

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8132 of 2023

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M and T Enterprises, a proprietorship firm having its place of business at Village- Belwa, P.O.- Belwa, P.S.- Kishanganj, District- Kishanganj through its proprietor Md. Tanbir Alam alias Tanweer Alam male aged about 44 years son of Late Wahid Alam resident of Village- At and P.O.- Belwa, District- Kishanganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Director, Department of Mines and Geology, Government of Bihar, Patna.
4. The District Magistrate, Kishanganj.
5. The Mines Development Officer, Kishanganj.
6. The Bihar State Mining Corporation Ltd, through its Chief Executive Officer, Bihar, Patna.

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 8171 of 2023

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Jai Shiv Shakti Enterprises, a Proprietorship firm having its Place of Business at Village-Khoda, Tehsil-Rawatsar, District-Hanumangarh, Rajasthan through its Proprietor Budh Ram Sharma Male aged about 36 Years Son of Kana Ram resident of Village-Khoda, Tehsil-Rawatsar, District-Hanumangarh, Rajasthan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The Director, Department of Mines and Geology, Government of Bihar, Patna.
4. The District Magistrate, Kishanganj.
5. The Mines Development Officer, Kishanganj.
6. The Bihar State Mining Corporation Ltd through its Chief Executive Officer, Bihar, Patna .

... .. Respondent/s

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Appearance :

(In Civil Writ Jurisdiction Case No. 8132 of 2023)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv. with
Mr. Alok Kumar and
Mr. Mukund Kumar, Advocates

For the Respondent/s : Mr. Naresh Dikshit, Spl. P.P. with
Mr. Utsav Anand, JC to Mr. Naresh Dixit, Adv.



(In Civil Writ Jurisdiction Case No. 8171 of 2023)

For the Petitioner/s : Mr. Gautam Kumar Kejriwal, Adv. with
Mr. Alok Kumar and
Mr. Mukund Kumar, Advocates
For the Respondent/s : Mr. Naresh Dikshit, Spl. P.P. with
Mr. Utsav Anand, JC to Mr. Naresh Dixit, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 08-09-2023

Heard Mr. Gautam Kumar Kejriwal, learned counsel for the petitioners and Mr. Naresh Dikshit, learned Special P.P. for the Mines.

2. Since in both the cases, the issue involved and the reliefs prayed by the petitioners are identical, hence the same has been taken up together for analogous hearing and disposal with the consent of the parties.

3. The petitioners, who have 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(s) of the Mines Development Officer, Kishanganj and the order issued by the District Magistrate, Kishanganj, whereby the compounding charges imposed under rule 56(2) has been affirmed and further



directed to recover the compounding charges of 25 times the cost of mineral from the petitioners against alleged mining done by the petitioners, are seeking quashing of the orders mentioned in para 1 of the respective writ petitions; and further for a direction commanding upon the concerned respondents not to enforce the demand arising out of the impugned orders, and in case enforced then for a direction to refund such amount along with adequate compensation to the petitioners.

4. The petitioners having been declared successful bidder, awarded the contract for operation of different sand ghats 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).

5. After having completed all the paraphernalia, including the payment of auction amount in installment, 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(s) in favour of the petitioners in connection with the contract awarded for mining operations. The engagement of the petitioners as contractors was to carry out mining operations in



terms of the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act, 1957'), the Corporation had engaged the petitioners to extract minerals from the sand ghat identified by the corporation and to sell/supply the same to the purchasers/customers. The quantity of sand exist in the sand ghat was already assessed by the respondent Corporation and the minimum reserve price of such stock of sand was indicated in the auction notice. The auction amount was the actual cost of minerals already recovered by the Corporation from the petitioners. As per the relevant terms of 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.

6. Thus, the role and obligation of the petitioners were confined to the sale of sand to a purchaser, who would be



allowed to collect such sand from the petitioners' 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.

7. While the petitioners were operating the mining at the sand ghat/site allotted under the agreement by the respondent-Corporation in the meantime they received a letter issued under the signature of the Mines Development Officer, Kishanganj wherein by making a reference to an inspection conducted by the respondent-Collector, Kishanganj pointed out several shortcomings and non-compliance of the Bihar Sand Mining Policy 2019 and the petitioners were called upon to make good such failure within a period of 48 hours. The petitioners complied with the said requirement and informed the concerned respondent and deposited the respective penal demands, however, it is the case of the petitioners that the respondents have never disclosed any evidence of presence of such dozer machine in course of the so called inspection done



by the Collector nor any irregularities in respect to excavating sand in violation of the Bihar Sand Mining Policy 2019 as also Rules 30 and 56 of the Rules 2019. It is the further case of the petitioners that after such payment was made by the petitioners the respondent no. 5 once again served further letter whereby the petitioners were called upon to further deposit a huge sum of Rs. 57,25,000/- and 42,80,000/- respectively on account of compounding charges being 25 times the cost of minerals excavated within a period of two days of the issuance of the said letter.

8. The petitioners being aggrieved by the aforementioned demand and conduct of the respondent- Department of Mines and Geology submitted a detailed objection/representation and submitted that the petitioners were neither liable to deposit the initial compounding charges nor the revised demand as the said demand pertains to one single inspection carried out by the respondent-District Collector, Kishanganj and, moreover, it was not the case of Rule 56(2) of the Rules 2019 as the petitioners happen to be the valid contractor attached with the respondent-Corporation and therefore, no cost of recovery of 25 times of cost of minerals could survive against the petitioners. The petitioners have also raised the grounds against the revised



compounding charges, however, having found no response to the petitioners' objection by the respondent no. 5 under Rule 67 of the Rules, 2019 before the respondent-District Collector, Kishanganj. However, respondent-District Collector, Kishanganj without considering various grounds on facts as well as law raised by the petitioners, affirmed the orders of the respondent no. 5-Mines Development Officer, Kishanganj, hence the present writ application.

9. The petitioners by invoking the prerogative writ jurisdiction of this Court have assailed the impugned orders of the District Mines Officer as well as the District Collector, *inter alia*, on the grounds that the very basis of demand is the inspection, purportedly carried out by the respondent-District Collector, Kishanganj is based upon no evidence nor the petitioners were informed or the same was done in presence of the petitioners or their representatives. The petitioners were not the concessionaire or the lease holder of the respondent-Department of Mines and Geology and in fact the petitioners had a contractual relationship with their respondent Corporation who happen to be the concessionaire in terms of the notice inviting tender itself, therefore, any demand of compounding charges could have only been raised upon the Corporation and



not the petitioners. That apart, the demands are violative of Rule 56 of Rules 2019 because of the petitioners being a valid contractor associated with the respondent-Corporation. He further contended that the respondents have not at all appreciated the provisions of law as prescribed under the Rules 2019 and have issued a blanket direction imposing liability of 25 times cost of minerals. It is next submitted that the impugned orders are violative of the principles of natural justice as the petitioners were never awarded any opportunity of personal hearing before passing of such orders and moreover the orders are non speaking and based on mechanical conclusion without assigning any reasons forming the basis of decision. There is no appreciation regarding applicability of Rule 56 of Rules 2019 to the case of the petitioners.

10. Learned counsel lastly submitted that in similar circumstances, 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.”

11. Learned counsel further drew the attention of this Court to one another judgment passed in the case of M/s Uma Associates vs. The State of Bihar and Others (CWJC No. 3400 of 2023) *vide* order dated 09.05.2023 wherein while adjudicating the similar issue, the Court has held as follows:

“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.”

12. On the other hand, Mr. Naresh Dikshit, learned Special P.P. for the Mines Department while refuting the contention of the petitioners submitted that the demands raised by the respondent no. 5 and duly affirmed by the District Collector, Kishanganj are based upon the inspection conducted by the District Collector who found various irregularities at the site and accordingly penalty has been imposed proportionate to the irregularities/illegality committed by the petitioners. However, on a query made by this Court with regard to the submission made on behalf of the petitioners that in identical circumstance, the Court while adjudicating the similar issue has been pleased to set aside the impugned orders imposing the penalty based upon the inspection report and saddled with the liability of payment of 25 times the cost of minerals, he fairly submits that the learned coordinate Bench has elaborately answered the issue raised in the aforementioned judgments and



interfered in the impugned orders of imposition of penalty.

13. Having considered the aforesaid facts and circumstances and the settled position of law, this Court also feels it appropriate to dispose of the writ petitions in terms of the orders passed by the learned coordinate Bench of this Court in the cases of M/S Harsh Construction (supra) and Uma Associates (supra) and accordingly in consequence thereof, the orders under challenge passed by the concerned respondent-Mines Development Officer, Kishanganj and duly affirmed by the District Collector-Kishanganj are hereby quashed and cancelled. The Chief Executive Officer, Bihar State Mining Corporation Limited, Patna is directed to refund the respective amount realised from the petitioners, if any, and also to ensure refund of the respective security of the petitioners within a period of three months from the date of receipt/production of a copy of this order, if not refunded till date.

14. Both the writ petitions stand disposed of with the aforesaid directions.

(Harish Kumar, J)

Anjani/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	11.09.2023
Transmission Date	N.A.

