

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6156 of 2023

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Kumar Harsh Son of Shiv Shankar Singh, Behind Nirsa High School, Bhamal, Heriajam, Nirsa Chatti, Dhanbad Jharkhand- 828205 through its authorised representative namely Mukesh Kumar Gupta male aged about 42 years Son of Bajrangi Prasad Gupta, Street/Road/Late- Lalita Prasad Road, Area/Locality/Sector- Biratpur, Village/Town/City- Aurangabad, P.O.- Aurangabad- 824101, Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Bihar State Mining Corporation Limited, Patna through its Managing Director.
3. The Managing Director, Bihar State Mining Corporation Limited, Patna.
4. The General Manager, Bihar State Mining Corporation Limited, Patna.
5. The Chief Executive Officer, Bihar State Mining Corporation Limited, Patna.
6. The District Collector, Aurangabad.
7. The Mines Development Officer, Aurangabad. (Cluster number 19 of river sone).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar Advocate Ms. Ekta Rani, Advocate
For the State	:	Mr. Abhishek Singh, AC to GA -7
For the Mines	:	Ms. Kalpana, Advocate

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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:-

(a) for issuance of a writ in the nature of certiorari for quashing of the letter dated 27.02.2023 issued vide reference number 436/Khanan by the respondent number 7 whereby the petitioner has been saddled with a penalty for Rs. 4,90,17,929/-



impliedly under rule 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as the rules 2019 for short) and has been called upon to pay the same within a period of 3 days of such demand along with a direction to submit an explanation against proposed deactivation of the storage and discontinuation of e-*challans* for allegation of violation of the terms and conditions of the storage license possessed in form K in terms of the rules 2019;

b) for issuance of a writ or order or direction upon the respondents to immediately reactivate the user id and password assigned to the petitioner for storage of sand in the premises covered by the storage license issued in form K as the petitioner has already deposited the full contractual amount of 15,202,841/- along with all the statutory liabilities and other charges with the Bihar State Mining Corporation Limited (hereinafter referred to as "the Corporation" for short) as per rules 2019 well in advance against sand ghat namely "Emambara" in cluster number 19 in river sone and is entitled to store sand produced by the said sandghats already belonging to the petitioner,

(c) for further issuance of a writ or order or direction



restraining the respondent corporation and its authorities from taking any coercive action against the petitioner for recovery of the amount of penalty indicated/demanded in terms of the impugned letter bearing reference number 436/Khanan dated 27.02.2023 and in case any part of or whole of such penalty is recovered by any means then for a direction for refund of the same along with interest and compensation as may be deemed fit in the facts and circumstances of this case;

(d) for further holding and a declaration that the whole proceeding of inspection of the premises of the petitioner under storage license in form K and the opinion formulated on the basis thereof in absence of the petitioner or his represented authorized for such purpose is an ex parte exercise which can never have any valid consequence adversely affecting the interest of the petitioner and therefore the consequential demand of penalty is wholly misconceived, baseless and unsustainable in the eye of law.

3. Both the learned counsel for the petitioner as also learned Special PP Mines jointly submitted that this case is also covered by order of 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. In the aforesaid background the letter no. 436/Khanan dated 27.02.2023 issued by the Mineral Development Officer stands quashed with liberty to the respondent-authorities to act in accordance with law after putting the petitioner on notice.

5. The writ application stands disposed of.

(Rajiv Roy, J)

Jagdish/Jyoti/-

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