IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6429 of 2023

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M/s Eklavya Stone and Mines Pvt. Ltd through its Director Nidhi Kumari, aged about 32 years, Female, Daughter of Amarnath Singh, Resident of A-58, Police Colony, Near Park, Gandhi Vihar, Phulwari, Anisabad, P.S.- Gardanibagh, District- Patna, having its registered office at Village-Pathra English, P.O.- Orhanpur, P.S.- Muffasil, District- Nawada.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary-cum-Principal Secretary, Mines and Geological Department, Govt. of Bihar, Patna.
2. The Additional Chief Secretary-cum- Principal Secretary Mines and Geological Department, Govt. of Bihar, Patna.
3. The Director Mines and Geological Department, Govt. of Bihar, Patna.
4. The Assistant Director Mines and Geological Department, District- Nawada.
5. The District Magistrate-cum- Collector Nawada.
6. The Mineral Development Officer Mines and Geological Department, Nawada.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sudhir Kumar Singh, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA- 7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 12-10-2023

Heard Mr. Sudhir Kumar Singh, learned counsel for the petitioner and Mr. Naresh Dikshit, learned Spl. P.P. for the Mines. The State is represented by Mr. Gyan Prakash Ojha, learned Government Advocate No.-7.

2. The petitioner is a registered company engaged in storage of stone, has been granted license for storage of stones (minor minerals) in the stock hold area, bearing License No. 01 of 2019 in favour of the petitioner in “Form-K” for

storage of stone (minor minerals) in land appertaining to Khata No. 227, Plot No.4254/10020, measuring 3 acres 42 decimals situated at Mauza Bhadokhara, District Nawada. filed the present writ petition seeking indulgence of this Court for issuance of appropriate writ/writs, order/orders, direction/directions for the following reliefs:

> *(I) For quashing the order contained in Letter No. 964 dated 15.04.2023 issued under the signature of Mineral Development Officer, Mines and Geological Department, Nawada (Respondent No. 6) whereby and whereunder a penalty of sum of Rs. 31,64,90,413/- has been imposed upon the petitioner under Rule 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation) (Amended) Rules, 2021 for illegal storage of 2978498 CFT stone mineral and further direction has been issued to deposit the aforesaid amount within 15 days failing which the stored stone will be seized and a Certificate Case shall be instituted for realization of the aforesaid amount.*
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> *(ii) For issuance of writ of mandamus commanding the respondents to provide stock capping by issuing transport challan/ generating E-challans on the portal and to allow the petitioner to dispatch/ transport stone from the stock hold area in*

the District of Nawada for which the petitioner has obtained K license under Rule 39(1) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation) Rules, 2019."

(iii) For any consequential relief or reliefs for which the petitioner will be found entitled in the facts and circumstances of the present case.

3. Without averting to the factual matrix of the case, this Court straightway examine the legality of the order impugned on the basis of the submissions made herein.

4. While assailing the impugned order, imposing penalty to the tune of Rs.31,64,90,413/- under Rule 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation) Amended Rules, 2021, it is submitted that the aforesaid provision has been made to prevent only illegal mining.

5. The petitioner being a valid K license holder to stock, transport/dispatch of stored minerals from the stock hold area is not covered by the provisions made in Rule 56 of the Rules, 2019, as amended by Amendment Rules, 2021 and thus Amended Rules, 2021 is not attracted in the case of the petitioner and no such penalty can be imposed in exercise of power confessed under Rule 56(2) of the Rules, 2019, as

amended by Amendment Rules, 2021. He further submits that the irregularity as alleged, even if accepted for the sake of argument, though not admitted, is with respect to storage of stone chips for the year 2019 and, as such, the amended Rules, 2021 cannot apply retrospectively. He further submits that the impugned order issued by the Mines Development Officer, Nawada is, prima facie, on the dictate of the higher authorities and, as such, he being a competent authority has not applied independent mind. That apart, before issuance of the impugned order dated 15.04.2023 has been issued without any show-cause notice or giving any opportunity of being heard.

6. Per contra, learned Spl. P.P. for the Mines, while justifying the impugned order passed by the Mines Development Officer, Nawada, has stated that the petitioner being permitted and granted the stock capping and transportation challan has stored 2978498 CFT of stone at the storage site, which is not permissible under the law and thus the storage of stone minerals at the site between 03.12.2019 to 31.12.2019 is punishable under Rule 56(2) of the Bihar Minerals Amendment Rules, 2021 (hereinafter referred to as 'the Amendment Act, 2021'). He further submits that storage, in question, at the K-License site is illegal under Rule 56(2) of the

Amendment Act, 2021 and thus a penalty of 25 times to the price of minerals is to be realized from the petitioner, which is calculated at Rs.31,64,90,413/- and accordingly, the impugned order, as contained in Letter No. 964 dated 15.04.2023 has been issued. He next submitted that the order issued by the Mineral Development Officer, Nawada is the competent authority to issue demand notice under the Rules, 2019 as amended in the year 2021, however, any final order passed by the Mining Officer shall be appeallable to the Collector within 60 days from the date of order, as provided under Rule 67 of the Bihar Mineral Rules, 2019. Further the final order passed by the Collector shall be appeallable to the Mines Commissioner, but the petitioner without availing the statutory provision available to him has come before this Court under the writ jurisdiction, which is not tenable under the law.

7. At this stage, learned counsel for the petitioner submits that the order impugned, apart from, wholly without jurisdiction, has been passed in complete violation of the principles of natural justice and thus the existence of alternative remedy does not by itself bar this Court from exercising its jurisdiction under Article 226 of the Constitution of India. Heavy reliance has been made in the case of M/s Magadh Sugar

& Energy Ltd. Vs. The State of Bihar & Ors., 2021 SCC OnLine SC 801 wherein three Judges Bench of the Hon'ble Supreme Court dealing with the principle of alternative remedy and its exception has summarized elaborately.

8. This Court also tempted to quote para. 19 of the Judgment in **M/s Magadh Sugar & Energy Ltd.** (supra) for the appreciation of the issue in question.

> *"19. While a High Court would normally not exercise its writ jurisdiction under Article 226 of the Constitution if an effective and efficacious alternate remedy is available, the existence of an alternate remedy does not by itself bar the High Court from exercising its jurisdiction in certain contingencies. This principle has been crystallized by this Court in* ***Whirpool Corporation v. Registrar of Trademarks, Mumbai, (1998) 8 SCC 1****, and* ***Harbanslal Sahni v. Indian Oil Corporation Ltd., (2003) 2 SCC 107****. Recently, in* ***Radha Krishan Industries v. State of Himachal Pradesh & Ors 2021 SCC OnLine SC 334*** *a two judge Bench of this Court of which one of us was a part of (Justice DY Chandrachud) has summarized the principles governing the exercise of writ jurisdiction by the High Court in the presence of an alternate remedy. This Court has observed:*
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> > *"28. The principles of law which emerge are that:*
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> > *(i) The power under Article 226 of the Constitution to issue writs can be exercised*

not only for the enforcement of fundamental rights, but for any other purpose as well;

(ii) The High Court has the discretion not to entertain a writ petition. One of the restrictions placed on the power of the High Court is where an effective alternate remedy is available to the aggrieved person;

(iii) Exceptions to the rule of alternate remedy arise where (a) the writ petition has been filed for the enforcement of a fundamental right protected by Part III of the Constitution; (b) there has been a violation of the principles of natural justice; (c) the order or proceedings are wholly without jurisdiction; or (d) the vires of a legislation is challenged;

(iv) An alternate remedy by itself does not divest the High Court of its powers under Article 226 of the Constitution in an appropriate case though ordinarily, a writ petition should not be entertained when an efficacious alternate remedy is provided by law;

(v) When a right is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is a rule of policy, convenience and discretion; and

(vi) In cases where there are disputed questions of fact, the High Court may decide to decline jurisdiction in a writ petition. However, if the High Court is objectively of the view that the nature of the controversy requires the exercise of its writ jurisdiction, such a view would not readily be interfered with."

(emphasis supplied)

The principle of alternate remedies and its exceptions was also reiterated recently in the decision in Assistant Commissioner of State Tax v. M/s Commercial Steel Limited (Civil Appeal No. 5121 of 2021). In State of HP v. Gujarat Ambuja Cement Ltd., (2005) 6 SCC 499, this Court has held that a writ petition is maintainable before the High Court if the taxing authorities have acted beyond the scope of their jurisdiction. This Court observed:

> *"23. Where under a statute there is an allegation of infringement of fundamental rights or when on the undisputed facts the taxing authorities are shown to have assumed jurisdiction which they do not possess can be the grounds on which the writ petitions can be entertained. But normally, the High Court should not entertain writ petitions unless it is shown that there is something more in a case, something going to the root of the jurisdiction of the officer, something which would show that it would be a case of palpable injustice to the writ petitioner to force him to adopt the remedies provided by the statute. It was noted by this Court in L. Hirday Narain v. ITO [(1970) 2 SCC 355: AIR 1971 SC 33] that if the High Court had entertained a petition despite availability of alternative remedy and heard the parties on merits it would be ordinarily unjustifiable for the High Court to dismiss the same on the ground of non-exhaustion of statutory remedies;unless the High Court finds that*

factual disputes are involved and it would not be desirable to deal with them in a writ petition."

9. On a query made by this Court as to whether before issuance of the impugned letter no. 964 dated 15.04.2023, the petitioner was allowed any opportunity of being heard or any notice to show-cause has been served upon him. The learned Special P.P. (Mines) failed to respond.

10. Having anxiously gone through the materials available on record and the submissions advanced on behalf of the parties, this Court finds that admittedly before issuance of the impugned order imposing the penalty, as contained in Letter No. 964 dated 15.04.2023, the petitioner has not been served any notice nor any opportunity of being heard, thus on this score alone this Court finds that the order impugned is fit to be quashed and cancelled and the matter is remitted to the Mines Development Authority, Nawada afresh.

11. Accordingly, the impugned order imposing the penalty, as contained in Letter No. 964 dated 15.04.2023, is hereby quashed and remit the matter to the Mines Development Authority, Nawada, who will issue fresh notice to the petitioner within a period of two weeks from the date of receipt/production of a copy of this order and after giving adequate time to file

response in the matter, shall pass final order in conformity with the principle of natural justice, preferably within a period of four weeks thereafter.

12. In the meantime, the respondents shall not take any action in furtherance of the impugned Letter No. 964 dated 15.04.2023.

13. Accordingly, the present writ petition stands allowed to the extent indicated hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.10.2023
Transmission Date	NA