

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5948 of 2023

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M/s Shri Bhagwan Enterprises a partnership firm registered under the Partnership Act 1872, having its office at Belhariya, Near Kisan Cinema Hall, Tekari Gaya-824236 through its partner Pawan Kumar Singh, aged about 29 years, Male, S/o Ganauri Singh, R/o Belhariya, Near Kisan Cinema Hall, Tekari, Gaya-824236, 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 Bihar State Mining Corporation Limited through its Managing Director, Room No. 164, Vikas Bhawan (New Secretariat), Bailey Road, Patna-800015.
3. The District Magistrate, Gaya.
4. The Mining Development Officer, Gaya.

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 20-07-2023 Heard the parties.

2. The prayer in the writ petition is/are as follows:-

“(i) to issue an appropriate writ, order/orders direction/directions in the nature of Certiorari quashing Letter No. BSMC/397 and Letter No. BSMC/08/9102-60/22 480 dated 06.03.2023 and 28.03.2023 respectively (Annexure-P/5 Series) issued by the Respondent No. 2- Managing Director, Bihar State Mining Development Corporation whereby and whereunder a penalty of Rs. 74,41,853/- has been levied upon the Petitioner for irregularities alleged to have been committed by the



Petitioner during mining activity at Thanpur Sand Ghat, Gaya (Cluster-48);

(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. 74,41,853/-;

(iii) this Hon'ble Court may further adjudicate and hold that Letter No. BSMC/397 and Letter No BSMC/08/9102-60/22 480 dated 06.03.2023 and 28.03.2023 respectively (Annexure-P/5 Series) issued by the Respondent No. 2 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. BSMC/397 and Letter No. BSMC/08/9102-60/22 480 dated 06.03.2023 and 28.03.2023 respectively (Annexure-P/5 Series) 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.

3. At the outset learned counsel for the petitioner submits that he has represented before the Managing Director, Bihar State Mining Corporation Limited, Bihar Patna in the light of the order passed by co-ordinate bench of this Court in the case of **M/s Uma Associates Vs The State of Bihar & Others** passed in **CWJC No. 3400 of 2023** and the relevant paragraphs no. 7 to 9 which are incorporated herein below:-

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.”

4. Mr. Naresh Dixit, learned Special PP Mines submits that the matter is covered by the order passed by this court in the case of **M/s Uma Association (supra)** and further, representation of the petitioner (Annexure P/6) to the writ petition will be considered and reasoned order may be passed.

5. Accordingly, the writ petition stands disposed off



with a direction to the Managing Director, Bihar State Mining Corporation Limited, (respondent no. 2) to take up the representation of the petitioner dated 23.03.2023 and pass an appropriate order in accordance with law.

(Rajiv Roy, J)

Jagdish/Jyoti/-

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