

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 18404 of 2021**

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Kameshwar Ray, Son of Satyanarayan Ray Resident of Village Ishupur, P.O. Manupur, P.S. Dighwara, District- Saran.

... .. 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 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, Bhojpur.
6. The District Magistrate, Bhojpur.
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 settles 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.”

बिहार सरकार  
स्वास्थ्य एवं भूतत्व विभाग।

अधिसूचना

पटना, दिनांक.....

02 / एम0एम0-(वां)-38 / 21-..... / एम0 माननीय लक्ष्मण न्यायालय को प्यादादेश को अलोक में अब नये सिरे से बाबू घाटों का चयन पर्यावरण, वन एवं जलवायु परिवर्तन मंत्रालय, भारत सरकार को द्वारा जारी 2020 की बाबू खनन नए अलोक को अनुसार किया जायेगा। इसलिए 2019 की बन्दोबस्ती को अब आने नहीं बढ़ाया जा सकता है। अतएव वर्ष 2019 की बंदोबस्ती को २२ बार बन्दोबस्तधारियों से प्राप्त प्रतिमूह शशि (267.83 करोड़ रु0) वापस करने की स्वीकृति दी जाती है।

2. प्रस्ताव में मन्त्रिपरिषद् की स्वीकृति प्राप्त है।

बिहार राज्यपाल के आदेश से.

-02

(चित्रगुप्त कुमार)

सरकार के उप सचिव।

ज्ञापांक-02/एम0एम0-(बी0)-38/21-...../एम0, पटना, दिनांक .....

प्रतिनिधि :-अपर सचिव, (ई-गजट कोषांग), वित्त विभाग, बिहार, पटना को सी०डी० सहित प्रेषित करते हुए अनुरोध है कि इसकी 100 (एक सौ) प्रतियाँ मुद्रित कर खान एवं भूतत्व विभाग, बिहार, पटना को उपलब्ध करायी जाय।

-/02

सरकार के उप सचिव।

ज्ञापांक-02/एम0एम0-(बा0)-38/21-\_\_\_\_\_/एम0. पटना, दिनांक \_\_\_\_\_

प्रतिलिपि-सभी विभागों के अपर मुख्य सचिव/प्रधान सचिव/सचिव/विभागाध्यक्ष/  
प्रमण्डलीय आयुक्त/जिला पदाधिकारी को सूचनार्थ एवं आवश्यक  
कार्रवाई हेतु प्रेषित।

२०/-

सरकार के उप सचिव।

उपपत्र-४२/एच०४-१४-४८/३१-\_\_\_\_\_/१९४८, पाना, दिनांक \_\_\_\_\_  
 ६६६६६-००१ उप निदेश/सहायक निदेश/अतिरिक्त निदेश पञ्जीयसी/सम  
 निदेश को सुधार्च एवं सहायक सहायक हेतु प्रेषित।

107-

संलग्नक १०००

Figure 1

आपका-02 / एम/एम- (सी)-38 / 21- / एम. एम. विनायक  
 सीलिंगी-विनायक राव, अभिलेख संग्रहालय विभाग, विहार, एम. एम. को मजिस्ट्रेट  
 की दिनांक 07.12.2021 की डेस्क में कप सख्या-01 की मालिका में  
 सुधारों एवं आवश्यक आदेशों हेतु प्रेषित।

FD/-

सत्यमेव जयते ।

हामांक-०२/एचएएन-आर-३३/२१-.../एच. वरुण, दिनांक ...  
प्रतिनिधि-माननीय भरो के जल सचिव/प्रधान सचिव के प्रधान जल सचिव/  
निदेशक कोलाह/मुख्यालय जिला सही पराधिकारी/कमी जो सुचननी  
एव जलसक कर्मचारी हो दिनांक।

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ਸਾਹਿਬਾਨ ਦੇ ਸਾਥ ਰਹਿਣ।

अपॉक-02/एमएस-100-38/21-3373/एम3, पटना, दिनांक 10/12/2021  
प्रतिनिधि - जयदीप मिश्र, जय एच फुल्ल मिमा को (जिलाधीन देवसई पर  
अपॉक-02/एमएस-100-38/21-3373/एम3, पटना, दिनांक 10/12/2021)

सर्वज्ञान ही तुमि रुचिय।

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-

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