

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12692 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 Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna.
3. The District Magistrate cum Collector Banka.
4. The Mines Inspecetor cum Competent Authority, District Mining Office, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Binod Kanth, Sr. Adv. Mr. Gautam Kumar Kejriwal, Adv. Mr. Samir Ali Khan, Adv.
For Spl. P.P. Mines	:	Mr. Naresh Dikshit, Spl. P. P. Mines.
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7 Mr. Abhishek Singh, AC to GA-7

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 11-07-2018 Heard Mr. Binod Kanth, learned Senior Counsel for

the petitioner and Mr. Naresh Dikshit, learned Special P. P.,

Department of Mines.

The present writ application has basically been filed for quashing the notice issued, vide Memo no. 449, dated 19.05.2018, under the signature of In-charge Officer, Legal Section, Banka, in Misc. Case No. 03 of 2018-19, as contained in Annexure - 3, whereby the petitioner's firm has been directed to appear and submit its defence on 01.06.2018, before the Respondent No. 3, the District Magistrate, Banka.



The notice further stipulates that in case of non-appearance, it will be presumed that the petitioner has nothing to say in this regard and the final order will be passed on the basis of documents available on record.

The impugned notice stipulates that it has been issued in pursuance to order dated 02.04.2018, passed by Commissioner, Mines, in Misc. Case No. 13 of 2018, whereby it has been directed to take a decision on the basis of the merits and demerits of the case. In this connection, the inspection report of the Mines Inspector, Banka, submitted vide Letter No. 221, dated 14.02.2018, has been annexed with the impugned orders.

The reliefs prayed for, as stipulated in paragraph no. 1 of the writ application, reads as follows:-

1. a) For issuance of a writ in the nature of certiorari for quashing of the notice bearing memo number 449/vidhi dated 19.05.2018 issued by the respondent number 3 which is in teeth of the order dated 29.03.2018 passed by Hon'ble Mr. Justice Dinesh Kumar Singh in C.W.J.C. No. 4860 of 2018;

b) For holding and a declaration that the very initiation of Misc. Case No. 13 of 2018 by the respondent number 2 the then in office once having been held by this Hon'ble Court to be illegal, invalid and without jurisdiction, no further orders could be passed much less any notice would be issued by the respondent



Department to the petitioner in connection with the said case and proceeding;

c) For further holding and a declaration that even the notice issued by the respondent number 3 is in teeth of 21A (4) and 22 (2) of the Bihar Minor Mineral Concession Rules 1972 (hereinafter referred to as the Rules for short);

d) For any other relief reliefs to which the petitioner is found entitled in the facts and circumstances of this case;

I. A. No. 4944 of 2018

The above mentioned Interlocutory Application has been filed with a prayer for amendment of prayer in the main writ application to the extent for stay of the impugned notice issued vide Memo No. 449 dated 19.05.2018, under the signature of In-charge Officer, Legal Section, Banka, as contained in Annexure – 3.

Mr. Naresh Dixit, learned Special P. P. Mines has no objection if the Interlocutory Application is allowed to the extent of amendment of prayer in the main writ application.

Accordingly, I. A. No. 4944 of 2018 is allowed to the extent of amendment of prayer in the main writ application.

It is submitted by learned Senior Counsel for the Petitioner, that the impugned notice, as contained in Annexure - 3, has been issued in pursuance to the order dated 02.04.2018,



passed by the Commissioner, Mines in Misc. Case No. 13 of 2018, whereas on the contrary the said miscellaneous proceeding was already quashed by this Court, vide order dated 29.03.2018, passed in C.W.J.C. No. 4860 of 2018, as contained in Annexure - 4, on the sole ground and on being conceded by learned Special P. P. Mines, that for exercise of revisional jurisdiction under the Rule 45 (1)(a) of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'Rules, 1972'), either *suo moto* or on application of an aggrieved person, the *sine qua non* is the existence of an order passed by the Collector, to be revised. Since there was no order of the Collector or any concerned authority, but the proceeding of Misc. Case No. 13 of 2018, was initiated *suo moto*, by the Commissioner, Mines. Hence, the said proceeding including the order dated 14.02.2018, passed by the Commissioner, Mines, as contained in Annexure - 6 to the said writ application, whereby the petitioner's settlement was cancelled and security amount was confiscated, was quashed by this Court.

Hence, there was no occasion for Respondent No.2, the Commissioner, Mines, to pass the order dated 02.04.2018, in Misc. Case No.13 of 2018, when the said proceeding was already quashed, vide order dated 29.03.2018, passed in



C.W.J.C. No. 4860 of 2018, as contained in Annexure – 4. Accordingly, the issuance of said notice is absolutely without jurisdiction and amounts to overreaching the order of this Court.

It is further submitted by learned Senior Counsel for the petitioner that the Inspection Report submitted by Mines Inspector, Banka, vide letter No. 221, dated 14.02.2018, which is enclosed with the impugned notice, as contained in Annexure - 3, basically stipulates the breach of terms and conditions of the lease/settlement by the petitioner. In this regard, it is submitted that Rule 21- A(1) (2) and (3) of Rules, 1972, makes it mandatory for every holder of mining lease/settlement/permit/stockist to take all possible precautions while conducting mining operation, for protection of environment and control of pollution as also the terms and conditions of environmental clearance. Rule 21- A(4) stipulates that if the lessee/settlee/permit holder commits breach of any of the conditions laid down in the environmental clearance, his lease /settlement shall be liable to be terminated after giving him a due notice of at least thirty days for rectification of the said breach of terms and conditions in the environmental clearance, and such cancellation can be done if the settlee fails to rectify the mistake even during the period of notice. But the provision



of Section 21- A(4) has not been complied with in the case of the petitioner.

It is next contended that Rule 22 (1) mandates the mining operation to be conducted in accordance with the mining plan, but Rule 22 (2) stipulates that any breach of conditions of the mining plans entails the lease or settlement liable to be terminated after giving due notice to the concerned lessee or settlee for rectification of the breach so committed, within a period of thirty days and on his failure to do so within the said period of thirty days.

In this regard, reliance has been placed on the case of ‘Shailesh Dhairyawan Vs. Mohan Balkrishna Lulla’, (2016) 3 S.C.C. 619 where it has been held in paragraph no. 33, that the doctrine of purposive interpretation of a statute is resorted to when the literal interpretation may not serve the purpose or may lead to absurdity. The provisions under Rule 21- A(4) or 22 (2) of the Rules, 1972, is for allowing the settlee/lessee to rectify the breach of conditions of environmental clearance or conditions of the mining plan while conducting mining. But in the instant case, such notice has been issued to prepare a ground for cancelling the lease or settlement and not to allow the settlee to rectify the mistake.



It is lastly submitted that on the basis of same inspection report, earlier Misc. Case No. 13 of 2018 was initiated by the Commissioner, Mines, in exercise of *suo moto* revisional jurisdiction and on the basis of same report, the present impugned notice has also been issued.

However, the petitioner has rectified most of the breached conditions stipulated in the inspection report, which gets reflected from the show cause submitted in pursuance to issuance of impugned notice, as contained in Annexure - 4. Hence, the respondent authorities are required to make a fresh inspection to give a purposive interpretation to the provisions under Rule 21- A(4) and Rule 22 (2) of Rules, 1972. Moreover, it is submitted that the order dated 02.04.2018 has not been supplied to the petitioner.

It is submitted by Mr. Naresh Dikshit, learned Special P.P., Mines, that the Collector or the authorities of Mining Department have the jurisdiction to initiate a proceeding in case of breach of terms or conditions of the lease/settlement, breach of environmental clearance or breach of conditions of approved mining plan.

In the present case, notice has been issued in a separate proceeding being Misc. Case No. 03 of 2018-19, which



has no legal infirmity, hence the impugned notice cannot be treated as continuation of quashed proceeding being Misc. Case No.13 of 2018. However, he admits that the Mines Commissioner ought not to have passed any order on 02.04.2018 in Misc. Case No. 13 of 2018, when the said proceeding was already quashed, on the concession made by the learned counsel for Department of Mines. Hence, on this score, he concedes that the impugned notice can be quashed, since it has been issued in pursuance to order passed in an already quashed proceeding, but with a liberty to the Collector to proceed afresh in case of any breach of terms or conditions of the lease or settlement or environment clearance or mining plan.

Though this matter has been listed under the heading 'For Orders on Petition' to consider the I. A. No. 4944 of 2018 filed with a prayer for stay of operation of the impugned notice, but with the consent of the learned counsels for the parties, this application is being heard on merits on limited questions whether the impugned notice has been issued in pursuance to an order dated 02.04.2018, passed in Misc. Case No. 13 of 2018 by Commissioner, Mines, when the said proceeding was already quashed by this Court, in view of the prayer made in paragraph no.-1 of the writ application, as quoted above, and in view of the



concessions made by the learned Special P. P. Mines.

Having heard the learned counsels for the parties, it is not in dispute that the impugned notice has been issued in pursuance to order dated 02.04.2018 by the Commissioner, Mines in Misc. Case No. 13 of 2018, whereas the said proceeding was already quashed, vide order dated 29.03.2018, passed in C.W.J.C. No. 4860 of 2018. Hence, the impugned notice cannot be allowed to sustain on this sole ground, particularly in view of the concessions made by learned Special P. P. Mines. Though the order dated 02.04.2018, has not been brought on record but the existence of the same has not been disputed by the learned Special P. P. Mines.

Accordingly, the impugned notice issued vide Memo No. 449 dated 19.05.2018, under the signature of In-Charge Officer, Legal Section, Banka, in Misc. Case No. 03 of 2018-19, as contained in Annexure - 3, is hereby quashed.

Since the Collector or the authorities of the Mining Department have the jurisdiction to initiate a proceeding in case of breach of terms and conditions of lease or settlement, or the breach of terms of mining plan, or the breach of environmental clearance, the Collector, Banka, or the concerned authorities of Mining Department are at liberty to initiate a proceeding afresh



and take it to its logical conclusion after giving a due notice and opportunity of hearing to all affected persons including the petitioner, in accordance with the provisions stipulated in Rules, 1972.

However, the concerned authorities will be at liberty to get the inspection conducted afresh in view of the submissions made by the learned Sr. Counsel for the petitioner that there is a provision under Rule 21- A(4) or 22 (2) to rectify the breach of terms and conditions of environmental clearance or breach of approved mining plan, which the petitioner claims to have done, in between the inspection report submitted on 14.02.2018 and the issuance of the impugned notice.

It is made clear that this Court has not expressed any opinion on the merits of the case, particularly whether the impugned notice, contained in Annexure - 3, is a notice in terms of Rule 21- A(4) and Rule 22 (2) of the Rules, 1972, or not or the question of nature and extent of breach of environmental clearance or breach of approved mining plan by the petitioner. Since, the impugned notice has been quashed on the ground that the same has been issued on the basis of an order passed by Commissioner, Mines, in a quashed proceeding, hence, any consideration of the merits of the case would be a futile exercise.



Accordingly, with the above observations, this writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

Amrendra/-

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