

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5242 of 2021

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M/s Mahadev Enclave Pvt. Ltd. a registered Company Having its registered Office at B-37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through one of Its Directors namely Kartik Rathi aged about 25 years S/o Shri Ajay Rathi R/o 3-B 22 23 Sukhadia Nagar, Sri Ganganagar (Rajasthan).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
2. The Principal Secretary Cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The Director, Department of Mines and Geology, Govt. of Bihar, Patna.
4. The District Magistrate Cum Collector, Nawadah.
5. The Assistant Director Mines, District Mining Office, Nawadah.
6. The Mines Development Officer (Hqr), Department of Mines and Geology, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Mines	:	Mr. Naresh Dixit, Advocate
	:	Mr. Utsav Anand, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, (G.A-7)
	:	Mr. Uday Shakar Pandey (A.C to G.A 7)

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

15 13-07-2023 Heard Mr. Gautam Kumar Kejriwal learned counsel for the petitioner and Mr. Utsav Anand Junior Counsel to Mr. Naresh Dixit learned Special Mines, learned A.C to G.A-7 as also A.C to S.C.-10.

2. The prayers in the writ petition are as follows:-

(a) for issuance of a writ in the nature of certiorari for quashing of the letter bearing reference number 3191/M Patna



dt. 02.12.2020 issued by the respondent No. 6 and impugned letter no. 105 Khanan dt. 15.01.2021 issued by the respondent no. 5;

(b) for issuance of a writ in the nature of certiorari for quashing of the letter bearing reference number 204/KHANAN dated 24.02.2020 issued by the respondent no. 5;

(c) for issuance of a writ or order or direction upon the respondents specially the respondent no. 4 and 5 to refund the interest paid by the petitioner for the time being in light of the Order dated 15.09.2020 passed in C.W.J.C. number 7582 of 2020;

(d) for holding and a declaration that in terms of section 3 (c) read with section 3d) of the Mines And Minerals (Development And Regulation) Act, 1957 (hereinafter referred to as the MMDR act 1957 for short) and rule 25(2) of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the rules 1972 for short) the liability for payment of rent/royalty would commence from the date of commencement of actual and physical mining operation by the petitioner after obtaining all clearances and permissions and not from the date of execution of the lease deed;

(e) for further holding and a declaration that the 2



installment in the case of petitioner would fall due in the month of January 2019 and not January 2018 as per rule 1972 and the terms of lease deed as well;

(f) for further holding and a declaration that acceptance of 1st installment at the time of execution of lease deed in the year 2017 and 2nd installment in the month of January 2019 by the respondents without any action taken for cancellation of settlement in terms of rules 52(5) of the rules and clause 24, 25 and 26 of Part VII of the lease deed dt. 18.09.2017 constitute an implied extension of time and as such no liability of interest would arise as per the law laid down by the Hon'ble Supreme Court in the matter of AIR-2002- SC-2340 [R. K. Saxena Vs DDAJ;

(g) for further holding and a declaration in the alternative that the petitioner was prevented by force majeure conditions as the required licenses and clearances were pending from the ends of statutory authorities and therefore the respondents cannot approbate and reprobate at the same time by initially refraining from any step taken under rule 52(5) of the rules and by raising demand of 2nd installment and interest later which is also a situation covered by the AIR 1956-SC-593/602 [Nagubhai Ammal Vs B Shama Rao]-3 J. AIR 2010-SC-2077



[Karam Kapahi and Others Vs Lal Chand Trust and Others] and AIR 2009-SC-1783 [Badri Kedar Paper Pvt. Ltd Vs U.P Electricity Regulatory Commission);

(h) for grant of any other relief or reliefs to which the petitioner is found entitled to in the facts and circumstances of the case.

3. Mr. Kejriwal has provided list of dates and events and as per it on 12.11.2014, the NIT was published for grant of mining lease for Block No. 1 Rajouli in the district of Nawada for a period of five years.

4. Subsequently, the firm being successful in the bid got the letter of acceptance on 10.02.2015. Further, as per the clause of the said letter of acceptance, the petitioner submitted mining plan to the department which got approved on 25.06.2015.

5. Thereafter, an application was preferred for environmental clearance before the State Environment Impact Assessment Authority (SEIAA), Bihar Patna which was finally granted on 27.06.2017.

6. The lease deed was executed on 18.09.2017 which is on record (Annexure-6) and as per the earlier letter of acceptance dated 10.02.2015, the first installment was to be paid



at the time of execution of the lease deed dated 18.09.2017 while rest of the amount was to be cleared by 31st of January of the next calendar year (Clause-7).

7. It is the case of the petitioner that since the lease deed was executed on 18.09.2017 itself, it could not make payment of the second installment by 31st of January 2018 rather it came to be paid on 31.01.2019.

8. The department taking the said payment as third installment made demand for payment of second installment along with interest vide letter no. 204 dated 24.02.2020 (Annexure-17) of the petition. Aggrieved, the petitioner challenged the same in CWJC No. 7582 of 2020 which came to be disposed off on 15.09.2020 by a co-ordinate bench of this court and it is necessary to bring on record the relevant part of the said order which read as follows:

Heard learned Counsel for the State as also the learned Special PP appearing for the Department of Mines.

On 11.9.2020 this Court had passed the following order:-

"As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Petitioner's counsel submits today



that the demands raised against him would be paid along with interest for two months in terms of Rule 52 (5) of the Bihar Minor Mineral Concession Rules, 1972 in three (03) equated monthly instalments, subject to his right to claim exemption of the remaining interest before the Respondent no. 1. State counsel and Special P. P. Mines submit that in this connection they would be seeking instructions from the Authorities.

Let instructions be obtained and the Court be informed regarding the same.

List on 15.09.2020,"

Pursuant to the Court's order dated 11.9.2020 learned Special PP Mines submits, upon instruction, that the Mines authorities are agreeable to the petitioner's proposal that he would be paying the principal amount along with interest thereupon for two months in equated monthly installments within three months. For balance interest he would be approaching the Principal Secretary, Department of Mines by a representation within two weeks, claiming exemption of the said amount.

In view of such statement of the learned Special PP Mines and having regard to the stand of the petitioner, which is binding inter parties, the application may be disposed of in the aforesaid



terms, It is however made clear that should the petitioner default in his commitment recorded hereinabove. it will be open to the respondent authorities to proceed against the petitioner in accordance with law, and the petitioner will not be permitted to rely on the instant order. The order is being passed in presence of Mr. Krishna Kant Singh, learned State Counsel The petitioner should submit his representation within a period of two weeks and deposit his first installment along with the said representation within two weeks. The remaining two installments would be deposited as per consensus recorded hereinabove.

Upon determination of petitioner's claim for exemption of interest beyond two months, the authorities would be free to take steps according to law.

The writ application stands disposed of.”

9. It is the case of the petitioner that subsequently the 4th and 5th installment were cleared and there is no dispute about it.

10. Pursuant to the said order of the co-ordinate bench of this court as stated above, a detailed representation was preferred before the respondent no. 2, the Principal Secretary -cum- Commissioner, Department of Mines and Geology, Bihar Patna.



11. The department thereafter, passed an order communicated to the petitioner vide letter no. 3191/M dated 02.12.2020 by which the same was rejected.

12. Still aggrieved the present petition.

13. Learned counsel for the petitioner has multiple grievance but has scale down the same to some major points

(i) the order was to be passed by the respondent no. 2, the Principal Secretary -cum- Commissioner, Department of Mines and Geology, Bihar Patna to pass an order but the same has been passed by the Mines Development Officer (Headquarter), Department of Mines, Bihar Patna;

(ii) since the second installment was paid along with the two month interest and the reason behind the delayed payment was explained in the representation, the department should have taken sympathetic view of the matter.

14. Mr. Utsav Anand learned Junior Counsel to the Special PP Mines, Bihar Patna submits that the petitioner had to act in accordance with the agreement signed between the parties which clearly envisaged payment of installment by 31st of January every year and having defaulted on its own cannot seek remission and as such the order in question is valid. He has however taken this Court to Section 52 (5) of the Act which read



as follows:-

52(5) Default in payment – If any instalment shall not be deposited before prescribed period, 24 percent simple interest shall be charged upto two months and after that action, for cancellation shall be taken.”

15. He as such submits that the order in question is perfectly in line of the agreement as also the Rules and thus, the petitioner do not have any case.

16. This court finds force in the submission put forward by the learned Junior Counsel to the Special PP Mines, the letter of agreement was very clear and the petitioner was to make payment by 31st of January every calendar year by way of 2nd, 3rd, 4th and 5th installment and it is also clear that it defaulted which came to be paid only on 13th October of 2020 after the order of this court in CWJC No. 7582 of 2020. So far as grievances of the order having not been passed by the respondent no. 2, the Principal Secretary -cum- Commissioner, Department of Mines and Geology, Bihar Patna, this Court is of the view that the order shows that same has been communicated to the petitioner on the direction of the Principal Secretary (*Niredeshaanushar*) which is present in the order.

17. In the considered view of the Court, the only



thing remains that:

(i) whether any sympathetic consideration to the prayer of the petitioner to waive of the interest part for the delayed payment can be allowed or not;

(ii) if the same can not be allowed, whether the same can be taken by way of installment or not.

18. In view of the limited questions that has/have to be answered by the respondent no. 2, the Principal Secretary Department of Mines and Geology, Bihar Patna, the writ petition stands disposed of with a direction to the petitioner to approach the respondent no. 2, the Principal Secretary -cum- Commissioner, Department of Mines and Geology, Bihar Patna with proper representation within four weeks from today.

19. If such representation is preferred within four weeks from today, the respondent no. 2, Principal Secretary Department of Mines and Geology Bihar, Patna shall take a decision and communicate the same to the petitioner within the next three months. Before passing the order, the Principal Secretary may give personal hearing to the petitioner.

20. It is made clear that the order be signed by the respondent no. 2, the Principal Secretary -cum- Commissioner, Department of Mines and Geology, Bihar Patna.



21. The writ petition stands disposed of with the
aforesaid observation.

(Rajiv Roy, J)

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