

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15831 of 2022

Md. Saifuddin son of Piyaar Mohammad, Resident of Ward No. 2, Amaljhari,
P.O.-Belwa, P.S.-Belwa, District-Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Director, Department of Mines and Geology, Government of Bihar, Patna.
4. The District Magistrate, Patna.
5. The District Magistrate, Rohtas.
6. The District Magistrate, Bhojpur.
7. The District Magistrate, Aurangabad.
8. The District Magistrate, Madhepura.
9. The District Magistrate, Jamui.
10. The District Magistrate, Lakhisarai.
11. The District Magistrate, Banka.
12. The District Magistrate, Sitamari.
13. The District Magistrate, Kaimur.
14. The District Magistrate, Begusarai.
15. The District Magistrate, Saran.
16. The District Magistrate, Supaul.
17. The District Magistrate, Saharsha.
18. The District Magistrate, Bhagalpur.
19. The District Magistrate, Gaya.
20. The District Magistrate, Gopalganj.
21. The District Magistrate, Kishanganj.
22. The District Magistrate, Muzaffarpur.
23. The District Magistrate, Madhubani.
24. The District Magistrate, Khagaria.
25. The District Magistrate, Purnea.
26. The District Magistrate, Vaishali.
27. The District Magistrate, Arwal.
28. The District Magistrate, Darbhanga.



29. The District Magistrate, Jehanabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Samir Kumar, Advocate
For the Mines : Mr. Naresh Dixit, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha (GA7)

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

2 24-11-2022 Petitioner has prayed for following relief(s) :-

“a) For holding and declaring the tender document comprising terms and conditions prescribed by the respondent Department of mines and geology, government of Bihar in Annexure - 1 to the notice inviting tender issued vide letter number 4738 Patna dated 09.09.2022 for settlement of sandghats in the State of Bihar for a period of five years to be wholly misconceived, contrary to the provisions of law and violative of Article 14, Article 19 (1) (g) and Article 21 of the Constitution of India and as such not executable for any purpose as that of settlement of mining rights;

b) For further holding and a declaration that the condition prescribed in Clause 28 in the Annexure - 1 to the notice inviting tender is in teeth of Section 15 of the Mines And Minerals (Development And Regulation) Act 1957 [hereinafter referred to as the Act 1957 for short] read with Rule 58 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation And Storage) Rules 2019 [hereinafter referred to as the Rules 2019 for short] and also the principle of law settled by the Honorable Apex Court in the matter of **State of T.N. Vs. M.P.P. Kavery Cheety, reported in (1995)2 SCC 402** and also the principal reiterated in the judgment delivered by a division bench of this honorable court in its judgment dated 27.10.2016 in the matter of **CWJC No. 9908 of 2016 (Mahadev Enclave Private Limited Versus**



The State of Bihar And Others);

c) For holding and a declaration that the condition prescribed in Clause 31 of the Annexure - 1 to the notice inviting tender is in teeth of Rule 50 of the Rules 2019 which is impermissible in law as condition prescribed in the tender notice is at best a part of policy decision of the respondent Department of mines and geology which cannot rise above the provisions of rules 2019 which is a delegated legislation made in exercise of powers under Section 15 of the Act 1957;

d) For holding and a declaration that the condition prescribed in Clause 42 (xxv) of the Annexure 1 to the notice inviting tender requiring mining lessees to sell 25% of the monthly mineral product to the stockiest license holders is again violative of the statutory provision of Section 15 of the Act 1957 and the fundamental rights guaranteed under Article 14, 19 (1) (g) of the Constitution of India as there is no law to support prescription of such a condition which principle of law has been laid down by the Constitution bench of the Honorable Apex Court in the matter of **State of M. P. And another Vs Thakur Bharat Singh reported in AIR 1967 SC 1170, Bishambhar Dayal Chandra Mohan Vs State of U. P. reported in 1982 - 1 - SCC- 39 vide Para - 27;**

e) For further holding and a declaration that the conditions prescribed in Clause 42 (xxv) in Annexure - 1 to the notice inviting tender is further in teeth of the law laid down by the Honourable Apex Court in a recent judgment in the matter of **State Of Gujarat And Others Versus Jayeshbhai Kanjibhai Kalathiya [Civil Appeal Number 10373 10374 of 2010];**

f) For further holding and a declaration that the condition prescribed in Clause 42 (xxxviii) in Annexure - 1 to the notice inviting tender is further violative of Article 14 and 21 of the Constitution of India as it seeks to snatch the fundamental right of a person to pursue any legally and statutorily available remedy to claim damages in case of any loss suffered on account of wrong done by another;

g) For further holding and a declaration that



the condition prescribed in Clause 34 (kha) and 42 (xxi) in Annexure 1 to the notice inviting tender is again violative of the law laid down by the Honorable Apex Court in the matter of **State of Gujarat and Others Versus Jayeshbhai Kanjibhai Kalathiya [Civil Appeal Number 10373 -10374 of 2010]** and also the fundamental rights guaranteed to a person under Article 14, 19 (1) (g) and 21 of the Constitution of India who would succeed in the award of settlement;

h) For further holding and a declaration that the condition prescribed in Clause 34 (kha) and 42 (xxi) in Annexure - 1 to the notice inviting tender is violative of the object of a purpose and scope of Section 15 of the Act 1947 read with Rule 43 and 44 of the Rules 2019 inasmuch as, the said condition has sought to shift the responsibility of a person transporting sand to the shoulders of the mining lease holder which is impermissible in law;

i) For further holding and a declaration that restricting sale and supply of sand from sandghats only to registered vehicles is an impediment upon the fundamental and statutory right of the mining lease holder who is otherwise free to cause sale and supply of sand to any intending purchaser who would hit the sandghats settled in his favour and it is the sole responsibility of the local administration to ensure appearance and movement of only valid and registered vehicles in public areas including sandghats of lease holder;

j) For further holding and a declaration that the condition prescribed in Clause 7 (ja) in Annexure 1 the notice inviting tender is further illegal, misconceived, unreasonable and violative of the of the fundamental rights guaranteed under Article 14, 19 (1) (g) and 21 of the Constitution of India as mere pendency of a criminal case against a person in absence of charges framed by a competent court of law cannot disentitle him from participating in a tender process;

k) For further holding and a declaration that the condition prescribed in Clause 4 (vi) read with Clause 7 (cha) in Annexure -1 to the notice inviting



tender is again misconceived, wholly arbitrary and violative of the fundamental rights guaranteed under Article 14, 19 (1) (g) and 21 of the Constitution of India as mere pendency of a certificate proceeding against a person can never constitute a good ground to disentitle him to participate in a tender process as mere such pendency is not conclusive enough to prove of his final liability having remained unpaid and therefore provides an assessment of his conduct of being a defaulter in law;

l) For further holding and a declaration that the condition prescribed in Clause 20 (v) in Annexure -1 the notice inviting tender is absolutely unwarranted and unauthorized a requirement which is least meaningful and purposeful for the respondents and more invasive of the right to privacy of an individual intending to participate in the tender process as the successful bidder has already been required to furnish the income tax returns, balance sheet and audit report for the specified financial years which is enough to assess the financial health of a person;

m) For further issuance of an appropriate writ or order or direction restraining the respondents from proceeding further with the impugned notice inviting tender issued vide letter number 4738 Patna dated 09.09.2022 and all other tender notices issued in furtherance thereto with respect to various districts in the state of Bihar;

n) For further holding and declaring all such tender processes carried out by the respondents in furtherance to the notice inviting tender issued vide letter number 4738 Patna dated 09.09.2022 and all other tender notices issued as a sequel thereto to be illegal, invalid and of no consequence for any person whatsoever;

o) For grant of any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of this case.”

After the matter was heard for some time, finding the Bench not to be in favour of the submission made by the



learned counsel for the petitioner, learned counsel for the petitioner, under instructions, states that the petition, in its present form, may be permitted to be withdrawn reserving liberty to file afresh with better particulars on the same and subsequent cause of action, if so required and desired.

Prayer allowed.

Petition is disposed of as withdrawn with the liberty aforesaid.

As and when such petition is filed, registry shall process it immediately and have it listed before the appropriate Court.

Also liberty reserved to the petitioner to take recourse to such other remedies as are otherwise available in accordance with law.

Interlocutory application, if any, shall also stand disposed of.

(Sanjay Karol, CJ)

(Partha Sarthy, J)

K.C.Jha/chn

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