

**CWP-8744-2024 (O&M) &  
connected petitions.**

**-1-**

2025.PHHC.033141



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

**CWP-8744-2024 (O&M)  
Date of Decision: 04.03.2025**

**RAJENDER PARSHAD -PETITIONER**

**V/S**

**STATE OF HARYANA AND OTHERS -RESPONDENTS**

**CWP-10421-2024 (O&M)**

**SANJAY SIMBERWAL -PETITIONER**

**V/S**

**STATE OF HARYANA AND OTHERS -RESPONDENTS**

**CWP-11024-2024 (O&M)**

**NARENDER KUMAR AND OTHERS -PETITIONERS**

**V/S**

**STATE OF HARYANA AND OTHERS -RESPONDENTS**

**CORAM: HON'BLE MR. JUSTICE KULDEEP TIWARI**

Present: Mr. Sanjiv Gupta, Advocate,  
for the petitioner in CWP-8744-2024.

Mr. Anshul Mangla, Advocate  
for the petitioner in CWP-10421-2024.

Mr. Devender Arya, Advocate,  
for the petitioners in CWP-11024-2024.

Mr. Pankaj Mulwani, DAG, Haryana.

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**KULDEEP TIWARI, J. (Oral)**

1. In all above subjected writ petitions a challenge is thrown to a common order dated 29.02.2024, passed by the Commissioner, Gurugram Division, Gurugram, wherethrough, permission has been granted under Section 17-A of the Prevention of Corruption Act, 1988 (hereinafter referred to as the 'Act of 1988'), therefore, amenable to be decided together through a common order.

2. The petitioners herein are officials of the Mines and Geological Department, Haryana, have approached this Court, fetching grievance from the impugned order (*supra*), wherethrough, permission under Section 17-A of the Act of 1988, for initiation of enquiry/investigation has been granted.

3. Before this Court embark upon the submissions, as made by learned counsel for the petitioners, lets have a glance over the facts, upon which there is no wrangle between the parties concerned.

i. A source report was received in the Vigilance Department at Narnaul, with regard to some embezzlement of funds in the Department of Mines and Geological, Haryana, and on the basis of the said complaint a regular vigilance Enquiry No.1, dated 29.06.2021, was registered after getting the approval from the State Government vide 32/5/2021-4(1) dated 25.06.2021, and further, the Director General, State Vigilance Bureau, Haryana (now Anti Corruption Bureau), also accorded permission vide its letter dated 29.06.2021.

ii. During the course of enquiry, it was found that the Principal Bench, National Green Tribunal, New Delhi (hereinafter, referred to as the 'NGT') laid down some terms, on which vehicle, or other equipment, as involved in the illegal mining can be released. Such guidelines/terms were issued vide order dated 19.06.2020. The relevant extract of the guidelines is extracted hereinafter:-

“(1) Vehicles/Equipments/Excavators with showroom: Invoice category/ value more than Rs. 25 lakhs and life less than 5 years old will pay Penalty Amount of RS 4 Lacs.

(2) Vehicles/Equipments/ Excavators with showroom category/ value more than Rs. 25 lacs and more than 5 years but less than 10 years old will pay Penalty Amount of Rs 3 Lacs.

(3) For the remaining Vehicles older than 10 Year, Equipment/ Excavators which are otherwise legally permissible to be operated and not covered by Serial No. 1 and 2 then Penalty Amount be Rs 2 Lacs.”

iii. Further during enquiry, it surfaced that the officers/employees of the Mining and Geological Department Narnaul, in collusion with the vehicle owners prepared fake invoice bills, affidavits, etc., and the same were attached with the *challan* for paying the fine. Even in some cases, they changed the category, and the value of the seized vehicles, so as to grant benefit to those vehicle owners by imposing lesser penalty. On the basis of the fake invoices bills and false affidavits, the vehicles were released by paying very less penalty in violations of the orders of the NGT, which caused financial loss of lakhs of rupees to the Exchequer. This practice was found to be prevalent from

February, 2020 to September, 2020.

iv. During the aforesaid period, the petitioners were found to be posted at Mining and Geological Department, at Narnaul, and it further surfaced during the enquiry that they being the officers/officials of the department concerned, were in collusion with the vehicle owners, not only accepted the fake invoices for the seized vehicles, but also, without verification of the documents, even changed the category/value of the vehicles, and charged lesser fines on the seized vehicles.

v. The statement of concerned officers/officials were recorded, and the entire connected records were confiscated from the concerned department, which made vivid postulation that the Mines and Geological Department, Narnaul, had seized a total 292 vehicles involved in illegal mining from 01.01.2020 to 30.09.2020, and out of which, 214 vehicles were released after paying fine as per the directions passed by the NGT, whereas, 25 vehicles which were seized by the Mining department concerned, on account of not paying the fine/*challan* in time by the owners thereof, therefore, criminal cases were registered against them at different police stations in the District Mahindergarh.

vi. It further surfaced from the enquiry that the owners of 42 vehicles, paid lesser environmental

compensation amount, than the requisite amount fixed by the NGT, and that was done by preparing the fake invoices and using false affidavits, and fake documents. In this regard 08 FIRs were registered in Police Station, City Narnaul, against the owners of the abovesaid 42 vehicles.

vii. From the said enquiry the role of the officers/ employees was surfaced, and then in order to conduct further enquiry, a request was sent to the Commissioner, Gurugram Division, for granting permission under Section 17-A of the Act of 1988. Accordingly, the Commissioner, Gurugram, granted permission vide impugned order dated 29.02.2024.

viii. It is also informed to this Court that during the pendency of the instant petitions, an FIR bearing No.15 dated 16.04.2024, has been registered against the petitioner-Rajender Parshad and other co-accused, under Sections 420, 467, 468, 471 and 120-B of the IPC, and under Section 13(1)(c) of the Act of 1988, at P.S. Anti Corruption Bureau, Gurugram Range, Gurugram.

**SUBMISSIONS MADE BY LEARNED COUNSEL OF THE PETITIONERS.**

4. Learned counsel for the petitioners submits that no notice was given to the petitioners prior to the grant of sanction vide order dated 29.02.2024, under Section 17-A of the Act of 1988, and the anomaly in receiving lesser amount of penalty has arisen on account some misunderstanding between the then Director General of Mines and

Geological Department, Haryana and the Head of the Vigilance Department concerned.

5. They further submit that prior to accord sanction under Section 17-A of the Act of 1988, a departmental enquiry was required to be held, whereas, in the instant matter no such exercise was carried out, rather straightway without complying with the principle of natural justice, the impugned sanction was granted.

6. Further, the submissions which raised vociferously by learned counsel of the petitioners, is that all the offenders/defaulting persons (owners of the seized vehicles), have already been booked by way of an undertaking, and at no stage they have been exonerated by the department/authority concerned, in that eventuality, the department concerned, is free to take action as per the rules and regulations against the defaulting persons. This aspect has never been considered by the Commissioner concerned, while granting impugned sanction (*supra*).

7. Learned counsel for the petitioners in CWP-11024-2024 and CWP-10421-2024, while continuing their arguments submits that the issue with regard to the interpretation and applicability of Section 17-A of the Act 1988, has already been referred to a larger bench as per the order dated 16.01.2024, passed by the Supreme Court in “**Nara Chandrababu Naidu vs. State of A.P. and another**” in **SLP (Criminal) No.12289 of 2023**, therefore, till the decision in aforesaid case, no action is required to be taken against the present petitioners.

8. They in addition submit, that the order, which was passed by

the National Green Tribunal (NGT), New Delhi, there was no clarification, as to how and which procedure is to be adopted to evaluate, the showroom value of the vehicles seized, on account illegal mining. There was no clarity with the concerned field officers and the department as well. Reference is also made to Whatsapp chats of the mines department officers during the relevant period.

9. While referring to one of the Whatsapp chats dated 25.02.2020, to lend vigor to their arguments, learned counsel for the petitioners submit that the then Director General of Mines and Geological Department, Haryana, had advised/directed the concerned field officer(s) to levy penalty on the basis of the affidavits given by the vehicle owners, in case there is no invoice bills of the seized vehicles, and in case, where the invoice bills are available there was no yardstick to ascertain the genuineness of the same. Therefore, the action of the petitioners was *bona fide* and no criminality can be attached to it.

**SUBMISSIONS MADE BY LEARNED STATE COUNSEL**

10. On the other hand learned State counsel, while relying upon reply dated 25.10.2024, vociferously opposed the asked for relief to the present petitioners. He submits that the sanctioning authority, has considered the entire evidence, including the statements of witnesses recorded during enquiry, placed before it, and after applying its judicious mind granted sanction. Therefore, the impugned order does not require any judicial interference.

ANALYSIS

11. This Court has examined the submission, as made by learned counsel for the petitioners and other relevant documents as placed before this Court, in detail.

12. Before this Court starts to pen down any opinion on the submissions and the prayer made in the instant petitions, it is imperative to have a glance upon some legal precedents, from where this Court lends vigor to reach a just conclusion.

13. The Hon'ble Supreme Court in "**State of Punjab and another Vs. Mohammed Iqbal Bhatti**", (2009) 17 Supreme Court Cases 92, inasmuch as, it has been categorically held therein that, the legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the superior courts. The relevant paragraphs of this judgment are reproduced hereinafter:-

"6. Although the State in the matter of grant or refusal to grant sanction exercises statutory jurisdiction, the same, however, would not mean that power once exercised cannot be exercised once again. For exercising its jurisdiction at a subsequent stage, express power of review in the State may not be necessary as even such a power is administrative in character. It is, however, beyond any cavil that while passing an order for grant of sanction, serious application of mind on the part of the concerned authority is imperative. The legality and/or validity of the order granting sanction would be subject to review by the criminal courts. An order refusing to grant sanction may attract judicial review by the Superior Courts. 7. Validity of an order of sanction would depend upon application of mind on the part of the authority concerned and the material placed before it. All such material facts and material evidence must be considered by it. The sanctioning authority must apply its mind on such material facts and evidence collected during the investigation. Even such application of mind does not appear from the order of sanction, extrinsic evidence may be placed before the court in that behalf. While granting sanction, the authority cannot take into consideration an irrelevant fact nor can it pass an order on extraneous consideration not germane for passing a

statutory order. It is also well settled that the Superior Courts cannot direct the sanctioning authority either to grant sanction or not to do so. The source of power of an authority passing an order of sanction must also be considered. [See *Mansukhlal Vithaldas Chauhan v. State of Gujarat*]. [(1997) 7 SCC 622]. The authority concerned cannot also pass an order of sanction subject to ratification of a higher authority. [See *State v. Dr. R.C. Anand*] [(2004) 4 SCC 615].”

14. Also, in the verdict rendered in “**Mansukhlal Vithaldas Chauhan Vs. State of Gujarat**”, (1997) 7 SCC 622, the Hon’ble Supreme Court has, while concurring with the ratio of law laid down in “**Sterling Computers Ltd. Vs. M&N Publications Ltd.**”, (1993) 1 SCC 445, held that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decisionmaking process. The relevant paragraph of Mansukhlal Vithaldas Chauhan’s verdict (*supra*) is reproduced hereunder:-

“28. In *Sterling Computers Ltd. vs. M & N Publications Ltd.*, AIR 1966 SC 51, it was pointed out that while exercising the power of judicial review, the Court is concerned primarily as to whether there has been any infirmity in the decision-making process? In this case, the following passage from Professor Wade’s *Administrative Law* was relied upon :

“The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the Court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts *ultra vires*. The Court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard which leaves to the deciding authority the full range of choices which legislature is presumed to have intended.”

15. The Hon’ble Supreme Court has also expressed a similar view in “**State of Karnataka Vs. Ameerjan**”, (2007) 11 Supreme Court Cases 273, by holding that, application of mind on the part of the

sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. The relevant paragraphs of this verdict are reproduced as under:-

“9. We agree that an order of sanction should not be construed in a pedantic manner. But, it is also well settled that the purpose for which an order of sanction is required to be passed should always be borne in mind. Ordinarily, the sanctioning authority is the best person to judge as to whether the public servant concerned should receive the protection under the Act by refusing to accord sanction for his prosecution or not.

10. For the aforementioned purpose, indisputably, application of mind on the part of the sanctioning authority is imperative. The order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority. We have noticed hereinbefore that the sanctioning authority had purported to pass the order of sanction solely on the basis of the report made by the Inspector General of Police, Karnataka Lokayukta. Even the said report has not been brought on record. Thus, whether in the said report, either in the body thereof or by annexing therewith the relevant documents, IG Police, Karnataka Lokayukta had placed on record the materials collected on investigation of the matter which would prima facie establish existence of evidence in regard to the commission of the offence by the public servant concerned is not evident. Ordinarily, before passing an order of sanction, the entire records containing the materials collected against the accused should be placed before the sanctioning authority. In the event, the order of sanction does not indicate application of mind as (sic to) the materials placed before the said authority before the order of sanction was passed, the same may be produced before the court to show that such materials had in fact been produced.”

16. Furthermore, in **Mansukhlal Vithaldas Chauhan’s** verdict (*supra*), it has also been held that, the order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. The validity of sanction depends on the applicability of mind by the sanctioning authority to the facts of the case, as also the material and evidence collected during investigation. The relevant paragraphs of this verdict are reproduced hereunder:-

“18. The validity of the sanction would, therefore, depend

upon the material placed before the sanctioning authority and the fact that all the relevant facts, material and evidence have been considered by the sanctioning authority. Consideration implies application of mind. The order of sanction must ex facie disclose that the sanctioning authority had considered the evidence and other material placed before it. This fact can also be established by extrinsic evidence by placing the relevant files before the Court to show that all relevant facts were considered by the sanctioning authority. (See also Jaswant Singh vs. State of Punjab, AIR 1958 SC 124; State of Bihar vs. P.P. Sharma, 1991 Cri. L.J. 1438).

19. Since the validity of "sanction" depends on the applicability of mind by the sanctioning authority to the facts of the case as also the material and evidence collected during investigation, it necessarily follows that the sanctioning authority has to apply its own independent mind for the generation of genuine satisfaction whether prosecution has to be sanctioned or not. The mind of the sanctioning authority should not be under pressure from any quarter nor should any external force be acting upon it to take decision one way or the other. Since the discretion to grant or not to grant sanction vests absolutely in the sanctioning authority, its discretion should be shown to have not been affected by any extraneous consideration. If it is shown that the sanctioning authority was unable to apply its independent mind for any reason whatsoever or was under an obligation or compulsion or constraint to grant the sanction, the order will be set aside for the reason that the discretion of the authority "not to sanction" was taken away and it was compelled to act mechanically to sanction the prosecution."

### **FINAL ORDER**

17. To sum up the above legal propositions; (i) the order of refusal, or granting sanction may attract a judicial review by the superior courts; (ii) the legality, and validity of the order granting sanction can be subject to the review by the criminal courts; (iii) while passing an order for grant of sanction, serious application of mind on the material facts, and material evidence placed before it, on the part of the concerned authority is imperative; (iv) while exercising the power of judicial review, the concern of the court, is primarily to adjudge as to whether, there has been any infirmity in the decision making process; (v) the order granting sanction must be demonstrative of the fact that there had been proper application of mind on the part of the sanctioning authority, and the order

of sanction must *ex facie* disclose that the sanctioning authority has considered the evidence and other material placed before it.

18. On the anvil of above legal propositions, this Court can delve upon the exercise of gauging the legality of the impugned order (*supra*), whereby, sanction for prosecution of the present petitioners, has been granted.

19. As already reproduced above, the undisputed fact that on the basis of a source report, an enquiry was initiated, and once during the enquiry, the wrong doing of officers/employees of Mines and Geological Department, Haryana, surfaced, the vigilance department concerned, approached the competent authority, i.e. the Commissioner, Gurugram, to accord sanction under Section 17-A of the Act of 1988. The entire record was placed before the competent authority concerned, and after considering the report, a detailed speaking order was passed while according sanction to the vigilance department.

20. A perusal of the sanctioning order (*supra*), reflects that the authority concerned has not only meticulously considered the material placed before it, but same is also reflecting in the impugned order, and the sanction order has not been passed in a mechanical manner. Procedurally, there is no error in granting sanction for prosecution.

21. Thus, the impugned order (*supra*), has passed the test of legality, and this Court finds no illegality or perversity therein, requiring interference.

22. The submission regarding not granting any previous

audience by the authority concerned, before granting sanction for prosecution, is also of least significance as there is no statutory requirement for the authority concerned, to grant any opportunity of hearing before taking any decision on the request of the prosecution agency, to grant sanction under Section 17-A of the Act of 1988.

23. Much emphasis has been made on the chats in Whatsapp group of the Mines and Geological Department, Haryana. Although these are the disputed question of facts, this Court does not want to record its reasons in declining the arguments, however, it is only sufficient to record that the Mines and Geological Department, Haryana, at no stage, made any directions upon the petitioners to accept the forged invoice bills and the other documents, in order to grant undue benefit to the owners of the seized vehicles.

24. Further, there are serious allegations of collusion with the defaulting owners of the seized vehicles, inasmuch as reflecting the value of the vehicles less, so that lesser penalty could be imposed upon them.

25. The aforesaid criminal act of the present petitioners was duly considered by the authority concerned, and an apt decision granting sanction, has been made.

26. The final attempt made by learned counsel for the petitioners to escape from the criminal liability, by making reliance upon SLP (Criminal) No.12289 of 2023 (*supra*), however, that issue has also been examined by this Court. The reference which is pending before the larger bench, on the issue of requirement of prior approval for initiating

proceedings under Section 17-A of the Act of 1988, has no bearing upon the legal issue, which has arisen for consideration in the instant matter. In the instant case, the investigating agency has already approached the sanctioning authority to grant sanction in view of Section 17-A of *ibid* Act, therefore, the reliance as placed upon the SLP (*supra*), is a misplaced reliance.

27. *Insuma*, the instant petitions, are hereby, **dismissed**.

28. All pending application(s), if any, also stand **disposed** of accordingly.

A photocopy of this order be placed on the files of the connected cases.

**March 04, 2025**  
*dharamvir*

**(KULDEEP TIWARI)**  
**JUDGE**

Whether speaking/reasoned. : Yes/No  
Whether Reportable. : Yes/No