CBI regarding the contents of the aforestated Report**, who shall take further steps as per the process of law based on the outcome of the Preliminary Report within two weeks from the receipt of copy of this Order.*

The copy of the complete paperbook along with the report dated 13.03.2020 be supplied to the Central Bureau of Investigation Office at Sector 30-A, Chandigarh through its Superintendent of Police/Head of Department concerned who is directed to conduct/get the Preliminary Enquiry conducted based on the aforestated Report and take action based on outcome of such Preliminary Enquiry as per the process of law. The outcome/action taken be apprised to this Court on the next date of hearing.

List on 08.09.2020.

Notice of the CM-7345-CWP-2020 to the counsel for non applicants as well as CBI for the aforesaid date.

The remaining two CMs i.e. CM-7344-CWP-2020 and CM- 7346-CWP-2020 to be taken up along with the main case.

- sd-
(JASWANT SINGH)
JUDGE

August 11,2020
-sd-
(ASHOK KUMAR VERMA)
JUDGE ”

(Emphasis Supplied)

[6] After passing of the aforesaid order dated 11.08.2020, the Central Bureau of Investigation-CBI submitted its preliminary inquiry report dated **08.09.2020, *inter alia*, stating that** at present no *Naka* or personnel were found on the spot. However, whether *Nakas* were set up or not is a matter to be looked into. Relevant part of the report dated 08.09.2020 is

reproduced as under:-

“ 8. *That CBI team along with Mining Officer also visited the alleged unauthorized check points to assess the current situation which revealed that presently no person of contractor or naka found existed at the alleged places, however, in past prior to police raids nakas were erected for the purpose of collection of slips from the truck owner taking sand and gravels from the crushers. This allegation is required to be examined thoroughly.*

What remains to be done:

- *To collect pen drive from the Registrar of Hon'ble High Court of Punjab and Haryana, Chandigarh having original photographs and videos clicked by the CJM, Rupnagar and submitted before the Hon'ble High Court of Punjab and Haryana, Chandigarh.*
- *To collect Certified copy of Affidavit filed by the department before Hon'ble Hight Court of Punjab & Haryana, Chandigarh alongwith complete file with regard to correspondence made in CWP No. 31506 of 2019 titled as Bachittar Singh Vs. State of Punjab & Ors.*
- *To get the details about complaints received by Mining department with regard to illegal mining in district Ropar during the relevant period.*
- *To get the details of complaints lodged by mining department against the defaulters/contractors in district Ropar during the relevant period.*
- *To get the details about how many Crashers are operating in District Ropar with the approval of mining department/competent authority.*
- *To get posting details of Mining Officer, SDM's, Tehsildar's, and Naib Tehsildar's posted in*

District Ropar during the period 01.01.2019 to till date alongwith their mobile numbers/contact numbers.

- *To collect details of the SHOs posted in District Ropar alongwith their posting details and mobile numbers from 01.01.2019 till date.*
- *To collect slips/vouchers from the owners of Crusher in District Rupnagar if any for collection of illegal Royalty Tax/Gunda Tax.*
- *To collect Slips/Vouchers from the drivers of trucks/tippers if any for collection of illegal Royalty/Gunda Tax from the said drivers.”*

[7] On receipt of the report dated 08.09.2020 by the CBI, we had directed the State of Punjab vide order dated 15.10.2020 to respond to the proposed action, if any, to be taken by them on the said status report filed by CBI. In pursuance thereto, Sh. Rahul Bhandari, IAS, Director Mining, Department of Mines and Geology, State of Punjab **filed his affidavit dated 29.10.2020** indicating the proposed action. In nutshell, it was detailed in this affidavit regarding the action taken against the persons who had set up the *nakas*. Apart from this, it was also stated that steps were being taken to fortify the area with more police force. Taking cognizance of the affidavit dated 29.10.2020 as well as **subsequent affidavit dated 01.12.2020** filed by the State and hearing the parties at length, we passed the following order on 04.12.2020:-

“ **CWP No.31506 of 2019(O&M) & Connected Matters**

Bachittar Singh Vs. State of Punjab & Ors.

*Present :- Mr. Mansur Ali, Advocate &
Mr. Imran Ali, Advocate for the Petitioner
(in CWP No.31506 of 2019).*

*Mr. Sumeet Mahajan, Senior Advocate assisted by
Mr. Amit Kohar & Mr. Saksham Mahajan, Advocate for
Petitioners (In CWP No.35567 of 2019).*

Ms. Rameeza Hakeem, Additional Advocate General, Punjab with Dr. Malvika Singh, AAG Punjab for respondent No.1 to 4.

Mr. Gurminder Singh, Senior Advocate assisted by Mr. Anandeshwar Gautam, Advocate & Mr. RPS Bara, Advocate for respondent No.5.

Ms. Shubhra Singh, Advocate for respondent no.6-CBI.

Vide order dated 15.10.2020, we had directed the State to respond as to what proposed action State of Punjab intends to take in view of the preliminary enquiry report dated 8.9.2020 submitted by respondent No.6-CBI.

In pursuance to our order dated Mr. Rahul Bhandari, Director, Mining had filed his affidavit dated 29.10.2020, whereby it has detailed the “proposed action” in paragraph No.3 (at page 462 and 463 of paperbook), in particular at point (iii) whereby matter re: illegal check points and collection of gunda tax is being investigated by the Senior Superintendent of Police, Roopnagar.

Consequently, on the last date of hearing viz. 30.10.2020 we had directed the State to submit progress report, if any, in terms of the contents of affidavit dated 29.10.2020.

Today, the State Counsel has referred to affidavit dated 01.12.2020 filed before this Court whereby details of progress made on departmental front and investigation/registration of criminal cases has been made known. As per paragraph 10 of this affidavit (at page 582 of the paperbook), 4 FIRs have been registered in District Roopnagar viz-a-viz illegal mining activities. However, we find that there is no clarity in this affidavit regarding the issue reported by CJM/DLSA of setting up of illegal nakas/Gunda Tax.

*Thus, we direct the State to file **affidavit detailing the following information:-***

- (i) Progress against the persons who have been found manning the illegal nakas/check posts and their superiors/contractors as stated in affidavit dated 29.10.2020;*
- (ii) The provisions, if any, under which the State proposes to take action against such persons;*
- (iii) Progress against the erring officials, if any, who*

permitted setting up of such illegal nakas as the information and action taken till date seems to be nothing more than an eye-wash;

- (iv) To apprise this Court as to whether there is any provision under the Mines and Minerals (Regulation and Development) Act, 1957; The Punjab Minor Minerals Rules, 2013 or any other Act/Rules/Regulations for the time being in force, which penalizes any person for setting up illegal nakas/Gunda Tax/seeking royalty for minerals in State of Punjab;*
- (v) The procedure, if any, which is in place at present where an aggrieved person can report against setting up of such illegal nakas/Gunda Tax;*
- (vi) To apprise this Court as to what is the method/procedure put in place by the State Government for reporting illegal mining in any area by any person and provisions under which penal action is taken.*

Let the information/State Report be filed two days in advance from the next date of hearing.

At this stage, on a pointed query put to counsel for respondent No.6-CBI regarding the progress made in preliminary enquiry, we are informed that same is still under progress. Considering the subsequent events, especially the initiation of criminal proceedings by the State of Punjab and other administrative enquiries initiated to investigate into the issue of illegal check posts, we are of the opinion that it would be a wastage of resources by asking two agencies to look into similar issue. Consequently, we direct the respondent No.6-CBI to put on hold any further enquiry into the matter till further orders.

List on 17.12.2020 for further consideration.

Photocopy of this order be placed on the files of connected cases.

*- sd-
(JASWANT SINGH)
JUDGE*

*-sd-
(ASHOK KUMAR VERMA)
JUDGE ”*

December 04, 2020

[8] Thereafter, aforesaid Sh. Rahul Bhandari has filed another affidavit dated 15.12.2020 detailing the progress in the issue involved and also submitted point wise information sought by us. After considering the contents of affidavit dated 15.12.2020, we passed the following order on 11.01.2021:-

“ CM Nos. 7344, 7345, 7346, 7935 & 8780-CWP of 2020;
CM No. 121-CWP of 2021 in/and
CWP No. 31506 of 2019

BACHITTAR SINGH VERSUS STATE OF PUNJAB AND OTHERS

*Present: Mr. Mansur Ali, Advocate for the petitioner
(Applicant in CM Nos. 7344, 7345 & 7346 of 2020;
and CM No. 121 of 2021)*

*Ms. Rameeza Hakeem, Addl. Advocate General, Punjab and
Dr. Malvika Singh, Assistant Advocate General, Punjab
for respondent Nos. 1 to 4 / State.
(Applicant in CM No. 8780 of 2020)*

*Mr. Gurminder Singh, Sr. Advocate, assisted by
Mr. Anandeshwar Gautam, Advocate
for respondent No. 5 – Rakesh Kumar Choudhary
(Applicant in CM No. 7935 of 2020)*

*Ms. Shubhra Singh, Advocate
for respondent No. 6 – CBI, Chandigarh.*

*[The aforesaid presence is being recorded through video
conferencing since the proceedings are being conducted
in virtual court]*

*In pursuance to our order dated 04.12.2020, Mr.
Rahul Bhandari, Director, Mining, has filed his affidavit dated
15.12.2020, whereby it has detailed the point wise information
sought by us.*

*A perusal of paragraph Nos. 4 to 7 of the affidavit
shows that three FIRs have been registered against different persons
according to their prima facie role found in illegal setting up of
Nakas for collecting goonda tax. Apart from that, senior police and
administrative officers have been assigned duties for enquiring,
checking, preventing and supervising the nuisance(s) related to
mining in the area.*

Similarly, a perusal of the paragraph No. 9 of the affidavit details the action taken against the erring officials till the filing of the affidavit.

After considering the contents of paragraph Nos. 4 to 9 of the affidavit, we are prima facie satisfied with the progress made till date. However, we direct the respondent – State of Punjab to consider, if feasible, framing comprehensive guidelines regarding assigning of duties amongst the police and administrative officials clearly defining their duties vis-a-vis the issues pertaining to Mining, which includes transportation of minerals as well.

As far the response given by State regarding the queries raised by us at point (iv) to (vi) of our previous order dated 15.12.2020 is concerned, we find that most of the actions that the State Government intend to take care at initial stage(s). Although, numerous provisions of the Mines and Minerals (Development and Regulation) Act, 1957 as well as the Punjab Minor Mineral Rules, 2013 (for short “Rules”) have been referred to in the affidavit, but none of them seems to sufficiently address the issues raised in the previous orders passed by this Court. This is evident from the following paragraphs :-

- *In paragraph Nos. 13 & 14 of the affidavit shows that a period of three months has been sought to make certain amendments in Rules to effectively deal with the issue regarding setting up of illegal Nakas etc.*
- *Similarly, it has been stated in paragraph No. 20 of the affidavit that a web portal is being developed where provisions for online complaints will be made and this portal will be launched shortly.*
- *Likewise, a few more amendments in the Rules have been proposed in paragraph No. 27 of the affidavit in line with the Rules framed by State of Haryana.*

Consequently, we direct State of Punjab to apprise the Court on the next date of hearing about the action(s) taken subsequent to proposals made in its affidavit dated 15.12.2020, and specify the necessary amendments to be made.

List on 05.02.2021 for further consideration.

- sd-
(JASWANT SINGH)
JUDGE

January 11, 2021
-sd-
(ASHOK KUMAR VERMA)
JUDGE ”

[8.1] In compliance of our afore-reproduced order dated 11.01.2021, Sh. Rahul Bhandari has filed an **affidavit dated 02.02.2021** whereby a report of the progress made till date has been submitted.

[9] We have heard learned counsel for the parties at length and have also scrutinized the record carefully with their assistance.

[9.1] A bare perusal of the record shows that the State of Punjab has put in substantial efforts to iron out the loopholes existing in the system regulating mines and minerals in State, which allows unscrupulous elements to take advantage of the situation and cause wrongful loss to public. It is further evident that now specific responsibilities have been fixed by the State of the concerned officers who are duty bound to take action in case of any violation under their domain.

[9.2] However, it is important that the various undertakings given by the State in its numerous affidavits are summarized herein below for not only sake of convenience but also to bind them in future. Consequently, the undertakings given by State are reproduced affidavit wise and point wise:

“ (A) ***Affidavit dated 29.10.2020:-***

3. *Though the Joint Inspection Team / Committee constituted by the Deputy Commissioner, Rupnagar vide order dated 21.11.2019 (Page 222 / Annexure R-3) and comprising of:*

- i. *The SDM concerned,*
- ii. *The DSP concerned,*
- iii. *XEN cum District Mining Officer, Rupnagar,*

iv. District Forest Officer, Rupnagar and

v. Regional Transport Authority, SAS Nagar.

had submitted two reports dated 26.11.2019 and 12.12.2019 [Page 260 & 263 /Annexure R-4 Colly], which were placed on record before this Hon'ble Court vide Reply/affidavit dated 10.02.2020 [Page 195] that there were no illegal barriers/check posts set up by the Respondent No. 5 at the locations in question and no gunda tax was being collected, it would appear that the Joint Inspection Team/Committee has failed to contain illegal activities of the mining contractors. **Therefore, further to Para 8 of the CBI Status Report the following is the Action Taken is proposed thereon:-**

- (i) Issuance of show cause notice to the members of the Joint Inspection Team / Committee for failing to contain illegal activities of the mining contractors including taking of disciplinary action against the concerned officials. In this regard the deponent i.e. Director Mines / Water Resources Department has issued letter dated 27.10.2020 to the Chief Secretary, Government of Punjab, Principal Secretary, Transport Department, Additional Chief Secretary, Home and Justice Affairs and Principal Chief Conservator, Punjab, a copy of which is being annexed herewith as ANNEXURE R-14.
- (ii) Further, the deponent has also issued Letter No. 274/Mining dated 27.10.2020 to the Senior Superintendant of Police, Roopnagar for initiating action against the persons / workers of the private contractors found deployed at check points and whose statements were recorded by the Joint Inspection Team / Committee in its reports dated 26.11.2019 and 12.12.2019 including action under criminal law against the persons/workers of the private contractors (named in the letter dated 27.10.2020) and submission of report to the Office of Director, Mines, Water Resources Department Punjab within 15 days by the Senior Superintendant, Police. A copy of letter dated

27.10.2020 issued to the Senior Superintendant of Police, Roopnagar is annexed herewith as ANNEXURE R-15.

- (iii) **Hence the matter re: illegal check points and collection of gunda tax is being investigated by the Senior Superintendant of Police Roopnagar who has been required to register a criminal case if so required, and submit a report to the Deponent within 15 days. ”**

(B) Affidavit dated 15.12.2020:-

13. **The Department is considering amending the Punjab Minor Mineral Rules, 2013 (the 2013 Rules) inter alia providing for that if any person establishes any Check-Posts/Nakas, physical or otherwise for collecting royalty or checking slips of Royalty etc. will be punishable under relevant provision of Rules.**
14. **Given that these proposed Rules/amendments, as the case may be will have to be formulated, approved by the Council of Ministers, notified it is prayed that an adequate period of three months may be granted for this purpose.** As far as the present legislative structure/scheme under the Act / Rules is concerned, every mining contract / lease required that mining operations be carried out in conformity with the 2013 Rules, more particularly Clause 13 of the auction notice dated 30.05.2019 read with Section 4(1) and Section 4(2) of the 1957 Act. The said provisions read as under:-

Clause 13. Other Mandatory conditions:

- a. **The prospective bidder / contractor shall comply with the provisions of the Water (Prevention & Control of Pollution) Act, 1974, Air (Prevention & Control of Pollution) Act, 1981, Environment (Protection) Act, 1986, Punjab Land Security**

Act, 1900, Indian Forest Act, 1927, Wild Lives (Preservation) Act, 1972, Mines Act, 1952, Mines and Minerals (Regulation and Development) Act, 1957, Forest (Conservation) Act, 1980, Metalliferous Mines Regulation, 1961, Environment Clearance, Environment Management Plan, and Punjab Minor Minerals Rules, 2013 (as amended) as well as any conditions imposed by the environmental clearances.

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Section 4. Prospecting or mining operations to be under licence or lease. - (1) No person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a reconnaissance permit or of a prospecting licence or, as the case may be, of a mining lease, granted under this Act and the rules made thereunder.

XXX

(2) No reconnaissance permit, prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of this Act and the rules made thereunder.

20. ***In order to improve the reporting mechanism and control of illegal mining, the Department is developing a web portal where the provision of online submission of complaints has been made and a mobile application is being developed, which will help online submission of complaints and record real time location of the complainant and illegal mining spot. This e-mechanism for submission of complaints will be launched shortly.***

27. *The Department has also perused the Haryana Minor Mineral Concession, Stocking, Transportation of Minerals and Prevention of Illegal Mining Rules, 2012 (the 2012 Haryana Rules). **The existing provisions of the 2013 Rules as well as proposed provisions on the basis of 2012 Haryana Rules are as under:-***

- a. *Presently all the mineral concession holders in the State of Punjab are required to issue weighment slips to all the vehicles transporting minor mineral from the mining sites allotted by the department through online mode to control and monitor the activity. These are duly approved by the officials of the department before issuance. In case of crushing units working in the State, as per provisions of Crusher Registration Policy 2015 they are required to submit monthly return in the prescribed format for the quantity of minor mineral processed by them.*
- b. *In case of Haryana as per Rule 98(2) of the 2012 Haryana Rules there is provision of issuance of booklets containing duly numbered transit passes by the mining officer in-charge to both the mineral concession holder and crushing units. The mineral concession holder and owner of crushing unit are required to issue such passes to every purchaser of the mineral. Any vehicle found transporting minor mineral without such valid transit pass will be considered to be in contravention of rules. Rule 98(2) of the 2012 Haryana Rules reads as under:-*

98. Requirement of a mineral Transit pass – (1) No person shall transport or cause to be transported any mineral, in whatever form, from one place to another by any carrier without having a valid mineral transit pass.

(2) The mineral concession holder or a stone crusher licensee or a mineral dealer licensee shall apply for and shall be issued the booklets containing such duly numbered mineral transit passes by the mining officer-in-charge of the district concerned. The mineral concession holder or the stone crusher operator or the mineral dealer, as the case may be, shall maintain a register of all receipts and despatches along with the particulars of the mineral transit passes issued by him and furnish such details in the monthly production and despatch reports and shall maintain a complete account of the booklets of mineral transit passes utilised by him.

c. **In light of Rule 98(2) of the 2012 Haryana Rules the Department proposes that provisions of Crusher Registration Policy 2015 presently applicable to Punjab be amended as follows:-**

“ All crushing/screening units will hence forth will be required to register on the online portal of the

department. All the purchasers of the mineral from these units shall be issued transit passes from this portal through online mode only. Any vehicles carrying minor mineral without such transit pass will be considered illegal and proceeded against as per relevant provisions of MMDR Act, 1957 and PMMR 2013.”

The Crusher Registration Policy 2015 will also provide the Department provide that the activity of online registration and issuance of transit permits will be completed in a timely manner. Further, since crushing units get NOC to establish crusher from Punjab Pollution Control Board (the PPCB) necessary directions by the Department in this regard will be issued to PPCB which will ensure that penal action against non-compliant units is duly taken by the PPCB.

- d. It is also proposed that any vehicle used for transportation of minor mineral in the State shall obtain Mineral transport permit from the Authorized Officer. All such permits shall be issued through online mode. This will help in monitoring the vehicle involved in transportation of minor mineral in the State.*
- e. It is also proposed that all the wheel mounted/chain mounted excavators/poclains involved in excavation of earth/minor minerals would be required to register with the Department and be fitted with GPS to monitor their*

movement.

(C) Affidavit dated 02.02.2021:-

2. *In compliance to the aforesaid directions, the Department has **proposed amendments in the Punjab Minor Mineral Rules 2013 to prevent setting up of illegal check posts in the State. The file has been submitted to the office of Hon'ble Chief Minister, Punjab for placing the same as a Cabinet Memorandum carrying amendments in Punjab Minor Mineral Rules, 2013 before the Council of Ministers. The aforesaid amendments have been proposed with the aim to stop illegal check posts in the State. Copy of proposed amendments in Rules has been annexed as Annexure R-47.***
3. *That a web portal has been developed where provisions for online complaints has been made and which is under testing and shall be made fully operational shortly. The android application has been uploaded on the google store and can be downloaded for the purpose of making complaints. Name of the application is Punjab Mines and a screenshot of the same is annexed hereto and marked as Annexure R-48.*
4. *Further, it is submitted that Hon'ble National Green Tribunal while hearing the matter in OA No. 57 of 2020 on 03.03.2020 observed that there was huge gap in the raw material used and the raw material accounted for by the stone crushers in the State of Punjab, from which it could be inferred that unaccounted raw material was sourced from illegal mining. The NGT in its order dated 10.12.2020, based upon reports submitted by various committees i.e. on 27.2.2020 in O.A. No. 767/2018, Dinesh Kumar Chadha vs. State of Punjab by CPCB & PPCB, on 01.08.2020 by PPCB & Punjab SEIAA and on*

03.12.2020 by MOEF&CC, CPCB & PPCB, has raised some observations, the operative part is reproduced hereunder:-

7.“ It appears to be necessary in these circumstances that the State / PCB revisits its policy of the consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 to stand alone stone crushers without credible and effective data to ensure that raw material is not sourced by illegal mining. In absence thereof, it is the State mechanism itself which may be encouraging illegality. Moreover, there does not appear to be any plan to enforce the 'Polluter Pays' principle by recovering the compensation assessed, to prevent operation of illegal stone crushers.”

Further, Hon'ble National Green Tribunal has given the following directions vide orders dated 10.12.2020 to the State and the same is reproduced hereunder:-

- “8. We thus find it necessary to direct the State of Punjab to take remedial action of suitably limiting the number of stone crushers as per carrying capacity of legitimate source of raw material and taking stringent action taken against the stone crushers not having accountable sources of raw materials for stone crushing. A suitable mechanism for the

purpose may be evolved by the Chief Secretary, Punjab within one month from today and remedial action taken expeditiously, preferably within three months thereafter.”

Copy of the order dated 10.12.2020 passed by the NGT is annexed hereto as Annexure R-49.

5. *The Hon'ble National Green Tribunal advised the Punjab Pollution Control Board to revisit its policy of the consents under the Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 to stand alone stone crushers without credible and effective data to ensure that the raw material is not sourced by illegal mining. Further, the Hon'ble National Green Tribunal directed the State of Punjab to take remedial action of suitably limiting the number of stone crushers as per carrying capacity of legitimate source of raw material and taking stringent action against the stone crushers not having accountable sources of raw materials for stone crushing within three months.*
6. ***Accordingly, in compliance to the Hon'ble National Green Tribunal aforesaid directions, a proposal has been sent to the Worthy Chief Secretary Punjab wherein it has been requested to direct the PPCB to carry out amendments to an affect that fresh application for Establishment of stone crushers be entertained only after obtaining prior NOC regarding the source of raw material from the Mining Division of the Water Resources Department. This would help in containing illegal mining of minor minerals by Crushing units in the State of Punjab. The following amendments in rule 74 (A) of Punjab Minor Mineral Rules 2013 has been proposed for approval from Cabinet.***

" The stone crusher owners shall register stone crusher unit through online portal of the department. The fees of registration/renewal fees shall be paid online through department portal. The stone crusher owners shall be accountable for sources of mineral for crushing and shall satisfy the Mining Officer concerned about it while producing the details of source in monthly return (Form-C) or GST paid bills or through transit pass issued."

Further for registration of carrier use for transportation of mineral, following rule 72(A) shall be inserted after rule 72. As per amendments proposed in Punjab Minor Mineral Rules.

72 (A). Registration of a carrier used for transportation of mineral in any form and the requirement of a mineral transport permit.

(1) Any mode of carrier transport, mechanically driven or otherwise, and used for transportation of any mineral from any quarry site in the State, in whatever form, shall be required to be registered with the Director or such officer as authorized by him for the said purpose and for such period as required for any part or parts of the state. All such permit shall be issued through online mode. All such vehicles shall be fitted with GPS for real time tracking.

(2) A carrier used for transportation of any mineral shall be registered for the purposes of these rules by an officer authorized by the Director for periods of seven days or three months or one year on payment of fee as prescribed in the Schedule.

(3) No mineral concession holder or a permit holder under these rules shall allow loading of any mineral from their concession area, in a carrier of whatever description, which is not registered as such in accordance with these rules.

(4) Carriers deployed for transportation of mineral(s) from any other state into or through the state shall also obtain such Mineral Transport Permits for such periods as required from the authorized officer in case of a carrier/ vehicle used for such purpose through online mode or through offline mode from the nearest check-post established by the Department in the state.

(5) The Government may cancel the registration of any carrier if it is found to be indulged in violation of these rules on three occasions and debar its registration as such for future.

7. ***Further it is submitted the Director General of Police Punjab has sent Standard Operating Procedure for carrying out police raids in connection with illegal mining vide their letter dated 11.12.2020. The copy of the Standard Operating Procedure is annexed hereto as ANNEXURE R-50.***

9. ***As far as taking action against any illegal collection of gunda tax, which being a law-and-order problem,***

appropriate action can be taken under relevant provisions of the IPC. In this regard, department has proposed amendment in rule 74(1) of Punjab Minor Mineral Rules 2013 which is as follows:

“ 74(1)(a): If any person other than an authorized government officer, establishes any check post/Nakas physical or otherwise for checking slips, for transit passes, he shall be punishable under relevant sections of MMDR Act, 1957 and IPC. The check post/ Nakas established by an authorized government officer shall have representatives from Mining department/ Police department/ District administration.

The authorized government officer may seek presence of Concerned concessioner or his representative at the check post / Nakas in case any contradiction/ clarification is required regarding slips/transit pass produced by the carriers.”

- 10. That to act against the complaints of the illegal mining, Additional Deputy Commissioners and Superintendent of Police (D) in each district have been appointed as the Nodal Officers and they are working in-tandem with each other.***
- 11. Apart from above measures, in order to stop usage of illegally extracted minor minerals in the State of Punjab, all government departments involved in development works have been written to check the royalty receipts of minor minerals used by their respective contractors before making final payments to them. ”***

(Emphasis Supplied)

[9.3] A cumulative reading of the contents of affidavits filed by State reflects their positive intent to deal with the various situations that arise vis-à-vis transportation and reporting of illegal check *nakas* and alleged collection of *Gunda Tax*. Apart from that it is evident that various officers have been assigned designated roles for better management of issues that arise. We find that the measures that have been proposed by the State Government are sufficient at this stage and seem to be effective in dealing with the nuisance of setting of illegal *nakas* for collecting *Gunda Tax*.

[10] Now coming back to the facts of the case, we find that the grievance as raised by the petitioner has been addressed by the official respondents, as is evident from the status report(s) submitted by the State Government. As per the latest report in shape of affidavit dated 02.02.2021, in paragraph No. 8, progress in the FIR case as well as progress made against erring officials has been mentioned. For ready reference, paragraph No. 8 of the affidavit dated 02.02.2021 is reproduced as under:-

“8. *That as regards persons who have been found manning the illegal nakas/check posts and their superiors/contractors as stated in affidavit dated 29.10.2020 and action taken thereof as stated in affidavit dated 15.12.2020, the Deponent's Department had directed SSP, Roopnagar, vide letter dated 21.01.2021, to inform subsequent actions taken in the above mentioned case. Copy of the letter dated 21.01.2021 is annexed hereto as Annexure R-51.*

The SSP Roopnagar vide his letter dated 27.01.2021 has informed that challans in three number FIRs 211, 179 and 218 u/s 385 of IPC have been presented in the Hon'ble Courts on 08.01.2021, 14.01.2021 and 19.01.2021 respectively. Copy of the letter dated 27.01.2021 is annexed hereto as Annexure R-52.

As regards the action taken against erring officials, the Deponent's Department on 21.01.2021 has requested the concerned Departments to intimate the latest status and expedite the disciplinary proceedings of enquiry against the concerned officers who were posted during November-December 2019, copies of which are annexed herewith as Annexure R-53. Suitable action by respective departments is under progress."

[10.1] Since, we are not a fact finding Court while exercising jurisdiction under Article 226 of the Constitution and the factual report dated 13.03.2020 submitted by Secretary, District Legal Services Authority, Rupnagar has already been made basis for initiation of criminal as well as departmental proceedings, we see no reason to continue with the instant petition, especially in view of the prayer made by writ petitioner which was primarily confined to ensuring that no private individual sets up an illegal check *naka* for collecting *Gunda Tax*. Further, as is evident from the latest report in the form of affidavit dated 02.02.2021 (as reproduced in paragraph-10 of our judgment), three FIRs have already been lodged against individuals for setting up illegal *nakas* and collecting *Gunda Tax*, as also disciplinary proceedings have been initiated against the erring officials, we would not like to delve further into these factual aspects, since these are best left to be decided by concerned authorities / Courts, as per law.

[11] As far as the prayer made by the petitioner for handing over the investigation to CBI is concerned, we are of the view that same cannot be permitted as well. Although the petitioner has raised apprehension that the State agency will not conduct the investigation as thoroughly as CBI, but we find the said apprehension to be baseless considering the facts of the case as

well as subsequent developments that have taken place. At one point of time, we also had serious doubts about the sincerity of the State to take action against culprits and therefore, considering the gravity of situation, we concededly had asked the **Central Bureau of Investigation to submit a preliminary report** primarily to take action against erring officials who had failed to discharge their duties as observed by us in the order dated 11.08.2020. This was done by taking a cue from the Central Vigilance Commission Act, 2003 whereby under Section 8 of the Act, 2002, the Commissioner has the power to direct the investigating agency to hold a preliminary enquiry into the allegations put forth before it.

[11.1] In pursuance to our directions, a report dated 08.09.2020 was submitted by CBI which makes it clear that it had not found any illegal check posts on the spot and had sought time for assessing the pen drive submitted by Secretary, District Legal Services Authority, Rupnagar alongwith other official records in order to investigate and complete preliminary investigation. Simultaneously, the State of Punjab had placed on record its progress report by way of **affidavit dated 01.12.2020** (at page Nos. 579 to 585 of the paper-book) of Sh. Rahul Bhandari, Director Mining, Department of Water Resources, Govt. of Punjab, whereby it had reported initiation of action against the alleged offenders alongwith erring officials. Thus when a matter was to be investigated on the basis of documentary / electronic proof which are already in existence and their admissibility as well as resultant culpability of offence(s) is to be adjudicated by judicial process itself, we found no reason to ask the CBI to continue with its investigation which concededly was at initial stage when we stayed further

process of preliminary enquiry vide our interim order dated 04.12.2020. Further, we were also influenced by the subsequent action taken by the State Government and thus intended to avoid multiplicity of efforts and wastage of public money, while passing interim order dated 04.12.2020.

[11.2] At this stage, we would like to highlight the law with regard to **transferring of investigation** from a State Agency to CBI, which is very well settled by Hon'ble Supreme Court in “***Bimal Gurung Versus Union of India and others***”, 2018(5) SCC 480. The Hon'ble Supreme Court in this case in paragraph-29 has categorically held after discussing various judicial precedents that the power of transferring investigation to other investigating agency/CBI must be exercised in rare and exceptional cases. For ready reference, paragraph-29 of the judgment is reproduced as under:-

“ 29. The law is thus well settled that power of transferring investigation to other investigating agency must be exercised in rare and exceptional cases where the Court finds it necessary in order to do justice between the parties to instil confidence in the public mind, or where investigation by the State Police lacks credibility. Such power has to be exercised in rare and exceptional cases. In ***K.V. Rajendran vs. Supdt. of Police***, (2013) 12 SCC 480, this Court has noted few circumstances where the Court could exercise its constitutional power to transfer of investigation from State Police to CBI such as: (i) where high officials of State authorities are involved, or (ii) where the accusation itself is against the top officials of the investigating agency thereby allowing them to influence the investigation, or (iii) where investigation *prima facie* is found to be tainted/biased. ”

[11.3] Applying the principles as laid down by Hon'ble Supreme Court in ***Bimal Gurung's case (supra)*** to the present case, we find that

neither of the three ingredients are applicable. The pleadings of the writ petition neither point to involvement of high officials of State nor accusation is against any of the top officials. As far as the investigation conducted by the police is concerned, we have already expressed our satisfaction with the progress made in previous interim orders itself. Furthermore, a central agency cannot be directed to inquire into every matter only because a litigant feels he may not get justice from the State. Every action taken by State in its administrative capacity has to be taken to be bona-fide and correct until and unless same is found to be tainted/ faulty.

[11.4] Hence, the prayer made for transferring the investigation to CBI is rejected.

[11.5] Lastly, the prayer made by petitioner for taking action against private respondent No. 5 (*Rakesh Kumar Choudhary*) is concerned, we consider the same to be unjustified for more than one reason. **Firstly**, there is no direct nexus brought forth before us which could prove that private respondent No. 5 is directly involved in setting up of illegal *nakas* and extorting money through his goons. **Secondly**, the antecedents of petitioner himself are not without blemish, as numerous FIRs are registered against him, as highlighted by private respondent No. 5 in his written statement at paragraph-9 (at page 519 to 521 of the paper-book). As per this, the petitioner himself is a defaulter who has been repeatedly indulging into illegal mining activities and at present, seven (07) FIRs are registered against him which are at various stages. For sake of convenience, the tabular form depicting the FIRs and their respective stages are reproduced as under:-

Sr. No.	FIR No. Under Section	Present Status
1	<i>FIR No. 45 dated 04.04.2008 P.S.: Morinda U/s 3 Damage to Public Property Act and Section 427 IPC</i>	<i>Convicted on 17.09.2011</i>
2	<i>FIR No. 45 dated 19.04.2012 P.S.: Kiratpur Sahib U/s 379, 411 IPC & Section 21(1), 4(1) of MMD&R Act, 1957</i>	<i>Under Trial</i>
3	<i>FIR No. 95 dated 03.12.2013 P.S.: Kiratpur Sahib U/s 188, & Section 21(1), 4(1) of MMD&R Act, 1957</i>	<i>Under Trial</i>
4	<i>FIR No. 109 dated 04.10.2017 U/s 323, 325, 307, 341, 148, 149, 506 IPC P.S. Sadar Roop Nagar.</i>	<i>Sub judice in Court</i>
5	<i>FIR No. 219 dated 17.12.2019 U/s 353, 186 IPC P.S. City Roop Nagar.</i>	<i>Sub judice in Court</i>
6	<i>FIR No. 45 dated 16.04.2020 U/s 174-A IPC P.S. Kiratpur Sahib</i>	<i>Under Investigation</i>
7	<i>FIR No. 47 dated 17.04.2020 U/s 174-A IPC P.S. Kiratpur Sahib</i>	<i>Under Investigation</i>

Thus, it is quite possible that the allegations levelled against private respondent No. 5 are out of some personal grudge or professional rivalry. Again, these disputed questions of fact cannot be decided by us, especially when three (03) FIRs have been registered against individuals by State Government for alleged setting up of *nakas* and collecting *Gunda Tax*, which will decide the involvement, if any, of respondent No. 5.

CONCLUSION:

[12] In view of the above, the present **writ petition** is **disposed of** in view of the stand taken by the State whereby appropriate action, as permissible under law, has been initiated against the culprits / erring officials, and findings to this effect as well as other aspects have been rendered by us in paragraphs-10 & 11 of our judgment.

[13] We bind the State to the various affidavits dated 01.12.2020, 15.12.2020 & 02.02.2021 filed by it in the present writ petition, whereby numerous proposals have been put forth. It would be appreciated in case all the proposals as enumerated in affidavits filed by the State and detailed in our judgment under paragraph-9 are concluded within a period of three (03) months from today.

[14] At the same time, we would also like the State Government to apprise us about the progress made *vis-a-vis* the proposed amendments as well as other measures for receiving and redressal of complaints pertaining to various stages of illegal mining, as submitted by official respondents in various affidavits filed before us and highlighted in paragraph-9.2 of our judgment. Apart from this, we should also be apprised about the status of disciplinary proceeding initiated against erring officials. Thus, we **direct** the State Government to submit a compliance / status report after a period of six (06) months.

[15] Since the main petition itself has been decided, no orders are required to be passed in the pending miscellaneous applications, if any, the same stand(s) disposed of.

List on **27.08.2021** for submission of **status / compliance**
report.

(JASWANT SINGH)
JUDGE

February 26, 2021
'dk kamra'

(ASHOK KUMAR VERMA)
JUDGE

<i>Whether Speaking/reasoned</i>	<i>Yes</i>
<i>Whether Reportable</i>	<i>Yes</i>