

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7689 of 2023

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Gyan Infrabuild Pvt. Ltd., company registered under the Companies Act, 1956 having its Corporate office at Awlespur, Kandwa, P.S. Kandwa District Varanasi, Uttar Pradesh through its Director Pradeep Kumar Das, male aged about 56 years Son of late Manmanto Kumar Das resident of Das Brothers, Shivganj, P.S. Dehri, District Rohtas, 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 Principal Secretary cum Mines Commissioner, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The District Magistrate, Aurangabad.
4. The Mineral Development Officer, Aurangabad.
5. The District Mining Officer, Aurangabad.
6. The Bihar State Mining Corporation Limited, through its Managing Director, Room No. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna.
7. The General Manager, Bihar State Mining Corporation Limited, Room No. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna.

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL JUDGMENT

Date : 31-08-2023

Heard Mr. Rajiv Kumar Singh, learned counsel appearing on behalf of the petitioner, Mr. Gyan Prakash Ojha, learned GA-7 for the State and Mr. Naresh Dikshit, learned Spl. P.P. (Mines).

2. The petitioner is a registered Company under the



Companies Act preferred the present writ application through its Director invoking the prerogative writ jurisdiction of this Court for the following reliefs:

“(i) To issue an appropriate writ, order or direction in the nature of certiorari quashing Letter No.439 dated 27.02.2023 issued by the Respondent Mineral Development Officer, Aurangabad whereby and whereunder a penalty of Rs. 2,74,38,100/- has been levied upon the petitioner for irregularities alleged to have been committed by the petitioner during mining activity at Anikat sand ghat (Cluster No. 09) in Aurangabad District.

(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 abovementioned penalty of Rs. 2,74,,38,100/-.

(iii) This Hon'ble Court may further adjudicate and hold that Letter No. 439 dated 27.02.2023 issued by the Respondent Mineral Development Officer, Aurangabad 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 nor has been provided with a copy of the report of the so called inspection conducted by the Special Investigation Unit or any other opportunity of hearing prior to the impugned letter imposing penalty.

(iv) 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.

(v) To issue an appropriate order or direction upon the Respondent authorities to either extend the contract of the Petitioner for such number of days for which the Petitioner has illegally not been allowed to do any mining activity in the wake of the impugned order imposing penalty or in the alternative remit the proportionate amount for the said period from the bid amount since the Petitioner has been prevented from conducting any mining during the said period solely on account of the illegal orders passed by the Respondents.

(vi) To grant any other relief or reliefs which the Petitioner may be found entitled to in the facts and circumstances of the case.”

3. The short facts leading to the filing of the present writ petition is/are that in the light of the order of the Hon'ble



Supreme Court in Civil Appeal Nos. 3661-3662 of 2020, auction for selection of the Contractor/Settlee for operating sandghats Dhamini 1 and Anikat 1 (Cluster No. 09) on river Sone in the district Aurangabad, Bihar was held wherein the petitioner was declared successful bidder and in pursuance thereto he deposited all the necessary amounts under the various head along with the necessary documents and after due verification the work order was issued vide letter no. 662 dated 02.12.2021. The petitioner was allotted the aforementioned sandghats for carrying out the mining activity and the duration for which mining operation was carried out either upto 31.02.2022 or till further orders were passed by the Hon'ble Supreme Court in the aforementioned appeal, whichever was earlier.

4. That pursuant to the issuance of the work order, the petitioner started the mining operation at the sandghat allotted to him from 15.12.2022. However, subsequently, in the light of the order of the Hon'ble Supreme Court dated 26.09.2022, the operation of the sandghats, in question, was to be conducted through the Bihar State Mining Corporation Ltd. and thus the settlement/contract of the petitioner was further extended time to time. The petitioner also deposited the proportionate amount of Rs.1,35,64,394/- and also the amount



under GST, Income Tax and other heads for getting the extension of settlement contract.

5. It is submitted that while the petitioner was carried on with the mining activity in the sandghats allotted to him in accordance with the provisions of the Mineral Rules, all of a sudden the petitioner received letter no. 439 dated 27.02.2023, issued by the respondent Mineral Development Officer, Aurangabad whereby a penalty of Rs.2,74,38,100/- has been levied upon him for irregularities alleged to have been committed during mining activity at Anikat 1 sandghat, which was found during inspection allegedly conducted by Special Inspection Team. The petitioner has been directed to deposit the amount within a period of three days, failing which the generation of E-transit challan used for transportation of sand would be stopped. It is the case of the petitioner that the generation of E-challan was stopped on 27.02.2023 itself.

6. He further contended that the allegation of illegal mining outside the environment clearance area has been levelled merely on the basis of presumption, since no actual inspection of the sand ghat, in question, was done and as is clear from the absence of any narrations made in the impugned order dated 27.02.2023, none of the petitioner's representatives/employees



have been caught indulge in any illegal mining activity within the permissible environment clearance area. Further there is neither any seizure of any tools, equipment nor transport vehicles belonging to the petitioner. He further submits that imposition of penalty of a huge amount of Rs.2,74,38,100/- upon the petitioner is completely illegal and in violation of the principles of natural justice as well as the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as 'the Rules, 2019').

7. Apart from the submissions that the impugned order imposing the penalty is wholly without jurisdiction and is contrary to Rule 56(2) of the Rules, 2019, the petitioner further submits that the same is in complete violation of the principles of natural justice, inasmuch as neither any cause has been shown nor any reasonable opportunity to meet the allegation has been provided and thus on this score alone, the impugned order is fit to be quashed and cancelled.

8. It is the categorical assertion of the learned counsel for the petitioner that at no point of time any inspection was made and furthermore the State is also duty bound to produce the inspection report to show that the same was done



and/or it was done in presence of the petitioner or State representative, but the respondent has failed to discharge his duties. It is further contended that Rules 30 and 47 of the Rules, 2019 envisages action by the Collector and not by a Mining Development Officer, which also makes the impugned order wholly without jurisdiction.

9. Learned counsel for the petitioner lastly submitted that under the identical situation, the learned coordinate Bench of this Court in C.W.J.C. No. 3400 of 2023 (**M/s Uma Associates Vs. The State of Bihar and Others**) vide order dated 09.05.2023 has been pleased to quash the penalty order and allowed the writ application. Paragraph 8 of the judgment is quoted hereinbelow for appreciation of the matter in issue.

“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.”

10. Per contra, learned Spl. P.P. (Mines) while refuting the contention of the petitioner submitted that there is no illegality in the order impugned, which is based on physical verification and inspection having been carried out by the respondent authorities. During such inspection, the mining of sand beyond the permitted environment clearance area was found and thus the respondents have rightly proceeded under the relevant provisions of the Rules and imposed penalty in accordance with law. He, however, fairly submits that in identical matter under similar circumstances the learned coordinate Bench of this Court has interfered with and held the impugned order of penalty unsustainable.

11. This Court has also perused the impugned order dated 27.02.2023, as contained in Annexure-6 to the writ petition, and *prima facie* is convinced that neither the impugned order discussed the date on which inspection was made nor it speaks who were the authorities conducted the inspection and before such inspection whether the petitioner was noticed or copy of the inspection report has ever been served or any cause



has been shown to him warranting the response of the petitioner.

12. In view of the aforementioned admitted facts and the position obtaining in law, this Court finds that the order passed by the learned coordinate Bench in **M/s Uma Associates** (supra) squarely covers the case of the petitioner, hence this Court has no hesitation in setting aside the impugned letter dated 27.02.2023 issued by the respondent Mineral Development Officer, Aurangabad, as contained in Annexure-6 to the writ petition.

13. Needless to observe that the respondent authorities are at liberty to proceed afresh in the matter in accordance with law.

14. The writ petition stands allowed with the observations made hereinabove.

(Harish Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.09.2023
Transmission Date	NA

