

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13618 of 2017

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1. M/s Sainik Foods Pvt. Ltd., a registered company having its registered office at H.I.G.D. 5 Deendayal Nagar, Phase - I, Kanth Road, Muradabad, Uttar Pradesh through its authorized representative Brijesh Saxena son of Mata Prasad Saxena resident of Gandhi Nagar, Chandra Kuan, Jalaun, Konch, Uttar Pradesh.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna.
2. The Director, Department of Mines & Geology, Govt. of Bihar, Patna.
3. The District Magistrate cum Collector, Gaya.
4. The Assistant Director, District Mining Office, Gaya.
5. The Circle Officer, Manpur, Gaya.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv.
For the Respondent/s : Smt. Kumari Amrita - GP3
Mr. Mithilesh Kumar Upadhyay, A.C. to G.P.3
Mr. Lalan Kumar, A.C. to Spl. P.P. Mines

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

ORAL JUDGMENT

Date: 15-01-2018

This writ petition under Article 226 of the Constitution of India was filed praying for issuance of a writ in the nature of certiorari for quashing the notice dated 06.09.2017 of the respondent No.3 the District Magistrate cum Collector, Gaya charging the petitioner of alleged violation of Rule 25(1), 21(5) of the Bihar Minor and Mineral Concession Rules, 1972 (hereinafter referred as to 'the Rules') as amended from time to time and Condition 7(ii) of the Notice Inviting Tender and fixing 14.09.2017 as date of hearing of the matter failing which the provisional allotment of the Mining Plot would be cancelled and the application fee together with security deposit would



be forfeited. A copy of the notice is impugned at Annexure-26 of the writ petition.

It is while the writ petition is pending that the final orders have been passed by the District Magistrate, Gaya bearing Memo No.2258 dated 12.10.2017 whereby for alleged violation of the Notice Inviting Tender and statutory provisions contained in 'the Rules' that in purported exercise under Rule 21(5), 25(1) and 24(3) of 'the Rules', the District Magistrate, Gaya while cancelling the provisional allotment has forfeited the security deposit of Rs. 17,06,00,000/-. A copy of the order has been placed on record vide Annexure-28 of I.A. No. 7792 of 2017 filed in the proceedings and it is on consideration of the fact that the order is in continuation of the proceedings so initiated that leave was granted to the petitioner to question the same in the present proceedings while allowing the interlocutory application vide order passed on 10.11.2017.

Mr. Gautam Kejriwal learned counsel for the petitioner while explaining the obligation cast on the petitioner under paragraph 7(ii) of the Notice Inviting Tender, a copy of which is placed at Annexure-1 submits that although a successful tenderer is required to submit the documents mentioned in the said paragraphs within a period of 120 days from the date of issuance of a letter of acceptance but the same is impossible because the obligations so created, is dependent on a



timely discharge of obligation by other authorities i.e the State Environment Impact Assessment Authority ('SEIAA' for the sake of brevity) as well as the State respondents. Learned counsel in support has referred to the notification dated 14.9.2006 of the Ministry of Environment and Forest on the issue of environmental clearance, a copy of which is placed at Annexure-29 to the rejoinder and in particular reference to the chart present at the last page of the notification at running page 221 of the proceeding he submits that there is a clear admission of consumption of 270 days by the 'SEIAA' in taking a decision on the application filed by a tenderer for grant of environmental clearance. He thus submits that where the 'SEIAA' itself consumes 270 days in taking a decision on the application filed by a tenderer for environmental clearance, it is impossible to adhere with the schedule present at paragraph 7(ii) of the Notice Inviting Tender and which position is well within the knowledge of the State respondents.

It is submitted that responding to the Notice Inviting Tender which was published on 6.12.2014 enclosed with Annexure-1 that the petitioner participated for grant of Mining lease in respect of Block No.1, Mauza Mirzapur, Circle Manpur, Gaya and was successful. A letter of acceptance was issued on 07.02.2015, a copy of which is enclosed at Annexure-2 to the writ petition. The letter at paragraph 2



requires the petitioner to submit 7 documents, detailed at paragraph 2 of the letter which as already indicated, was to be submitted within 120 days. It is submitted that soon after the issuance of the letter of acceptance on 7.2.2015 that the petitioner submitted the Mining plan. It is submitted that in terms of the letter of acceptance and for the purpose of execution of agreement in form D for enabling the petitioner to commence his mining activity, the petitioner had to produce the following documents.

- “a) Approval of mining plan of the project area.
- b) Environmental clearance from SEIAA.
- c) Payment of 10% of the settlement amount as security.
- d) Payment of 20% of the settlement amount as first installment.
- e) Payment of Income Tax and Surcharge @2% of the first installment.
- f) Payment of 2% of the first installment as separate fund.
- g) 3 copies of the map of the project area to be furnished in tracing cloth.”

It is submitted that the petitioner submitted a Mining plan in tune with the requirements with the respondent Department for approval and which was accordingly granted vide letter dated 20.5.2015 enclosed at Annexure-3 subject to the stipulations present thereunder. Since a period of 120 days was to exhaust and the petitioner was yet to obtain a environmental clearance that he applied for extension vide his letter dated 29.5.2015 before the District Magistrate, Gaya at Annexure-4. No response was received and thus



the petitioner filed another application on 6.6.2015 before the Assistant Director, Mines and Geology, a copy of which is present at Annexure-5. Alongside petitioner applied for environmental clearance before the 'SEIAA'. The 'SEIAA' vide its meeting held on 18.7.2015 directed the petitioner to submit a report from the Divisional Forest Officer, Gaya as regarding the distance of the project area from the National park. The petitioner on his part applied before the Divisional Forest Officer, Gaya as well as the Circle Officer, Manpur for such Certificate on 4.8.2015 and a certificate was issued by the Circle Officer on 6.8.2015 but no certificate was issued by the Divisional Forest Officer. The petitioner vide his letter dated 14.8.2015 informed the Assistant Director, Mines and Geology as regarding the developments in the settlement, a copy of which is at Annexure-6. The petitioner was informed by the Assistant Director, Mines and Geology, Gaya vide bearing No.1324 dated 11.7.2016 to ensure compliance of the letter of acceptance by submission of the necessary documents failing which orders would be passed under Rule 25(1) of 'the Rules', a copy of which is enclosed at Annexure-7. The petitioner filed his reply to the notice on 23.7.2016 at Annexure-8 and also filed a time extension petition in view of the procedural delay taking place in environmental clearance on 27.7.2016 at Annexure-9.

In between and since the petitioner was delayed in submission



of the documents that he was put on notice by the Collector on 17.8.2016 at Annexure-10 which was duly replied by the petitioner vide Annexure-11 on 24.9.2016. The petitioner also represented before the 'SEIAA' for expediting the environmental clearance on 02.11.2016 at Annexure-13. A meeting of the State Level Expert Appraisal Committee ('SEAC' for the sake of brevity) stated to be a Sub committee of 'SEIAA' was held on 28.1.2017 and in so far as the Mining Project of the petitioner is concerned, the decision is present at paragraph 9(e) requiring the petitioner to submit a report from the Circle Officer concerned through the District Magistrate regarding the status of habitation, whether legal or illegal, within 500 meters around the project area. The proceedings of the meeting of the 'SEAC' held on 28.1.2017 circulated vide letter dated 6.2.2017 is placed at Annexure-14 with the agenda of the petitioner at running page 87. In obedience with the directions of the 'SEAC', the petitioner applied before the Circle Officer, Manpur Circle for the desired certificate as to whether there was any habitation within an area of 500 meters of the project area, whether legal and illegal. A copy of request is at Annexure-15 and a similar request was made before the District Magistrate, Gaya vide letter dated 10.2.2017, copy of which is at Annexure 16 to the writ petition. The Assistant Director, Mines and Geology vide his letter No.251 dated 13.2.2017 directed the Circle



Officer, Manpur to supply the petitioner with the required information, a copy of which is at Annexure-17 to the writ petition.

The next meeting of 'SEAC' was held on 18.2.2017 and since the petitioner was yet to produce the certificate that he was again directed to discharge the obligation vide paragraph 11(a) of the proceedings, a copy of which was circulated vide letter dated 2.3.2017 enclosed at Annexure-18 to the writ petition. The petitioner requested the Circle Officer, Manpur for the certificate once again vide his request letter dated 23.3.2017 at Annexure-19 but failed to obtain the same.

The third meeting of the 'SEAC' took place on 26.5.2017 and circulated vide letter dated 7.6.2017 at Annexure 20. Vide Agenda No.11(b) the petitioner was directed to do the needful. The petitioner made a request before the Collector on 29.6.2017 vide Annexure-21 explaining the repeated directions of the 'SEAC' and with a request to supply with the certificate, but no steps were taken by the Collector to issue any certificate. The next meeting of the 'SEAC' was held on 28.06.2017 and circulated on 29.06.2017 vide Annexure-22 with same stipulation for the petitioner present at paragraph 3(a). It is submitted that the 'SEAC' was dissolved in July, 2017 and it is after dissolution that the Assistant Director vide his letter dated 9.8.2017 forwarded the certificate issued by the Circle Officer, Manpur, Gaya bearing No.



395 dated 08.06.2017 enclosed at Annexure-24 to the writ petition which in turn relied upon a report of a Revenue Karamchari. Since the directions of the 'SEAC' required the petitioner to submit a report from the Circle Officer through the District Magistrate and since the report submitted by the Circle Officer was in fact a report of Revenue Karamchari which had no endorsement of the District Magistrate, Gaya in tune with the directions of the 'SEAC' that the petitioner again represented before the District Magistrate, Gaya on 05.09.2017 vide Annexure-25 but by the impugned show cause notice dated 06.09.2017, the District Magistrate, Gaya charging him of alleged violation of Rule 25(1), 21(5) of 'the Rules' and Condition of 7(ii) of the Notice Inviting Tender, put him on notice against cancellation. It is submitted that the petitioner responded to the notice explaining the position on 10.9.2017 vide Annexure-27 but was served with the impugned order of cancellation of his letter of acceptance and forfeiture of security deposit vide order bearing Memo No.2258 dated 12.10.2017 impugned at Annexure-28 and which has aggrieved him.

It is the argument of Mr. Kejriwal that where it is the default of the District Magistrate, Gaya himself in not certifying the report of the Circle Officer, Manpur as directed by the 'SEAC' and regarding which obligation the petitioner had filed several reminders yet without



appreciating that the default was on the part of the District Magistrate cum Collector himself inasmuch as the report of the Circle Officer, Manpur simplicitor did not satisfy the directions of the 'SEAC' that instead the impugned order has been passed. According to Mr. Kejriwal, the report of the Circle Officer, Manpur forwarded by the Assistant Director through his letter dated 9.8.2017 at Annexure-24 is of no consequence because it is neither a report of a Circle Officer, Manpur nor issued through the District Magistrate, Gaya as directed by the 'SEAC' and thus did not satisfy the directions. Learned counsel in support of the proposition that the District Magistrate, Gaya having defaulted in issuing certificate as required by the 'SEAC' he cannot take advantage of his own folly referred to a judgment of the Supreme Court reported in **(2010)6 SCC 193 (Eureka Forbes Limited versus Allahabad Bank and Ors.)** with in particular reference to paragraph 65 and 66. For the same proposition learned counsel has referred to the another judgment of the Supreme Court reported in **(2006) 5 SCC 340 (Panchanan Dhara and Ors. Vs Monmatha Nath Maity and Another)** paragraph 27.

Summarizing his argument, it is submitted by Mr. Kejriwal that the petitioner has been seriously prejudiced by the act of the respondent themselves inasmuch as the failure of the District Magistrate, Gaya to discharge his obligation in issuing the certificate in tune with the requirement of the 'SEAC' has led to a situation



where the 'SEAC' itself has been dissolved and as a consequence major portion of the period of settlement, has gone by. It is the submission of Mr. Kejriwal that although the District Magistrate, Gaya has passed the orders impugned in purported exercise under rule 21(5), 25(1) and 24(3) of 'the Rules' but the exercise is without jurisdiction because the default lies with the respondents themselves and not the petitioner for in absence of the certificate to be issued by the District Magistrates, Gaya the petitioner could not obtain an environmental clearance and resultantly could not take the follow up steps for execution of the agreement in form D, thus delaying his mining activities. It is the submission of the Mr. Kejriwal that the order of cancellation is a gross abuse of statutory power by the Collector for he cannot take advantage of his own default.

The argument is contested by the learned counsel for the State and counsel for the Mining Department who while charging the petitioner of defaulting in submission of documents as mandated under paragraph 7(ii) of the Notice Inviting Tender have not been able to explain as to why despite repeated request made by the petitioner before the District Magistrate cum Collector, Gaya for issuance of the certificate of habitation within 500 meters of the project Area, he has not bothered to do the same, even though the directions of the 'SEAC' required the report of the Circle Officer to be



issued through the Collector of the District. The only ground that has been raised by the learned counsel for the respondents to support the impugned action is that the petitioner has failed to deposit the documents within the stipulated period.

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

The obligation cast on the petitioner under paragraph 7(ii) of the Notice Inviting Tender is not a unilateral exercise to be performed by the petitioner alone to the exclusion of others rather it is a multi party exercise with a equal responsibility assigned to the 'SEIAA' as well as the State respondents and a delayed action by any, would certainly prejudice the exercise discharged by the petitioner because it is only after seeking approval of the mining plan and getting environmental clearance from the 'SEIAA' that an obligation is cast on the petitioner to deposit 10% of the settlement amount by way of a security as well as 20% of the settlement amount by way of a first installment apart from his obligation to deposit the income tax and surcharge. The obligation of deposit of 3 copies of the map in tracing cloth is again an exercise on getting the environment clearance after approval of the mining plan.

Unfortunately for the petitioner, his effort in this direction got stuck soon after seeking approval of the mining plan when he



approached the 'SEIAA' for Environmental clearance. Although the petitioner applied for environmental clearance before 'SEIAA' as back as on 17.6.2015 and whereafter orders were passed for submission of report from the Divisional Forest Officer as regarding the distance of the project from National park on 18.7.2015 but thereafter the matter was delayed and the State Level Expert Appraisal Committee ('SEAC') stated to be a Sub Committee of the 'SEIAA' in its meeting held on 28.1.2017 i.e after more than 1 and half years of the application filed by the petitioner seeking environmental clearance, issued the following directions as present at paragraph 9(e) of the proceedings at Annexure-14:

“The Committee directed the project Proponent to submit a report from the Circle Officer concerned through the District Magistrate regarding status of habitation whether legal or illegal within 500 meters around the project area.

.....”

(Emphasis is mine)

It is undisputed rather an admitted position that except for the report issued by the Circle Officer vide letter bearing No. 395 dated 8.6.2017 which in turn referred to the report of the Revenue Karamchari and was forwarded by the Assistant Director, Mines and Geology through letter No.1623 dated 9.8.2017 on the directions of the District Magistrate passed on 7.8.2017, copies of which are present at Annexure-24 to the writ petition, there is no certificate issued by



the District Magistrate, Gaya. A plain reading of the directions of 'SEAC' would confirm that the report of the Circle Officer had to be routed through the District Magistrate, Gaya. It is unfortunate that despite reminders given by the petitioner to the District Magistrate cum Collector, Gaya to discharge this obligation on 10.2.2017 vide Annexure-16, on 29.6.2017 vide Annexure-21 and lastly on 5.9.2017 vide Annexure-25 yet he failed to appreciate his obligation and instead proceeded to issue a show cause notice to the petitioner under Rule 25(1), 21(5) of 'the Rules' read alongside Clause 7(ii) of the Notice Inviting Tender vide Notice dated 6.9.2017 at Annexure 26 and which is followed by the cancellation order dated 12.10.2017 upholding the allegations vide Annexure-28. It is unfortunate that the District Magistrate, Gaya even after taking note of the direction of the 'SEAC' in paragraph 8 of the impugned order at running page 144 of the proceedings and although refers to his order dated 7.8.2017 but it is admitted by learned counsel for the respondents that the order dated 7.8.2017 referred to by the Collector in the impugned order is an order passed in the file and no formal orders were issued on 7.8.2017.

The fact remains that at the first instance, the delay has been caused by the 'SEIAA' in granting Environmental clearance to the petitioner which remained pending since 17.6.2015 when the petitioner applied for environmental clearance and even when the



‘SEAC’ a Sub committee of the ‘SEIAA’ put the matter in motion and reiterated its direction of production of a certificate issued by the Circle Officer of the Area through the District Magistrate regarding the status of habitation and following which repeated reminders were given by the petitioner but the District Magistrate, Gaya has failed in his duty, rather has shifted the onus on the petitioner when in fact the default is by the District Magistrate, Gaya.

A plain reading of the obligations to be discharged by the petitioner as present at paragraph 7(ii) of the Notice Inviting Tender would confirm that the petitioner could not have proceeded without obtaining an environmental clearance as present at paragraph 7(ii)(ख) for making the deposits which were consequent upon obtaining the environmental clearance after approval of the Mining plan. Obviously, when the ‘SEAC’ required the petitioner to produce a report from the Circle Officer through the District Magistrate as regarding the status of the habitation, the object was clear because a report duly certified by the District Magistrate on the issue of habitation within an area of 500 meters of the project area had the authenticity attached to it. Unfortunately, the District Magistrate, Gaya has failed to appreciate this object and in absence whereof the report of the Circle Officer failed to satisfy the ‘SEAC’. The petitioner was a loser from either side. The ‘SEAC’ would not proceed



without obtaining a habitation certificate from the District Magistrate, Gaya and the District Magistrate, Gaya without discharging his obligation, charges the petitioner of statutory violation.

The default is entirely attributable to the District Magistrate, Gaya for the prejudice caused to the petitioner for which the application of the petitioner for Environmental Clearance remains pending awaiting the certificate from the District Magistrate. The delay has led to a situation where the 'SEIAA' itself stands dissolved. In my opinion, in the circumstances discussed, neither the petitioner can be held guilty of violation of Rule 25(1) and 21(5) of 'the Rules' nor he can be held guilty of violation of paragraph 7(ii) of the Conditions of Notice Inviting Tender.

The circumstances discussed leave no room for confusion that the District Magistrate cum Collector, Gaya is solely responsible for failing the petitioner to complete his exercise of producing the Environmental Clearance. The irony is that perpetuating the illegality, the District Magistrate, Gaya in gross abuse of statutory powers has cancelled the letter of acceptance of the petitioner for a default which is entirely attributable to him. Apart from the judgments relied upon by Mr. Kejriwal, I am tempted to refer to a judgment of the Supreme Court since reported in (2007) 11 SCC 447 (**Kusheshwar Prasad Singh versus State of bihar & Others**) which was rendered in the



case originated from this State and although the petitioner lost at all stages of the proceedings but his appeal was partly allowed by the Supreme Court and paragraph 14 to 16 would be relevant for the purpose which is reproduced hereinbelow for ready reference:

“14. In this connection, our attention has been invited by the learned counsel for the appellant to a decision of this Court in *Mrutunjay Pani v. Narmada Bala Sasmal* wherein it was held by this Court that where an obligation is cast on a party and he commits a breach of such obligation, he cannot be permitted to take advantage of such situation. This is based on the Latin maxim '*Commodum ex injuria sua nemo habere debet*' (No party can take undue advantage of his own wrong).

15. In *Union of India v. Major General Madan Lal Yadav* the accused-army personnel himself was responsible for delay as he escaped from detention. Then he raised an objection against initiation of proceedings on the ground that such proceedings ought to have been initiated within six months under the Army Act, 1950. Referring to the above maxim, this Court held that the accused could not take undue advantage of his own wrong. Considering the relevant provisions of the Act, the Court held that presence of the accused was an essential condition for the commencement of trial and when the accused did not make himself available, he could not be allowed to raise a contention that proceedings were time-barred. This Court (at SCC p.142, para 28) referred to Broom's *Legal Maxims* (10th Edn.) p. 191 wherein it was stated;

"it is a maxim of law, recognised and established, that no man shall take advantage of his own wrong; and this maxim, which is based on elementary principles, is fully recognised in Courts of law and of equity, and, indeed, admits of illustration from every branch of legal procedure".

16. It is settled principle of law that a man cannot be permitted to take undue and unfair advantage of his own wrong to gain favourable interpretation of law. It is sound



principle that he who prevents a thing from being done shall not avail himself of the non-performance he has occasioned. To put it differently, "a wrongdoer ought not to be permitted to make a profit out of his own wrong".

It is noticed that the report submitted by the Circle Officer, Manpur through his letter No.395 dated 8.6.2017 which was forwarded by the Assistant Director, Mines and Geology through letter dated 9.8.2017 at Annexure-24 to the writ petition is not a report of the Circle Officer rather he merely encloses the report of a Revenue Karamchari and thus the report is not in tune with the directions of the 'SEAC' which requires a report prepared by the Circle Officer himself on verification of the situation and issued through the District Magistrate. The petitioner has been wronged by the District Magistrate, Gaya, who having failed to discharge his own duty to issue the habitation certificate which has deprived the petitioner of the mandatory Environmental Clearance, he has encashed his default by holding the petitioner guilty of statutory violations.

For the reasons so discussed above, the show cause notice dated 6.9.2017 of the District Magistrate cum Collector, Gaya impugned at Annexure-26 together with the order of cancellation of the letter of acceptance and forfeiture of the security deposit bearing Memo No.2258 dated 12.10.2017 impugned at Annexure 28, cannot be upheld and are accordingly quashed and set aside. The District



Magistrate cum Collector Gaya is directed to issue the habitation certificate in tune with the direction of the State Level Expert Appraisal Committee, after obtaining a report from the Circle Officer, Manpur, afresh within 6 weeks of receipt/production of a copy of this judgment.

The writ petition is allowed with the direction aforementioned.

(Jyoti Saran, J)

Bibhash/-

AFR/NAFR	A.F.R.
CAV DATE	NA
Uploading Date	20.01.2018
Transmission Date	NA

