

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 15950 of 2008

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Ajay Kumar Singh, S/o- Sri Baij Nath Singh, At+P.O.- Kanchanapur, P.S.
Sasaram, Dist- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary, Old Secretariat, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Patna.
3. The Additional Secretary, Department of Mines and Geology, Government of Bihar, New Secretariat, Patna.
4. The Mineral Development Officer, Rohtas at Sasaram.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jai Prakash Singh, Advocate
For the Respondent/s : Mr. Naresh Dixit, SPP, Mines.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 18-11-2021

Heard learned counsel for the parties.

2. Petitioner has prayed for the following relief(s):-

“(i) For appropriate declaration-

(a) The notification dt. 27-3-08 Amending

the Bihar Minor Mineral Concession Rules is unconstitutional being violative of Art 14 and 19(1) (g) of the constitution of India being arbitrary, unreasonable and irrational.

(b) Fastening liability to pay extra royalty for the quantity of the stone extracted and dispatch with effect from 29-11-04 is without jurisdiction and beyond the competence of the Govt. of Bihar as a delegatee under section 15 of mines and mineral (development) Act 1957.

(c) The addition of provision in column 3 for Entry 1 and Entry no. II of Schedule II is irrational arbitrary and contravene Art 14 of the constitution of India.

(d) The State Govt. by Exercise of Rule making power under section 15 of mines and mineral (development) Act 1957. can not enhance royalty with retrospective effect by deeming fiction as the fiction cannot be stretched beyond logical limit.

(e) Renewal is the essential feature of lease and deleting of Rule 22 is without any rational and as such it is violative of Art 14 and 19 (1) (g) of the constitution of India.

(f) The vested right of the petitioner and corresponding duty of the Respondent in terms of concluded contract cannot be altered in view of the specific terms of the Agreement entered between the petitioner and the Respondent and alteration in the terms and condition of the lease Agreement during its continuance is impermissible in law.

(g) The demand raised by the Respondent no.4 is illegal and without jurisdiction as it will amount to inserting additional condition unilaterally in the concluded contract.

(h) The scheme under Rule 52 of B.M.M.C. Rule 1972 is only a modality for grant of lease by Auction and cannot be construed as enabling provision to retrospectively enhance the liability.

(i) For appropriate declaration and reading down the notification dt. 27-3-08 to make it prospective and effective from the date of notification in the official Gazette be applicable in future context.

(ii) For a follow up direction to the Respondents not to act upon the notification dt. 27-3-08 and restrain from raising any demand on the basis of the impugned notification.

(iii) For quashing of the demand of Rs. 1,24,00000/ raised as Royalty by the respondent no.4.

(iv) For restraining the respondents from taking locrcine steps for realisation of Royalty dues calculated on the basis of stone extracted and dispatched.

(v) For any other relief or consequential reliefs to which the petitioner may be found entitled to in the facts and circumstances of the case.”

3. We notice that the lease in question was only for a

period of five years, commencing from 14th of November, 2003, and perhaps, with the passage of time, the issue may have become infructuous, more so in the light of interim order dated 7th of November, 2008 passed by this Court.

4. Further it is brought to our notice, which fact is not disputed by either side, that the issue is primarily covered vide judgment **dated 21st of March, 2005** rendered by a coordinate Bench of this Court in **L.P.A. No. 535 of 2004**, titled as **Uday Kumar Singh Vs. The State of Bihar & Ors. and other analogous appeals**, which has attained finality.

5. Learned counsel for the petitioner, emphatically canvassing the case of the petitioner, pleads that the appropriate authority can examine the issue with regard to the recovery sought to be effected from the petitioner in the light of the decision rendered in the case of **Uday Kumar Singh (supra)**.

6. We see no difficulty in accepting such prayer, more so, in view of the terms of the agreement dated 14th of November, 2003 entered into between the parties (Annexure-1).

7. As such, as prayed for, the present petition stands disposed of in the following mutually agreeable terms:-

(a) Petitioner shall appear before Respondent No. 2, namely, the Principal Secretary, Department of Mines and

Geology, Government of Bihar, New Secretariat, Patna;

(b) The said respondent shall examine the issue in the light of the judgment rendered by a coordinate Bench of this Court in the case of **Uday Kumar Singh (supra)**;

(c) The said authority shall take a decision, in accordance with law, keeping in mind the consequences flowing from the said decision, of course after complying with the principles of natural justice;

(d) It shall be open for the parties to place on record pleadings of the respective cases before the appropriate authority;

(e) The issue of law is left open to be decided in an appropriate case, should the need so arises subsequently;

(f) Liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law, should the need so arises subsequently;

(g) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(h) We have not expressed any opinion on merits. All issues are left open;

8. The petition stands disposed of in the aforesaid terms.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/PKP-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	