IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11054 of 2021

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M/s Aditya Multicom Private Limited a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 12, Waterloo Street, 2nd Floor, Kolkata-700069, through its Authorized Signatory, Pankaj Kumar Singh, aged about 29 years (male) son of Shri Murali Singh, resident of Village-Balihar, P.O. Dullahpur, P.S. Simari, District Buxar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Commissioner-cum-Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna-800001.
2. The Principal Secretary cum Commissioner Mines, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna-800001.
3. The Special Secretary cum Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Assistant Director, Department of Mines and Geoldogy, Rohtas Sasaram.
5. The District Magistrate-cum-Collector, Rohtas Sasaram.

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12178 of 2021

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M/s. Aditya Multicom Private Limited, a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at 12, Waterloo Street, 2nd Floor, Kolkata - 700069, through its Authorized Signatory, Pankaj Kumar Singh @ Pankaj Singh, aged about 29 years (male) son of Shri Murali Singh, resident of Village Balihar, P.O. Dullahpur, P.S. Simari, District- Buxar.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Commissioner - cum - Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of

Bihar, Vikas Bhawan, Bailey Road, Patna.

3. The Special Secretary - Cum- Director, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Assistant Director, Department of Mines and Geology Aurangabad.
5. The District Magistrate - cum - Collector, Aurangabad.
6. The Superintendent of Police, Aurangabad.

... ... Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 11054 of 2021)

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ozha (GA 7)
For Mining department	:	Mr. Naresh Dixit, Advocate

(In Civil Writ Jurisdiction Case No. 12178 of 2021)

For the Petitioner/s	:	Mr. Suraj Samdarshi
For the Respondent/s	:	Mr. Gyan Prakash Ojha (GA 7)
For Mining department	:	Mr. Naresh Dixit, Advocate

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

CAV JUDGMENT

Date : 09-03-2022

Regard being had to the commonality of the controversy in both the aforesaid writ petitions, it was thought apposite to hear them analogously and accordingly, they were heard together with the consent of the parties and are being disposed of by the present singular order.

2. The first writ petition i.e. C.W.J.C. No. 11054 of 2021 had originally been filed for directing the respondents to remove the restriction from generating e-challan on the portal http://portal.biharmines.in/ forthwith and to allow

the petitioner to sell sand from the stock-hold areas in the District of Rohtas, for which the petitioner has obtained K-License under Rule 39 (1) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the ‘Rules, 2019’).

3. As far as the second writ petition i.e. C.W.J.C. No. 12178 of 2021 is concerned, the same had originally been filed for directing the respondents to remove the restriction from generating e-challan on the portal http://portal.biharmines.in/ forthwith and to allow the petitioner to sell sand from the stock-hold areas in the District of Aurangabad, for which the petitioner has obtained K-License under Rule 39 (1) of the Rules, 2019.

4. During the pendency of the aforesaid two writ petitions, some developments have taken place leading to filing of number of Interlocutory applications in both the cases. The petitioner, in the first case, has filed one such interlocutory

application bearing I.A. No. 4 of 2021, wherein additional relief has been sought for inasmuch as now the petitioner seeks quashing of Memo No. 262 dated 07.07.2021 issued by the In-charge Deputy Director, Mines and Geology, Patna Circle, Patna, whereby and where under 17 K-licenses issued to the petitioner in the district of Rohtas have been cancelled. As far as the second case is concerned, one such interlocutory application bearing I.A. No. 2 of 2021 has also been filed wherein an additional relief has been sought i.e. regarding quashing of Memo No. 193 dated 17.8.2021, issued by the In-charge Deputy Director, Mines and Geology, Magadh Circle, Gaya, whereby and where under 11 K-licenses issued to the petitioner in the district of Aurangabad have been cancelled. Since the learned counsels for the Respondents have not opposed the said interlocutory applications, both the interlocutory applications i.e the one bearing I.A. No. 4 of 2021 (in the first case) and the other bearing I.A. No. 2 of 2021(in the second case) are allowed. It may stated that the counter affidavits filed by the respondents also deal with the issue of cancellation of the K-licenses of the petitioner, hence no additional counter affidavit is required to be filed as has also been averred by the learned counsel for the respondents.

5. Apparently, the facts of both the cases are more or less similar and the only difference is that while in the first case i.e. C.W.J.C. No. 11054 of 2021, the respondents had settled the sand Ghats situated in the District of Rohtas in favor of the petitioner by executing an agreement dated 21.04.2015 for a period of five years i.e. from 2015 to 2019 for the purposes of extracting and removing sand as per the provisions contained in the Bihar Minor Mineral Concession Rules, 1972 and those contained in Government Notification no. 277 dated 22.07.2014 as also as per the concerned Government orders and notifications, whereas in the second case i.e. CWJC No. 12178 of 2021 the sand Ghat situated in the District of Aurangabad was settled in favor of the petitioner

vide agreement dated 24.07.2015 for a period of five years i.e. from 2015 to 2019. Thus this Court would be delving on the facts of the first case.

6. The brief facts of the case, according to the petitioner of the aforesaid two cases are that the State of Bihar had notified in the official gazette a New Sand Policy, 2013 vide memo No. 2214 dated 27.8.2013, in pursuance to the judgment rendered by the Hon'ble Supreme Court in the case of Deepak Kumar Vs. The State of Haryana, reported in (2012) 4 SCC 629, where-after notification no. 2887 dated 22.07.2014 was issued by the Department of Mines & Geology, Government of Bihar, by which criteria and procedure was laid down for settlement of sand mines for the period 1.1.2015 to 31.12.2019. Accordingly, the Respondent State Government had amended the Bihar Minor Mineral Concession Rules, 1972 w.e.f. 11.08.2014 so as to bring it in consonance with the New Sand Policy, 2013. Thereafter, the Department of Mines & Geology, Government of Bihar had taken steps for initiating

the process of settlement of sand Ghats in various Districts of Bihar and an advertisement was published on behalf of the Department of Mines & Geology, Government of Bihar for settlement of sand Ghats by auction, for the District of Patna, Bhojpur and Saran as one unit, Rohtas and Aurangabad as one unit, Jamui and Lakhisarai as one unit and other districts as individual units, for a period of five years i.e. from 2015 to 2019.

7. The petitioner had also participated in the auction process and was declared as the highest bidder as far as the districts of Rohtas and Aurangabad are concerned. Pursuant to the issuance of the work order, an agreement was also executed in between the parties on 21.4.2015/24.7.2015. After completion of the requisite formalities, the petitioner had engaged in extracting and removal of sand from the sand Ghats in question for a period of five years and the period of settlement / agreement had then come to an end on 31.12.2019.

8. It is the further case of the petitioner that all of a sudden, the State Government unilaterally framed the Bihar Mining Policy-2019, which was notified vide Notification dated 14.08.2019 and then the State Government notified the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the “Rules, 2019”), which was published in the Bihar Gazette on 17.09.2019. Thereafter, the Respondents had published notice inviting e-auction for the purposes of settlement of sand Ghats in various districts of Bihar in accordance with the provisions contained in the Bihar State Sand Policy 2019 and the Rules, 2019 for a period of five years, starting from the year 2020. However, it appears that the said process was interdicted on account of a judicial pronouncement by the National Green Tribunal, Delhi, hence the State Government invoked the provision contained in Rule 77(2) of the Rules, 2019. At this juncture it would be relevant to refer to Rule 77 of the Rules, 2019 herein below:-

> “77. Power of Government to relax the operation of any provision of these Rules:-
>
> (1) The State Government may, relax the operation of one of more of the provisions of these Rules, if, in the opinion of the Government, such relaxation is necessary in public interest.
>
> (2) Notwithstanding anything contained in these rules, the State Government, in such case as it deems proper in public interest, may grant a mining lease/mining settlement and may also authorize the grant of a quarrying permit or movement permit to any person on terms and conditions other than those prescribed in these rules for reasons to be recorded in writing:
>
> Provided that the State Government may grant a mining lease/settlement/in any area under its jurisdiction to any Government Department or State owned Corporation on terms and conditions other than those prescribed in these Rules.”

9. It is the further case of the petitioner that prior to finalization of the aforesaid auction and consequent settlement of Ghats for a period of five

years starting from the year 2020, the Respondents came out with a resolution dated 27.12.2019, whereby and where-under, in exercise of powers conferred under Rule 77(2) of the Rules, 2019, the settlement period of the existing settlees of sand Ghats in the State of Bihar, which was to come to an end on 31.12.2019, was extended till 31.10.2020 or till the new settlees obtain environment clearance, whichever is earlier, upon 50% increase in the settlement amount over the year 2019. Thereafter, the Respondent State vide various notifications has been extending the settlement period of the sand Ghats of the existing settlees, which was again extended till 31.12.2020, then till 31.03.2021 and finally till 30.09.2021, however, upon increase in the settlement amount, as stipulated in the various notifications issued by the State Government from time to time. It is stated that vide notification dated 31.03.2021, the settlement period of the sand Ghats of the existing settlees was extended by the Respondent State from 01.04.2021 to 30.09.2021, upon 50%

increase in the settlement amount over and above the settlement amount of the year 2020.

10. At this juncture, it is submitted by the Ld. Counsel for the petitioner that the State Government had come out with a resolution dated 16.12.2020, whereby and where-under the use of trucks with 14 or more wheels for transport of sand and stone chips was prohibited, resulting in huge loss being suffered by the petitioner apart from the fact that rampant illegal mining was prevailing in the District of Rohtas and Aurangabad, hence the petitioner was reluctant to accept the offer of extension of settlement for the period 01.04.2021 to 30.09.2021, but it was pressurized by the Department and finally the petitioner had communicated its conditional acceptance to the Department, vide letter dated 31.3.2021, wherein it had categorically stated that in case use of trucks with 14 wheels or more, for transport of sand, is not allowed, it shall be constrained to reconsider the entire matter and take appropriate decision, including but not limiting to surrender of

its settlement for the remaining extended period, without any liability to pay the royalty for the remaining extended period. The petitioner, in terms of the extension granted to it vide notification dated 31.03.2021, was required to deposit its first installment of royalty amount, totaling to a sum of Rs. 25,47,72,242/- (in the first case) on or before 31.03.2021, which the petitioner had deposited by 05.04.2021 i.e. after a delay of only five days. Thereafter, the petitioner was directed to deposit the interest on delayed payment, which was also deposited by the petitioner. Subsequently, the petitioner, by its letter dated 20.04.2021, sent to the District Magistrate, had surrendered its settlement of sand Ghats in the District of Rohtas and Aurangabad, however, the same was rejected by the Collector vide letter dated 27/29.04.2021 on the ground that the petitioner had failed to comply with the provisions contained in Rule 50 (1) of the Rules, 2019, hence, the petitioner was directed to deposit the second installment of royalty amount. The petitioner had then replied vide its letter dated 29.04.2021 clarifying that Rule 50(1) of the Rules, 2019 is not applicable to the petitioner and the petitioner shall cease its mining activity w.e.f. 01.05.2021.

11. At this juncture, it would also be relevant to quote Rules 39, 47 and 50 of the Rules, 2019, which are reproduced herein below:-

> **39.** (1) Every person who carried business of minor/ major mineral beyond any lease hold area shall obtain a stockist license from the Mining Officer in Form-K which shall be displayed at a conspicuous place of business and shall maintain proper accounts of purchase and sale of all such minerals in a register in form-H which shall be produced before the Mines Commissioner, Director of Mines, Additional Director of Mines or Deputy Director of Mines or Mining officer or any other officers authorised by the Government, for inspection. Every application for obtaining license in Form-K shall be accompanied with a fee of Rs. 10,000/- (Ten Thousand Rupees)

(a) Every such license shall be valid for one calendar year;

(b) Every such license may be renewed on application which shall be accompanied by a fee of Rs. 2000 (Two Thousand Rupees)

(2) Every such person as mentioned in (1) shall issue a transport challan in Form-'G' or in the prescribed format to every carrier, while dispatching minerals from his stock.

(3) If any person as mentioned in (1) fails to maintain a register in form 'H' or obtain license in Form 'K' or issue a challan in Form 'G' or in the prescribed format, shall be punishable with simple imprisonment which may extend up to one year or value of the mineral along with a fine which may extend upto Rs 10,000/- or with both.

(4) No person shall be permitted to erect, install or operate a stone crusher outside a lease hold area.

Provided that the existing stockist license held for stone mineral used for crusher shall remain operational till the validity of their license period, on the condition of the licensee abiding by all the relevant rules/provision of law / conditions stated in their license/ conditions stated in CTE & CTO issued by BSPCB failing which the license shall be cancelled.

Provided further that the department may allow installation of any crusher including mobile crusher within a periphery of 500 meters of the lease hold boundary to the lease holder or person directly engaged in construction activity on conditions as decided by the department.

47. Power to Suspend or Cancel Mineral Concession. -

(1) The Collector shall be competent to cancel / suspend any Mineral Concession in his district.

(2) Subject to such restrictions as the State Government may prescribe, the Collector may suspend or cancel and forfeit the Security Deposit/Earnest Money Deposit of any mineral concession in the following circumstances after giving reasonable opportunity of being heard -

(a) if wrong documents have been

furnished to obtain mineral concession; or

(b) if the mineral concession is transferred or sublet by the holder thereof; or

(c) if any mining revenue payable by the holder thereof is not duly paid; or

(d) in the event of any breach by the holder of such mineral concession by his servant or agent, or by any one acting on his behalf, with his express or implied permission, of any of the terms and conditions of such mineral concession; or

(e) if the holder of mineral concession or his agent or employee is convicted of an offence punishable under the Act or these Rules or any other law for the time being in force, relevant and connected with mining matters or matter relating to mining revenue or of any cognizable and non-bailable offence under any other relevant law; or

(f) if the purpose for which the mineral concession was granted ceases to exist; or

(g) if the mineral concession has been obtained through misrepresentation or fraud; or

(h) If the Mineral Concession Holder has violated any of the conditions mentioned in these rules; or

(i) If the Mineral Concession Holder fails to obtain the environmental clearance or violates any of the condition mentioned therein; or

(j) If the Mineral Concession Holder fails to start mining operation within three months from the date of executing deed

(k) If, for any other reason, the Collector is prima facie satisfied, that the mineral concession is fit to be cancelled.

(3) For any action taken under sub-rule (1), the Mineral Concession Holder shall not be eligible for any compensation or refund whatsoever.

(4) Notwithstanding anything mentioned above, in case of detection of any violation of the Act, these rules and any other condition of the mineral concession the State Government or

the Collector may, apart from cancelling the mineral concession, also impose suitable financial penalties and/or start criminal prosecution.

(5) Any such penalties levied shall be recoverable under the Public Demand Recovery Act, 1914 (Act 4 of 1914).

50. Exit Option for Mineral Concession Holder. -

(1) Any Mineral Concession Holder, at any point of the Mineral Concession period, may opt to exit the business upon giving Six months' notice to the Collector. However, this option is not available to Mineral Concession Holder who have not paid their bidding amount or settlement amount or have violated any condition of settlement.

(2) The Collector may allow such Mineral Concession Holder to exit the business and return any security money deposited by the Mineral Concession Holder after deducting such dues as are recoverable.

(3) The Collector, thereupon, shall initiate arrangement for a fresh

bidding.

(4) In case of fraud or violation of mining or environmental conditions or any other irregularities reported, no exit option will be available to the Mineral Concession Holder and their security deposit shall be forfeited.

12. It is the further case of the petitioner that the petitioner, in terms of Rule 39 of the Rules, 2019 had obtained K-License which is meant for storage of minor mineral beyond any lease-hold area, for which the licensee (petitioner in the present case) is required to maintain a register in Form-H, wherein the source of minor mineral has to be disclosed. It is stated that any sand stored by virtue of K- License necessarily has to suffer the incidence of royalty which is paid by the settlee and the transportation of such sand must precede issuance of e-challan. Thus, it is submitted that the entire stock held by the petitioner by virtue of K-License has already suffered the incidence of royalty, as such, no further tax is payable to the Government and the only requirement is to

disclose the name of the consignee to the Department. It is also the averment of the petitioner that K-License has been issued to the petitioner for different places in the district of Rohtas and Aurangabad, which were valid upto 31.12.2021, nonetheless, the respondents did not remove the restriction on selling sand from the stock hold area, compelling the petitioner to file representation before the learned Collector on 11.05.2021, requesting him to remove the restriction on selling sand from the stock-hold areas as also for directing the Mines Department to remove the restriction on generation of e-challans on the portal http://portal.biharmines.in/ so that sand could be transported from stock-hold areas for which the petitioner has K-License. The Collector, in reply to the said representation of the petitioner, vide letter dated 13.05.2021 informed the Director Mines that the physical verification of the stock-hold areas has been completed and therefore, stockiest license of the petitioner be restored. It is submitted that despite conduct of physical verification of the stock at the stock-hold areas, the respondents did not remove the restriction on selling sand from the stock hold areas and the suspension / blocking of generation of e-challans on the portal http://portal.biharmines.in/ continued, thus the petitioner was not able to sell the sand stocked at the stock hold areas for which it had already paid royalty to the Government.

13. The learned counsel for the petitioner has submitted that the stock lying in the stock hold areas has already suffered the incidence of royalty and there is no outstanding, hence, the petitioner cannot be precluded from lifting and selling the sand from the stock hold area of the petitioner. It is further submitted that the K-License granted to the petitioner is valid up to 31.12.2021 and moreover, the petitioner has already paid advance royalty till April, 2021, though the petitioner is not conducting any excavation of sand currently. Thus, it is submitted that the ownership of quantum of sand stocked at the stock hold areas equivalent to the

royalty already paid by the petitioner, stands transferred to the petitioner, hence, the petitioner is definitely entitled to sell sand from the stock hold area equivalent to the royalty already paid.

14. The learned counsel for the petitioner has also submitted that no show cause notice has been issued to the petitioner before suspension/ blocking of the e-challan. It is also submitted that there is no provision in the Act/ Rules either for cancellation or blocking of generation of e-challan. Rule 47 of the Rules, 2019 lays down certain circumstances wherein mining lease may be suspended or cancelled. However, Rule 47(2) of the Rules, 2019 provides that a reasonable opportunity shall be given to the settlee for being heard before such an action is taken. It is further submitted that no discrepancy was found by the Collector in the quantum of sand stocked at the stock hold area of the petitioner, hence had recommended for restoration of e-challan, nonetheless, the respondents have failed to permit the petitioner to lift/sell the sand from the stock

hold area. It is also the case of the petitioner that K-license of the petitioner has been cancelled only on account of surrender of settlement by the petitioner, whereas the fact remains that the petitioner cannot be debarred from K-license, already issued to the petitioner. It is also submitted that cancellation of K-licenses is bad in law and has been done in violation of the principles of natural justice inasmuch as no inspection was ever conducted in presence of the petitioner and moreover, no prior show cause notice has been issued to the petitioner. It is further contended that cancellation of K-licenses is completely dehors the Act and Rules since there is no provision for cancellation of K-license.

15. The learned counsel for the petitioner has further submitted that K-licenses have not been issued to the petitioner in the capacity of a settlee inasmuch as K-licenses are issued for storage of sand beyond 300 meters from river bank and sale/ transportation of sand takes place both from secondary loading area and K-license

sites and the login ID and password for K-license and secondary loading area are separate. It is also submitted that a settlee is free to transfer sand from secondary loading area to K-license site and the moment transit challans are generated for transport of sand from secondary loading area, deduction is made from the petitioner's capping limit on the online portal. It is also stated that grant of Settlement and issuance of K-license are neither simultaneous nor co-terminus. In the present case, the K-licenses are stated to have been issued prior to the date of last extension and are valid till 31.12.2021, way beyond the extension period which was till 30.09.2021. Moreover, according to the guidelines, K-license can be granted to other individuals also and in the Districts in question, there are other K-license holders as well. It is further submitted that issuance of K-license to the petitioner is not the incidence of petitioner being a settlee whereas relaxation in terms of K-license, viz as viz storage capacity and territory of sale, are incidence of petitioner being a settlee and relaxations are given because settlee is paying a huge quantum of royalty. Any other person who obtains a K-license does so by paying a very small amount. It is stated that relaxations are granted in order to protect the interest of settlees like the petitioner and ensure that they are able to generate sufficient revenue and pay royalty.

16. The learned counsel for the petitioner has further submitted that Rule 50 (1) of the Rules, 2019 applies only during mineral concession period. According to Rule 16, duration of mineral concession is five years. "Mineral Concession Period" used in Rule 50(1) of the Rules, 2019 means the initial term of five years, which in the present case was from 01.01.2015 to 31.12.2019 hence, Rule 50(1) of the Rules, 2019 does not apply in the and circumstances of the present case. It is also contended that since Rule 77 (2) of the Rules, 2019 is a non-obstante clause, the same will override the mechanism of exit option prescribed under Rule 50(1) of the Rules, 2019,

hence the Rules, 2019 shall be restricted to the procedural aspects, however, substantive aspects like procedure of settlement, determination of revenue etc. will not apply to the cases of extension of lease.

17. It is also the contention of the petitioner that admittedly, the outstanding demand against the petitioner is regarding 2nd, 3rd and 4th installment of the extended period i.e 01.04.2021 to 30.09.2021. In this context it is submitted that according to rule 26(4) of the Rules, 1972 and Rule 51(4) of the Rules, 2019, royalty is payable only for mineral which is extracted, owned or removed, however, since the petitioner has not conducted any mining activity after 01.05.2021, no royalty is payable for this period. Moreover, it is submitted that it is not the contention of the respondents that petitioner has extracted sand in excess of its entitlement after paying the 1st installment. In so far as the allegation of shortage of sand is concerned, it is submitted that prior to cancellation of K-license, the Sub-Divisional Officer, Dehri

conducted verification vide letter dated 04.05.2021 (Annexure-10 to the writ petition) and balance stock of sand was quantified, however, no allegation of shortage of sand was levelled in the report. Thereafter, the Collector, Rohtas at Sasaram, vide letter dated 21.06.2021 (Annexure-13), directed to seize the mined sand available in the stock/stores in the District of Rohtas to the tune of 83,45,800 CFT and make the same available to him whereafter, the Collector had recommended for cancellation of K-license on 02.07.2021 but no allegation of shortage of sand was levelled and then the K-license of the petitioner was cancelled vide letter dated 07.7.2021. The department had then published an advertisement on 10.07.2021 (Annexure-15) in which the quantum of sand at the K-license sites in Rohtas was shown to be 5,75,84,000 CFT. It is thus submitted that since the department did not find any shortage of sand at the K-license sites till 07.07.2021, and assumed ownership thereof w.e.f. 21.06.2021 (Annexure-13), it cannot now be said that there was shortage of sand at the K-license sites.

18. The learned counsel appearing for the respondents Department of Mines & Geology, Government of Bihar, Patna, Shri Naresh Dixit has submitted that the respondents have taken action against the petitioner on account of violation of the conditions of settlement and the prevalent rules. It is submitted that the Government has been taking action against the illegal mining activity, however, in terms of the settlement and the lease deed, it is the duty of the settlees to mark their area and protect the same and in case there is any illegal mining, an FIR can very well be lodged. As far as surrender of lease hold rights by the petitioner w.e.f. 01.05.2021 is concerned, it is stated that the same is totally malafide and against the statutory provisions as also against the terms and conditions of the work order dated 31.03.2021 issued by the Collector, which has been unequivocally accepted by the petitioner. It is stated that the tenure of mining lease was extended till 30.09.2021with a

condition that during the rainy season there would be no mining, however, the petitioner had, prior to the rainy season, surrendered its lease w.e.f. 01.05.2021 with a view to deprive the State Govt. of the settlement amount, which the petitioner was obliged to pay for the entire period of extension. It is stated that the petitioner is under obligation to deposit all the installment amounts, which he had to deposit for the period of extension of lease/ settlement period, which had been duly accepted by it and in case the petitioner had desired to leave the mining activities in between, it was obliged to comply with the provisions of the Rules, 2019. Thus, it is the submission of the Ld. counsel for the Respondents State that a settlee can leave and surrender lease only by giving a 6 months advance notice. It is further submitted that the Collector had informed the petitioner company vide letter dated 27.04.2021, in reply to its irrelevant notice/ letter dated 20.04.2021, that there is a clear provision contained in Rule 50 of the Rules, 2019, which speaks about exit option of a mineral concession holder, however, since the petitioner's decision to surrender the sand ghats/settlement made in its favor, as contained in its letter dated 20.04.2021, is without either giving any prior notice or paying the outstanding dues of royalty etc., the same was being rejected and the petitioner should deposit the 2nd installment amount pertaining to the extended period, failing which it was warned that necessary action would be taken under Rule 47 of the Rules, 2019.

19. The learned counsel for the respondents has further submitted that the petitioner has made a false statement in the writ petition to the effect that it has made payment of royalty of the sand which has been stored/ stocked in the stock hold area inasmuch as there are several demand notices, which have been issued to the petitioner, however, the petitioner has failed to make payment. It is also submitted that after surrendering the settlement, the petitioner herein cannot use the K-license to sell sand in as much as the said license was issued to the petitioner in the

capacity of a settlee, which allowed storage of sand without any limit whereas, the general K-license limits storage of sand to 30000 CFT only. In fact, for a settlee, provision has been made regarding issuance of appropriate e-challans to sell sand from licensed place to other districts even though there is no such provision for other licensee for selling sand in other districts, thus the contention of the petitioner that business from the sand ghat and that via K-license is different, is not correct in as much as K-license had been provided to the petitioner only on account of him being a settlee of the sand ghat in question. It is also submitted that the petitioner, by taking advantage of being a settlee, had accumulated large mass of sand and then had surrendered the sand mining lease w.e.f. 01.05.2021 as per a pre-designed plan with the sole object of not paying the Government royalty. It is thus submitted that once the petitioner surrendered the settlement and the lease, it ceased to be a settlee, hence it does not have the right to continue with the K-license so granted in that capacity.

20. The learned counsel for the respondents has further contended that the Department of Mines and Geology, Government of Bihar had taken measures after surrender of the settlement/ lease by the petitioner by making an inspection and several irregularities and illegalities have been found as is apparent from the report dated 15.06.2021 (Annexure-D to the counter affidavit). It is also stated that the Collector, Rohtas had also conducted inspection of the licensed area, during the course whereof, several irregularities and violations had been noticed, hence, the Collector, Rohtas had recommended for cancellation of K-license of the petitioner by writing to the Director, Mines and Geology Department. It is stated that upon inspection it was found that there was no sign boards, fencing was not in place, sand had not been covered by tarpaulin, no arrangement had been made for protection of the environment and in fact the monthly return register was also not found to have been maintained in the proper

format. Thus, the Deputy Director, Mines & Geology Department, Bihar vide memo dated 7.7.2021 had cancelled all the 17 K-licenses issued in favor of the petitioner's company (as far as the first case is concerned) and directed it to deposit a sum of Rs. 127.38 Crores.

As far as the second case is concerned, the Collector, Aurangabad had also reported, vide letter dated 08.07.2021, regarding several irregularities having been found during the course of inspection. In the said inspection it was found that there was no sign boards, fencing was not in place, sand had not been covered by tarpaulin, no arrangement had been made for protection of the environment, the monthly return register was not being maintained in the proper format and huge settlement amount to the tune of Rs. 95.79 crore was outstanding, as against the petitioner, hence the Collector, Aurangabad had recommended for cancellation of the stock license/ K-licenses of the petitioner. It was also found during the course of inspection held on 25.06.2021 that the petitioner had fraudulently removed/ sold sand stock worth Rs. 45.39 crore from its stock hold area, hence FIRs bearing Barun P.S. Case No. 176 of 2021 dated 6.7.2021 and Daudnagar P.S. Case No. 374 of 2021 were lodged against the K-licensee i.e. the petitioner herein. In fact, thereafter, the Deputy Director, Magadh Circle vide memo dated 17.08.2021 had cancelled all the 11 k-licenses of the petitioner of the second case with immediate effect.

21. The learned counsel for the respondents has further stated, with reference to the first case, that there was a stock of 5,75,84,000 Cft sand when the petitioner was a valid k-license holder, however, during the course of raid about 1,28,11,306 Cft sand was seized, hence apparently there was/is huge deficiency of sand which shows that the petitioner has fraudulently used the K-license to remove/sell sand stock from the stock hold area. It is also stated that deficiency to the tune of Rs. 102.63 crore has been detected as against the petitioner of first case, where-after FIRs

have been lodged and a certificate case has also been instituted for recovery of the said amount. It has also been pointed out that the petitioner has failed to deposit the outstanding installment amounts to the tune of Rs. 127.38 crore and it had in fact stored large quantity of sand as a settlee and paid the royalty only for the period upto March, however, subsequent thereto it has failed to pay the due amount of royalty. The learned counsel for the respondents has also referred to the trend of disproportionate transfer of sand from lessee to K-license during the last three years i.e prior to the month of surrendering of lease by the petitioner, as is apparent from the following chart:-

District Rohtas

Month	No. of stockiest challan to his own stockiest ID	Quantity of sand in CFT
April,2019	0	0
April,2020	0	0
April,2021	1042	6,01,200

The learned counsel for the respondents has also referred to the schedule of payment of royalty for the extended period i.e 01.04.2021 to 30.09.2021, with regard to the sand Ghats of the

Rohtas District, and its payment position which is being depicted in a tabular form herein below:-

Installment	Last date of payment	Royalty amount to be paid	Payment position
1st Installment	31.3.2021	Rs.25,47,72,242/-	PAID
2nd Installment	30.4. 2021	Rs.50,95,44,484/-	NOT PAID
3rd Installment	31.5. 2021	Rs.50,95,44,484/-	NOT PAID
4th Installment	30.6. 2021	Rs.25,47,72,242/-	NOT PAID

The aforesaid payment position would show that the petitioner has not paid any installment w.e.f. April, 2021 in spite of several reminders, hence, it is apparent that the petitioner has not paid the settlement amount/ royalty amount for the Rohtas district amounting to a sum of Rs. 127.38 crore, which was part of the conditions prescribed for extending the lease and which had been accepted by the petitioner.

22. As far as the second case is concerned, the learned counsel for the respondents has also referred to the trend of disproportionate transfer of sand from lessee to K-license during the last three years i.e prior to the month of surrendering of lease by the petitioner, as is apparent from the

following chart:-

District Aurangabad

Month	No. of stockiest challan to his own stockiest ID	Quantity of sand in CFT
April,2019	0	0
April,2020	0	0
April,2021	2890	15,70,500

The learned counsel for the respondents has also referred to the schedule of payment of royalty for the extended period i.e 01.04.2021 to 30.09.2021, with regard to the sand Ghats of the Aurangabad District, and its payment position which is being depicted in a tabular form herein below:-

Installment	Last date of payment	Royalty amount to be paid	Payment position
1st Installment	31.3.2021	Rs.19,15,70,160/-	PAID
2nd Installment	30.4.2021	Rs.38,31,40,320/-	NOT PAID
3rd Installment	31.5.2021	Rs.38,31,40,320/-	NOT PAID
4th Installment	30.6.2021	Rs.19,15,70,160/-	NOT PAID

The aforesaid payment position would show that the petitioner has not paid any installment w.e.f. April, 2021 in spite of several reminders, hence, it is apparent that the petitioner has not paid the settlement amount/ royalty amount for the Aurangabad district amounting to a sum of Rs. 95.79 crore, which was part of the conditions prescribed for extending the lease and which had been accepted by the petitioner. In fact the petitioner of the second case has fraudulently removed sand stock worth several crore from the stock hold area in an illegal manner.

23. The learned counsel for the parties have been heard at length and during the course of arguments, this Court has been taken through the voluminous records of the aforesaid two cases, which have been perused by me. In nutshell, the case of the petitioner is that the petitioners were granted mineral concessions of sand Ghat in the district of Rohtas and Aurangabad for the period 01.01.2015 to 31.12.2019, whereafter agreements dated 21.04.2015 and 24.07.2015 were executed. When the five years lease period of the petitioner

was coming to an end, the Rules, 2019 were notified on 17.09.2019. Thereafter, the Respondents had published notice inviting e-auction for the purposes of settlement of sand Ghat in the various districts of Bihar in accordance with the provisions contained in the Bihar State Sand Policy, 2019 and the Rules, 2019 for a period of 5 years starting from the year 2020, however, the said process was interdicted on account of a judicial pronouncement by the National Green Tribunal, New Delhi, hence the respondent State of Bihar invoked the provisions contained in Rule 77(2) of the Rules 2019 and came out with a resolution dated 27.12.2019 whereby and where under the settlement period of the existing settlees of sand Ghats in the State of Bihar, which was to come to an end on 31.12.2019 was extended till 31.12.2020 or till the new settlees obtained environment clearance, whichever is earlier, upon 50% increase in the settlement amount over the year, 2019. Thereafter, the respondent State has been extending the settlement period from time to time. The last of such extension of settlement period of the existing settlees was done by a notification dated 31.03.2021 whereby and where under the settlement period of the Sand Ghats of the existing settlees was extended by the Respondent State for the period 1.4.2021 to 30.9.2021 on the general conditions mentioned therein as also the same had postulated the mode, manner and time of payment of the settlement amount in four installments apart from it being stipulated therein that the Rule, 2019 will have to be followed. The petitioner is stated to have accepted the said extension of the period of the existing settlement of the sand Ghats appertaining to the district of Rohtas and Aurangabad and had also paid the first installment to the tune of Rs. 25,47,72,242/- and a sum of Rs. 19,15,70,160/- respectively. However, the dispute started when the petitioner had written a letter dated 20.4.2021 to the District Magistrate, Rohtas and Aurangabad communicating its decision to surrender the settlement of sand Ghats in the district of Rohtas and Aurangabad with immediate effect. However, the District Magistrate, Rohtas and Aurangabad had informed the petitioner vide letters dated 27.04.2021 and 29.04.2021 respectively that there is a clear provision contained in Rule 50 of the Rules, 2019, which speaks about exit option of a mineral concession holder, however, since the petitioner's decision to surrender the sand ghats/settlement made in its favor, as contained in its letter dated 20.04.2021, is without either giving any prior notice or paying the outstanding dues of royalty etc., the same was being rejected and the petitioner should deposit the 2nd installment amount pertaining to the extended period, failing which it was warned that necessary action would be taken under Rule 47 of the Rules, 2019. The petitioner had then replied vide its letter dated 29.04.2021 clarifying that Rule 50(1) of the Rules, 2019 is not applicable to the petitioner and the petitioner shall cease its mining activity w.e.f. 01.05.2021.

24. This Court further finds that the

petitioner of the aforesaid two cases, in terms of Rule 39 of the Rules, 2019, is stated to have obtained K-license for storage of minor mineral beyond the lease hold area and the same had been renewed lastly vide Memo dated 18.03.2021 with a validity up to 31.12.2021, however, subsequently the Respondents had restricted selling of sand by the petitioner from the stock hold area in as much as generation of e-challan on the portal http://portal.biharmines.in/ had been restricted by the respondents leading to the petitioner filing representations before the learned Collector, Rohtas and Aurangabad on 11.05.2021, requesting him to remove the restriction on selling sand from its stock hold area as also for directing the Mines Department to remove the restriction on generation of e-challan on the portal http://portal.biharmines.in/. It appears that thereafter the Collector, Rohtas had also conducted inspection of the licensed area, during the course whereof, several irregularities and violations had been noticed, hence, the Collector, Rohtas had recommended for cancellation of K-license of the petitioner by writing to the Director, Mines and Geology Department. It is stated that upon inspection it was found that there was no sign boards, fencing was not in place, sand had not been covered by tarpaulin, no arrangement had been made for protection of the environment and in fact the monthly return register was also not found to have been maintained in the proper format. Thus, the In-charge Deputy Director, Mines and Geology, Patna Circle, Patna vide memo dt. 7.7.2021 had cancelled all the 17 K-licenses issued in favor of the petitioner’s company (as far as the first case is concerned) and directed it to deposit a sum of Rs. 127.38 Crores.

As far as the second case is concerned, the Collector, Aurangabad had also reported, vide letter dated 08.07.2021, regarding several irregularities having been found during the course of inspection. In the said inspection it was found that there was no sign boards, fencing was not in place, sand had not been covered by tarpaulin, no arrangement had been made for protection of the environment, the monthly return register was not being maintained in the proper format and huge settlement amount to the tune of Rs. 95.79 crore was outstanding, as against the petitioner, hence the Collector, Aurangabad had recommended for cancellation of the stock license/ K-licenses of the petitioner. It was also found during the course of inspection held on 25.06.2021 that the petitioner had fraudulently removed/ sold sand stock worth Rs. 45.39 crore from its stock hold area, hence FIRs bearing Barun P.S. Case No. 176 of 2021 dated 6.7.2021 and Daudnagar P.S. Case No. 374 of 2021 were lodged against the K-licensee i.e. the petitioner herein. In fact, thereafter, the In-charge Deputy Director, Mines and Geology, Magadh Circle, Gaya vide memo dated 17.08.2021 had cancelled all the 11 k-licenses of the petitioner of the second case with immediate effect.

25. As far as the issue of surrender of settlement / lease hold rights by the petitioner w.e.f. 01.5.2021 is concerned, this Court finds that

after the work order dated 31.03.2021 was issued by the Collector, Rohtas and Aurangabad containing the terms and conditions of extension of existing settlement period, the petitioner had unequivocally accepted the same and in fact had also deposited the first installment, both for the District of Rohtas as also for the District of Aurangabad and the tenure/period of mining lease was extended till 30.09.2021, with a condition that during the rainy season there would be no mining, however, the petitioner had prior to the rainy season circumspectly and unilaterally surrendered its lease w.e.f. 01.05.2021 without depositing the balance settlement amount. It would be relevant to reproduce clause 18 of the Bihar Sand Mining Policy, 2019, notified by the respondent State Government vide notification dated 14.08.2019 herein below:-

> “18. Surrender of Concession- Annual settlement amount shall be paid before surrender of said sand Ghat by settlee. In case of surrender, the security deposit along with other payments made by him

shall be forfeited."

Thus, it is apparent that in case the petitioner had genuinely/legitimately surrendered its lease w.e.f. 01.05.2021, it was also required to deposit the remaining three installments which it did not do. This Court further finds that since the petitioner had accepted the work order dated 31.03.2021 unequivocally and had also paid the first installment, its conduct shows acceptance of the contract in question, meaning thereby that it had accepted the extension of lease period up to 30.09.2021on the terms and conditions mentioned therein. In such view of the matter, this Court holds that the petitioner is also required to pay the entire outstanding settlement amount for the period 1.4.2021 to 30.9.2021. Apparently, for the said reason, the petitioner has rightly not challenged the cancellation of settlement/ mineral concession in question in as much as it has got no defence.

26. Now, coming to the issue of cancellation of the K-licenses of the petitioner for the district of Rohtas and Aurangabad, this Court would first of

all refer to the conditions prescribed in Memo dated 18.03.2021, whereby and where under the K-Licenses of the petitioner had been renewed till 31.12.2021, which are being reproduced herein below:-

> “1.License holder shall maintain proper Accounts of minor minerals in Register in Form ‘H’ in which day to day transaction shall be entered.
>
> 2. License may be renewed on application which shall be accompanied by fee of Rs. 2000/- (Two thousand only), if related rules are followed during the license period.
>
> 3. In case of any dispute by raiyat regarding land of license hold area, the license issued may be cancelled.
>
> 4. License holder shall issue a transport challan in form ‘G’ or e-challan to every carrier/ truck/ Tractor or any vehicles while dispatching minerals from their stocks.
>
> 5. License holder if fail to maintain a register in form ‘H’ or issue a challan in form ‘G’ or e-challan shall be punishable

with a simple imprisonment which may extend up to one year or value of the mineral along with fine which may extend upto 10,000/- (Ten thousand only) or with both.

6. License holder shall submit every month to the competent officer a true and correct return for minerals in form-’I’ by the 15th day of the following month to which it relates.

7. Every license holder shall give all reasonable facilities to competent officer to inspect/ verify and check the accounts of the minerals.

8. JCB Machine will be operated on safe side and far away from overload Electric wire line.

9. License holder shall stock the Minor Mineral away from 50 M from metalled road/ public place.

10. On getting information about any mining dues/ FIR in future, storage license treated as self cancelled.

11. License holder shall arrange Parking in his own license hold area. Sand loaded vehicle will not be allowed during No Entry period.

12. License holder shall also have to display a sign board.

13. License Hold area shall be Properly Fenced/ earmarked by license holder.

14. Storage of mineral shall not be permitted to stock minor mineral below or near the overhead wire line or near any electric pole.

15. Minor minerals shall be properly covered from all sides by tarpoline at license holder area.

16. Proper arrangement for water spray in and around license hold area through water tanker/ water sprinklers shall be made by the licence holder.

17. License holder shall take all possible precautions for protection of Environment and control of pollution.

18. The department may direct to license holder to sale some proportion of their mineral to the BSMC at prescribed rate of department.

19. On cancellation of license, the minor mineral lying on the land of stock holder area shall become the absolute property of the Govt. and shall be sold by the

BSMC/ mining office.

20. Measures shall be taken to prevent dust emission by carrying of stocked mineral during transportation.

21. The License Holder will have to obey the directions given by the Department, District Collector or the Mining Officer in the public interest."

27. This Court further finds that as per the guidelines issued by the Mining and Geology Department, Government of Bihar, Patna vide letter dated 28.01.2019, for the purposes of issuance of K-Licenses, one of the condition is that the mineral stored in the stock hold area shall not be exceed 30 thousand Cft at any given moment of time, however, for the settlees there shall be no higher limit. These guidelines can be found at running page no. 271 of the brief of the second case.

28. Undeniably, as is apparent from the facts and circumstances mentioned herein above in the preceding paragraphs, on several occasions, the stock of sand in the stock hold area of the

petitioner, both in the district of Rohtas and Aurangabad has been found to be much more than 30 thousand Cft, hence, the case of the petitioner that the K License issued to the petitioner has got no relation with the Mineral concession/ settlement of the sand Ghats in question is belied. Thus, in case the contention of the petitioner is to be accepted i.e. to the effect that the K License has got no connection with the settlement of sand ghats in its favour, then admittedly the petitioner has violated the aforesaid guidelines in as much as the stock in the stock hold area has been found to be much more than 30,000 Cft. on numerous occasions hence, this in itself is a valid and sufficient ground for cancellation of the K Licenses of the petitioner. This Court also finds that admittedly the K-licenses issued to the petitioner is linked with the settlement of sand Ghats made in favour of the petitioner and once the petitioner has surrendered the settlement of the sand Ghats, it is precluded from using the K-License to sell the sand in question. This Court also finds from the facts and circumstances of the case, noted herein above in preceding paragraphs that the stock lying in the stock hold area of the petitioner has not suffered the incidence of royalty, especially since the petitioner has failed to pay the outstanding royalty/ settlement amount to the tune of Rs. Rs. 127.38 Crores and Rs. Rs. 95.79 crore respectively, hence it does not lie in the mouth of the petitioner to contend that it would still be entitled to sell the sand from the stock hold area without paying the outstanding royalty/ settlement amount.

29. As regards the issue raised by the petitioner to the effect that the Orders cancelling the K-licenses are bad in the eyes of law in as much as Rule 47(2) provides for issuance of a show cause before suspension/ blocking of e-challan and cancellation of the K-license, which has not been issued in the present case, it would suffice to state that Rule 47(2) of the Rules, 2019 deals with the power to suspend or cancel the mineral concession and does not deal with K-Licenses, which is covered by Rule 39 of the Rules, 2019, however,

the same does not provide for issuance of any show cause prior to cancellation of the K-License in cases of commission of irregularities and illegalities by the holder of the K-License as also in case of violation of the conditions mentioned in the memo by which the license of the petitioner had been renewed. This Court finds that the Collector Rohtas and the Collector, Aurangabad had conducted inspection of the stock hold area of the petitioner and vide reports dated 15.06.2021, 25.06.2021 and 8.7.2021, it was found that the petitioner had committed several irregularities inasmuch as there was no sign boards, fencing was not in place, sand had not been covered by tarpaulin, no arrangement had been made for protection of the environment, the monthly return register was not being maintained in the proper format and huge settlement amount was outstanding for payment qua the petitioner. It was also found during the course of inspections that the petitioner had fraudulently removed/ sold sand stock worth several crores of rupees from its stock hold area, hence FIRs have also been lodged against the K-licensee i.e. the petitioner herein, both in the district or Rohtas as also in the district of Aurangabad. Thus, this Court finds that the conditions mentioned in the letter/Order by which K-licenses of the petitioner were renewed have definitely been violated, apart from violation of Rule 39 (3) of the Rules 2019, resulting in lodging of FIRs against the petitioner in terms of Rule 39(3) and Rule 56(2) of the Rules, 2019. Hence, considering the aforesaid facts and circumstances of the case, this Court does not find any illegality either in the Order dated 07.07.2021, passed by the In-charge Deputy Director, Mines and Geology, Patna Circle, Patna or the Order dated 17.8.2021, passed by the In-charge Deputy Director, Mines and Geology, Magadh Circle, Gaya, cancelling the K-licenses of the petitioner and the same are held to be legal and valid.

30. Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, I do not merit in the present writ petitions

hence, the same are dismissed. Interim Orders, if any stand vacated.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	29.09.2021
Uploading Date	10-03-2022
Transmission Date	NA