

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4476 of 2023

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Pravin Kumar Son of Shri Rajendra Sharma, resident of Village and P.O. -
Shamsher Nagar, P.S. Daudnagar, District - Aurangabad, Bihar.

... .. 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, Aurangabad.
4. The Mineral Development Officer, Aurangabad.
5. The Bihar State Mining Corporation Limited, Through its Managing Director, Room No. 164, Vikas Bhawan, (New Secretariat) Bailey Road, Patna - 800015.
6. The General Manager, Bihar State Mining Corporation Limited, Vikas Bhawan, New Secretariat, Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajiv Kumar Singh, Advocate
For the Respondent/s : Mr.Gyan Prakash Ojha (Ga 7)

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

5 20-07-2023

I.A. No. 01 of 2023:

This interlocutory application has been preferred for
incorporating the following prayer to the main writ petition

(i) for the issuance of an appropriate writ, order or
direction in the nature of certiorari quashing the Letter
No. 428 dated 17.03.2023 issued by the General
Manager of the Bihar State Mining Corporation Ltd.
Patna whereby a penalty of Rs. 1,10,45,829/- has been
imposed against the petitioner without providing him



with any opportunity of hearing allegedly for conducting mining activity beyond the area covered by environmental clearance;

(ii) for the issuance of an appropriate order staying the operation of letter number 428 dated 17. 03. 2023 during the pendency of the present writ petition;

(iii) for the issuance of an appropriate order directing the respondent authorities to extend the time period allotted to the petitioner for conducting mining operations in Nanu Bhigha Sand Ghat, District-Aurangabad by such time from 27.02.2023 onwards during which the mining operations has been stopped pursuant to the illegal and arbitrary directions issued by the respondent authorities and also on account of the fact that no such order has been allowed to be generated from the said date.

There is no opposition from the other side.

In the particular facts and circumstances, the petition is allowed.

Let the prayer incorporated in para-15 be treated as part of the main writ petition.

The I.A. 01 of 2023 stands disposed of.



CWJC No. 4476 of 2023:

Heard Mr. Rajiv Kumar Singh, learned counsel for the petitioner and Mr. Utsav Anand, learned Junior Counsel to the Spl. P.P. Mines.

The petitioner has moved before the Court for grant of the following relief:

- (i) to issue an appropriate writ, order or direction in the nature of certiorari quashing Letter No.430 dated 27.02.2023 by the Respondent Mineral Development Officer, Aurangabad whereby and whereunder a penalty of Rs. 2.72.71,960/- has been levied upon the petitioner for regularities alleged to have been committed by the petitioner during mining activity at Nanu Bigha sand ghat (Cluster No. 25) in Aurangabad District;
- (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 above mentioned penalty of Rs.2,72,71,960/-;



(iii) this Hon'ble Court may further adjudicate and held that Letter No. 430 dated 27.02.2023 issued by the Respondent Mineral Development Officer, Aurangabad 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 attestations upon which the penalty has been levied nor has been provided with any other opportunity of hearing prior to the impugned letter imposing penalty;

(iv) 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;

(v) to issue an appropriate order or direction upon the Respondent authorities to either extend the contract of the Petitioner for such number of days for which the Petitioner has illegally not been allowed to do any mining activity in the wake of the impugned order imposing penalty or in the



alternative remit the proportionate amount for the said period from the bid amount since the Petitioner has been prevented from conducting any mining during the said period solely on account of the illegal orders passed by the Respondents;

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

The I.A. No. 01 of 2023 was filed, as stated above, in which the second letter no. 428 dated 17.3.2023 issued by the General Manager, Bihar State Mining Corporation Limited, Patna was annexed. A perusal of the same would show that in the subsequent inspection which the respondents claims to have been conducted on 14.3.2023, the fine amount was scaled down from Rs. 2,72,72,960/- to Rs. 1,10,45,829/-.

It is submission of the learned counsel for the petitioner that both the inspections were done behind his back. Worst, no show cause was asked for annexing the enquiry report so that he could respond to it and as such his submission is that both the orders have to go.

He also took this Court to the order of a coordinate bench of this Court in the case of **Uma Associates Vs. the State**



of Bihar (C.W.J.C. No. 3400 of 2023) and it is appropriate to incorporate paras 7, 8 and 9 for the proper appreciation of the case.

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 24.2.3033, 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 dose 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 under 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 e at liberty to proceed afresh in accordance with law.



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

Lastly, he has taken this Court to another order passed by the Patna High Court in **Amarnath Singh @ Amar vs. the State of Bihar** reported in **2022(1) PLJR 37** with specific reference to paras 9 and 18 which read as follows:

9. Per contra, the learned Special P.P. Mines Shri Naresh Dixit has submitted that there is no provision for refund of the amount in question, in the entire tender documents and the terms and conditions mentioned therein, hence the respondents are not in a position to make any refund to the petitioner. Nonetheless, it is submitted that the respondent state has challenged the judgment rendered by the National Green Tribunal in the case of Pawan Kumar (supra), before the Hon'ble Apex Court Vide C.A. No. 3661 of



2020, hence the only option for the petitioner is to await the final disposal of the said case by the Hon'ble Supreme Court of India. It is submitted that without a valid and legal DSR, environmental clearance cannot be obtained, hence the respondent State is also not in a position to issue any work order to the petitioner with regard to the sand ghats settled in his favour, thus the only option for the petitioner is to wait for the verdict of the Hon'ble Apex Court.

18.Having considered the rival from submissions of the learned counsel for the parties, this Court is of the considered view that an obligation had been casted on the respondent-State/the respondent Mines Department, not only to prepare the mining plan and



obtain the environmental clearance but also to issue work order to the petitioner, who is a successful bidder and execute a mining lease in his favor, more so after the respondent-State/the respondent Mines Department had got the security money, earnest money and other amounts deposited from the petitioner for the purposes of settlement of the sand ghats in question for a period of five years with to such effect from 1.1.2020 as per clause-9 of the tender document, however, the respondent-State/the respondent Mines Department has committed a breach of such statutory obligation, hence it cannot be permitted to take advantage of such a situation and make a profit out of its own wrong, thus the only



just and legal course left to this Court, to set right the wrong, is to direct the respondent State the respondent Mines Department to refund the security money, earnest money and processing fees deposited by the petitioner for the purposes of being granted settlement of Aurangabad Sone Sand Ghat No. 32, pursuant to the E-auction held on 26.12.2019, along with interest @ of 9% per annum with effect from day, the said amounts were deposited, till the date of payment, especially considering the fact that the respondent-State/the Respondent Mines Department has illegally and in an unjust manner related the aforesaid amount deposited by petitioner. It is directed accordingly.



He as such submits that when admittedly the petitioner was not allowed to do the mining work pursuant to the lease from 27.2.2023 to 31.3.2023, either the period be extended or he is entitled to the compensation with interest.

It has been submitted by Mr. Singh that he was granted a short tender for the period 17.1.2023 to 31.3.2023 for which the entire amount of Rs. 2,29,84,268/- was deposited with the Mining Department.

It is his further submission that on 27.2.2023, i.e. full one month before the period lease was to come to an end, the petitioner received letter no. 430 dated 27.2.2023 (Annexure-3) issued by the Mineral Development Officer, Aurangabad by which it was informed that on an inspection by a Special Enquiry Committee, irregularities were found. Further, a fine of Rs. 2,72,72,960/-was also imposed to be paid within 72 hours.

Learned J.C. to Spl. P.P. Mines although tried to defend the order concedes that from the record, it is clear that no notice was issued to the petitioner before the orders in question were passed and further conceded that this case is covered by the order of the coordinate Bench in **Uma Associates** (supra).

In view of the aforesaid facts both the orders as contained in letter No. 430 dated 27.02.2023 passed by Mineral



Development Officer, Aurangabad and letter no. BSMC-428 dated 17.3.2023 issued by the General Manager of BSMC Ltd., Patna stand quashed.

The respondents are at liberty to take steps in accordance with law after putting the petitioner on notice.

Additionally, the petitioner, if so advised, may prefer representation for extension of lease and/or to compensate him for the period (27.2.2023 to 31.3.2023) for which he has paid the full amount.

If the petitioner prefers such representation within four weeks from today, the respondent authorities are duty bound to consider the same and pass an appropriate order within a period of six weeks from the date, the petitioner prefers representation.

The writ petition stands disposed of.

(Rajiv Roy, J)

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