

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6219 of 2023

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M/S Absolute Auto Pvt. Ltd., through its Proprietor Animesh Sanwaria (Male), aged about 38 years, son of Anil Kumar Sanwaria, Resident of Bungalow No. 7, Chanchani Colony, Dhैया, Bhawardaha, Nannagar, Dhanbad, Jharkhand- 826004

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary-cum-Mines Commissioner, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The District Magistrate, Patna.
4. The Mineral Development Officer, Patna.
5. The Bihar State Mining Corporation Ltd., through its Managing Director, Vikas Bhawan (New Secretariat), Bailey Road, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Vardhan Narayan, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Naresh Dixit, Spl. P. P.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 25-08-2023

Heard Mr. Jai Vardhan Narayan, learned counsel appearing on behalf of the petitioner and Mr. Naresh Dixit, learned Spl. P. P. for the mines. The state is represented by Mr. Gyan Prakash Ojha, learned GA – 7.

2. The petitioner who has been engaged as contractor to carry out Mining activities on behalf of the Bihar State Mining Corporation Limited (hereinafter referred to as ‘the Corporation’) wherein the Corporation is a concessionaire/ lease holder as defined under Rule 2(XVII) of the Bihar



Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as 'the Rules, 2019' being aggrieved by the order dated 16.09.2022 passed by the Director Mines – cum – CEO, Bihar State Mining Corporation Limited, Patna whereby the show-cause filed by the petitioner has been rejected and the petitioner has been held liable and directed to pay Rs. 1,85,000/- as penalty under Rule 56 of the Rules, 2019 for illegal mining/transportation of 140 MT of sand through 35 E-Challans and since balance of security deposit of the petitioner is Rs. 41,14,285/- therefore, after adjustment of this amount it was ordered that Rs. 39,28,785/- be refunded to the petitioner. It has further been ordered that since the petitioner has violated the provisions of Section 192 of the Motor Vehicles Act, 1988, the State Transport Commissioner may take further action against the contractor, as per law. The petitioner further seeks a direction upon the respondents to forthwith return the entire security deposit in the tune of Rs. 41,14,285/- which is lying with the department and had been illegally and arbitrarily adjusted vide order dated 16.09.2022.

3. The short facts leading to the filing of the present writ application is the petitioner having been declared successful



bidder awarded the contract for operation of sand ghat and accordingly, allotted Cluster No. 12 Nisharpura Ghat 1 Sone River in the district of Patna vide Letter No. 112/Patna dated 13.01.2022 issued by the Authorized Officer of the Corporation.

4. Having completed all the paraphernalia, including the payment of auction amount, execution of agreement and its registration of payment of stamp duty, payment of Income tax etc. with an undertaking to strictly observe the terms and conditions of approved Mining plan and environmental clearance, the respondent Corporation issued work order in favour of the petitioner in connection with the contract awarded for mining operations.

5. The aforementioned agreement for mining operation over the allotted sand ghat was valid till 31.03.2022 or till further orders of the Hon'ble Supreme Court in the case of State of Bihar and Ors. Vs. Pawan Kumar and Others (Civil Appeal Nos. 3661-3662 of 2020).

6. The engagement of the petitioner as contractor was to carry out mining operation in terms of the provisions of Mines and Minerals (Development and Regulation) Act, 1957, the Corporation had engaged the petitioner to extract minerals from the sand ghat identified by the Corporation and to



sell/supply the same to the purchaser/customers. The auction amount was the actual cost of minerals already recovered by the Corporation from the petitioner. As per the tender notice, especially Clause 24 thereof, it prescribes that every vehicle (including boat) engaged in transportation of sand shall have to be registered with the respondent Department of Mines and Geology. All such vehicles, which are registered with the Department would have to install GPS (which can be communicated with the monitoring system of the Department) so that its movement can be monitored by the Department. Further Clause 31(i) deals with obligation to the contractor to issue E-Challan to the driver of the vehicle for transportation of sand.

7. Thus, the role and obligation of the petitioner was confined to the sale of sand to a purchaser, who would be allowed to collect such sand from the petitioner sandghats in a vehicle, which is registered with the Department of Mines and Geology. In case, such vehicle would not be registered with the Department, no challan would be generated by the portal of the department and vice versa would hold true that a challan generated by the portal of the Department implies that such vehicle had appropriate registration with the department



entitling it to transport sand from one place to other.

8. The petitioner further submits that subsequent to expiry of the period on 31.05.2022, the sand ghat has been closed and during the entire lease period, the mining activities have been performed strictly as per the provisions of the 2019 Rules and there has never been any complaint by any of the authorities or the Corporation. However, all on a sudden, the petitioner received a letter issued under the signature by the Director Mines – cum – CEO of the Corporation whereby, the petitioner has been directed to file his show-cause with regard to the illegal use of unrealistic vehicles for transportation of minor minerals (sand). It was found that during the contract period, out of total number of 4338 E-Challans generated by the petitioner, 35 E-Challans were issued for the unrealistic vehicles for transportation of 140 MT of sand whose value comes to Rs. 1,85,000/- and, as such, the same is found to be in contravention of Section 56 of the 2019 Rules and Clause XXVII of the agreement.

9. In response to the aforesaid show-cause notice, the petitioner has filed his reply, however, the same has been rejected by the Director Mines – cum – CEO of the Corporation vide impugned order dated 16.09.2022 and the petitioner has



been held liable for the irregularities and directed to pay Rs. 1,85,000/- as penalty under Rule 56 for illegal mining/transportation of 140 MT of sand through 35 E-Challans and thus, directed to make adjustment of this amount against the security deposit.

10. It is the case of the petitioner that the impugned order issued by the respondent Director Mines – cum – CEO of the Corporation imposing penalty under Rule 56 of the Rules, 2019 as against the petitioner is wholly without jurisdiction and unsustainable in the eyes of law on the grounds enumerated in the writ petition. Some of the grounds, *inter alia*, raised by the petitioner are that the respondent Corporation and its authority had no jurisdiction to impose penalty under Rule 56 of the Rules, 2019 for an offence allegedly committed in terms of Section 192 of the Motor Vehicles Act, 1988. It is further submitted that the show-cause notice dated 27.07.2022 issued by the Corporation has failed to bring out any such activity along with any evidence thus a relevant provision of the 2019 Rules pertaining to actual Act of illegal mining/transporting and selling failed to come into picture. He next submitted that undisputedly the minerals had suffered the incidence of royalty which had already been paid by the lessee to the



Department/Corporation and, as such, the E-Challan which have been issued, cannot be termed as violation of Section 56 of the 2019, Rules. Apart from the aforementioned grounds, the petitioner also raised other grounds, including the grounds, quoted hereinbelow:

“(i) No jurisdiction in terms of rule 56 of rules 2019 to initiate any proceeding as against the petitioner as the petitioner is a contractor with valid license to carry out mining activities in terms of agreement with the Corporation. Besides, the petitioner is not a transporter engaged in transportation of sand nor has caused such transportation of sand.

Rule 56 of the rules 2019 is in two parts- one is that which applies to a case of persons carrying out mining activities and another to persons engaged in transportation of minerals. Petitioner herein is a mining contractor and not at all a transporter. As such it is the said part of rule 56 dealing with engagement of a person in mining operations which would apply and not that which applies to the case of transporter.

(ii) The petitioner is simply a contractor engaged by the Corporation to carry out mining operations which includes excavation and extraction of sand from the sandghats wherein the last activity to be



performed is sale of sand from the sandghats. The petitioner is not concerned at all with the mode and mean of transportation of such sand from the point of sale. The petitioner is simply a seller of sand from the sandghats awarded under contract.”

11. While concluding the arguments, as discussed hereinabove, it is submitted that in similar circumstance, the learned coordinate Bench of this Court while adjudicating the identical issue vide order dated 02.05.2023 passed in C.W.J.C. No. 111 of 2023 (M/S Harsh Construction Vs. The State of Bihar and Others) has put a quietus to the issue/claim and held as follows:

“21. On the other hand Rule 56 of the Rules deals with penalty for unauthorized extraction and removal of minor minerals. Rule 56(1) of the Rules as quoted herein above is quite clear when it provides that whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made, otherwise than in accordance of these Rules, he would be liable for punishment, as provided under the said provision. Thus, in the opinion of this Court, the very heading of Rule 56 which talks about penalty for unauthorized extraction and removal of minor minerals, contemplates



that the same is with respect to persons not having a valid license/agreement for extraction of minor minerals. In case, the person is having a valid license, the permission for extraction already being there, in case there is any breach, the provision of Rule 30 which deals with penalty in case of breach of terms would come into play.

22. So far as the facts of the instant case is concerned, there is no dispute that pursuant to the petitioner being the highest bidder for the mine in question, work order dated 8.12.2021 (Annexure-1) was issued in his favour and subsequently an agreement was also entered into on 29.3.2022 (Annexure-2) between the BSMCL and the petitioner. Thus in the opinion of the Court the case of the petitioner would not come under Rule 56 of the Rules and the order impugned is not sustainable on this ground alone.

23. It may further be stated here that so far as the ground of incorrect e-challans being issued is concerned, it was submitted by learned senior counsel appearing for the petitioner that the petitioner was required to fill up Form-G and on the same being accepted that the mineral transit pass / e-challans is generated by the Department of Mines and Geology, Government of Bihar. Besides the details



mentioned in Form-G, at Sl. no. 16 thereof the vehicle number is required to be given. Learned senior counsel submitted that it is the categorical case of the petitioner that in absence of the registration number of the vehicle being available, with respect to the vehicle the petitioner supplied the chassis number of the vehicle and the respondents issued the e-challans for transportation of the mined sand.”

12. On the other hand, learned Special P.P. for the Mines Department has fairly submitted that the issue involved in the present writ application has been elaborately answered by the learned co-ordinate Bench in the case of M/S Harsh Construction (supra).

13. Having considered the submissions made on behalf of the parties and taking note of the judgment passed by the learned co-ordinate Bench of this Court, which squarely covers the issue involved in the present application, this Court feels it apt and proper to dispose of the present writ petition in terms of the order passed by the learned Coordinate Bench of this Court in the case of **M/S Harsh Construction (supra)** and accordingly in consequence thereof the impugned order dated 16.09.2022 under challenge passed by the Director Mines – cum – CEO, Bihar State Mining Corporation Ltd. is hereby quashed and cancelled. The Director Mines – cum – CEO, Bihar State



Mining Corporation Ltd. is directed to refund the respective security amount of the petitioner within a period of three weeks from the date of receipt/production of a copy of this order/judgment.

14. It is made clear that if the amount under the penalty has already been adjusted from the security deposit of the petitioner, the same shall also be refunded to the petitioner withing the aforenoted period.

15. In view thereof, the writ petitions stand allowed.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.09.2023.
Transmission Date	NA

