

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4582 of 2023

M/S Gyan Infra Build Pvt. Ltd. a company incorporated under the Companies Act, having its registered office at Awleshpur, Kauda, Varanasi Uttar Pradesh 2211006, through its director Pradeep Kumar Das aged about 55 years (male), son of Manmahto Das, Resident of Das Brothers Shivganj, Dehri, P.S. Dehri, District- Rohtas

... .. 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. Bihar State Mining Corporation Limited, through its Managing Director, Room No. 164, Vikas Bhawan, (New Secretariate), Bailey Road, Patna 800015.
6. The Managing Director, Bihar State Mining Corporation Limited, 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
For the State	:	Mr. Gyan Prakash Ojha (GA-7)
For the Mines	:	Mr. Naresh Dikshit, Advocate Ms. Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

4 06-07-2023 Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Naresh Dikshit, the Spl.P.P. who represents the Mines Department as also Mr. Gyan Prakash Ojha, learned G.A.-7 for the State.

2. The petitioner has moved before this Court with



following prayers:

i) to issue an appropriate writ, order or direction in the nature of certiorari quashing letter no.427 dated 17.03.2023 issued by the Respondent Managing Director whereby and whereunder a penalty of Rs. 2,43,29,894/- has been levied upon the petitioner for allegedly excavating 2,27,276 CFT sand from outside the Environment Clearance Area;

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. 2,43,29,894/-;

iii) further to hold that Respondent Managing Director is not the competent authority under the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 to levy penalty upon a settee;

iv) further to hold that letter no. 427 dated 17.03.2023 issued by the Respondent Managing Director 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;



v) further to hold that the levy of penalty contained in letter no 427 dated 17.03.2023 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;

vi) to 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 ?;

vii) to hold that the action of the respondent authorities in suspending/blocking of generation e-challan on the portal <http://portal.biharmines.in/> is completely dehors the provisions of Mines & Minerals (Development & Regulation) Act, 1957 and the 2019 Rules;

viii) to hold that the extreme measures like suspending/blocking generation of e- challan on the portal <http://portal.biharmines.in/>, needs necessarily to be preceded, by an express show cause notice and opportunity of hearing in this regard;

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

3. It has been contended by the learned counsel for the



petitioner that pursuant to the tender process issued for the Cluster No.21, Daudnagar B sand ghat within the district of Aurangabad issued on 02.12.2021 (Annexure-1), the petitioner firm participated and pursuant thereafter an agreement was signed between the parties on 08-01-2022 which was earlier for the period up to 31.03.2022 but was extended from time-to-time and finally it was extended upto 31.03.2023 on 22.12.2022 (Annexure-4 to the petition).

4. It is his further submission that the payments were made by the petitioner firm to the State Government diligently but all on a sudden received a letter no.435 dated 27.02.2023 issued by the Mineral Development Officer, Aurangabad, by which the petitioner firm was informed that during inspection, it was found that illegal mining to the tune of 5,10,015 CFT for which estimated value/fine was calculated at 5,43,41,598/- was to be paid within a period of three days (Annexure-6 to the writ petition).

5. It is the categorical assertion of the learned counsel for the petitioner, Mr. Samdarshi that at no point of time, any inspection was made and the State is duty bound to produce the inspection report to show that the same was done and/or it was done in the presence of the petitioner and/or State



representative.

6. He further submits that subsequently, he submitted representation on 01.03.2023 (Anneuxre-7 to the petition) whereafter once again a letter was issued by the General Manager, Bihar State Mining Corporation Limited, Patna narrating that another inspection was done on 14.03.2023 and it was found that the firm did mining outside the approved area and in that background the amount was reduced to 2,43,29,894/- which was directed to be paid within 24 hours. It is the contention of Mr. Samdarshi that once again there was no such inspection and again the letter is bereft of any inspection report.

It is his further submission that rule 30 and 47 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules 2019 (henceforth for short 'the Rules, 2019' envisages action by the Collector and not by a Mining Development Officer which in this case have been done.

7. It is his last submission that in similar situate matter a coordinate bench of this Court in **CWJC No.3400 of 2023** disposed of on 09.05.2023 relating to **M/s Uma Associates vs. The State of Bihar** interfered and allowed the writ petition. It is as such his submission that the writ petition is fit to be allowed.

8. Learned Special P.P., Mr. Naresh Dikshit on the



other hand submits that twice inspections were made whereafter it was found that petitioner firm moved beyond the approved area and in that background, the fine of 5,43,41,598/- earlier was imposed which was later reduced to 2,43,29,894/- after the second inspection which the petitioner is duty bound to pay. It is his further submission that once it is found that mining has been done on a prohibited area, rule 56 of 'the Rules, 2019' will come into play and as such the respondent authorities were quite justified in passing the order under the said Rule.

9. He however concedes that in similar situate matter of **M/s Uma Associates** (supra), this Court has interfered.

10. To the submission regarding applicability of Rule 56 of 'the Rules, 2019', Mr. Samadarshi submits that the same is applicable to the non-settlee and he has taken this Court to the said rule to show that it cannot be extended on those firm with which settlement has been made.

11. The counter affidavit filed by the Mines Department do not have any inspection report either related to earlier letter dated 27.02.2023 (Annexure-6) or the later letter dated 17.03.2023 (Annexure-8). To a query, whether any inspection report is/are available, learned Special P.P. submitted that it was on the basis of inspection that the letters in question



were issued.

12. This Court is convinced that in absence of any inspection report either with the letters sent to the petitioner twice and/or in counter affidavit, it can be fairly assumed that there was/were no inspection reports and in that backdrop, finds it unable to hold how the Mineral Development Officer earlier, Aurangabad and the General Manager Bihar State Mining Corporation Limited, Patna later came to the conclusion about illegal mining which led to the calculation of the amount and the petitioner was asked to pay. It is also beyond imagination of the Court how such a big amount is directed to be paid within a period of three days/24 hours as was/were directed by the respondents.

13. Having gone through the orders passed by the coordinate bench in **M/s Uma Associates** (supra), this Court has no hesitation in following the same route.

14. The letter no.435 dated 27.02.2023 passed by the Mineral Development Officer, Aurangabad as also the letter no.427 dated 17.03.2023 passed by the General Manager Bihar State Mining Corporation Limited, Patna stands quashed.

15. The respondents authorities are free to proceed afresh in the matter in accordance with law.



16. The writ application stands allowed.

(Rajiv Roy, J)

Prakash Narayan /-

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