

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.2071 of 2015
IN
Civil Writ Jurisdiction Case No. 18833 of 2012**

- =====
1. The State Of Bihar
 2. The Principal Secretary, Mines and Geology Bihar, Patna.
 3. The District Magistrate, Rohtas.
 4. The Assistant Director, Mines and Geology, Rohtas.

.... Appellants

Versus

M/s Adarsh Kumar Singh Chips Stone Works through its Proprietor Ravindra Singh son of Mahendra Singh resident of Village Kanchanpur P.S Sasaram District Rohtas.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Naresh Dikshit, Adv.
Mr. Braj Bihari Tiwary, Adv.

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

**HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date: 10-04-2018

Heard Mr. Naresh Dikshit, learned counsel appearing for the appellants. There is no representation on behalf of the respondent-writ petitioner.

This appeal under Clause 10 of the Letters Patent of the High Court of Judicature at Patna arises from the judgment and order of the learned Single Judge dated 13.8.2015 passed in C.W.J.C.No. 18833/2012, whereby after setting aside the order put to challenge, the writ petition was allowed.

Mr. Dikshit, learned counsel for the appellants, in reference to the order impugned in the writ petition has submitted that the order



would reflect that arrears due with interest was not disputed by the writ petitioner, meaning thereby the demand so raised at Annexure 3 to the writ petition by the Assistant Director, Mines and Geology, Rohtas dated 12.7.2011 which indicates the principal amount as well as the interest amount, did not suffer any infirmity. He, thus, submits that even though technically the order of the Mines Commissioner in Revision Case No. 56/2011 which was impugned at Annexure 1 to the writ petition was not in accordance with the direction earlier issued by this Court in C.W.J.C.No. 948/2012, in view of admission of the licensee writ petitioner, a remand would not give any other result.

Although the writ petitioner has appeared through learned counsel on service of notice but there is no representation on his behalf on the two dates that we have taken up this matter for consideration.

We have heard Mr. Naresh Dikshit, learned counsel appearing for the appellants and have perused the records.

For not being persuaded with the arguments of Mr. Dikshit to interfere with the opinion expressed by the learned Single Judge put to question before us, we deem it proper to reproduce the earlier order of this Court passed in C.W.J.C.No. 948/2012 enclosed at Annexure 6 to the writ petition to appreciate whether there is any infirmity in the opinion so expressed by the learned Single Judge. The operative portion of the order in C.W.J.C.No. 948/2012 runs under:



“ The petitioner is aggrieved by order dated 5.8.2011 contained in Annexure-1 by which the petitioner's licence as a stockiest has been cancelled. Earlier to Annexure-1, the petitioner was given notice vide Annexure-3 to appear before the authorities on 18.7.2011 to file a show cause and explanation as to why his stockiest licence ought not to be cancelled. The notice ordering for appearance on 18.7.2011 had been issued to the petitioner on 23.7.2011, much after the date fixed by the authorities for filing a show cause. In the result, the petitioner could not file his show cause.

It is submitted on behalf of respondent no.2 that the petitioner has defaulted and not made payment which he was bound to do under Clause 04 of Annexure-2 which contains the terms for grant of licence. Clause 04 envisages that the licensee has to pay the installment within time and if the installment is not paid within six months then he would be liable to be charged 24% interest. It further envisages that further default would result in cancellation of the licence.

... ..

Be that as it may, this Court comes to a finding that the petitioner was not given an opportunity to file a show cause before the concerned authority and as such the matter is remanded back to the Commissioner, Mines, who will determine the rate of interest to be paid by the petitioner and also hear the petitioner and thereafter pass an appropriate order in accordance with law.

Till the decision of the Commissioner, Mines the cancellation order issued vide Memo No. 809 dated



5.8.2011 shall remain stayed.

This writ application is disposed of with the aforesaid observations.”

(Emphasis supplied by us)

It is taking note of the earlier opinion of the Writ Court on the issue in contest that the learned Single Judge has opined thus:

“ So far as Annexure-1 i.e. order of the Commissioner, Mines is concerned, this order does not indicate that the Commissioner had passed the order in strict compliance of the order of the writ court i.e. order dated 15.2.2012 passed in C.W.J.C.No. 948 of 2012. While remanding the matter, it was specifically directed to determine the rate of interest to be paid by the petitioner, but nothing has been done by the Commissioner.

In view of the facts and circumstances, the Court has left with no option but to set aside the order of the Commissioner i.e. Annexure-1 as well as order of the licensing authority i.e. Annexure-5 to the writ petition.

Before parting with the order, it is necessary to direct the Assistant Director, Mines and Geology Deptt., Rohtas at Sasaram, to calculate the amount of remaining one installment with interest in terms of the licence i.e. simple interest of 24% and ask the petitioner to deposit the said amount. The said amount is to be deposited by the petitioner within three weeks from the date of receipt of notice. If the amount of installment with interest, as aforesaid, is not deposited by the petitioner after receipt of notice within three weeks, automatically the order dated 5.8.2011 i.e. Annexure-5 and order dated 29.5.2012 i.e. Annexure-1 to the writ



petition will come into play.

The writ petition, with above observation and direction, stands allowed.”

(Emphasis supplied by us)

It is simple arithmetic to see that the direction present in the judgment of the learned Single Judge impugned herein is after taking note of the failure of the respondents to ensure compliance of the order passed by this Court in C.W.J.C.No. 948/2012. In fact even while allowing the writ petition and reminding the department of the obligation cast upon them in the judgment of the Writ Court in C.W.J.C.No. 948/2012, the learned Single Judge in the order impugned herein, has put a duty on the petitioner of ensuring compliance, failing which the order so passed in his favour, is to come to an end.

We wonder how with such clear expression found in the judgment impugned where right of the department itself stands protected, there was any occasion to move in this Intra-Court Appeal which lacks substance and is accordingly dismissed with no order as to costs.

(Jyoti Saran, J)

(Chakradhari Sharan Singh, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
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