

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10725 of 2021

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M/s Brahmcharini Construction LLP a Limited Liability firm formed under the Limited Liability Partnership Act, 2008, through its partner Deepak Kumar, aged about 26 years (male), son of Akhileshwar Prasad Verma, Resident of Village Dhanaut, P.S. Rupaspur, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary cum Mines Commissioner, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Special Secretary cum Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Additional Secretary cum Director, Mines and Geology Department, government of Bihar, Vikas Bhawan, Bailey Road, Patna.
5. The District Magistrate, Aurangabad.
6. The District Mining Officer, Aurangabad.

... .. Respondent/s

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Appearance :

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

For the Respondent/s : Mr. Naresh Dikshit, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR



ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/Hon'ble Judges through Video Conferencing from their residential offices/residences. Also the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)

Date : 04-01-2022

Heard learned counsel for the parties.

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

“i) To issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to refund the security deposit of Rs. 1,23,53,500/- tendered by the petitioner for Sand Ghat no 34 in the district of Aurangabad in compliance with Clause 7 (iii) of the Tender document pursuant to being declared the highest bidder for the same in the auction conducted for settlement of sand ghats for the period 2020 – 2024.

ii) To issue an appropriate writ, order or direction in the nature of mandamus directing the Respondents to refund the



amount of Rs. 1,00,000/- tendered by the petitioner for grant of approval of mining plan to the Respondents for Sand Ghat no 34 in the district of Aurangabad.

iii) This Hon'ble may further adjudicate and hold that the since the Respondents have failed to fulfill their reciprocal obligations under the tender document, viz a viz, obtaining environmental clearance, preparation of mining plan and issuance of work order in favour of the petitioner allowing the petitioner to commence mining activity at Sand Ghat no 34 in the district of Aurangabad till date, the same amounts to repudiation of contract by the Respondents and the petitioner is entitled for refund of the security deposit.

iv) This Hon'ble Court may adjudicate and hold that the contract between the petitioner and the State of Bihar stands frustrated in light of the judgment dated 14.09.2020 passed by the National Green



Tribunal in O.A. No. 40 I 2020 (Pawan Kumar vs The state of Bihar) and O.A. No. 57 I 2020 (Md. Rizwan Vs Union of India) quashing the District Survey Reports prepared in the year 2018 and 2019 for the district of Banka and declaring all actions taken pursuant thereto to be nullity; and also in light of order dated 06.11.2020 passed in O.A. No. 62 I 2020 and analogous cases directing the Respondents to withhold further actions for settlement of sand ghats.

v) This Hon'ble Court may further adjudicate and hold that the action of the Respondents in not refunding the security deposit to the petitioner is bad in law and tantamounts to abuse of authority/power vested in them.

vi) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”

Sri Naresh Dixit, learned counsel for the respondents



places on record the government decision dated 10.12.2021,
which reads as under:-

बिहार सरकार	
खान एवं भूतल विभाग।	
अधिसूचना	
पटना, दिनांक.....	
02/एम0एम0-(आ0)-38/21-...../एम0	माननीय उच्चतम न्यायालय के न्यायादेश के आदेश में अब नये सिरे से बालू घाटों का पटन पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार के द्वारा जारी 2020 की बालू खनन मार्गदर्शिका के अनुसार किया जायेगा। इन्हें 2018 के बन्दोबस्ती की अब आगे नहीं बढ़ाया जा सकता है। अतएव वर्ष 2018 की बन्दोबस्ती की रकम वन्दोबस्तीधारियों से प्राप्त प्रतिभूति राशि (267.93 करोड़ ₹0) वापस करने की स्वीकृति दी जाती है।
2	प्रस्ताव में निम्नलिखित की स्वीकृति प्राप्त है।
बिहार राज्यपाल के आदेश से।	
80/- (विजयकुमार कुमार) सरकार के उप सचिव।	
ज्ञापक-02/एम0एम0-(आ0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि :- उपर सचिव, ई-गजट कोषागार, वित्त विभाग, बिहार, पटना को सूचित। सहित प्रेषित करते हुए अनुरोध है कि इसकी 100 (एक सौ) प्रतिशत मुद्रित एवं खान एवं भूतल विभाग, बिहार, पटना को उपलब्ध करायी जाए।
80/- सरकार के उप सचिव।	
ज्ञापक-02/एम0एम0-(आ0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि :- सभी विभागों के उपर मुख्य सचिव/प्रधान सचिव/सचिव/विभागध्यक्ष/प्रमण्डलीय आयुक्त/जिला पदाधिकारी को सूचनाार्थ एवं आवश्यक कार्यवाई हेतु प्रेषित।
80/- सरकार के उप सचिव।	
ज्ञापक-02/एम0एम0-(आ0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि :- सभी उप निदेशक/सहायक निदेशक/खनिज विकास पदाधिकारी/खान निरीक्षक को सूचनाार्थ एवं आवश्यक कार्यवाई हेतु प्रेषित।
80/- सरकार के उप सचिव।	



आपॉक-02/एम0एम0-(आ0)-38/21-...../एम0, पटना, दिनांक
प्रतिलिपि-विशेष सचिव, मंत्रिमंडल सचिवालय विभाग, बिहार, पटना को मंत्रिमंडल
की दिनांक 07.12.2021 की बैठक में मय संख्या-01 के आलोक में
सूचनाएं एवं आवश्यक कार्रवाई हेतु प्रेषित।

H0/-

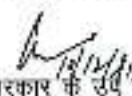
सरकार के उप सचिव।

आपॉक-02/एम0एम0-(आ0)-38/21-...../एम0, पटना, दिनांक
प्रतिलिपि-माननीय मंत्री के आरा सचिव/प्रधान सचिव के प्रधान आरा सचिव/
निदेशक कोषाग/मुख्यालय स्थित सभी पदाधिकारी/कर्मों को सूचनाएं
एवं आवश्यक कार्रवाई हेतु प्रेषित।

H0/-

सरकार के उप सचिव।

आपॉक-02/एम0एम0-(आ0)-38/21-3324/एम0, पटना, दिनांक 10/12/2021
प्रतिलिपि :-आई0टी0 मैनेजर, खान एवं भूतत्व विभाग को (विभागीय वेबसाइट पर
अपलोड करने हेतु) सूचनाएं एवं आवश्यक कार्रवाई हेतु प्रेषित।


सरकार के उप सचिव।

In view of the same, we do not find any necessity of adjudicating the issues raised in the present petition. However, Sri Suraj Samdarshi, learned counsel for the petitioner states that the government's notification, reproduced (supra), does not prescribe any time limit for refund of the amount.

Sri Dixit states that needful shall be done at the earliest.

At this stage, Shri Suraj Samdarshi, learned counsel for the petitioner states that petitioner be permitted to approach the appropriate authority for award of interest.

Prayer allowed.

The instant petition stands disposed of in the aforesaid terms.



Interlocutory Application(s), if any, shall stand disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/K.C.Jha

AFR/NAFR	
CAV DATE	
Uploading Date	07.01.2022
Transmission Date	

