IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 2316 of 2014

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Kalyanpur Cements Limited, a Public Limited Company, incorporated under the provisions of the Companies Act, 1913 having its Registered Office at 2 & 3, Dr. Rajendra Prasad Sarani, Kolkata -700001 and its Head Office at Maurya Centre, 1, Fraser Road, Patna - 800001 through its President (Finance) & Company Secretary, Sri Purushottam Kumar Chaubey.

.... Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat off Bailey Road, Patna- 800001.
2. Department of Mines & Geology, Government of Bihar - through its Principal Secretary, New Secretariat, off Bailey Road, Patna-800001.
3. Department of Environment & Forest, Government of Bihar - through its Principal Secretary, Sinchai Bhawan, Near New Secretariat, off Bailey Road, Patna.
4. Additional P.C.C.F.-cum-Chief Wild Life Warden, Bihar 4th Floor, Technology Bhawan, (Vishwasaraiya Complex), Bailey Road, Patna – 800015.
5. The Union of India through the Secretary, Ministry of Environment & Forest, Government of India, Paryavaran Bhawan, CGO Complex, Lodi Road, New Delhi – 110013.
6. Secretary, Ministry of Environment & Forest, Government of India, Paryavaran Bhawa, CGO Complex, Lodi Road, New Delhi – 110013.
7. Deputy Director, Ministry of Environment & Forest, Government of India, Paryavaran Bhawa, CGO Complex, Lodi Road, New Delhi – 110013.

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rajeev Ranjan Prasad, Ms. Surabhi, Mr. Sudhanshu Trivedi and Ms. Seema Sarsij, Advocates
For the Mines	:	Mr. D. K. Sinha, Sr. Advocate
For the Respondent/s	:	Mr. Rajendra Prasad, Spl. P.P. Mines Mr. Anjani Kumar, A.A.G. 4 Mr. Sanjay Kumar, A.C. to A.A.G. 4 Mr. S. D. Sanjay, A.S.G. Ms. Kanak Verma, C.G.C. Mr. R. R. Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date: 20-04-2017

Heard Mr. Rajeev Ranjan Prasad, learned counsel for the petitioner, Mr. Anjani Kumar, learned Additional Advocate General

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No. 4 assisted by Mr. Sanjay Kumar, learned AC to AAG-4, for the State and Mr. D. K. Sinha, learned senior counsel assisted by Mr. Rajendra Prasad, learned counsel for the Mines Department, Government of Bihar.

2. The petitioner is a Public Limited Company and is operating a cement manufacturing unit in the State of Bihar at Banjari in the district of Rohtas. For the said purpose, the State Government had granted lease for mining of *Murli Pahari*, on 02.01.1992 for 20 years i.e., till 1st January, 2012. An application for renewal was filed by the petitioner and after opportunity of hearing by the then Principal Secretary of the Department of Mines, by order contained in Memo No. 2458 dated 05.09.2012, observing that the prayer for renewal of the mining lease may not be rejected and granting the company further six months time would be appropriate. Thereafter, the order of the State Government rejecting the request for renewal of mining lease, was communicated to the petitioner under Memo No. 3225 dated 23.12.2013, issued under the signature of the Joint Secretary, Mines and Geology Department, Government of Bihar. The same is under challenge in the present writ application.

3. Learned counsel for the petitioner submitted that on account of they being able to demonstrate their *bona fide* before the then Principal Secretary, in the hearing granted to them, as would be

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evident from the order dated 05.09.2012, it was recorded that rejection of request for renewal of mining lease, for the present, was not proper and that it would be appropriate to grant six months time to the petitioner for taking necessary steps and the order further recorded that till such time the Government took a decision in terms of Rule 24A (6) of The Mineral Concession Rules, 1960 (hereinafter referred to as the 'Rules'), the term of the lease would be deemed to be extended. Learned counsel submitted that pursuant to the said order, the petitioner, after taking the Department into confidence, was paying about Rs. 60 lakhs per month, and with regard to there being dispute with regard to the notification of the Eco Sensitive Zone of the area concerned, i.e., *Murli Pahari*, the petitioner had filed C.W.J.C. No. 7625 of 2009, and 10 days prior to the passing of the impugned order, learned counsel for the Mines Department had taken time in the case for instructions regarding area of the Eco Sensitive Zone relating to *Murli Pahari,* as per the draft notification of the Central Government. Learned counsel further submitted that for reasons not known to the petitioner, the order of rejection after having been prepared by the new Principal Secretary of the Department, was finally approved by the State Cabinet and communicated to the petitioner under the letter impugned, which is clearly arbitrary and also not in conformity with the requirements of natural justice and

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more importantly, of the Rules themselves. Learned counsel submitted that Rule 26 of the Rules, relating to refusal of application for grant and renewal of mining lease contemplates that the State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over a whole or part of the area applied for. Learned counsel submitted that by the order dated 05.09.2012, no final decision had been taken with regard to the intention of the State Government not to renew the lease, but once, for whatever reason, the State Government is of the view that the request for renewal of the lease should be turned down, a notice is required to be given, followed by an opportunity of hearing, which in the present case, admittedly, has not been done and straight away the final order of rejection has been communicated under the impugned letter. Learned counsel submitted that there are reasons to justify and show the *bona fide* of the petitioner with regard to its efforts to discharge the obligation cast upon it for complying with the various provisions of the Rules and further that whatever impediments were coming in the way of the petitioner, were not of a nature which mandatorily required its request for renewal to be rejected, and were rather of a nature in which the State Government had the discretion to grant indulgence, either by way of fixing installments for paying its dues or

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even otherwise. Learned counsel submitted that in such background, it was all the more imperative for the State Government/the Principal Secretary of the Department to notice the petitioner, specifying reasons for being of the opinion that the request for renewal of lease should not be allowed, and then should have given an opportunity to the petitioner to satisfy the authorities that the same would not legally debar such consideration.

4. Mr. D. K. Sinha, learned senior counsel for the Mines Department tried to demonstrate before the Court that the impugned order cannot be faulted on the grounds urged, for the reason, that it was only a communication of the initial order dated 05.09.2012, which contains the reasons, and further, since time of six months granted to the petitioner to remove the shortcomings and the same not being done, which is not denied, the reasons mentioned in the impugned order stand justified and accordingly, the order refusing renewal also stands justified, and thus, no further hearing was required to be given to the petitioner after 05.09.2012 and before passing of the impugned order.

5. Mr. Anjani Kumar, learned AAG-4 submitted that though on merits, the State may be able to demonstrate before the Court that the ultimate decision would probably not require interference, but, in view of the finding recorded in the order dated

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05.09.2012 as well as the stand taken in the counter affidavit of the Mines Department itself, hearing, as contemplated under Rule 26 of the Rules, was not afforded and further that for consideration by the Court while exercising its extraordinary prerogative writ jurisdiction under Article 226 of the Constitution of India, it may balance various factors including the impact on the larger public interest, both for the State as well as citizens of Bihar.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is of the opinion that the matter requires fresh consideration. The Court would hasten to add that this may not be taken as an endorsement of the case of the petitioner for renewal of its mining lease or of rejection of the case of the State Government, relating to its power and discretion in such consideration. However, as the language of Rule 26 of the Rules itself contemplates that the State Government, though having the power to refuse the request for renewal, the same has to be exercised after giving opportunity of hearing, which does not seem to have been complied with in the present case. The reason the Court has come to such conclusion, is the admitted position, that by the order dated 05.09.2012, passed by the then Principal Secretary of the Department, after hearing the petitioner, the term of the lease was held deemed extended till the time the Government took a final decision in

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the matter as per Rule 24A (6) of the Rules and a finding was also recorded that rejection at that stage was not proper and grant of six months time to the petitioner was appropriate. Such clear-cut finding in the order dated 05.09.2012 leaves no scope for any ambiguity that the intention was to allow further opportunity to the petitioner to fulfill the requirements justifying grant of renewal of mining lease to it with regard to *Murli Pahari.* That being the position on 05.09.2012, for the State Government to come to the conclusion and pass final order rejecting such request, cogent reasons have to be reflected not only from the records but more importantly, before recording of those reasons, an opportunity was required to be given. The counter affidavit of the Mines Department states that after 05.09.2012, when the lease of the petitioner was deemed to be extended till the final decision of the Government and it was also held appropriate to grant it six months time to fulfill the requirements, and passing of the impugned order dated 23.12.2013, no opportunity of hearing was granted to the petitioner. Moreover, the Principal Secretary, who had heard the petitioner and passed order dated 05.09.2012 was not the same person who was the author of the order dated 23.12.2013 rejecting renewal of the lease. The Court after going through the provisions of the Rules, especially Rule 26 thereof, relating to opportunity of hearing, comes to the inescapable conclusion that such

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hearing contemplates making the applicant aware of the reasons why the Government does not think it appropriate to renew the mining lease, followed by an opportunity of hearing to the party concerned i.e., the petitioner in the present case, to satisfy the Government otherwise. Moreover, the requirement of satisfying the principles of natural justice makes it mandatory that before taking a final view in the matter, an opportunity of hearing has to be given to the person who is likely to be affected by the decision, which in the present case is lacking. Thus, there is infraction of this basic principle of natural justice, which has also been incorporated in the language of Rule 26 of the Rules itself.

7. Having come to such conclusion, the order impugned not being found sustainable in the eyes of law, is set aside. The matter is remanded to the State Government for taking a fresh decision on the request of the petitioner with regard to renewal of mining lease for *Murli Pahari,* in accordance with law, after giving opportunity of hearing to the petitioner. To facilitate matters, the authorized representative of the petitioner shall appear before the Principal Secretary, Department of Mines and Geology, Government of Bihar, within two weeks from today, along with a copy of this order. Upon the same being done, the Principal Secretary shall fix the next date of hearing in the matter and after giving full opportunity of

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hearing to the petitioner, a final decision shall be taken, in accordance with law and communicated to the petitioner. It is expected that the final decision would be taken expeditiously in view of the larger public interest involved.

8. The Court would like to clarify that it has not expressed its opinion on the merits of the matter and the authorities are at liberty to independently go into all aspects of the matter without being prejudiced by any observation made in this order, and the petitioner shall also be at liberty to produce all materials available, till the date of hearing by the Principal Secretary of the Department, which shall be considered in accordance with law.

9. The writ petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar

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