

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18636 of 2019**

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M/s. MSD Telematics Private Limited a Company incorporated Under the Provisions of the Companies Act, 1956, Having its registered Office at D-33, 3rd Floor, Infocity-2, Sector-33, Gurugram Haryana-122011, through its Authorized Signatory, Ajay Kumar Das (Male), aged About 61 Years, Son of Late Mahadeo Lal Das resident of H/o Late Ram Lakhan Srivastava, New Area, Jakkanpur, P.S. Jakkanpur, Town and District Patna-800001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
3. The Special Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
4. The Joint Secretary-Cum-Director, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
5. The Under Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna.
6. Bihar State Mineral Development Corporation Limited, Vikas Bhawan, Bailey Road, Patna, through its Chairman-Cum-Managing Director.
7. The Chairman-cum-Managing Director, Bihar State Mineral Development Corporation Limited, Vikas Bhawan, Bailey Road, Patna.

... .. Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Suraj Samdarshi, Advocate<br>Mr. Avinash Shekhar, Advocate<br>Mr. Rajan Prakash, Advocate<br>Mr. Piyush Ranjan, Advocate |
| For the Respondent/s | : | Mr. Gyan Prakash Ojha, GA-7<br>Mr. Naresh Dikshit, Spl. P.P. Mines                                                           |

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE PARTHA SARTHY**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE THE CHIEF JUSTICE)**

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice/ Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences/offices.)



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**Date : 09-12-2022**

Heard learned counsel for the parties.

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

- (i) To issue an appropriate writ(s), order(s) or direction(s) in the nature of Mandamus commanding the respondents to cancel the press notification dated 28.6.2018, whereby and whereunder installation of GPS device and e-lock on the vehicles carrying minor mineral has been stayed, till further orders by the Department of Mines & Geology.
- (ii) Alternatively to issue an appropriate writ(s), order(s) or direction(s) in the nature of Mandamus commanding the respondents to terminate the agreement dated 16.2.2018 entered into between the respondents and the petitioner, with immediate effect and further to pay the consequential damages for breach of agreement by the respondents.
- (iii) To issue an appropriate writ(s), order(s) or direction(s) in the nature of Mandamus commanding the respondents to refund the bank guarantee amounting Rs.30.00 Lac, security deposit amounting Rs.20.00 Lac and the royalty paid by the petitioner to the extent of Rs.99.00 Lac along with interest, which was tendered against installation of GPS device and e-lock on the vehicles.



- (iv) To issue an appropriate writ(s), order(s) or direction(s) in the nature of Mandamus commanding the respondents to make payment for the work done by the petitioner pertaining to installation of GPS device and e-lock on the vehicles, as also to make payment for the extra work done by the petitioner, at the behest of the respondents, beyond the scope of the agreement entered between the respondents and the petitioner.
- (v) To hold and declare that by precluding the petitioner from installation of GPS devices and e-locks, after obtaining bank guarantee and advance royalty from the petitioner, tantamounts to unjust enrichment.
- (vi) For a declaration that the demand for earnest money in the form of bank guarantee and security deposit, repeatedly, for the same tender is not maintainable in terms of Rule 161 & 162 of the Bihar Public Works Department Code.
- (vii) To award cost of litigation and suitable compensation for the loss and damages suffered by the petitioner on account of sudden stoppage of work by the respondent; and/or may grant, award any other relief(s) for which the petitioner may be found entitled to in the facts and circumstances of the present case.

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



Bar, learned counsel for the petitioner, under instructions, states that petitioner shall be content if petitioner is allowed to approach Respondent No. 4, namely, the Joint Secretary-Cum-Director, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna, venting out the grievances, subject matter of the present petition.

Respondents have no objection to the same.

The Hon'ble Supreme Court in ***D. N. Jeevaraj Vs. Chief Secretary, Government of Karnataka & Ors, (2016) 2 SCC 653***, paragraphs 34 to 38 observed as under:-

“34. The learned counsel for the parties addressed us on the question of the bona fides of Nagalaxmi Bai in filing a public interest litigation. We leave this question open and do not express any opinion on the correctness or otherwise of the decision of the High Court in this regard.

35. However, we note that generally speaking, procedural technicalities ought to take a back seat in public interest litigation. This Court held in *Rural Litigation and Entitlement Kendra v. State of U.P.* [*Rural Litigation and Entitlement Kendra v. State of U.P.*, 1989 Supp (1) SCC 504] to this effect as follows: (SCC p. 515, para 16)

“16. The writ petitions before us are not inter parties disputes and have been raised by way of public interest litigation and the controversy before the court is as to whether for social safety and for creating a hazardless environment for the people to live in, mining in the area should be permitted or stopped. We may not be taken to have said that for public interest litigations, procedural laws do not apply. At the same time it has to be remembered that every technicality in the procedural law is not available as a defence when a matter of grave public importance is for consideration before the court.”



**36.** A considerable amount has been said about public interest litigation in *R&M Trust* [*R&M Trust v. Koramangala Residents Vigilance Group*, (2005) 3 SCC 91] and it is not necessary for us to dwell any further on this except to say that in issues pertaining to good governance, the courts ought to be somewhat more liberal in entertaining public interest litigation. However, in matters that may not be of moment or a litigation essentially directed against one organisation or individual (such as the present litigation which was directed only against Sadananda Gowda and later Jeevaraj was impleaded) ought not to be entertained or should be rarely entertained. Other remedies are also available to public spirited litigants and they should be encouraged to avail of such remedies.

**37.** In such cases, that might not strictly fall in the category of public interest litigation and for which other remedies are available, insofar as the issuance of a writ of mandamus is concerned, this Court held in *Union of India v. S.B. Vohra* [*Union of India v. S.B. Vohra*, (2004) 2 SCC 150: 2004 SCC (L&S) 363] that: (SCC p. 160, paras 12-13)

“**12.** Mandamus literally means a command. The essence of mandamus in England was that it was a royal command issued by the King's Bench (now Queen's Bench) directing performance of a public legal duty.

**13.** A writ of mandamus is issued in favour of a person who establishes a legal right in himself. A writ of mandamus is issued against a person who has a legal duty to perform but has failed and/or neglected to do so. Such a legal duty emanates from either in discharge of a public duty or by operation of law. The writ of mandamus is of a most extensive remedial nature. The object of mandamus is to prevent disorder from a failure of justice and is required to be granted in all cases where law has established no specific remedy and whether justice despite demanded has not been granted.”

**38.** A salutary principle or a well-recognised rule that needs to be kept in mind before issuing a writ of mandamus was stated in *Saraswati Industrial Syndicate Ltd. v. Union of India* [*Saraswati Industrial Syndicate Ltd. v. Union of India*, (1974) 2 SCC 630] in the following words: (SCC pp. 641-42, paras 24-25)

“**24.** ... The powers of the High Court



under Article 226 are not strictly confined to the limits to which proceedings for prerogative writs are subject in English practice. Nevertheless, the well-recognised rule that no writ or order in the nature of a mandamus would issue when there is no failure to perform a mandatory duty applies in this country as well. Even in cases of alleged breaches of mandatory duties, the salutary general rule, which is subject to certain exceptions, applied by us, as it is in England, when a writ of mandamus is asked for, could be stated as we find it set out in *Halsbury's Laws of England* (3rd Edn.), Vol. 11, p. 106:

*'198. Demand for performance must precede application.—As a general rule the order will not be granted unless the party complained of has known what it was he was required to do, so that he had the means of considering whether or not he should comply, and it must be shown by evidence that there was a distinct demand of that which the party seeking the mandamus desires to enforce, and that that demand was met by a refusal.'*

25. In the cases before us there was no such demand or refusal. Thus, no ground whatsoever is shown here for the issue of any writ, order, or direction under Article 226 of the Constitution."

As such, petition stands disposed of on the following terms:-

(a) As and when any such petition is preferred by the petitioner before Respondent No. 4, namely, the Joint Secretary-Cum-Director, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Patna, the same shall be considered and decided expeditiously, preferably within a period of three months thereafter.



(b). All issues raised by the petitioner shall be dealt with;

(c) The said authority shall consider and dispose of the petition by passing a reasoned and speaking order;

(d) The order assigning reasons shall be communicated to the petitioner;

(e) Needless to add, while considering such petition, principles of natural justice shall be followed and due opportunity of hearing afforded to the parties;

(f) Also, opportunity to place on record all relevant materials/documents shall be granted to the parties;

(g) Equally, liberty is reserved to the petitioner to take recourse to such alternative remedies as are otherwise available in accordance with law;

(h) We are hopeful that as and when petitioner takes recourse to such remedies, as are otherwise available in law, before the appropriate forum, the same shall be dealt with, in accordance with law and with reasonable dispatch;

(i) Also, liberty reserved to the petitioner to take recourse to such remedies as would be otherwise available, in accordance with law;

(j) We have not expressed any opinion on merits. All



issues are left open;

The petition stands disposed of in the aforesaid terms.

Interlocutory Application(s), if any, shall stand disposed of.

**(Sanjay Karol, CJ)**

**(Partha Sarthy, J)**

Amrendra/PKP

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