

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.1492 of 2016
IN
Civil Writ Jurisdiction Case No. 13970 of 2013

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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.

.... Appellant

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

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Appearance :

For the Appellant : Mr. Sanjeev Ranjan, Advocate
For the Dept. of Mines : Mr. Naresh Dixit, Advocate
Ms. Kalpana, Advocate
For the State : Mr. Amrendra Kumar, AC to AAG-15

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CORAM: HONOURABLE MR. JUSTICE AJAY KUMAR TRIPATHI

And

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date: 12-12-2017

Heard learned counsel for the appellant as well
as learned counsel representing the Department of Mines,



Bihar, Patna.

2. The appellant, being aggrieved by the judgment dated 20.06.2016 passed by the learned Single Judge of this Court in C.W.J.C. No. 13970/2013, has come in this intra-court appeal.

3. The grievance of the appellant in the writ application was that the Mines Commissioner, Bihar, Patna had refused to interfere with the letter issued by the Assistant Director, Mines and Geology, Gaya raising a demand of Rs. 12,45,000/- towards the installment and interest as also late payment.

4. The contention of the petitioner-appellant is that the crusher plant for which he was given a stockiest licence was closed from May, 2010 to 02.03.2012 on account of certain extremists attack and possible threat to the life of its employees for failure to pay the levy. It is the case of the petitioner-appellant that they had applied for transfer of the location of business site in the License No. 164/2008, but when the same was not being considered, they had moved this Court in C.W.J.C. No. 11239/2011, which was heard and disposed off vide order dated 19.08.2011, and it is only after



the order of this Court to the Principal Secretary, Mines and Geology, Bihar, Patna to consider the matter regarding the desirability of the shifting of location of the site, the permission for shifting was granted.

5. Learned counsel for the petitioner-appellant submits that learned Single Judge has refused to interfere with the order of the Mines Commissioner, Bihar without appreciating that it is admitted position appearing from the earlier round of litigation that the crusher plant was closed during the given period and, therefore, according to him, the demand raised by the Mines Department, which has not been interfered with by the Mines Commissioner as well as the learned Single Judge is unjust and improper. According to learned counsel, the decision of the Hon'ble Supreme Court in the case of ***Chitra vs. State of Kerala and Others*** passed in ***Civil Appeal No. 2246/2006*** would be fully applicable in the facts of the present case. Reference in this regard has been made to paragraph 7 & 8 of the judgment of Hon'ble Supreme Court to show that in a similar circumstance the remission was allowed to the licensee when he had not utilized the license due to third party interference.



6. On the other hand, learned counsel representing the Department of Mines, Government of Bihar, Patna submits that the writ application preferred at this stage seeking an interference with the order of the Mines Commissioner or the demand raised by the Department was the misconceived application inasmuch as the petitioner-appellant himself continued to pay the annual installment as agreed under the licence during the period commencing from 2008-09, 2009-10, 2010-11 and 2011-12. The impugned notice for demand, as contained in Annexure-10, was issued for payment of installment of the year 2012 which was not paid by the petitioner-appellant till the year 2013. It is the case of the Department that only after 12.03.2013, the petitioner-appellant started raising plea for not granting remission.

7. Learned counsel further submits that so far as the judgment of the Hon'ble Supreme Court is concerned, the bare perusal of the same particularly paragraph-8 would show that in the said case, earlier a licence was issued to the petitioner-appellant for the period ending on 31.03.2001. In the said case, a renewal application was made on 26.02.2002



after shifting of the location to other premises. The renewal application was rejected in the said case on 04.09.2002, on the ground that the licence had become defunct. In that context, the Hon'ble Supreme Court held that, because the licence in the said case was rejected on 04.09.2002, the appellant would not be liable to pay the entire amount for the year 2001-02. The Hon'ble Supreme Court was of the view that had the appellant's application for renewal of FL3 licence been approved instead of rejection on 04.09.2002, the appellant would have been liable to pay the entire fee for the year 2001-02.

8. Drawing strength from the judgment of the Hon'ble Supreme Court, learned counsel for the Department of Mines submits that despite having noticed the difficulty being faced by the appellant in the said case, the Hon'ble Supreme Court was of the view had the licence been found renewed, the appellant would have been liable to pay for the entire period. Thus, in the facts of the present case, where from a bare perusal of the licence i.e. Annexure-1 to the writ application, it is crystal clear that petitioner-appellant had undertaken to pay the entire auction amount in seven early



installments in respect of the 7.43 acres of the area where the stone was to be stored for the stone crusher **as well as for sale**, the Department has not done any wrong by calling upon the petitioner to pay for the period 2012-13 when the amount became due.

9. It is further submitted that in the first round of litigation, when the petitioner-appellant moved this Court for a direction to the Mines Commissioner to consider his case for shifting of location, no prayer was made for *pro-rata* remission and the petitioner continued to pay the same without any protest. If, this being the position, the petitioner-appellant is not entitled to raise this issue subsequently.

10. We have heard the parties and perused the record. In our considered opinion, once the petitioner-appellant agreed under the terms of licence that he would pay the entire auction amount in seven early installments and the licence was not only for storage of the stone for its use in the crusher plant but also for sale, the petitioner having paid the installment during the relevant period i.e. 2008-09, 2009-10, 2010-11 and 2011-12, at this stage, cannot raise an issue for *pro-rata* remission when it comes to pay the installment



for the period 2012-13.

11. It is also true that in the first round of litigation when the petitioner came to this Court seeking a direction to the Mines Commissioner to consider his case for shifting, no prayer was made before this Court to direct the authorities of the Department to consider *pro-rata* remission.

12. As a matter of fact, at this stage, a writ court cannot say whether the petitioner-appellant was indulged in running the business of the stone from the licensed place or not, this is too late for the petitioner-appellant to raise all these issues.

13. We also find that that the judgment of Hon'ble Supreme Court which has though been cited on behalf of the petitioner but it helps the case of the respondent-Department, because in the said case despite having noticed the entire difficulties being faced by the petitioner-appellant, the Hon'ble Supreme Court was of the view that had the licence been renewed on 04.09.2002, the petitioner-appellant would have been liable to pay for the entire period of 2001-02, it does not help the petitioner-appellant at all.



14. We do not find any illegality or infirmity with the impugned order passed by the learned Single Judge. This appeal has no merit. It is, accordingly, dismissed.

(Ajay Kumar Tripathi, J.)

Rajeev/-

(Rajeev Ranjan Prasad, J.)

AFR/NAFR	AFR
CAV DATE	NA
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