

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8684 of 2017

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Jagadish Singh Arya @ Jagadish Singh Son of Late Ram Raksha Singh,
Resident of Village-Mirjapur, P.O.+ Block-Manpur, Police Station- Muffasil,
District-Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Bihar, Patna
2. The Principal Secretary, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The Director, Mines, Bihar, Patna.
4. The Assistant Director, Mines and Minerals, Gaya
5. The Commissioner, Magadh Division, Gaya.
6. The District Magistrate, Gaya
7. The District Mining Officer, Gaya
8. The Bihar State Pollution Control Board, Patna through its Chairman
9. The Chairman, Bihar State Pollution Control Board, Patna.
10. Shree Gaurav Bajaj S/o Sajjan Bajaj Director of M/S Ouktal Sales Pvt. Ltd. R/o-24/2 Haringtan Mansion, 8, Ho Chi Min Sarani, kolkata 700071
11. Smt. Puspa Singh W/o Shree Ramesh Singh R/o- Janakpur Manpur P.O.- Buniyadganj, P.S. Moffasil, Distt- Gaya. PH- 9431227001P.P.
12. M/S Navyug Engineering Comp.Ltd., Assistant General Manager-C. HSuryanarayan Raju S/o -C.H. Rama Raju, R/o Flat No. 171, Pataliputra Patna 800013, PH- 06122268789P.P.
13. Kartik Rathi S/o - Ajay Rathi Director of M/S. Mahadave Ankalav Pvt. Ltd. R/o B- 37, Ayodhaya Marg. Hanuman Nagar, Jaypur Rajsthan, PH- 7070995033P.P
14. M/s I.L and F.S Engineering and Construction Comp. Ltd. At -Jendapur, Mocharim, Jay hind Public School Ke Samne Bodhgaya 824231 PH- 7070995033 (P.P.)
15. Suresh Prasad, Son of Budhdev Yadav, Prop. Ramaya Construction Pvt. Ltd. 51/A .P Colony, Gaya . PH-8083333333P.P
16. Sheer Rajendra Singh, Son of Late Ramdev Singh, R/o 15-Mother Teresa Marg, North krishnapuri, Patna- 800013. PH- 9931919926P.P

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate
For Respondent No. 14 : Mr. Saket Tiwary, Advocate



	Mr. Saket Gupta, Advocate
	Mr. Anurag Singh, Advocate
For Respondent No. 12 :	Mr. P.N. Shahi, Sr. Advocate
	Mr. Ritesh Kumar, Advocate
For the Mines :	Mr. Naresh Dikshit, Advocate
	Ms. Kalpana, Advocate
For the State :	Mr. Lalit Kishore, Advocate General
	Mr. Manish Dhari Singh, A.C. to A.G.
	Mr. Satish Kumar Singh, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-07-2019

This is a Public Interest Litigation filed for banning mining activities in Village- Gere-Mirzapur, P.S. and Block- Manpur, District- Gaya and for a further direction to the Investigating Agencies to enquire into the matter as to how illegal mining was permitted in the area causing environmental damage, the activities being in violation of the relevant rules and regulations.

2. The matter proceeded and certain adjournments were sought on behalf of the petitioner's counsel and ultimately the petitioner was put to show-cause as to why action should not be taken against him. On 5th February, 2019 we passed the following order:

“Heard learned counsel for the



petitioner and the learned Advocate General for the Respondent-State of Bihar.

After having gone through the show cause of the petitioner in terms of the order dated 15.11.2017, we are satisfied with the same coupled with the subsequent affidavit filed by him on 05th March, 2018. There is, therefore, no necessity for proceeding to take any action against the petitioner as observed earlier.

This is a public interest litigation with regard to the mining operations being carried out which according to the petitioner is not in accordance with Rules. The learned Advocate General has taken an exception to the filing of the writ petition on the basis of the old Rules when according to him the Rules have already been amended in the year 2014. To that extent, the learned Advocate General may be correct in his submission, but the fact of the mining operations being carried out in accordance with the 2014 Rules as well as any other Rules or Regulations applicable will have to be assessed as we find that incidents of violation have again been reported after the promulgation of the 2014 Rules. In this regard, it would be appropriate that the concerned authority, namely, Assistant Director (Mines & Geology), Gaya, files his affidavit keeping in view the information received by him through



the letter dated 26th July, 2017, copy whereof has been filed as Annexure-A to the show cause filed by the petitioner (contained at page 335 of the paper book). The said officer shall also make further enquiries with regard to the current status of the mining operations as also submit his report about any such violations or otherwise in accordance with Rules within four weeks.

List on 11th of March, 2019.”

3. Supplementary affidavits were filed thereafter to which reply was given with specific reference to the violation of the terms and conditions of lease by the Respondent No. 10. The other counsel for the other respondents were also heard and a reply was submitted whereafter the Mines Officer was called upon to file an affidavit vide order dated 5th July, 2019 which is extracted hereinunder:-

“An affidavit has been filed on behalf of the Mines Officer bringing on record the fact that the respondent No.10 had been granted permission for blasting. However, in paragraph 8 of the affidavit, certain minor discrepancies have been pointed out. Learned counsel for the respondent No.10 states that the said discrepancies are in the process of being cleared. Let an affidavit be filed to that effect by



the next date fixed.

Learned counsel for the petitioner contends that any blasting permission cannot be in violation of the Metalliferous Mines Regulations, 1961, for which he has invited the attention of the Court to Clause 5 of Annexure 7 to the writ petition.

The learned counsel for the State may assist the Court along with the relevant Regulations in this regard on Friday next (12.07.2019).

List on Friday next (12.07.2019).”

4. After all this deliberation, learned counsel for the petitioner urged that the blasting that was being carried out for the purpose of mining operation was in violation of Metalliferous Mines Regulations, 1961 for which in particular the Respondent No. 10 did not have proper permission and the blasting was being carried out in violation of the prescription of the area within which the blasting could be permitted. It is in order to satisfy ourselves, we had called upon the Mines Officers and the other authorities to assist the Court in this regard. It was further discovered that there were some violations and complaints with regard to deep hole blasting measures for which the Director of Mines and Safety had sent his information



with a further direction that controlled deep blasting under Regulation 164 (1-A) and (1-B) of the 1961 Regulations should not be carried out without permission obtained from the Directorate. This letter dated 27th July, 2017 is on record.

5. The petitioner filed a supplementary affidavit contending that an F.I.R. had been lodged against the Respondent No. 10 and some of the other mining lease holders, the facts whereof are stated in the supplementary affidavit dated 5th of March, 2018.

6. It was also stated that operations are being permitted in violation of the said Regulations and pollution control measures are not being undertaken. The Assistant Director, District Mining Office, Gaya filed a supplementary counter affidavit on 5th of March, 2019 stating certain facts and also indicating that show-cause notice was issued in compliance of the orders issued by this Court to all the stone quarry settlers to give their reply which was specifically with regard to technical issue of controlled deep hole blasting within the danger zone towards habitation of the village in question. Further verifications were also sought and it was stated that one of the respondents namely M/s Octal Sales Pvt. Ltd. had not obtained the requisite permission. An Inquiry Report was



submitted on 23rd of February, 2019 which stated that there were some minor violations, but there was no disturbance from the mining activity of the stone blocks. The Inquiry Report dated 23rd February, 2019 is on record.

7. However, this affidavit which was filed in the year 2019 brings on record the letter dated 28.09.2018 whereby the permission of controlled blasting was granted to the Respondent No. 10. This document, therefore, indicates that the permission had been granted to the Respondent No. 10 for deep hole controlled mining operation subject to the conditions stipulated therein within the 300 metre zone. The minor discrepancies of setting up of pillars and boundary marks was also sought to be rectified.

8. A counter affidavit was filed on behalf of the Respondent No. 10 whereafter we had called upon a fresh report in this regard and accordingly a second supplementary counter affidavit on behalf of the Assistant Director was filed on 3rd of July, 2019. Paragraphs 7 to 9 of the said affidavit are extracted hereinunder:-

“7. That the respondent no. 10 has filed an affidavit in which he claims that he has obtained permission to conduct blasting beyond 100 meter but within 300 meter of the danger zone by the Director,



Mines Security, vide letter no. 1440 dt. 28.09-18 is correct.

8. That as submitted by the answering respondent in his earlier affidavit has clearly stated that a spot enquiry was done on all the stone Mining blocks and a detailed proceeding was prepared vide report dt. 23-02-19 (Annexure-E) and it was found during the enquiry that the respondent no. 10 has obtained blasting permission no. 28.09-18. So far as other minor negligence/violations are concerned, certain directions were issued by the respondents and on such directions, though, the respondent no. 10 has taken steps to meet all the objection but still certain minor discrepancies which have pointed out in Annexure-E series of Supplementary Counter Affidavit still exist such as Boundary mark and Pillars have not been placed entirely at the right spot and so far as Plantation of trees are concerned, though, certain trees have been planted but such plantation is inadequate and more plantation is required to be done by Respondent no. 10. It is further stated that Respondent no. 10 has constructed the catch Drain and Siltation Ponds but the same is not being maintained properly as per the requirement of environmental clearance. Meaning thereby, as on date the said minor discrepancies are existing which are required to be addressed in totality by Respondent no. 10.

9. That, except for the above discrepancies, the respondent no. 10 has complied



the objections raised by the Mining office, Gaya, for the present and the answering respondents will keep a strict eye on the mining activity of the area.”

9. A copy of the Metalliferous Mines Regulations, 1961 has been placed on record in the supplementary counter affidavit dated 10th July, 2019 of the Respondent No. 10. Chapter-11 of Mine Works of the said Regulations contains Regulation 106(b) which stipulates the notice to be given by a Mines Operator to the concerned Chief Inspector and the Regional Inspector. Regulation 164 (1-A) and (1-B) are extracted hereunder:-

“164 (1-A) in the case of an opencast working the blaster shall not charge or fire a shot

(a) Unless he has taken the precautions laid down in sub-regulation(1).

(b) Unless sufficient warning, by efficient signals or other means approved by the manager, is given over the entire area falling within a radius of 300 metres from the place of firing (hereinafter referred to as the danger zone) and also he has ensured that all persons within such area have taken proper shelter, and

(c) Where any part of a public road or railway lies within the danger zone, unless two persons are posted, one in either direction at the two extreme points of such road or railway



which fall within the danger zone who have, by an efficient system of telephonic communication or hooter or loudspeakers or other means approved by the Chief Inspector or Regional Inspector intimated clearance of traffic to the blaster and have also warned the passers by and whenever possible the vehicle also, if any, which have passed by such road or railway:

Provided that if blasting is done in such a manner approved in writing, by the Chief Inspector or Regional Inspector, that the flying fragments from blasting cannot project beyond a distance of ten metres from the place of firing, the provisions of clauses (b) and (c) needs not be complied with,

(1-B) (a) In the case of an opencast working, where any permanent building or structure of permanent nature, not belonging to the owner, lies within the danger zone, the aggregate maximum charge in all the holes fired at one time shall not exceed two kilograms unless permitted in writing by the Chief Inspector of the Regional Inspector and subject to such conditions as he may specify therein:

Provided that if blasting is done with delay detonators or other means an that there is a delay of at least half a second between successive shots fired, a maximum charge of



two kilograms can be used in each hole;

Provided further that if the shortest distance from the place of firing to any part of such building or structure is less than 50 metres irrespective of the amount of the charge, no blasting shall be done except with the permission in writing of the Chief Inspector or the Regional Inspector and subject to such conditions as he may specify therein.

(b) Notwithstanding anything contained in clause (a) the Chief Inspector may, by an order in writing and subject to such conditions as he may specify, exempt any mine or part thereof from the operation of all or any of the provisions of clause (a) on the ground that the observance of its provisions is not necessary or reasonably practicable on account of the special conditions existing thereat].”

10. According to the Respondent No. 10, the report in this regard in order to carry out such operations was sought for as required under the Rules and which was submitted by the IIT (Indian School of Mines, Dhanbad) indicating the pattern of the Deep Hole Blasting System and the manner in which it was to be carried out. With the aid of such reports, it has been submitted by the said respondent that all minor discrepancies have been removed and so far as deep hole blasting permission



is concerned, it is perfectly in accordance with the norms prescribed which can be carried out within the danger zone.

11. Having gone through the contents of the said affidavits and the rules, we find that the requisite permission had been granted which is now admitted to the respondent-authorities but certain minor violations of fixing of boundary marks etc. were pointed out.

12. The question of any further violation by any of the respondents, therefore, has to be taken care of, but so far as the present Public Interest Litigation is concerned, we find that sufficient exercise has been undertaken by the respondents to take appropriate steps against defaulting lease-holders and to prevent any further violations.

13. We direct the Respondent No. 4 Assistant Director, Mines and Minerals as well as the District Mining Officer, Gaya and the other State officials to ensure that all the mining operations including that of the Private Respondent No. 10 to 16 herein shall be monitored regularly and reports obtained in the event any complaint survives or is lodged in future in respect of the mining operations in the area. It shall be the duty of the respondents to take appropriate action in the matter in the event any such default is located or committed in



future.

14. With the aforesaid observations and directions,
we dispose of this Public Interest Litigation.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

P.K.P./-

AFR/NAFR	
CAV DATE	
Uploading Date	29.07.2019
Transmission Date	

