

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8918 of 2023

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Ideal Pharma through its Propreitor Manish Kumar (Male), Aged about 53 years, S/o- Late Surendra Kumar Singh, having its registered office at E-01, 1st Floor, Landmark Tower, Thakurbari Road, Sakchi, Jamshedpur, East Singhbhum, Jharkhand- 831001.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary-cum-Mines Commissioner, Mines and Geology Department, Government of Bihar, Vikash Bhawan, (New Secretariat), Bailey Road, Patna- 800014.
2. The Bihar State Mining Corporation Ltd., through its Managing Director, Vikash Bhawan, Bailey Road, Patna- 800014.
3. The Managing Director, the Bihar State Mining Corporation Ltd., Vikash Bhawan, Bailey Road, Patna- 800014.
4. The General Manager, Bihar State Mining Corporation Ltd., Vikash Bhawan, Bailey Road, Patna- 800014.
5. District Magistrate-cum-Collector, Bhojpur at Ara.
6. The Mineral Development Officer, Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kundan Kumar Ojha
For the Respondent/s : Mr.Gyan Prakash Ojha (Ga 7)

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 02-11-2023

Heard Mr. Dhananjay Kumar, 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):

“a) That letter bearing no.- 2280/khanan/ara dated 23/05/2023 issued from the collector Bhojpur (Khanan Shakha) under the signature of Collector Bhojpur, Ara whereby



and where under a penalty to the tune Rs. 30,60,000/- has been imposed against the petitioner, be quashed.

b) That an appropriate direction/ directions commanding the respondents not to give effect of the order contained in letter bearing no.-2280/khanan/ara dated 23/05/2023.

c) Any other relief/reliefs, order/orders as Your Lordship deems fit in the interest of justice.”

3. Learned counsel for the petitioner submits that the aforenoted impugned order has been assailed by the petitioner on the ground, *inter alia*, that the impugned letter issued by respondent no. 5, the District Magistrate-cum-Collector, Bhojpur at Ara 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 aforenoted 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 in-



spection 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 con-



tention 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. Moreover, the petitioner after accepting its guilt has already deposited the demand amount of Rs. 30,60,000/- through challan and now the petitioner has taken a calculated move to recover the penalty amount in the garb of approaching this Court. 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, but the facts of the present case is otherwise.

6. At this juncture learned counsel for the petitioner submits that the petitioner challenged the legality and validity of the impugned order dated 23.05.2023, whereby the penalty has been imposed and representation has also filed before the respondent No. 5 on 23.05.2023 itself denying all the charges of



violating any terms and conditions, apart from the order being in complete defiance of the principle of natural justice. However, as there was a threat from the respondent that if the penalty amount is not deposited by 26.05.2023, the e-challan generation shall be stopped, thus in such compelling circumstances the petitioner has deposited the penalty amount under protest.

7. 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. 2280/khanan/ara dated 23.05.2023 by respondent no.5, the District Magistrate-cum-Collector, Bhojpur at Ara, 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.

8. It would be worth notice here that if an amount is received without any authority of law or paid under protest on threat or coercion, the same can always be recovered under the law, barring few exception, otherwise it would amount to unjust enrichment. Furthermore, any order causing prejudice to the



right and entitlement of a person must be in consonance with the principle of natural justice. It is trite law that no person shall be condemned unheard.

9. It is needless to observe that consequent to quashing of the impugned order, the respondent would be under obligation to return the amount of penalty to the petitioner within a period of four weeks from the date of receipt or production of a copy of this order.

(Harish Kumar, J)

supratim/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.11.2023
Transmission Date	NA

