IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9908 of 2016

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1. M/s Mahadev Enclave Pvt. Ltd. having its office at B - 37 Ayodhya Marg, Hanuman Nagar, Jaipur (Rajasthan) through its authorized representative, Dalip Singh S/o Sh. Ram Singh R/o VPO - Deenwa Ladkhani, Distt - Sikar (Rajasthan)
2. Mr. Kartik Rathi, S/o Sh. Ajay Rathi, R/o 3-B 22, 23 Sukhadia Nagar, Sri Ganganagar (Rajasthan), Director of M/s Mahadev Enclave Pvt. Ltd. having its office at B-37 Ayodhya Marg, Hanuman Nagar, Jaipur (Rajasthan).

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary-cum-Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna.
3. The District Magistrate-cum-Collector, Banka.
4. The Deputy Commissioner of Commercial Taxes, Bhagalpur Commercial Taxes Circle, Banka.
5. The Mines Inspector, Banka.
6. The Union of India through the Secretary, Ministry of Mines, Shastri Bhawan, New Delhi.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Devasis Bharuka, Advocate
		Mr. Gautam Kejriwal, Advocate
For the State	:	Mr. Khurshid Alam, AAG-XII
		Mr. Abul Kalam, AC to AAG-XII
For Mines Department	:	Mr. D. K. Sinha, Sr. Advocate
		Mr. Rajendra Prasad, Special PP
For the Union of India	:	Mr. Anshuman Singh, CGC, UOI

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CORAM: HONOURABLE THE CHIEF JUSTICE
&
HONOURABLE DR. JUSTICE RAVI RANJAN

JUDGMENT AND ORDER

CAV

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 27-10-2016

The issues, which the present writ petition raises, are: *Whether a settlee of a minor mineral becomes the owner of the minor mineral, namely, sand, which it extracts and, having become the owner of the sand, whether the settlee becomes free to fix the sale price of its sand with no legal impediment of having to cap the maximum limit of* *its sale price inasmuch as sand is not an essential commodity and the Government has no authority or jurisdiction to fix the upper limit of the sale price? Yet another question, which pertinently arises, is: Whether the State Government's decision to fix the sale price of extracted sand by taking resort to Rule 48(1)(A) of Bihar Minor Mineral Concession Rules, 1972, is ultra vires Section 15 of the Act and also in violation of Articles 14, 19(1)(g) and 300-A of the Constitution of India?*

2. With the help of this writ petition, the petitioner prays for the following reliefs:

(a) for issuance of an order declaring Rule 48 of the Bihar Minor Mineral Concession Rules, 1972, ultra vires the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act'), and Article 14, 19(1)(g) and 300-A of the Constitution of India and, consequently, issue a writ of mandamus to the respondents not to give effect to Rule 48 of the Bihar Minor Mineral Concession Rules, 1972;

(b) In the alternative to prayer (a), for issuance of an order declaring Clause 11 read with Clause 4 of Annexure-1 to the New Sand

Policy issued by the Department of Mines and Geology, Government of Bihar, vide notification no. S.S.-2/M.M.(Ba)04/13-2214/M., Patna, dated 27.08.2013 ultra vires the provisions of Rule 48 of the Bihar Minor Mineral Concession Rules, 1972 and/or as arbitrary, unreasonable and violative of Article 14 of the Constitution of India and consequently, issue a writ of mandamus directing the respondents to fix the sale price of sand strictly in accordance with the procedure laid down in Rule 48(2) of the Bihar Minor Mineral Concession Rules, 1972 and keeping in mind the factors enumerated in Rule 48(1)(a) to (F) thereof like the actual cost of production, handling charges, transport cost, all taxes, 10% margin of profit, etc.;

(c) In alternative to prayer (a) but in addition to prayer (b), for issuance of an order declaring Clause 16 of Tender for Settlement of Sandghats dated 30.09.2014 empowering the State Government to fix price of sale of sand

(minor mineral) so won by the petitioner ultra vires Article 14, 19(1)(g) and 300-A of the Constitution of India, the provisions of the MMDR Act, 1957 and Rule 48 of the Bihar Minor Mineral Concession Rules, 1972;

(d) In alternative to prayers (a), (b) and (c), for issuance of an order declaring capping of 10% towards annual increase in sale price of sand by the State Government under the New Sand Policy dated 27.08.2013 and NIT dated 30.09.2014 as arbitrary, unreasonable, without any rational basis and therefore, violative of Article 14 and 19(1)(g) of the Constitution of India and consequently, directing the respondents to fix the price of sand keeping in mind the actual costs involved (including actual cots paid by the Petitioner) with 10% profit margin to the petitioner: and,

(e) Pass any other order or orders as this Hon'ble Court may deem fit in the facts and circumstances of the case.

Background facts:

3. Shorn of unnecessary details, the facts necessary for adjudication of writ petition are, in brief, as under:

4. The petitioner, which is a company incorporated under the Companies Act, 1956, pursuant to the Notice Inviting Tenders (NIT), dated 16.10.2014, for settlement of sand *ghats* located at the Banka district, in the State of Bihar, for a period commencing from 01.01.2015 and ending on 31.12.2019, issued by the Department of Mines and Geology, Government of Bihar, submitted its bids, *technical as well as financial*, which came to be finalized on 21.10.2014. The petitioner, having been declared the highest bidder in the tender process aforementioned, deposited accordingly the bid amount and the security money on different dates and entered into an agreement, with the State Government, on 20.05.2015, for mining, extracting and removing sand, for the period aforementioned under the provisions of the Bihar Minor Mineral Concession Rules, 1972, (hereinafter referred to as 'the Rules').

5. According to the petitioner, Department of Mines and Geology, Government of Bihar, did not notify the *sale price* as required in terms of Clause 16 of the NIT, dated 16.10.2014. Later on , when all the settlees of the sand *ghats* of Bihar, on their own, enhanced the *sale price* of sand in accordance with Clause 16 of the NIT, the Department of Mines and Geology, Government of Bihar, came out with a letter, dated 30.12.2015, restraining the settlees from increasing the *sale price* at their level and asserted that the power and authority to enhance the *sale price* lies with the Department exclusively under the provisions of Rule 48 (1) (A) of the Rules.

6. In the meanwhile, the rate of Bihar Value Added Tax was, according to the petitioner, increased from 5% to 14.5% in the light of the Notification, contained in SO 10, dated 13.01.2016, issued by the Commercial Taxes Department, Government of Bihar, without there being any increase in the *sale price* of the *sand* thereby compelling the petitioner to realize the difference of Bihar Value Added Tax, being an indirect tax, from the purchasers.

7. The petitioner contends that even for the settlement year 2016, the Department of Mines and Geology, Government of Bihar, had not come out with any notification fixing or revising the *sale price* of sand under Clause 16 of the NIT.

8. The petitioner, therefore, as the owner of the *sand,* so extracted, claims the right to fix the *sale price* of sand at its own level, and has challenged, with the help of this writ petition, the power of the State Government to fix the *sale price* of sand taking the aid of Rule 48(1)(A) of the Rules, which, according to the petitioner, *ultra vires* not only Section 15 of the Act, but also violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India.

9. The question, which falls for consideration, as already indicated above, is: *Can the State Government fix, under Rule 48(1)(A) of the Rules, the upper limit of the sale price of extracted minor mineral, such as, sand and, if so, whether Rule 48(1)(A) of the Rules is ultra vires Section 15 of the Act and violative of Articles 14, 19(1)(g) and 300-A of the Constitution of India?*

10. We have heard Mr. Devasis Bharuka, learned Counsel, appearing for the petitioner, and Mr. D. K. Sinha, learned Senior Counsel, appearing for the respondent Mines Department. We have heard also Mr. Anshuman Singh, learned Counsel, appearing for the respondent No.6, and Mr. Khurshid Alam, learned Additional Advocate General No.XII, appearing for the State-respondents.

11. Section 15 of the Act, being relevant, is reproduced hereinbelow:

> ***"15 - Power of State Governments to make rules in respect of minor minerals***
>
> *(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.*
>
> *(1A) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--*

(a) the person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the fees to be paid therefor;

(b) the time within which, and the form in which, acknowledgement of the receipt of any such applications may be sent;

(c) the matters which may be considered where applications in respect of the same land are received within the same day;

(d) the terms on which, and the conditions subject to which and the authority by which quarry leases, mining leases or other mineral concessions may be granted or renewed;

(e) the procedure for obtaining quarry leases, mining leases or other mineral concessions;

(f) the facilities to be afforded by holders of quarry leases, mining leases or other mineral concessions to persons deputed by the Government for the purpose of undertaking research or training in matters relating to mining operations;

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable;

(h) the manner in which rights of third parties may be protected (whether by way of payment of compensation or otherwise) in cases where any such party is prejudicially affected by reason of any prospecting or mining operations;

(i) the manner in which rehabilitation of flora and other vegetation, such as trees, shrubs and the like destroyed by reason of any quarrying or mining operations shall be made in the same area or in any other area selected by the State Government (whether by way of reimbursement of the cost of rehabilitation or otherwise) by the person holding the quarrying or mining lease;

(j) the manner in which and the conditions subject to which, a quarry lease, mining lease or other mineral concessions may be transferred;

(k) the construction, maintenance and use of roads, power transmission lines, tramways, railways, aerial ropeways, pipelines and the making of passage for water for mining purposes on any land comprised in a quarry or mining lease or other mineral concession;

(l) the form of registers to be maintained under this Act;

(m) the reports and statements to be submitted by holders of quarry or mining leases or other

mineral concessions and the authority to which such reports and statements shall be submitted;

(n) the period within which and the manner in which and the authority to which applications for revision of any order passed by any authority under these rules may be made, the fees to be paid therefor, and the powers of the revisional authority; and

(o) any other matter which is to be, or may be prescribed.]

(2) Until rules are made under sub-section (1), any rules made by a State Government regulating the grant of[1][quarry leases, mining leases or other mineral concessions] in respect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals:

Provided that the State Government shall not enhance the rate of[5][royalty or dead rent] in respect of any minor mineral for more than once during any period of three years.

(4) Without prejudice to sub-sections (1), (2) and sub-section (3), the State Government may, by notification, make rules for regulating the provisions of this Act for the following, namely:--

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A."

12. From a bare reading of Section 15 of the Act, what becomes clear is that it (Section 15) authorizes the State Government to regulate the grant of mining lease of minor minerals. Clause (O) Sub-Section (1-A) of Section 15 of the Act does not, admittedly, empower the State Government to fix the *sale price* of minor mineral so extracted. In the present case, it is *sand*, which has been extracted by the petitioner, and the sand, too, comes within the ambit of minor mineral.

13. The issue, *as to whether a State Government can fix upper limit of sale price of sand,* is no longer *res integra* inasmuch as the Supreme Court has, in ***State of T.N. Vs. M.P.P. Kavery Cheety***, reported in **(1995) 2 SCC 402,** held as follows :

> *"There is no power conferred upon the State Government under the said Act to exercise control over minor minerals after they have been excavated. The power of the State Government, as the subordinate rulemaking authority, is restricted in the manner set out in Section 15. The power to control the sale and the sale price of a minor mineral is not covered by the terms of clause (O) of sub-section (1-A) of Section 15. This clause can relate only to the regulation of the grant of quarry and mining leases and other mineral concessions and it does not confer the power to regulate the sale of already mined minerals."*

14. From a close reading of the above observations made by the Supreme Court, in ***State of T.N. Vs. M.P.P. Kavery Cheety*** (supra), it becomes abundantly clear that the law laid down, in ***State of T.N. Vs. M.P.P. Kavery Cheety*** (supra), with regard to fixing upper limit of *sale price* of *sand,* is that Clause (O) of sub-Section (1-A) of Section 15 of the Act does not empower a State Government to control the sale and the *sale price* of a minor mineral or to regulate the sale of minerals already mined.

15. Confronted with the proposition of law, as laid down by the Supreme Court, in ***State of T.N. Vs. M.P.P. Kavery Cheety*** (supra), Mr. D. K. Sinha, learned Senior Counsel, appearing on behalf of the respondents, could not bring on record anything to defend the impugned Notification.

16. In the result and for the foregoing reasons, this writ petition is allowed. The impugned Notification, dated 27.08.2013, insofar as it relates to the fixing of the upper limit of *sale price* of extracted sand is concerned, is hereby set aside and quashed.

17. However, there shall be no order as to costs.

(I. A. Ansari, CJ)

Dr. Ravi Ranjan, J: I agree.

(Dr. Ravi Ranjan, J)

J.Alam/-

AFR/NAFR	AFR
CAV DATE	**20.10.2016**
Uploading Date	**28**.10.2016
Transmission Date	