

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 1503 of 2012

IN

Civil Writ Jurisdiction Case No 5436 of 2012

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1. The State Of Bihar through Its Chief Secretary, Government of Bihar, Patna
 2. The Principal Secretary, Mines and Geology, Bihar, Patna
 3. The Commissioner, Department of Mines & Geology, Bihar, Patna
 4. The Joint Secretary, Department of Mines & Geology, Bihar, Patna
 5. The District Magistrate, Jehanabad
 6. The Assistant Director, Department of Mines & Geology, Bihar, Patna

.... Appellant/s

Versus

M/S JMD Stone Works Through Its Proprietor Om Prakash Sharma Son Of Shardanand Sharma Resident Of Village Indrapur, P.S. Makhdumpur, District-Jehanabad

.... Respondent/s

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For the Appellant/s : Mr D K Sinha, Sr Advocate, Mines with
Mr Rajendra Prasad, Spl PP, Mines

For the Respondent/s : Mr K N Choubey, Sr Advocate with
Mr Vinod Kr, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

And

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-08-2015

IA No 6279 of 2012 has been filed for condoning the delay in filing the appeal.

2 For the reasons mentioned in the application, delay in filing the appeal is condoned.

3 IA No 6279 of 2012 stands disposed of.

4 Heard learned counsel for the appellants at length. The

private contesting respondent has appeared. With consent of parties, this appeal is being disposed of at this stage itself.

5 The private contesting respondent, who was the writ petitioner, was duly granted stone crusher licence. One of the conditions of the licence was that if the bid amount is not deposited within the time stipulated, he would have, within six months' time, to deposit the balance with 24% simple interest. If that is not done then proceedings for cancellation of licence would be taken up.

6 It is not in dispute that the licensee failed to pay the entire bid amount. He was, thus, required to pay the balance within six months with interest. He was unable to pay the same though he paid substantial part with interest. When the proceeding for cancellation of licence was taken up, he paid certain amounts and sought time to pay the balance with interest. Instead, the licence was cancelled. He came to this Court but was relegated to alternative statutory remedy. He, accordingly, filed appeal before the Mines Commissioner, Department of Mines and Geology, Government of Bihar, Patna. While the appeal was pending, he deposited the entire balance amount with interest but notwithstanding that, his appeal was dismissed on the technical plea that he did not deposit the entire amount before the cancellation order was passed. He, thus, filed the writ petition challenging the State action.

7 The learned Single Judge noted that the whole purpose of the cancellation provision, under such contingency, was to enforce payment of the civil dues alongwith this enormous interest at the rate of 24%. The learned Single Judge was of the view that the licensing authority itself had the discretion to extend time to enable the licensee to pay the amount with interest as stipulated. The provisions did not put any cut off date or time in this regard. Thus, the learned Single Judge was of the view that the order of cancellation of licence, under such circumstances, was unjust.

8 In our considered view, the intra-Court appeal requires no review of the judgment of the learned Single Judge for defining it incorrect. Merely because a power to cancel is conferred on an authority does not mean that the authority has to exercise that power. The power to cancel the licence is in aid of enforcement of the terms of licence. The condition being of payment of the bid amount of licence fee with stipulation of penal interest for delayed payment, the licensing authority should have granted time to the licensee to pay the amount. It is not such a default where operating conditions are being violated. This default is a monetary default, with a penal interest clause. Once the amounts were fully liquidated then even the appellate authority should have taken a pragmatic view of the matter and allowed the appeal instead of becoming hyper technical in the

matter.

9 Thus, we are not inclined to interfere with the order of the learned Single Judge. This intra-Court appeal is, accordingly, dismissed.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

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