

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7134 of 2023

=====

Arena Food and Agro Industries Private Limited, a company incorporated under the provisions of the Companies Act, 1956, having its registered office at Village Nimi, P.S.- Shekhopur, District Sheikhpura, through its Director, Radhey Sharma, aged about 48 years, Son of Harangi Singh, resident of Village Nimmi, P.S.- Shekhopur, District- Sheikhpura.

... .. 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, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The District Magistrate cum Collector, Sheikhpura.
5. The Mineral Development Officer, Sheikhpura.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Vijay Shankar Tiwari, Advocate Mr. Rohit Singh, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA- 7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P. Mines Ms. Kalpana, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 22-08-2023

Heard Mr. Suraj Samdarshi, 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 is a Private Limited Company incorporated under the provisions of Companies Act, 1956, *inter alia*, engaged in the activity of mining stone in the State of



Bihar seeking a direction upon the respondents to allow the petitioner to remove/sell 1,95,671.60 MT and 17,458.91 MT of royalty paid minerals (stone chips and dust) lying at stock areas bearing K-license no. K-Sheikhpura/28/2022 and K-Sheikhpura/30/2022 respectively. The petitioner further seeks a declaration from this Court to hold that mineral stocked by him at its K-license sites obtained under Rule 39 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as 'the Rules, 2019') is royalty paid and the property of the petitioner.

3. Short facts, which led to the filing of the present writ application is that the petitioner's company having been declared as a highest bidder at Rs.29,00,00,000/- was granted the mining lease with respect to land situated at Mauza Mathokar Surdaspur, Circle Sheikhpura. Having deposited the amount, the petitioner entered into an agreement with the State of Bihar for the period from 30.03.2017 to 29.03.2022. In terms of the agreement, the petitioner had deposited the entire royalty amount along with interest over the delayed payment.

4. It is submitted that as per the terms of Schedule-II of Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules, 1972'), in case of settlement is made



through auction, the royalty under Rule 26(1)(b) would be the auction amount. The petitioner had also obtained environment clearance from State Environment Impact Assessment Authority, Bihar and the proposed capacity of production was capped at 11,41,250 tonnes per annum. Thus, for the entire period of five years, the petitioner was entitled to extract 57,06,250/- tonnes of mineral i.e. 14,26,56,250 CFT.

5. It is the case of the petitioner that during the entire period of five years, the petitioner company had produced only 12,02,59,361.7 CFT minerals, which comes to 48,10,374 MT. Despite the above fact the respondent Mineral Development Officer, Sheikhpura vide letter no. 722 dated 04.07.2022 directed the petitioner to deposit Rs.6,25,34,581/- as additional royalty. It was alleged that the petitioner had despatched mineral worth Rs.36,43,58,068/- during the settlement term till 29.03.2022, but had deposited only Rs.30,18,23,487/-, therefore, the petitioner was liable to pay additional royalty of Rs.6,25,34,581/-. The petitioner's response to the aforesaid letter came to be rejected vide letter no. 731 dated 06.07.2022, which was assailed before the Collector Sheikhpura in appeal, bearing Appeal Case No. 96 of 2022 under Rule 67 of the 2019 Rules. However, the same was also



dismissed vide order dated 28.03.2023.

6. Aggrieved by the aforesaid order, the petitioner is in the process of assailing the same before the Municipal Commissioner.

7. In support of the relief sought for, various legal grounds have been raised by the petitioner, inter alia, that no additional royalty was payable to the respondents, since in case of auction, the royalty was the auction amount as per Schedule-II of Rules, 1972, which was enforced at the time of execution of agreement. He further submits that Rule 39 of Rules, 2019 stipulate issuance of license for storage of minor mineral beyond lease hold area. In the light of the same, the petitioner had obtained two storage license in form 'K' bearing license no. K-Sheikhpura/28/2022 vide Memo No. 47 dated 17.02.2022 and K-Sheikhpura/ 30/2022 vide Memo No. 56 dated 02.03.2022 respectively, which were valid till 31.12.2022.

8. He next submits that the license holder is supposed to maintain the register in Form-H, wherein the source of minor mineral has to be disclosed and any sand stored by virtue of K-license necessarily has to suffer the incidence of royalty, which was paid by K-license holder at the time of purchasing the mineral from the concession holder. The



transportation of such mineral must precede issuance of E-challan, which is a procedural formality and no extra money is payable to the Government when the K-license holder sells mineral from the K-license sites.

9. Mr. Samdarshi, further submits that surprisingly on account of non-payment of additional royalty, one F.I.R. bearing Sheikhpura P.S. Case No. 396 of 2022 has also been lodged against the petitioner, which also revealed that a Stone Crusher Machine lying at the mining cite was also seized. Thus, the additional prayer has been made by filing interlocutory application, bearing I.A. No. 1 of 2023 seeking a direction upon the respondents to allow the petitioner to remove his stone crusher machine lying at the mining site, which has been seized by the Mining department, in view of the terms of the agreement, especially Part IX, Clause 6 thereof, which stipulates upon expiration/termination of the agreement, the petitioner was entitled to remove plant, machinery and other articles from the mining site. However, the petitioner was not granted permission to remove stone crusher machine installed by him at the mining site.

10. Per contra, Mr. Naresh Dikshit, learned counsel for the Mines and Geology Department, with reference to the



averments made in the counter affidavit, vehemently submitted that there is a provision under Clause 36 of Part VII of the Settlement that the lessee shall have to pay extra royalty in case he extracts stone for the excess quantity in comparison to bid amount in that calendar year. He has further drawn the attention of this Court to Rule 54(4) proviso of the Rules, 1972 and Rule 22(3) of Bihar Mineral Rules, 2019, which provides for payment of royalty for extra quantity of mineral extracted and dispatched. He also submits that on the representation filed by the petitioner before the Collector, Sheikhpura for inspection of his site, the same was carried out after constitution of a committee vide Memo No. 1222 dated 29.09.2022 and the Committee found that there was only 37,186 CFT stone chips at the site, while as per departmental portal, the quantity of mineral should have been 52,80,692 CFT as on 07.07.2022.

11. He also submits that the petitioner has been seeking permission to remove mineral, which does not exist at the site, which is clear from the inspection report and it is apparent that he has removed the same without paying royalty to the Government, which led to the institution of Sheikhpura P.S. Case No. 396 of 2022 dated 08.07.2022.

12. Mr. Dixit lastly submits that once the lease has



expired and K-linces also come to an end, the petitioner is not entitled to seek removal of any mineral from the site and moreover, in a circumstances, where he has already mined more and sold the same beyond the limit fixed under the settlement.

13. Having given anxious consideration to the submissions made on behalf of the parties, prima facie, it appears that there is apparent dispute with regard to availability of adequate mineral at site, in question. A huge variance has been shown in the report of inspection committee vis-a-vis departmental portal. That apart, the petitioner successfully able to show from the materials that the inspection of the sites, which was approximately spread in four acres, was done in a haste.

14. Further, the petitioner being aggrieved by letter no. 731 dated 06.07.2022 issued by the Mineral Development Officer, Sheikhpura preferred an appeal under Rule 67 of the 2019 Rules before the Collector, Sheikhpura, bearing Appeal Case No. 96 of 2022 challenging the demand of additional royalty of Rs.6,25,34,581/-, which also came to be dismissed vide order dated 28.03.2023 and thus he intends to assail the same before the Principal Secretary, Mines and Geology Department, Government of Bihar.

15. Though, the issue in respect to additional



royalty and the present one is somewhat different, but certainly connected to each other and is obvious dispute with regard to the availability of mineral, thus, in the opinion of this Court it would be just and proper to relegate this matter also to the Principal Secretary, Mines and Geology Department.

16. The parties are also in consensus with the observations made by this Court.

17. Needless to observe that if the petitioner files application/petition in support of his claim, including the claim for removal of his stone crusher machine from the site within a period of four weeks from today, the same shall be considered and disposed of by a reasoned and speaking order preferably within a period of further eight weeks.

18. Accordingly, the present writ application stands disposed of.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.08.2023
Transmission Date	NA

