

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4860 of 2018

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M/s. Mahadev Enclave Pvt. Ltd. a registered company Having its Registered office at B- 37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through one of its directors namely Kartik Rathi aged about 25 years, S/o Shri Ajay Rathi, R/o 3-B 22 23 Sukhadia Nagar, Sri Ganganagar (Rajasthan).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-Cum-Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna.
2. The Principal Secretary-Cum-Ccommissioner, Department of Mines & Geology, Govt. of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Banka.
4. The Mines Inspector-cum-Competent Authority, District Mining office, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Adv.
For the Respondent/s	:	Mr. Gyan Prakash Ojha- GA-7
		Mr. Abhishekh Singh, AC to GA-7
For the State	:	Mr. Naresh Dikshit, Adv.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL JUDGMENT

Date : 29-03-2018

Heard learned Counsels for the petitioner and the Special P.P., Department of Mines and Geology, Govt. of Bihar, Patna.

The present Writ application has been filed for the relief as



stipulated in paragraph no.1 of the Writ application, which reads
as :-

a) For issuance of a writ in the nature of certiorari for quashing of the entire proceedings of Misc. Case No.13/2018 initiated by the respondent no.2 in purported exercise of powers under the Bihar Minor Mineral Concession Rules 1972 (hereinafter referred to as the Rules 1972 for short) on the basis of letter no.221/M, dated 14.02.2018 issued by the respondent no.4.

b) For restraining the respondent no.2 from initiating any proceeding in original in exercise of powers purportedly under the rules 1972 at the instance/report of Sub Ordinate Authorities as none of the provisions of the rules 1972 confers powers on the respondent no.2 to initiate any original proceedings except that of revision against an order passed by the Collector of the District under the rules 1972 alone in terms of Rule 45 and 46A.



c) For a consequential direction upon the respondents specially the respondent no.2 to compensate the petitioner adequately for causing undue harassment by way of initiation of same prototype proceedings in exercise of power purportedly under the rules 1972 which is otherwise not available from plain, literal and simple reading of any of the provisions of the rules 1972;

d) For grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.”

Re. Interlocutory Application No.2100 of 2018.

Interlocutory Application No.2100 of 2018 has been filed for quashing of the order dated 14.03.2018, passed in Misc. Case No.13/18 by the respondent no.2, the Principal Secretary-cum-Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna, as contained in Annexure-6 to the interlocutory application, whereby, the Mining lease of the petitioner has been cancelled with immediate effect and security deposit of the petitioner has been directed to be confiscated.

Learned Special P. P. Mines has no objection with regard



to allowing the Interlocutory Application to the extent of amending the relief.

Accordingly, Interlocutory Application No.2100 of 2018 is allowed to the extent of amendment of relief.

Learned Counsel for the petitioner is permitted to make amendment of prayer in the main petition.

Re. Interlocutory Application No. 2194 of 2018.

Interlocutory Application No.2194 of 2018 has been filed for quashing of the Letter No.1450/M, dated 16.03.2018, issued under the signature of Deputy Secretary, Department of Mines and Geology, Bihar requesting the Director, Information and Public Relation, Department, Govt. of Bihar, for publication of notice in Hindi and English daily newspapers inviting tender for Reverse e-Auction and further quashing the notice inviting tender for Reverse e-Auction of the district of Banka, as contained in Annexure-7 to the interlocutory application.

Learned Special P. P. Mines submits that quashing of the notice inviting tender for Reverse e-Auction is a fresh cause of action, hence, the petitioner ought to have challenged the same in a separate proceeding, instead of filing interlocutory application.

Learned Counsel for the petitioner seeks permission to



withdraw the present Interlocutory Application with a liberty to pray for quashing of notice inviting tender for Reverse e-Auction for the district of Banka in a separate proceeding.

Interlocutory Application No.2194 of 2018 is permitted to be withdrawn with the liberty above-mentioned.

Accordingly, Interlocutory Application No.2194 of 2018 is disposed of.

Re. CWJC No. 4860 of 2018.

It is submitted by learned Counsel for the petitioner that vide Notification No.2887, dated 22.07.2014 tenders were issued by the Department of Mines and Geology, Govt. of Bihar for settlement of sands-ghats for different districts throughout the State of Bihar for the period of 2015-2019. The petitioner also purchased the tender documents and submitted the technical and financial bid for settlement of sands ghats for the district of Banka. The petitioner being the highest bidder was declared successful bidder. Subsequently, the settlement was made for Sand ghats in the district of Banka for the period 2015-2019 and work order was issued in favour of the petitioner, after he obtained the required clearance certificates including environment clearance the petitioner began the mining work. But after two years of Settlement, with the change in the



Government, the respondent authority started obstructing the petitioner in conducting mining operation inspite of deposit of royalty amount in terms of settlement.

Learned Counsel for the petitioner further submits that Misc. Case No. 13/2018 was initiated by respondent no.2, the Principal Secretary-cum-Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna (hereinafter referred to as the 'Commissioner') by exercise of *suo motu* revisional jurisdiction conferred under Rule 45 of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules'), which amounts to exercise of original jurisdiction as for such exercise of *suo motu* revisional jurisdiction there has to be an order passed by the Collector, which can be revised, but in the present case Collector never passed any order. The Mines Commissioner has passed the order for initiation of Miscellaneous Case No. 13 of 2018 on the report of respondent no. 4, the Mines Inspector-cum-competent authority, District Mining Officer, Banka.

It is further contended that initiation of proceeding is not only contrary to the terms of settlement but also contrary to the provisions of State Sand Policy, 2013. Though all these facts were brought to the notice of Mines Commissioner but vide



order dated 14.3.2018 passed in Miscellaneous Case No. 13 of 2018, as contained in Annexure-6, the Mines Commissioner, Bihar, considering the conduction of mining by the petitioner in complete disregard to the environmental guidelines and mining laws, cancelled the mining lease of the petitioner with immediate effect and has ordered for confiscation of security money. The Mines Commissioner, Bihar, on a wrong presumption of law that even the original proceeding can be initiated under *suo motu* revisional jurisdiction under Rule 45 of Rules, 1972, has passed the impugned order and, thereby, not only obstructed the petitioner from mining but has also caused loss to the State exchequer. Moreover, the Mines Inspector-cum-competent authority the District Mining Officer, Banka only transmitted a report but had never requested for initiation of any proceeding. The Mines Commissioner has only emphasized on the word 'suo motu' used in Rule 45 of Rules 1972, and as such, he has assumed that 'suo motu' revisional jurisdiction can be exercised to initiate a fresh proceeding. The sine qua non for exercise of such power is the existence of an order passed by the Collector but in the present case, no such order was ever passed by the Collector.

Mr. Naresh Dikshit, learned Special P.P., Department of



Mines, very fairly concedes that Rule 45 of Rules 1972 does not give such power to the Mines Commissioner to initiate a proceeding, hence, any order passed subsequent to initiation of such proceeding is vitiated in law, and as such, he does not oppose the prayer of the petitioner for quashing the initiation of Miscellaneous Case including the order of cancellation of settlement and confiscation of security amount, as contained in Annexure-6.

Having heard learned counsels for the parties, though in view of the concession made by the learned Special P.P., Department of Mines, there is no need of delivering a detailed judgment.

However, it is relevant to refer Rule 45 of the Rules, 1972, which reads as under :-

“[45. Application for revision. -(1) (a)

The Commissioner, at any time for reason to be recorded in writing, may on his own motion, and where any person aggrieved by any order passed by the Collector under these rules files an application within 60 days from the date of communication of the order, and within 75 days from the date on which an



application is deemed to have been refused by the Collector, if no communication is made of such refusal, shall start a proceeding for revision of the order:

Provided that an application for revision may be entertained even after the time specified as above if the applicant satisfies the Commissioner that he had sufficient cause for not making the application within time]

(b) [xxxx]

(2) In every [proceeding] under sub-rule (1) against the order of Collector refusing to grant or renew a mining lease, any person to whom a mining lease was granted or whose lease was renewed in respect of the same area or for a part thereto, shall be impleaded as party.

(3) Along with the application under sub-rule (1) the applicant shall submit as many copies thereof as there are parties impleaded under sub-rule (2).



[(4) On receipt of the application and copies thereof under sub-rule (2), the Commissioner shall send a copy of the application, and where proceeding is started by him on his own motion, under sub-rule(1) he shall send notice of starting the proceeding and reasons thereof to each of the parties impleaded specifying a date on or before which he may make representation, if any, against the revision application.]

From bare perusal of the Rule 45(1)(a) it appears that revisional jurisdiction can be exercised by the Commissioner, *suo motu* and on application of any person aggrieved by the order of the Collector for revision of the order.

Hence, for exercise of revisional jurisdiction under Rule 45(1)(a) either *suo motu* or on application of an aggrieved person, the *sine qua non* is existence of an order to be revised with. In the present case, admittedly, there was no order of Collector or any authority.

Since the very initiation of proceeding being Misc. Case No. 13 of 2018 is bad in law, hence, the subsequent order also gets vitiated.



Accordingly, in view of the above discussions and in view of the concession made by learned Special P.P., Department of Mines, the entire proceeding including, the order dated 14.3.2018 passed in Misc. Case No. 13 of 2018, passed by the Commissioner, Mines, Government of Bihar, as contained in Annexure-6, whereby the petitioner's settlement has been cancelled and security amount has been confiscated is quashed.

This writ application stands allowed.

(Dinesh Kumar Singh, J)

Ashwini/-Anil

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

