

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3400 of 2023

M/s Uma Associates a partnership firm registered under the Partnership Act 1872, having its office at S 20/56-10-2F, 2/3 Sonal Sadan, Mall Road, Cantonment, Varanasi, Uttar Pradesh, through its partner Anand Singh, aged about 49 years (male), son of Ram Gopal Singh, Resident of S 20/56-10-2F, 2/3 Sonal Sadan, Mall Road, Cantonment, P.S. Cant. District Varanasi, Uttar Pradesh.

... .. 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 District Magistrate, Rohtas.
4. The Mineral Development Officer, Rohtas.
5. The Bihar State Mining Corporation Limited, Through its Managing Director, Room No. 164, Vikas Bhawan, (New Secretariate), Bailey Road, Patna 800015.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Rohit Singh, Advocate Mr. Vijay Shankar Tiwari, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P. Mines Ms. Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

- 5 09-05-2023 1. Heard Learned counsel for the petitioner and learned counsel for the respondents.
2. The petitioner has filed the instant application for the following relief(s):-

“i) To issue an appropriate writ, order or



direction in the nature of certiorari quashing letter no 514 dated 24.02.2023 issued by the Respondent Mineral Development Officer, Rohtas whereby and whereunder a penalty of Rs. 2,37,95,800/- has been levied upon the petitioner for irregularities alleged to have been committed by the petitioner during mining activity at Shankarpur A sand ghat.

ii) During pendency of this writ application, this Hon'ble Court may direct the Respondents not to suspend the generation of e-transit challans required for transportation of sand and/or take any other coercive steps against the petitioner for recovery of the Rs. 2,37,95,800/-.

iii) This Hon'ble Court may further adjudicate and hold that letter no. 514 dated 24.02.2023 issued by the Respondent Mineral Development Officer, Rohtas is bad in the eyes of law since the same has been issued in glaring violation of the principles of natural justice as the petitioner has not been afforded any show cause whatsoever to controvert the allegations upon which the penalty has been levied.

iv) This Hon'ble Court may further adjudicate and hold that the levy of penalty contained in letter no. 514 dated 24.02.2023 is in violation of the maxim audi alteram partem as the petitioner has been condemned unheard without an opportunity to defend the charges against it.

v) This Hon'ble Court may further adjudicate and hold that the imposition of penalty upon the petitioner is in violation of the Bihar Minerals (Concession, Prevention of Illegal Mining,



Transportation & Storage) Rules, 2019?

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

3. It is the case of the petitioner that the petitioner having participated in the tender process and being the highest bidder for Shankarpur A sand ghat, a Letter of Intent was issued vide Letter no.834 dated 10.12.2021. Consequent thereto an agreement dated 7.1.2022 was entered into between the petitioner and the Bihar State Mining Corporation Limited ('BSMCL' in short).

4. Learned counsel for the petitioner submits that the initial agreement was for a period till 31.3.2022, however, extension from time to time was granted. The petitioner was surprised to receive an order of penalty to the tune of Rs.2,37,95,800/- contained in Letter no.514 dated 24.2.2023. The petitioner was directed to deposit the said amount within a period of 3 days failing which the generation of e-transit challans used for transportation of sand would be stopped.

5. Learned counsel for the petitioner further submits that no inspection was carried out in terms of Rule 59. No show cause notice was issued to the petitioner prior to passing of the order of penalty. It is further submitted that admittedly the



petitioner being a settlee, at best, the petitioner could have been proceeded against under Rule 47 of the Rules and not under Rule 56. It is further submitted that although the order impugned does not in so many words mention about the same having been passed under Rule 56, however, the very calculation of penalty clearly implies the same to have been passed under the said Rule. It was further submitted that it is not the case of the respondents that the minerals were removed without challans as such, the case of the petitioner would not fall into that of illegal mining.

6. Learned Spl.P.P. Mines appearing for the Mines Department, in reference to the counter affidavit filed on behalf of the respondents submitted that there is no illegality in the order impugned which is based on the inspection having been carried out by the respondent authorities and mining of sand beyond the permitted mining area having been found. Consequently, the two trucks in question were also seized and the order of penalty was passed. It is further submitted that the petitioner/settlee having been found to be carrying mining beyond the mining area permitted in the agreement, the case of the petitioner would come under illegal mining and has been rightly proceeded under Rule 56.



7. Having heard learned counsel for the parties, the Court is not going into all the points which has been raised on behalf of the petitioner except the specific statement that no notice was issued to the petitioner prior to passing of the order of penalty, impugned herein. On perusal of the order contained in Letter no.514 dated 24.2.2023, it transpires that the same mentions about some inspection having been carried out by a Committee constituted in the Department on 12.3.2023 and 13.2.2023 and on the basis of the report submitted by the Committee, the order of penalty impugned herein has been passed holding the petitioner to be liable to pay penalty of Rs.2,37,95,800/- with a further direction that the same should be paid within a period of 3 days.

8. On perusal of the said order, the Court does not find that either the inspection by the so called departmental team was carried out in presence of the petitioner, whether the copy of the inspection report was provided to the petitioner or that proper opportunity to show-cause was issued to the petitioner prior to passing the order of penalty. In view of these facts, in the opinion of the Court the order of penalty dated 24.2.2023 issued under the signature of the Mineral Development Officer, Rohtas, Sasaram, is not sustainable and is hereby quashed, with liberty



to the respondents that if so advised, they will be at liberty to proceed afresh in accordance with law.

9. The writ application stands allowed with the above observations.

(Partha Sarthy, J)

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