

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11600 of 2022

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Nagendra Kumar Son of Shri Mundrika Rai Resident of New Gosai Tola,
Sultanpur, Dr. D. Ram, DAV Public School, Ward No. 20, Danapur Khagaul,
P.O. and P.S.- Danapur, District- Patna 801503, Bihar.

... .. 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 Assistant Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Engineer-in-Chief, Flood Control and Drainage, Water Resources Department, Government of Bihar.
5. The Chief Engineer, Flood Control and Drainage, Water Resources Department, Government of Bihar.
6. The Executive Engineer, Flood Control and Drainage, Water Resources Department, Government of Bihar.
7. The Collector-cum-District Magistrate, Patna.
8. The District Mining Officer, Patna.
9. The Mineral Development Officer, Patna.
10. Bihar State Mining Corporation Limited through its General Manager, Room No. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna 800015.
11. The Authorized Officer, Bihar State Mining Corporation Limited, Room No. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna 800015.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.K. Shahi, Sr. Adv. Mr. Suraj Samdarshi, Adv.
For the Mines Dept.	:	Mr. Naresh Dixit, Adv.
For the State	:	Mr. Gyan Prakash Ojha (GA7) Mr. Uday Shankar Pandey, AC to GA7

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NAWNEET KUMAR

PANDEY

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 19-12-2022



Heard Mr. P.K. Shahi, learned Senior Advocate for the petitioner and Mr. Naresh Dixit, Special P.P. for the Mines.

The petitioner was selected as the successful tenderer for extracting sand from the Sand Ghats of Cluster No.6, Fatehpur Sand Ghat as he had quoted the highest bid of Rs. 4,59,92,373/-. He had deposited the first and second installments of the auction amount. With the completion of the process of tender, the work order was issued on 17.01.2022, the duration of which was till 31.03.2022.

For the petitioner to extract sand from the aforementioned Cluster-6 of the Sand Ghat in question, a temporary bridge was required to be constructed over the water-body as there was no approach road/link road. Such contingency was thought of and, therefore, a provision was made in the tender document that the tenderer himself will have to seek 'No Objection' for carriage ways, waterways/causeways from the concerned department,



particularly the Department Water Resources for making any temporary arrangement for transportation of sand from the river-bed to the main road.

For the aforesaid purpose, the petitioner had informed the Chief Engineer and the Executive Engineer of the Flood Control and Drainage Department as well as the Mining Officer for permission to construct temporary bridge by using hume-pipes or using balloon technology for the needful. The petitioner has been fair in stating that the request was acted upon by the Mineral Development Officer when he forwarded the application of the petitioner to the Executive Engineer, Flood Control along with a proposal in requisite format and his recommendation for necessary action to be taken there upon.

Based on the aforementioned recommendation, the Executive Engineer is said to have conducted an inspection and submitted a proposal to the Superintending Engineer, Flood Control, Buxar giving his recommendation for grant of 'No Objection' for construction of such temporary



bridge. The recommendation of the Executive Engineer, referred to above, was ratified by the Superintending Engineer on 04.02.2022 for necessary clearance in that regard. Nonetheless, 'No Objection' for construction of temporary bridge was never granted by the Waterways Department with the result that the petitioner could not extract sand. This was communicated promptly by the petitioner to the authorized officer of Bihar State Mining Corporation Limited (hereinafter called "BSMCL").

The petitioner has brought on record the aforementioned communication dated 28.02.2022. All these were happening when an agreement also was executed between the petitioner and the BSMCL for the Cluster No.6, Fatehpur Sand Ghat. When no permission came forthcoming, the BSMCL was again intimated.

The term of the lease expired on 31.03.2022.

The petitioner grieves that the very action of giving lease to the petitioner for extracting sand, without clear passage or causeway, was a malafide action on the



part of the BSMCL but he limits his prayer in the present writ petition only for refund of the money deposited by him towards the tender agreement.

It does not appear from the writ petition whether the petitioner had approached the concerned authority of the Mines Department for the needful but, from the counter affidavit of the Mines Department, it appears that the Department is not ready to return any amount to the petitioner as such demand would be in the nature of compensation sought from the Mines Department which has specifically been proscribed in the tender document [refer to Clause 31 (xii)].

A perusal of the tender papers clearly indicates that it shall be the responsibility of the tenderer to seek necessary permission from the Water Resources Department if link-road through the water-body is required to be made/constructed even temporarily for the purposes of extracting and transporting sand. What Clause 29 of the tender document insists upon is that the tenderer has to



obtain necessary permission from the Department. In Clause 31 of the tender papers, the responsibilities of the tenderer has been noted. Clause 31(xii) of the aforesaid states that in the event of non-availability of the minerals for which tender has been given or any impediment in the causeway or any dispute with respect to boundary or for any reason whatsoever in extraction of the minerals, no compensation would be demanded by the tenderer from the Mines Department.

Based on the aforesaid clause in the tender papers, Mr. Naresh Dixit, learned advocate justifies the stand of the Department in the counter affidavit that seeking the refund of the money deposited by the petitioner would be nothingelse but compensation for his not having been able to extract the sand during the lease period.

Mr. Shahi however contends that this is a faulty reading of the relevant clause of the tender paper.



Refund of money of the tenderer is not akin to seeking compensation for any difficulty in extraction. The work of extraction could not begin in the absence of the permission by the Waterways, another Department of the Government, to construct temporary bridge/causeway for the sand to be transported.

The work was never begun in the absence of such permission. The petitioner would have demanded compensation if he had asked for return of partial amount deposited by him for the reason of delayed permission or for the paucity of the minerals which could have been extracted under the lease. The lease and the agreement could not be acted upon for the reason of no permission to build the link road before the extraction/excavation began. In such event, asking for the refund of the tender money would not be seeking compensation.

After having heard the learned counsel for the parties, we find that it would be very unjust to ask the petitioner to be content with the expiration of the lease-



deed without even starting the excavation work without refund of the deposit of installments towards the tender. The petitioner cannot be blamed for the lease not having become operational or his not having been able to excavate sand for any gainful use. It was a dispute inter-se department which ought to have been addressed by the Mines Department.

We do not find any intervention of the Mines Department.

The situation gets further exacerbated when the Mines Department, on the request of the petitioner had recommended for grant of No Objection by the Waterways Department. In the absence of such permission, no link road could have been constructed by the petitioner even temporary as that would have been a violation of the terms of the tender and other laws in that regard.

There is yet another aspect which cannot be lost sight of, which is that no party, howsoever big, strong or weak can be allowed to pocket the money which is not due



to him and cause unjust enrichment or consequent unjust deprivation.

This is an illustrious case where we find that the petitioner would stand unjustly deprived of the money which could have been put to use, but not because of any fault on his part.

The Mines Department also cannot be faulted for 'No Objection' not having been granted by the Waterways Department as the Officer of the Mines Department had recommended for grant of 'No Objection'.

Nonetheless, the petitioner would be entitled for refund of the amount but without any interest whatsoever.

After having said so, we direct the petitioner to approach the Respondent No.10 for the needful within a period of two weeks. On such request made by the petitioner, necessary directions shall be issued by the concerned respondent and the tender money with necessary deductions shall be returned to the petitioner.



As we have noted above, the petitioner shall not
insist for any interest on such payment.

The writ petition stands allowed accordingly.

(Ashutosh Kumar, J)

(Nawneet Kumar Pandey, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	20.12.2022
Transmission Date	

