

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8436 of 2023

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M/s Jai Bhagwati Mines a partnership firm having its office at 3F Siddarth Market, Lal Kothi Compound, Near Civil Lines, Gaya, through its authorised signatory, Sanjeva Shyam Singh, aged about 59 years (male), son of Ghanshyam Prasad Singh, Resident of HIG- 57, Chanakya Puri Colony, P.S. Rampur, District- Gaya.

... .. 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 Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The District Magistrate, Gaya.
5. The Mineral Development Officer, Gaya.
6. Bihar State Mining Corporation Limited, through its Managing Director, Room No. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna 800015.
7. The Managing Director, Bihar State Mining Corporation Limited, Room No. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna 800015.
8. Pramod Prasad Amar Kumar Resident of Gram Murma, PO Lamipatra, P.S. Pandwa, District Palamu, Jharkhand.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Avinash Shekhar, Adv.
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 : 21-09-2023

Heard Mr. Avinash Shekhar, learned counsel for the



petitioner and Mr. Naresh Dikshit, learned Special P.P. for the Mines.

2. By filing the present writ application, the petitioner seeks following relief(s):

“ i) To issue an appropriate writ, order or direction in the nature of certiorari for quashing letter no. 400 dated 06.03.2023 issued by Respondent Managing Director, Bihar State Mining Corporation Limited whereby and whereunder a penalty of Rs. 19,35,47,820/- has been levied upon the petitioner for illegally excavating 72,855.65 MT sand from outside the mining area and selling the same using the user-id of the sand ghat.

ii) Consequent to grant of relief no (i) to set aside the settlement of Cluster 22 Khijarsarai Sand Ghat in the district of Gaya in favour of Respondent no. 8 and grant further extension of the said sand ghat in favour of the petitioner.

iii) To issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents to grant refund of proportionate royalty for period petitioner has not been sell sand on account of suspension of e-transit challans.

iv) This Hon'ble Court may further adjudicate and hold that Respondent Managing Director, Bihar State Mining Corporation Limited is not the competent authority under the Bihar Minerals (Concession, Prevention of Illegal Mining,



Transportation & Storage) Rules, 2019 (hereinafter referred to as "2019 Rules") to levy penalty upon a settlee.

v) This Hon'ble Court may further adjudicate and hold that letter no. 400 dated 06.03.2023 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 notice whatsoever to controvert the allegations upon which the penalty has been levied.

vi) This Hon'ble Court may further adjudicate and hold that the levy of penalty contained in letter no. 400 dated 06.03.2023 is in gross violation of the maxim *audi alteram partem* as the petitioner has been condemned unheard without an opportunity to defend the charges against it.

vii) This Hon'ble Court may further adjudicate and hold that the imposition of penalty upon the petitioner is in violation of the 2019 Rules?

viii) This Hon'ble Court may further adjudicate and hold that the action of the respondent authorities in suspending/blocking of generation of e-challan on the portal <http://portal.biharmines.in/> is completely de hors the provisions of Mines & Minerals (Development & Regulation) Act, 1957 and the 2019 Rules.

ix) This Hon'ble Court may further adjudicate and hold that extreme measures like suspending/blocking generation of e- challan on



the portal <http://portal.biharmines.in/>, needs to be necessarily preceded, by an express show cause notice and opportunity of hearing.

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

3. Learned counsel for the petitioner submits that the aforementioned impugned order has been assailed by the petitioner on the ground, *inter alia*, that the impugned letter issued by respondent no.7, the Managing Director, Bihar State Mining Corporation Limited, Patna (for short ‘the Corporation’), imposing penalty under Rule 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (for brevity “the Rules, 2019) as against the petitioner is wholly without jurisdiction as the respondent(s) have no jurisdiction in terms of the aforementioned Rules to initiate any proceeding against him as he is contractor with valid licence to carry out mining activities in terms of agreement with the Corporation. He further submits that the impugned decision is an ex-parte and has been taken without any show-cause notice served upon him. No opportunity of hearing has been afforded to the petitioner before taking such decision with serious financial implications was taken against him. Further, neither



any inspection of the alleged mining area was carried out in presence of the petitioner nor the inspection report has ever been served to him, which defeated the sanctity and credibility of such exercise of inspection. He also submits that there is no reference that the previous records and reports of the mining area of the petitioner has been considered before taking the impugned decision. That apart, the impugned decision is mechanical and non-speaking and based on simple technical inference of the respondent-Corporation without any findings based on acceptable materials. It is the case of the petitioner that he has never violated the terms and conditions of the environmental clearance meant for the mining site given to him under contract. He has maintained the integrity and limitations of the mining area under the contract. He has never crossed the limits/boundary of the mining area awarded to him under the contract and, as such, the allegation of mining done by him beyond the mining site under environmental clearance are absolutely false and baseless. There is no eyewitness of such mining activity allegedly done by the petitioner.

4. Learned counsel for the petitioner by elaborating his submissions further submits that neither any plant, machinery and tool installed by the petitioner have been seized



from the mining area where the petitioner had allegedly carried out mining activity beyond the area under environmental clearance nor any vehicle of the petitioner has been intercepted by the district administration on the ground of non-availability of transportation challan or stock of mineral illegally extracted from any mining site being transported by such vehicle. While concluding his submissions, he drew the attention of this Court on a 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.”



5. On the other hand, Mr. Naresh Dikshit, learned Special P.P. for the Mines Department while refuting the contention of the petitioner, submits that the demands raised by the respondent no.7 are based upon the inspection conducted by the joint inspection team, who found various irregularities at the site and accordingly penalty has been imposed proportionate to the irregularities/illegality committed by the petitioner. However, on a query made by this Court with regard to the submission made on behalf of the petitioner that in identical circumstance, the Court while adjudicating the similar issue has been pleased to set aside the impugned order, he fairly submits that the learned coordinate Bench has elaborately answered the issue raised in the aforementioned judgments and interfered in the impugned order of imposition of penalty.

6. Having considered the aforesaid facts and circumstances and the settled position of law, this Court also feels it appropriate to dispose of the writ petition in terms of the order passed by the learned coordinate Bench of this Court in the case of **Uma Associates (supra)** and accordingly in consequence thereof, the impugned order of penalty as contained in letter no. 400 dated 06.03.2023 by respondent no.7, the Managing Director, Bihar State Mining Corporation



Limited, Patna, is hereby quashed and cancelled with a liberty to the respondents that if so advised, they will be at liberty to proceed afresh in accordance with law.

(Harish Kumar, J)

rohit/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22-09-2023
Transmission Date	

