

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18409 of 2021

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Bijendra Kumar Son of Dhupanath Ray, Resident of Village Jivrakhan Tola,
P.O. Vyapur, P.S. Maner, 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 Assistant Director, District Mining office, Patna.
6. The District Magistrate, Patna.
7. The Bihar State Mining Corporation Limited, through its Managing Director, Vikas Bhawan (New Secretariat), Bailey Road, Patna - 800015.
8. The Managing Director, The Bihar State Mining Corporation, Vikas Bhawan (New Secretariat), Bailey Road, Patna - 800015.
9. The State Environment Impact Assessment Authority, through its Chairman, 2nd Floor, Beltron, Baldev Bhawan Road, Shastri Nagar, Patna, Bihar 800023.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha (G.A.7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 29-01-2022

Heard learned counsel for the parties.

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

- i) To issue an appropriate writ, order or

direction in the nature certiorari for quashing resolution contained in memo no. 3043 dated 01.10.2021 (Annexure 12) to the extent that on the basis of transferred environment clearance Respondent Bihar State Mining Corporation Limited has been authorised to operate the sand ghats in the District of Patna, Bhojpur, Saran, Rohtas, Aurangabad, Gaya. Jamui and Lakhisarai, through contractors.

ii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing tender notice dated 01.10.2021 (Annexure 13) and the tender document (Annexure 14) issued by the Respondent Bihar State Mining Corporation Limited inviting bids for selection of contractors for operation of sand ghats in the district of Patna, Bhojpur, Saran, Rohtas, Aurangabad. Gaya, Jamui and Lakhisarai.

iii) During the pendency of this writ application to direct the Respondents to maintain status - quo regarding mining of sand in Patna, Bhojpur, Saran, Rohtas, Aurangabad, Gaya, Jamui and Lakhisarai and not proceed with tender notice dated 01.10.2021.

iv) To issue an appropriate writ, order or direction in the nature of certiorari for quashing letter no. 140 dated 22.09.2021 (Annexure 15) by which the prior environment clearances of the earlier settee have been transferred to Bihar State Mining Corporation Limited.

v) This Hon'ble Court may adjudicate and hold that the transfer of environment clearances to Bihar State Mining Corporation Limited is bad in law and therefore Bihar State Mining Corporation Limited cannot be allowed to sub-contract the operation of sand ghats.

vi) This Hon'ble Court may further adjudicate and hold that the prior environment clearances of the settlers of sand ghats could not have been transferred without the no-objection of the project proponent thereof.

vii) This Hon'ble Court may further adjudicate and hold that since on 22.09.2021 Bihar

State Mining Corporation Limited was not authorised to undertake mining activity, it could not have applied for transfer of environment clearance in its favour.

viii) This Hon'ble Court may further adjudicate and hold that Rule 18(4) of the 2019 Rules, providing for transfer of environment clearance Rules is in direct conflict with paragraph 11(1) of S.O. 1533 dated 14.09.2006 and in light of Article 254 (1) of the Constitution of India, is void to the extent of this repugnancy.

ix) This Hon'ble Court may further adjudicate and hold that Rule 17 (6)(vi) and Rule 18 (4) are beyond the rule making powers conferred on the State of Bihar.

x) This Hon'ble Court may further adjudicate and hold that since the prior environment clearances were granted under the notification S.O. 1533 dated 14.09.2006 issued by MoEF, the same could not have been transferred under Rule 18(4) of the 2019 Rules.

xi) This Hon'ble Court may further adjudicate and hold that since State of Bihar and /or Bihar State Mining Corporation Limited could not be project proponent for grant of environment clearances, therefore, the prior environment clearances could not be transferred to State of Bihar and /or Bihar State Mining Corporation Limited.

xii) This Hon'ble Court may further adjudicate and hold that in the garb of selection of contractor for operation of sand ghats, Bihar State Mining Corporation Limited intends to grant fresh settlement of sand ghats which is not permissible.

xiii) This Hon'ble Court may further adjudicate and hold that if the Respondents are allowed to proceed with the NIT dated 01.10.2021, the Petitioner shall be severely prejudiced.

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

Learned counsel for the respondents places on

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

बिहार सरकार खान एवं भूतत्व विभाग।	
अधिसूचना	
पटना, दिनांक.....	
02/एम0एम0-(बो0)-38/21-...../एम0	माननीय उच्चतम न्यायालय के न्यायादेश के आलोक में अब नये सिरे से बालू घाटों का चयन पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार के द्वारा जारी 2020 को बालू खनन मार्गदर्शिका के अनुसार किया जायेगा। इसलिए 2019 के बन्दोबस्ती को अब आगे नहीं बढ़ाया जा सकता है। अतएव वर्ष 2019 की बंदोबस्ती को रद्द कर बन्दोबस्तधारियों से प्राप्त प्रतिभूति राशि (267.83 करोड़ रु0) वापस करने की स्वीकृति दी जाती है।
2.	प्रस्ताव में मन्त्रिपरिषद की स्वीकृति प्राप्त है।
बिहार राज्यपाल के आदेश से.	
ह0/- (चित्रगुप्त कुमार) सरकार के उप सचिव।	
ज्ञापक-02/एम0एम0-(बो0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि :-अपर सचिव, (ई-गजट कोषांग), वित्त विभाग, बिहार, पटना को सी0डी0 सहित प्रेषित करते हुए अनुरोध है कि इसकी 100 (एक सौ) प्रतियाँ मुद्रित कर खान एवं भूतत्व विभाग, बिहार, पटना को उपलब्ध करायी जाय।
ह0/- सरकार के उप सचिव।	
ज्ञापक-02/एम0एम0-(बो0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि-सभी विभागों के अपर मुख्य सचिव/प्रधान सचिव/सचिव/विभागाध्यक्ष/प्रमण्डलीय आयुक्त/जिला पदाधिकारी को सूचनार्थ एवं आवश्यक कार्यवाई हेतु प्रेषित।
ह0/- सरकार के उप सचिव।	
ज्ञापक-02/एम0एम0-(बो0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि-सभी उप निदेश/सहायक निदेश/अतिरिक्त निदेश/सहायक निदेश/सहायक निदेश एवं आवश्यक कार्यवाई हेतु प्रेषित।
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ज्ञापक-02/एम0एम0-(बो0)-38/21-...../एम0, पटना, दिनांक	प्रतिनिधि-सभी उप निदेश/सहायक निदेश/अतिरिक्त निदेश/सहायक निदेश/सहायक निदेश एवं आवश्यक कार्यवाई हेतु प्रेषित।
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ह0/- सरकार के उप सचिव।	

In view of the same, we do not find any necessity of adjudicating the issues raised in the present petition. The respondents have intended to take action. However, learned

counsel for the petitioner states that the government's notification, reproduced (supra), does not prescribe any time limit for refund of the amount.

Learned counsel for the respondents states that needful shall be done at the earliest.

At this stage, 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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	