IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.6709 of 2016

M/s Champion Group of Company through it proprietor Amit Kumar Singh Son of Rameshwar Singh Resident of Divya Lok Complex, East Boring Canal Road, P.S. - Krishnapuri, District - Patna.

.... Petitioner

Versus

1. The State of Bihar.
2. The Principal Secretary, Mines & Geology, Bihar, Patna.
3. The District Magistrate, Rohtas.
4. The Divisional Forest Officer, Rohtas.
5. The Superintendent of Police, Rohtas.
6. The Assistant Director, Mines & Geology, Rohtas.
7. The Mining Inspector, Rohtas.

.... Respondents

Appearance :

For the Petitioner/s : Mr. Y.V.Giri, Sr.Adv.
Mr. Sanjeev Kumar, Adv.

For the State : Mr. Himanshu Kumar Akela, AC to PAAG-2

For the Mines : Mr. Rajendra Prasad, Adv.

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 21-09-2017

Heard Mr. Y.V.Giri, learned Senior Counsel appearing for the petitioner, learned counsel for the State and Mr. Rajendra Prasad, learned counsel for the Mining Department.

With the consent of the parties the writ petition has been heard with a view to final disposal at the stage of admission itself.

The petitioner is aggrieved by the order dated 15.3.2016 passed by the Commissioner, Mines and Geology, Bihar, Patna in Revision Case No. 9/2015, whereby the Mines Commissioner while dismissing the revision application of the petitioner has confirmed the order bearing Memo No. 395 dated 19.10.2015 of the District

Magistrate, Rohtas, impugned at Annexure 7, whereby the settlement order made with the petitioner vide Memo No. 330 dated 3.9.2015 has been cancelled, inter alia, on grounds of violation of Clause 4 thereof. The order of the Commissioner is impugned at Annexure 8 to the writ petition.

While the writ petition remains pending for consideration that the respondent Collector, Rohtas came up with fresh auction notice published in the newspaper on 20.9.2017 for auction sale of the seized materials which is inclusive of stone metals, boulder, stone chips and paria settled with the petitioner. The said order has been brought on record vide Annexure 9 to I.A.No. 7039/2017.

Having heard learned counsel for the parties on the amendment so prayed on the interlocutory application and considering that it is only consequential action undertaken in consequence of the impugned orders that the prayer is allowed. The petitioner is permitted to question the same impugned action in so far as it relates to the petitioner in the present application.

The facts of the case leading to the order(s) in question is that a notice was published by the respondents issued from the Collectorate, Rohtas for auction sale of the stone chips, stone metals and boulder at Mauza Amri, Amra and Basa in the district of Rohtas on 20.8.2017. The petitioner responded to the same and filed his tender. The auction was held on 20.8.2015 in which the petitioner was declared successful. The work order was issued in his favour bearing Memo No. 330 dated 3.9.2015 issued under the signature of the Assistant Director, Mines and Geology, Rohtas at Sasaram, a copy of which is present at Annexure 2. Thereafter the petitioner received a show cause notice under the signature of the Assistant Director, Mines and Geology, Rohtas bearing Memo No. 383 dated 3.10.2015, whereby the Assistant Director while making reference to the transportation of the stone chips, stone boulders in excess of the challan issued by the Department has mentioned that it is causing loss to the Government revenue and while making such observation the petitioner was charged with not filing the weekly returns in time. The petitioner was asked to show cause on the allegations and which was duly replied by him contesting the same, a copy of which is present at Annexure 5. The charges were denied and the petitioner while submitting weekly returns clarified the position. It was specifically stated by the petitioner that in so far as his vehicles are concerned, they were accompanied with challan for 250 cubic feet of stones and thus, were in accordance with Rules. It was also specifically mentioned that if there were any such vehicles who were carrying stones beyond the challan entries, they were outside his settled area. Despite clarification made by the petitioner on the issue of transportation as well as on weekly returns, that the District Magistrate vide impugned order bearing Memo No. 395 dated 19.10.2015 in reference to the show cause notice bearing Memo No. 383 dated 3.10.2015 has proceeded to cancel the settlement order with the petitioner bearing Memo No. 330 dated 3.9.2015 for violation of Clause 4 thereof. The order has been confirmed by the Commissioner when the revision filed by the petitioner bearing Revision Case No. 9/2015 has been dismissed which is impugned at Annexure 8 and feeling aggrieved the petitioner is before this Court.

As I have already indicated above, while the matter is pending consideration that the fresh auction notice has been issued which has been brought on record vide Annexure 9 to the interlocutory application and the prayer of the petitioner to question the same has been allowed.

Mr. Giri, learned Senior Counsel appearing for the petitioner, has questioned the proceedings on following grounds:

(a) The show cause notice against the penal action bearing Memo No. 383 dated 3.10.2015 at Annexure 4 is vague and is not accompanied with any specific instance of violation by the petitioner.

(b) Even when the petitioner has categorically denied any violation in transportation of stone materials or in submission of weekly returns, yet neither the order passed by the District Magistrate, Patna impugned at Annexure 7 nor the order of the revisional authority does proceed to reject the stand with specific reference to any violation.

(c) Whereas the charge alleges transportation of stones in excess of the challan and non-filing of the returns and which has been clarified by the petitioner but the order of the Collector goes beyond the charge in cancelling the settlement for violation of Clause 4 of the settlement order which relates to illegal mining by a settlee. The order of cancellation is thus beyond the charge.

(d) The order of the Commissioner is a perpetuation of illegality for it mechanically affirms the order of the Collector which itself goes beyond the charge levelled against the petitioner.

(e) The allegation of transportation of excess material or of not filing of the returns, is not resting on any evidence.

The argument of Mr. Giri has been contested by Mr. Rajendra Prasad, learned counsel appearing for the Mining Department, who has referred to paragraph 7 of the counter affidavit to submit that it is the transportation of excess materials by the petitioner in excess of the challan that the impugned action was initiated which was in the light of the report of the Mines Inspector. It is submitted that the Mines Inspector submitted a report on illegal extraction of stones from the protected forest allegedly received by the petitioner in his stock and which has led to the proceeding in question.

I have heard learned counsel for the parties and have perused the records.

As I have indicated above, the show cause issued to the petitioner under the signature of the Assistant Director, Mines and Geology, bearing Memo No. 383 dated 3.10.2015 basically alleges a default by the petitioner in submission of weekly returns. Although a reference is made by the Assistant Director regarding transportation of stones by settlees in excess of challan which was causing revenue loss for the State but no specific instance has been levelled against the petitioner nor does the Assistant Director refer to any vehicle of the petitioner which was allegedly transporting stones in excess of the challan. In my opinion, the charge memo is vague in absence of specific instance of violation. Law on the issue of the charge memo is well settled and the person confronted needs to be specifically told about the item of violation. A casual reference to violations in a sweeping manner in any charge memo, is not sufficient for constituting any charge.

In so far as the present case is concerned, the charge memo so relied upon by the Collector and the Commissioner bearing Memo No. 383 dated 3.10.2015 is vague and was contested by the petitioner in his reply present at Annexure 5. It was submitted that there was no violation by the petitioner and that his vehicles were carrying stones as per challan. It was again stated that if any vehicle was found carrying stones in excess of the challan, it may be belonging to some other settlee and not the petitioner. The petitioner has also enclosed the monthly challans, copies of which are enclosed at Annexures 6 series. Strangely the order impugned of the Collector dated 19.10.2015 does not reject the contention of the petitioner nor points out any specific instance of violation by the petitioner. The order also does not give details of any vehicle belonging to the petitioner which was apprehended transporting stones in excess of the challan. In fact the order of the Collector goes beyond the charge when it cancels the settlement order dated 3.9.2015 for violation of Clause 4 thereof which runs under:

> "4. पत्थर उठाने के कम में किसी प्रकार का अवैध खनन/ अवैध खनन से निकाल गये पत्थर को प्राप्त करने की सूचना प्राप्त होने पर जमा की गयी संपूर्ण राशि को जप्त कर ली जायेगी एवं नियमानुसार कानूनी कार्रवाई की जायेगी।"

A plain reading of Clause 4 would show that it is a charge of illegal mining and when read alongside the show cause as contained in Annexure 4 would confirm that no such charge was levelled against the petitioner of indulging in illegal mining. In other words, the order of cancellation goes beyond the charge. The unfortunate part is that the Commissioner while exercising the revisional jurisdiction has also not bothered to satisfy himself on the charge, rather he has mechanically endorsed the order of the Collector by supplementing his reasons. A cursory glance of the reasons assigned by the Commissioner to support the order of the District Magistrate would show that item Nos. (i) and (ii) refers to alleged illegal mining by the petitioner which is not even an item of charge as manifest from the show cause notice bearing Memo No. 383 dated 3.10.2015 of the Assistant Director. In so far as Item Nos. (iii) to (vi) is concerned, it relates to illegal transpiration of excess material. As I have observed earlier, no specific instance has been given in reference to any vehicle number or challan issued in favour of the petitioner to confirm the charge of transportation of excess material. In other words, the allegation of transportation of excess material and non-filing of returns is resting on no evidence. Apparently the petitioner has been wronged for no justifiable reason because the orders impugned are founded on no evidence.

In the circumstances discussed, the order of cancellation of settlement passed by the Collector, Rohtas vide Memo No. 395 dated 19.20.2015, impugned at Annexure 7, as affirmed by the Mines Commissioner, Department of Mines and Geology vide Memo No. 909 dated 18.3.2016, impugned at Annexure 8, are rendered perversity and are accordingly quashed and set aside. In consequence the auction notice placed on record at Annexure 9 in so far as it concerns the petitioner and relates to settlement order at Annexure 2 is quashed and set aside.

Since the petitioner has illegally been denied the benefit of the settlement order, he would be entitled to the full term/ period for which the settlement was granted to him vide order bearing memo no. 330 dated 3.9.2015 which shall be calculated afresh and accordingly intimated to the petitioner within four weeks of receipt/ production of a copy of this order.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.10.2017
Transmission Date	NA