

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.2003 of 2015

IN

Civil Writ Jurisdiction Case No. 14318 of 2014

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M/s Mahadev Enclave Pvt. Ltd. having its registered office at B-37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through its authorized representative Rajendra Kumar S/o Mangtu Ram R/o- Village and P.O.- Kodha, Tahsil- Rawatsar, District- Hanumangarh. Appellant/s

Versus

1. The State of Bihar through Principal Secretary cum Commissioner, Department of Mines & Geology, Patna
2. The Divisional Commissioner, Bhagalpur
3. The District Magistrate cum Collector, Patna
4. The Mines Officer, Banka
5. M/s Petroleum through its proprietor Md. Siddique S/o not known, Village + P.O. – Khiribandh, P.S. – Jagdishpur, District – Bhagalpur Respondent/s

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Appearance :

For the Appellant/s : Mr. Gautam Kumar Kejriwal
For the Respondent/s : Mr. D. N. Sinha, Sr. Advocate
Mr. Rajendra Prasad, Spl. P.P., Mines

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI)

Date: 31-01-2017

Delay of 108 days in filing this appeal is condoned.

I. A. No. 8871 of 2015 is allowed.

Heard learned counsel for the appellant and counsel for the Mines and Geology Department.

None on behalf of the private-respondent no. 5, despite valid service of notice.

After a very detailed hearing on the issue of settlement of a sand ghat in the district of Banka, the judgment, impugned, has come to be rendered by the Learned Single Judge, vide order, dated



15.12.2014 in C. W. J. C. No. 14318 of 2014. From the narration of the facts, Learned Single Judge has been able to establish a basic fact that most of the bids were either fixed or undervalued. An open tender was held in open Court with freedom to the parties to participate and now the bid offered by the appellant adds up to 1,51,00,000 /- (one crore and fifty one lac) per annum. Since the appellant turned out to be the highest bidder, the Learned Single Judge crystallized his direction in following terms, which is evident from paragraph 35 and 36 of the order:

“35. In the light of aforesaid discussion, it is held that:-

(i) The amount of daily basis collection from M/s Mahadev Enclave Pvt. Ltd. for the period 1st January, 2014 to 2nd June, 2014 will be decided by the Secretary of the Mining Department who had allowed the daily mining operation keeping in mind that the rate offered by M/s BBQ Construction i.e. 97,01,000/- for January to December, 2014.

(ii) For the period 3rd of June, 2014 to 12.9.2014, the payment for the daily wages operation made by M/s Mahadev Enclave Pvt. Ltd. will be realized from it at the rate of Rs.97,01,000/- per annum on prorata basis.

(iii) For the period 13.9.2014 and upto 31st December, 2014 M/s Mahadev Enclave Pvt. Ltd. shall be liable to pay at the rate of Rs.1,51,00,000/- per annum on prorata basis.

(iv) The daily settlement of Respondent no. 6 shall come to an end forthwith from today and if M/s Mahadev Enclave Pvt. Ltd. has to function for the remaining period i.e. from tomorrow 16th December, 2014 to 31st December, 2014 it must deposit the amount for the period 3rd June, 2014 to 31st June, 2014 in lump-sum beyond what has already been paid in the period



1.1.2014 to this day.

(v) It is also made clear that if M/s Mahadev Enclave Pvt. Ltd. for carrying the mining operation from tomorrow deposits at least a sum of Rs.20 lacs in two installments, namely, 10 lacs by tomorrow i.e. 16th December, 2014 and another 10 lacs by 23rd December, 2014 then alone it would be allowed to extract sand for this period of 16 days i.e. 16.12.2014 to 31.12.2014 and on its failure to pay either of the installment the mining operation being carried out by M/s Mahadev Enclave Pvt. Ltd. shall be stopped forthwith.

36. It however goes without saying that, as it is claimed by M/s Mahadev Enclave Pvt. Ltd. that if Rs. 85 lacs rupees has been deposited by it for the mining operation undertaken on daily rate basis as also Rs. 29 lacs pursuant to the tender notice dated 13.9.2014 it will be the duty of the officials respondents to ensure that a proper accounting is made and if any amount is found to have been paid in excess by M/s Mahadev Enclave Pvt. Ltd. that must be accounted for in next year settlement as this Court has also been informed that this very sand mine has been settled to Respondent no. 6 M/s Mahadev Enclave Pvt. Ltd. for a period of five years from 1.1.2015. “

In compliance of the said directive of the Learned Single Judge, the appellant has carried out his obligation, made deposits and worked the tender thereafter. But through the present appeal he is trying to shake off the liability fastened by the Learned Single Judge for the earlier period, beginning 1st of January, 2014, which was the highest bid initially against the NIT given by one M/s BBQ Construction. This figure was Rs. 97,01,000 /-.

The petitioner cannot deny the fact that after the expiry



of 2013 settlement and before the settlement of the new calendar year, due to litigation the settlement got delayed and the appellant had the advantage of working the mines and exploiting the sand on a token or notional basis on a daily rate. Since the settlement had to be done for the entire calendar year and looking at the kind of offer, which the appellant had himself made for the calendar year, in the larger interest of the revenue, the wholesome order was passed, which is being challenged now selectively, which is not permissible after deriving benefit. Obviously, the effort now is to shake off certain part of liability, which was accepted as part of the order in entirety, with the object of making some quick buck out of the deal since the appellant is quite smug now with the settlement in his favour.

This Court is not willing to truncate the order of the Learned Single Judge and allow relief to the appellant in parts. The entire spirit of the order of the Learned Single Judge will fail, if any part of the order is interfered with.

The appeal, therefore, has no merit. It is dismissed.

(Ajay Kumar Tripathi, J)

(Nilu Agrawal, J)

SKM/-

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