

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5429 of 2019

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Westlink Trading Private Limited, A Company registered under the Companies Act, 1956 having its Registered office at D-504, Building No.27, Sunshine Co-Op HSG SOC Ltd, Mahada Colony Chandivali, Mumbai-400072 having its branch office at Mohalla Kailashpuri, P.O. and P.S.- Banda, District- Banda, Uttar Pradesh and local office at Ist Floor, Shivam Apartment, Anandpuri, West Boring Canal Road- 800001 through its Director Abhishek Kumar Singh, age 44, Male, S/o Devendra Mohan Singh, Resident of Ist Floor, Shivam Apartment, Anandpuri, West Boring Canal Road- 800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Department of Mines and Geology, Vikas Bhawan, Bailey Road, Patna-800001
2. The Joint Secretary-cum-Director, Directorate of Mines and Geology, Vikas Bhawan, Bailey Road
3. The Collector, Jamui, District- Jamui, Bihar
4. The Collector, Lakhisarai, District- Lakhisarai, Bihar
5. Mineral Development Officer, District Mining Office, Jamui, District Jamui, Bihar
6. Mineral Development Officer, District Mining Office, Lakhisarai, District- Lakhisarai, Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. S.B. Upadhyay, Sr. Adv. Mr. Mrigank Mauli, Adv.
For Dept. of Mines	:	Mr. Naresh Dikshit Mr. Brij Bihari Tiwary
For the Respondent/s	:	Mr.Gyan Prakash Ojha (GA7)

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL JUDGMENT
Date : 07-05-2019

The writ application has been filed for issuance of appropriate writs, orders or directions for the following relief(s):-

(i) For holding that the period of settlement – for the “Sandghat” at Lakhisarai and Jamui for the period of three years in favour of the petitioner’s Company- shall run from the date on which the “ Work Order” is issued to the petitioner’s Company by the respondent authorities.

(ii) For holding that the “First Year” for settlement shall be considered when the work order shall be issued to the petitioner.

(iii) For issuance of writ in the nature of mandamus, upon grant of the aforesaid relief, directing them to formalize the settlement for a period of three years from the date of issuance of work order- by issuing appropriate orders.

The brief facts of the case is that petitioner is a private Limited company registered with Registrar of Companies. The advertisement was published on 24.6.2016 on behalf of the respondent no. 2 for settlement by auction of the “Sandghat” at Lakhisarai and Jamui as single unit for the period 2016-2019. The advertisement stated that the Reserve price for “Sandghat”



of Jamui would be Rs. 15,32,89,770/- and for Lakhisarai would be Rs. 15,23,72,989/-. The tenders had to follow the “Two-Envelope-System” and had to clear the two tiers of scrutiny viz., the technical round and the Financial Round before they were to be found eligible for participating in the Auction. Advertisement declared that further details with regard to the terms and conditions were to be found in the tender document.

The petitioner had participated in the auction after following the prescribed procedure and after fulfilling and clearing the Technical and Financial bid rounds of the tender process was declared as the highest bidder at Rs. 49 crores for the combined unit of Lakhisarai-Jamui. The petitioner also deposited the required 25% of the bid amount for the “sandghats” at Jamui and Lakhisarai.

“In Principal” approval, in terms of clause 9(i) of the tender Document, for the mining was issued by the Collector, Jamui on 22.7.2016 and by the Collector, Lakhisarai on 23.7.2016. It is further submitted that in terms of the requirement of Clause 9(ii) of the Tender documents, and the requirement of the letters dated 22 & 23.7.2016, two mining plans along with Progressive Mine Closure Plan for Jamui and Lakhisarai was filed on 13.10.2016 with the Mining Directorate for its approval within 90 days of the “In-Principal” approval.



The Mining plan submitted by the petitioner was forwarded by respondent no.2 to the Collectors of Jamui and Lakhisarai by Memo no. 3012 dated 28.11.2016 and sought their recommendation/opinion/sanction-after getting physical inspection done. The Mining plan of the petitioner was finally approved on 29.6. 2017 which was communicated to the petitioner by letter No. 1666 dated 29.6.2017. The said mining plan was conditional for obtaining statutory clearances including getting Environmental clearances. Copy of the letter No. 1666 dated 29.6.2017 has been annexed as Annexure -P/17 to the writ application.

The Collector Jamui by his letter No. 150 dated 6.7.2017 directed the petitioner to obtain Environmental Clearance and also asked the petitioner to deposit 50% of the revised amount for the year 2017. The petitioner in terms of the statutory provision was under obligation to present the approved Mining Plan to SEIAA for getting EC but, unfortunately, the SEIAA has become non-functional on account of retirement of its chairperson on 2.7.2017.

The petitioner, in spite of SEIAA being non-functional applied for grant of Environment Clearance. The demand of the respondent authorities to deposit the proportionate amount for the first year and further for the second year for the year 2017



and also for the year 2016 were assailed before this Hon'ble Court vide CWJC No. 12099 of 2017 filed on 11.8.2017. The District Collector of Jamui and Lakhisarai vide memo no. 406 dated 8.11.2017 and vide Memo no. 664 dated 21.11.2017 respectively cancelled the settlement of the petitioner on the direction of the Mines Commissioner during pendency of the aforesaid writ application. The aforesaid writ petition was withdrawn by the petitioner with liberty to agitate his demand before the Revisional Authority- Mines Commissioner. The order passed by this Court in CWJC No. 12099 of 2017 has been annexed as Annexure- P/20 to the writ application.

Thereafter, the petitioner company filed Revision case no. 7 of 2018 before the Mines Commissioner. The Mines Commissioner vide order dated 7.9.2018 set aside the order of cancellation of settlement of the sand Ghats of Jamui and Lakhisarai in favour of the petitioner's Company by the District Collectors of Jamui and Lakhisarai by order dated 8.11.2017 and 9.10.2017 respectively. The petitioner's Company was directed to give undertaking to the effect that it would not deliberately delay the procurement of the Environment Clearance and deposit 20% of the proportionate amount for the year 2016 and 2017 within seven days. The petitioner's company in compliance of the aforesaid order passed by the



Mines Commissioner gave an undertaking that it would not deliberately delay the procurement of the Environment Clearance.

The petitioner's Company vide its letter dated 10.9.2018 sought clarification from the District Collectors of Jamui and Lakhisarai with regard to the amount to be deposited in the respective districts. Once the clarification was obtained the amount to the tune of about Rs. 22 crores was deposited with the respondent authorities in compliance of the Mines Commissioner order dated 7.9.2018.

In the meantime, the Hon'ble N.G.T. vide its order dated 13.9.2018 stayed the notification of MOEF by which the SEIAA used to grant EC. The entire process of the EC came to standstill by virtue of the aforesaid order. The petitioner's company received letter bearing no. 15 dated 14.1.2019 from SEIAA intimating the order of the Hon'ble NGT and new process in effect for issuance of EC. The petitioner's company in light of the aforesaid letter initiated the process of EMP/EIA as per the order of the Hon'ble NGT. The petitioner took the initiative of proceeding as per the new norms even before the aforesaid communication was made to the petitioner.

Learned counsel for the petitioner has submitted that aforesaid fact would demonstrate that at no point of time



petitioner was at fault for delay in issuance of the EC. The petitioner after investing huge sum of money to the tune of Rs. 28 crores till date has not win any mineral. It has further been submitted that due to delay and laches on the part of the respondent authorities the petitioner has undergone various litigation which ultimately culminated in restoration of the settlement of the Sand Ghats of the petitioner, which was terminated mainly on the ground of non grant of EC.

The petitioner made an application dated 21.1.2019 to the Department (respondent no.1) for extending the period of settlement since the delay has not been on the part of the petitioner. It has been submitted that in terms of the tender document the “First Year” is to begin when all the formalities with regard to issuance of work order has been completed and the work order is about to be issued and at that point of time the payments with regard to the “First Year” is to be made. It has further been submitted that petitioner has invested huge sum of money and has not done business for a single day. The prayer has been made to extend the settlement for a period of three years from the date of issuance of work order.

A detailed counter affidavit has been filed on behalf of the respondent nos. 1,2,5 and 6 (Mines Department). The respondents have stated in the counter affidavit in para 10,11,



12,13, 14 and 15 that as per the New Sand Policy, 2013, there is no provisions for extension of the term of settlement on the ground of delay in grant of the requisite environmental clearances by the SEIAA. A bare perusal of the tender document entered into between petitioner's company and the Department would illustrate that under Clause 8 of the said agreement, it has been categorically laid down that the settlement of Sand Ghats in favour of the petitioner would be for the period between 2016-31/12/2019 and furthermore, there would be an yearly increase at the rate of 20% in the settlement amount that was to be paid by the petitioner to the concerned authorities under the Department. The petitioner's company was well aware of all the terms and conditions of the said tender document. He put signature on each page of the tender document in-question.

It has further been submitted that in terms of Rule 22 of the Bihar Minor Mineral Concessions Rules Amended in 2014 it was the responsibility of the petitioner's company to get a mining plan prepared by a recognized qualified person (RQP) and submit it before the concerned authorities under the Department for necessary approval within a period of 90 days from the issuance of the "in principal sanction order" in favour of the petitioner's company.



Having heard the parties in detail this Court finds that it is a matter of record that the relevant “in principal sanction orders” was issued to the petitioner’s company on 22.7.2016 (Jamui) and 23.7.2016 (Lakhisarai) respectively. The mining plan for the same was submitted by petitioner before the concerned authorities under the Department for approval on 13.10.2016 after 80/81 days after the “in principal sanction” orders were issued in favour of the petitioner’s company. This illustrates the careless approach adopted by the petitioner’s company which had led to delay in commencing the mining operations on the relevant Sand Ghats in question. It further appears that letter bearing memo no. 7 dated 12.10.2017 was addressed to the Department by the Collector Jamui and it was stated in this letter that a process of physical verification was carried on by the concerned authorities under the Department on the relevant Sandghats settled in favour of the petitioner’s company and during the process of verification, certain irregularities with respect to the amendment of names of 6 out of 55 ghats in question were found. The copy of the said letter has been annexed as Annexure- A to the counter affidavit. In this respect clarifications/queries were sought from the petitioner’s company and due to delay in furnishing those relevant clarifications by the petitioner’s company, delay



occurred in approval of mining plan. The appraisal committee of the Department found certain irregularities including *inter alia*, the absence of the names, mauja and coordinates of several sandghats as well as the lack of clarity over the relevant sandghats and the circles they were situated in during this exercise of physical verification carried out by the concerned authorities under the Department. In the light of such development, the department issued a letter dated 30.12.2016 addressed to the District Magistrate of Jamui to take steps towards removal of these irregularities as per report of physical verification of sandghats settled in favour of the petitioner's company. Thereafter, by letters dated 11.1.2017 and 12.1.2017, reports with respect to the removal of irregularities were submitted before the department by the District Magistrate Lakhisarai and District Magistrate, Jamui respectively.

Following the submission of these reports the mining plan submitted by the petitioner's company was approved by the appraisal committee for the Department on 23.1.2017 and by the intra- department committee on 20.2.2017 and in light of these approvals, a notification bearing memo no. 1666 dated 29.6.2017 was issued by the Department informing the petitioner company that the mining plan submitted by the petitioner company before the Department stood approved.



The Spl. PP Mines submitted that delay in approval of the mining plan was because of the irregularities pointed out by the appraisal committee of the Department and causal approach of the petitioner's company towards removing those irregularities.

A rejoinder to the counter affidavit has been filed by the petitioner wherein submission has been made that delay has been on the part of respondents leading to non issuance of work order and the petitioner has diligently pursued his case. The copy of Sand Policy 2013 has been annexed as Annexure P/28 to the rejoinder to counter affidavit. Learned counsel for petitioner has argued that in terms of Rule 25(2) of the Bihar Minor Mineral Concession Rules 1972 the date of commencement of the period for which a mining lease is granted shall be the date on which the mining lease deed is executed under sub- rule (1) and the lessee shall be liable to pay rent/royalty from the date of the execution of the mining lease." He has further relied on Rule 11(c) of the Bihar Minor Mineral Concessions Rules 1972 which is quoted below:-

"The period of settlement shall not be less than 5(five) years:

Provided that in the interest of State revenue and mineral development the State Government shall be at liberty to either



extend or reduce the settlement period whenever required for reasons to be recorded in writing.”

Learned counsel for petitioner has relied on judgment reported in **(2003)1 SCC 726 (BEG Raj Singh Vs. State of U.P. and others.)** and **(2007)11 SCC 447 (Kusheshwar Prasad Singh vs. State of Bihar & Ors.)** and has argued that a “wrongdoer ought not to be permitted to make a profit out of his own wrong”. 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. The Authorities cannot be allowed to take undue advantage of their own fault in failure to act in accordance with law.

This Court, after hearing the arguments of both the sides, find that work order has not been issued to the petitioner because petitioner has not obtained Environmental Clearance from SEIAA in terms of the “in principal” approval issued in favour of the petitioner by the Collectors Jamui and Lakhisarai on 22.7.2016 and 23.7.2016 respectively as per clause 9(i) of the tender document. The aforesaid letter stated that formalities had to be completed before the work order was to be issued and it included (i) submission and approval of the Mining Plan from the department of Mines and Geology (ii) getting Environmental Clearance from SEIAA (iii) payment of 50% of



the bid amount for the first year.

In terms of 1st proviso of Section 25(1) of Bihar Minor Mineral Concession Rules, 1972, “ *no lease shall be executed unless the person to whom such lease has been granted submits the environmental clearance and mining plan as required under these rules.*”

The respondents have stated in the counter affidavit that on account of late submission of mining plan for approval by the petitioner after delay of about 80/81 days after “in principal sanction order” issued in favour of the petitioner and careless approach adopted by the petitioner’s company to remove the irregularities pointed out by the appraisal committee, the delay has occurred in approving the mining plan.

The petitioner has admitted in rejoinder to the counter affidavit that Environmental Clearance has not still been granted to the petitioner. As such, the work order has also not been issued to the petitioner till date. Therefore, at this stage, this Court cannot issue direction for holding that period of settlement of Sandghats at Lakhisarai and Jamui for a period of three years in favour of the petitioner's company shall run from the date on which the work order is issued to the petitioner’s company by the respondent authority.

Mandamus according to Black’s law dictionary, Ninth



Edition, “A writ issued by a court to compel performance of a particular act by a lower court or a government officer or body, to correct a prior action or failure to act”.

The writ makes sure that the power or the duties are not misused by the executive or administration and are duly fulfilled. It safeguards the public from the misuse of authority by the administrative bodies.

Article 226 empowers the High Courts to issue, to any person or authority, including the government (in appropriate cases), directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto*, *certiorari* or any of them.

Mandamus is issuing command to an inferior court or ordering a person to perform a public or statutory duty. As a general rule *Mandamus* is not issued in anticipation of injury.

The Hon’ble Supreme Court has held in judgment reported in **AIR 1962 SC 1210; [Dr. Rai Shivendra Bahadur vs. Governing Body of the Nalanda College, Bihar Sharif & Ors.]** that in order that *Mandamus* may issue to compel the respondents to do something it must be shown that the statutes impose a legal duty and the appellant has legal right under statutes to enforce its performance. Similarly, in another decision reported in **AIR 1954 SC 592; [K.N. Guruswamy v.**



The State of Mysore & Ors.], the Hon'ble Supreme Court has held "it is not our practice to issue meaningless writs".

Therefore, this Court is of the view that writ of mandamus cannot be issued in vagueness. In the instant case, the work order in favour of petitioner has not been issued till date. The work order has not been issued till date because petitioner has not submitted Environmental clearance as required U/s 25(1) of Bihar Mines Mineral Concession Rules, 1972.

This Court finds that in terms of Section 11(c) of the Bihar Minor Mineral Concession Rules 1972, the State Government shall be at liberty to either extend or reduce the settlement period whenever required for the reasons to be recorded in writing. As such, it is within the jurisdiction of the State Government to either extend or reduce the settlement period whenever required.

Learned counsel for petitioner has submitted that necessary application dated 21.1.2019 has been filed before respondent no.1 vide Annexure P/27 making request to extend the period of Sandghats for a period of three years from the date of issuance of work order, which is still pending before respondent no.1.

In such circumstances, this Court does not feel it proper to issue any direction to the respondent with regard to the relief



claimed by the petitioner in para 1 to 4 of the writ application

Accordingly, this writ petition is disposed of with direction to the petitioner to agitate the matter before respondent no.1 who shall pass appropriate order in accordance with law on the pending application of the petitioner dated 21.1.2019 as contained in Annexure P/27 within a period of one month from date of receipt /production of this order.

(Sanjay Priya, J)

shyambihari/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	16.5.2019
Transmission Date	

