

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13970 of 2013

M/S Vijeta Construction Ltd. its registered Head Office at West Morabadi Maidan,
Ranchi through its authorized representative Kumar Arun Sinha, son of Ram Prasad
Sinha, resident of Mohalla- Mohannagar, Police Station-Kotwali, District- Gaya
.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Mines and Geology, New
Secretariat, Bihar, Patna
2. The Commissioner, Department of Mines, Bihar, Patna
3. Collector-cum- District Magistrate, Gaya
4. District Mining Officer, Gaya.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Adv
For the Respondent/s : Mr. D.K.Sinha, Sr. Adv.
Mr. Rajendra Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL JUDGMENT

Date: 20 -06-2016

The petitioner, which is a company registered, under the Indian Companies Act, 1956, has approached this Court, invoking its writ jurisdiction under Article-226 of the Constitution of India, mainly with a prayer to quash an order dated 21.06.2013 passed in Revision Case no.17/2013 by the Mines Commissioner, Bihar, Patna. By the said order, the Mines Commissioner has declined to interfere with the letter no.498M/ dated 12.03.2013 issued by the Assistant Director, Mines and Geology, Gaya (Annexure-10 to the writ petition). The Assistant Director, Mines and Geology, Gaya vide Memo No. 498M/ dated 12.03.2012 had issued notice to the petitioner to deposit instalment of Rs.12,45,000/- with interest of Rs.49,800/-.

The petitioner company had resisted the demand on the ground that its plant was closed from May, 2010 to 02.03.2012 on account of continuous Maoists and extremist attack.

2. The fact of the case is that the petitioner company was awarded contract by the Road Construction Department for widening of Gaya Daudnagar Road, Manipur Hulasganj Road, Kadri Chainari Road etc. Since the project required large quantity of stone chips of high quality, the petitioner company entered into a mining lease agreement for supply of stone boulders. He had applied for a captive crusher Unit for preparing stone chips and its storage. He got 'No Objection Certificate' from the Bihar State Pollution Control Board. Thereafter, the petitioner was granted stone stockiest licence under the provision of Bihar Minerals (Prevention of illegal Mining, Transportation and Storage) Rules,2003 for the crusher unit vide Licence No.164/2008 dated 28.03.2008, The licence was issued for the area situated at Mouza- Pindara, Police Station-Gurua in the district of Gaya over Plot nos.04,86 and 76 having an area of 7.43 acres at a total auction amount of Rs.87,00,000/-, which was to be paid in seven equal yearly instalments.

3. The petitioner company started functioning. However, immediately thereafter, the petitioner company began to receive continuous extortion calls from Maoists and extremists. It has



been claimed that in the year 2008 itself, his company was raided by extremists and, as such, an F.I.R. vide Gurua P.S. Case no.63 of 2008 was registered. It has been claimed that repeatedly the extremists committed offence and one another F.I.R. vide Sherghati (Gurua) P.S. Case no.76 of 2010 was registered. Due to extremists pressure, the production was stopped from May, 2010 and crusher Unit was closed.

4. Subsequently, the petitioner with a view to change the site entered into an agreement on 03.06.2010 with one C.S.T. Industries Pvt. Ltd for acquiring land in village-Lodhipur, Police Station-Muffasil, District-Gaya. The petitioner got 'No Objection Certificate' from Bihar State Pollution Control Board and, thereafter, he applied for change of location of business site of its Licence No.164 of 2008 for shifting its Unit to Lodhipur, Gaya. On the request of the petitioner, the Collector, Gaya vide its letter dated 28.09.2010 sought guidelines from the Principal Secretary, Mines and Geology Department, Bihar, Patna. Even thereafter, since no directive was issued, the petitioner filed a writ petition vide C.W.J.C.No.11239 of 2011, which was disposed of on 19.08.2011 with direction to the Principal Secretary, Mines and Geology, Bihar, Patna to dispose of the matter contained in the letter of the District Magistrate, Gaya dated 28.09.2010 regarding desirability of shifting of location of Unit

from Pindra, Gurua to Lodhipur. Thereafter, in view of non-availability of any statutory provision in the Rules, the claim for shifting of the petitioner company was rejected by the Commissioner, Mines, Bihar vide Memo No.2355 dated 17.10.2011 (Annexure-6 to the writ petition) .

5. The petitioner, thereafter, filed another writ petition vide C.W.J.C.No.19023 of 2011, which was finally allowed on 27.01.2012 and direction was issued to allow transfer of location (Annexure-7 to the writ petition). Finally, after taking approval from the Collector, the competent authority accorded transfer of location of business site of Licence No.164/2008 from Pindara Gurua to Lodhipur on 02.03.2012. The petitioner immediately shifted its plant and machinery and commenced production.

6. In the year 2012, the petitioner received a letter no. 498/Mines dated 12.03.2013 asking the petitioner to deposit the instalment of Rs.12,45,000/- with interest by 31st December,2012. Thereafter, the petitioner represented before the District Mining Officer requesting therein to adjust part of instalment on the ground that his Unit was closed from 2010 to 02.03.2012. However, on representation, when no decision was taken for pro-rata remission of auction amount, the petitioner preferred statutory revision before the Mines Commissioner, Bihar, Patna vide Revision Case no.17/2013.



The said revision was rejected by the Mines Commissioner by its order dated 21.06.2013 (Annexure-12 to the writ petition). Aggrieved with the order dated 12.03.2013 (Annexure-10 to the writ petition) and order dated 21.06.2013 passed in Revision Case no.17/2013, the petitioner company has approached this Court by filing the present writ petition.

7. Sri Sanjeev Ranjan, learned counsel for the petitioner at the very outset has argued that since the petitioner's Unit remained closed from 2010 to 2012 due to failure on the part of the State maintaining law and order, the petitioner is entitled to claim for pro-rate remission. He submits that the amount deposited during the period, when petitioner's Unit remained closed due to extremists pressure/attack, may be adjusted against subsequent instalment. Sri Ranjan, learned counsel for the petitioner has heavily placed reliance on Annexure-4 to the writ petition i.e. letter dated 28.09.2010 issued under the signature of the Collector, Gaya addressed to the Principal Secretary, Mines and Geology Department. He submits that the aforesaid communication categorically states that due to the extremist pressure and attack, the work of crusher was completely closed and this was the reason that the learned Collector, Gaya had sought guidelines for transferring the location of Unit. He submits that due to failure on the part of the Respondent/State, the petitioner's Unit



remained closed and, as such, the instalments paid by the petitioner during the closed period may be directed to be adjusted against subsequent instalment. It has been argued that if inaction or delay has occurred due to failure on the part of the State, the petitioner may not be allowed to suffer. In support of his argument, he has placed reliance on **(1998)8 SCC 646; Anand Prakash Singh Vs. Union of India & Ors.** He has also argued that against the order passed in C.W.J.C.No.19023 of 2011, the State had preferred an appeal vide L.P.A. No.1072 of 2012. By way of referring to Annexure-9 to the writ petition, i.e. an order dated 17.08.2012, he submits that the learned counsel for the Respondents of the writ petition, who were appellants in L.P.A. No.1072 of 2012, on instruction, had submitted that the Mines Department would not demand the yearly instalments for the remaining period of lease from the writ petitioner if he surrenders the lease. Quoting the aforesaid submission of learned counsel for the Respondent/State in L.P.A. No.1072 of 2012 dated 17.08.2012, he has argued that the Respondent/State may be directed to adjust the instalments, which were already paid, for the subsequent period. On the aforesaid ground, learned counsel for the petitioner has made a prayer for setting aside both the impugned orders and grant of pro-rata remission.

8. Sri D.K.Sinha, learned Senior Counsel, who was



assisted by Sri Rajendra Prasad, learned counsel for the Respondent/Mines and Geology Department has opposed the prayer of the petitioner. He submits that the Bihar Minerals(Prevention of Illegal Mining , Transportation and Storage) Rules,2003, which provides the stockiest licence for storage of stone to be used in crusher, does not provide any rebate to the licensee owing to non-functioning of the crusher unit. He submits that in view of absence of any statutory provision for such rebate, the petitioner's claim for pro-rata remission is not tenable and the writ petition is fit to be rejected. He further submits that in view of peculiar facts and circumstances, this Court in C.W.J.C.No.19023 of 2011 had directed for allowing the petitioner to shift the location and in compliance with the order of this Court, the petitioner was permitted to change the location and after change, the petitioner in terms and conditions of the same licence i.e. Licence No.164/2008 was permitted to proceed with the Unit at changed location at Gaya. In sum and substance, it has been argued by Sri Sinha, learned Senior Counsel for the Respondent/ Mines and Geology Department that the petitioner in view of absence of any statutory provision is not entitled to get any relief and the writ petition is fit to be rejected.

9. Besides hearing learned counsel for the parties, I have also perused the materials available on record. It is not in dispute



that the petitioner was granted licence of stone stokiast in respect of an area located in Mauza Pindara, Police Station-Gurua in the district of Gaya for an area of 07.43 acres of land appertaining to Plot nos.04, 86 and 76. It is also a fact that in respect of extremist attack and pressure, two F.I.Rs were lodged vide Annexures-2 and 3 to the writ petition. Thereafter, on request of the petitioner for shifting the location, the Collector, Gaya vide its letter dated 28.09.2010 had sought guidelines from the Principal Secretary, Mines and Geology Department and in the said letter, the fact regarding closure of Crusher was also mentioned. At the first instance, the petitioner raised dispute only for the purposes of change of location from Pindara , Gurua to Lodhipur, Gaya. Finally, in compliance with the order of this Court passed in C.W.J.C.No.19023 of 2011, the petitioner was accorded permission to change the location, which was finally allowed on 02.03.2012 on the same terms and conditions, which were incorporated in Licence No.164/2008. Meaning thereby that the petitioner was required to pay the auction amount of 87,00,000/- in seven equal instalments. The petitioner after change of location, as admitted in the writ petition, commenced its production immediately after the order dated 02.03.2012. Only after issuance of notice i.e. Annexure-10 to the writ petition, whereby he was asked to deposit the instalment amount of Rs.12,45,000/- with interest, the petitioner



started raising a plea for grant of pro-rata remission, which has finally been rejected by order dated 21.06. 2013 passed in Revision Case no. 17/2013 by the Mines Commissioner, which has been assailed in the present writ petition. In paragraph-16 to the writ petition, it has categorically been accepted by the petitioner that after grant of stone stockiest licence on 28.03.2008 vide Licence no.164/2008, the petitioner had paid annual instalment of Rs.12,45,000/- regularly for the period commencing from 2008-09, 2009-2010, 2010-11 and 2011-12. Meaning thereby that after impugned notice i.e. Annexure-10, was issued for payment of instalment of the year 2012, which was not paid by the petitioner till 2013 and only thereafter from 12.03.2013, the petitioner started raising plea for grant of pro-rata remission, which was required to be paid by the end of December,2012. Accordingly, interest was also to be paid.

10. The petitioner in paragraph-13 of the writ petition, has made a categorical statement that the competent authority after taking approval from the Collector accorded transfer of location of business site in Licence no.164/2008 from Pindara Gurua to Lodhipur on 02.03.2012 by stating that other conditions will remain unaltered. The petitioner immediately shifted its plant and machinery and commenced production. Meaning thereby that in the year 2012, there was no disturbance and at changed location his Unit had

properly functioned.

11. Accordingly, the Court is of the opinion that the Respondent/ Assistant Director, Mines and Geology Department had rightly issued notice dated 12.03.2013 (Annexure-10 to the writ petition) asking the petitioner to deposit the instalment. Only after the demand of instalment, 2012 was raised, the petitioner started raising a plea for grant of pro-rata remission. Keeping in view the fact that location of the licensee was shifted with specific stipulation that terms and conditions of the licence will remain same and after change of location, the petitioner's Unit started its functioning, the petitioner is not entitled to claim any rebate. Earlier while depositing the instalment for the period commencing from 2008-09, 2009-2010, 2010-11 and 2011-12, no objection was raised. On record, there is nothing to indicate that any objection was raised after the change of location. Accordingly after issuance of notice, due to non-payment of instalment for the year 2012, the petitioner is not entitled to raise any grievance.

12. So far as Anand Prakash Singh's case (supra), on which reliance has been placed by learned counsel for the petitioner, is concerned, the Court is of the opinion that the said order was passed in a complete different situation. In the said case, a recommendation for award of bravery medal was made by the Superintendent of

Police. However, at the level of State itself, the delay had occurred. In the said writ petition, the Union of India had filed a counter affidavit, wherein it was indicated that if the recommending authority explaining the reason for delay recommends, same shall be considered and, as such, the writ petition was allowed. This Court is of the view that Anand Prakash Singh’s case (supra) has got no relevance in the facts and circumstances of the present case.

13. Keeping in view the fact that change of location of the petitioner’s unit was granted on the same terms and conditions of the licence, there was no reason to grant any remission, I do not find any ground to allow the writ petition.

14. The writ petition stands dismissed.

(Rakesh Kumar, J)

NKS/-

AFR/NAFR	
CAV DATE	
Uploading Date	21-06-2016
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