

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6915 of 2020

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Lucky Construction A Proprietorship Firm, having its place of business at Mustafapur Cantt. Road, P.O. and P.S. Khagaul, Danapur, District Patna, through its authorized signatory, Mohd Zishan Akhtar, aged about 31 years (Male), Son of Sheikh Muhd Arif, Resident of 86, Block-A, DDA Janta Flats Pocket-11, Jasola Vihar, South Delhi, P.S.-Sarita Vihar, District New Delhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna-800001.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna-800001.
3. The Assistant Director, District Mining Office, Patna.
4. The Mineral Development Officer, District Mining Office, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate

For the Respondent/s : Mr. Gyan Prakash Ojha, GA-7

For the Mines Department: Mr. Naresh Dikshit, Spl. P.P.

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 29-11-2021

Heard learned counsel for the parties.



The petitioner has prayed for the following relief/s :-

“(I) For quashing of the demand dated 16.1.2020, and all consequential acts, issued by the respondent no.3, whereby and whereunder for alleged violation of Rule 39(1) (2) the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 penalty to the extent of Rs.10,90,000/- has been imposed, without authority of law.

(ii) To further hold and adjudicate that the demand raised vide communication dated 16.1.2020 is in utter violation of the principles of natural justice, which cannot be sustained in the eyes of law.

(iii) To hold and adjudicate that the provision of Section 39 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 does not apply to the person who does not deal in minor minerals and it applies only to the distributors/stockists of minor mineral.

(iv) For quashing of the letter no.238 dated 28.1.2020, issued in pursuance of the communication dated 16.1.2020, whereby and whereunder the petitioner has been directed to deposit the amount forthwith.

(v) For a direction to the respondent authorities not to take any coercive step against the petitioner in pursuance of the communication dated 16.1.2020, as the same is not only without authority of law, but the



demand raised therein is in utter violation of the principles of natural justice; and for any other relief(s) to which the petitioner is found entitled in the facts and circumstances of the case.”

Having heard learned counsel for the parties, we are of the considered view that the impugned notice/notice of demand dated 16th of January, 2020 (Annexure-8, Page 102) issued by Respondent No.4, namely, the Additional Director, District Mining Office, Patna needs to be quashed and set aside, *inter alia*, on the ground that principles of natural justice stand violated, inasmuch as, no opportunity of hearing was ever afforded to the petitioner. The order entails civil as also penal consequences. Penalty of Rs.10,90,000/- stands imposed. The order does not reveal as to whether any prior notice was also issued to the petitioner.

Petitioner states that the notice also falls foul of the provisions of Rule 39 of the Bihar Minor Mineral Concession Rules, 1972.

We leave this question open to be considered and decided by the officer concerned.

Shri Naresh Dikshit, learned Special P.P. for the Mines Department, vehemently opposes the petition on the ground that the petitioner has got equally efficacious alternative



remedies.

In the attending facts and circumstances and, more so, in view of the law laid down by the Apex Court in the case of ***general Manager, Electrical Rengali Hydro Electric Project, Orissa & Others v/s Sri Giridhari Sahu & Others*** reported in 2019 (10) SCC 695, we find favour with the submissions made.

As such, on this short ground alone, for the impugned action is perverse in law, we quash and set aside the impugned notice/notice of demand dated 16th of January, 2020 (Annexure-8, Page 102) issued by Respondent No.4, namely, the Additional Director, District Mining Office, Patna, and dispose of the present petition in the following terms :-

a) The Assistant Director, District Mining Officer shall initiate fresh process, if so required, in accordance with law;

b) Notice to show cause shall be issued to the petitioner which the petitioner undertakes to respond to within a period of four weeks. In fact, petitioner volunteers to appear before the said officer on 13.12.2021 at 10:30 a.m.;

c) The parties shall not take any unnecessary adjournment;

d) The entire process, after affording due opportunity



of hearing to the petitioner, shall be completed within a period of two months thereafter.

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sanjay

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2021
Transmission Date	NA

