IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.12335 of 2023

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Rohit Agarwal Son of Ashok Kumar Agrawal Resident of Arjun Road, Moti Nagar, Sindri Dhanbad through his authorised representative namely Aditya Kumar Singh male aged about 23 years son of Tapeshwar Singh resident of Village - Sarnarayan, P.O.- Saraiya, P.S.- Dariapur, Saraiya, District Saran, Bihar-841101

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Bihar State Mining Corporation Limited, Patna through its Managing Director.
3. The Managing Director, Bihar State Mining Corporation Limited, Patna.
4. The General Manager, Bihar State Mining Corporation Limited, Patna.
5. The Chief Executive Officer, Bihar State Mining Corporation Limited, Patna.
6. The Mines Development Officer, Jamui.
7. The District Magistrate, Jamui. (Cluster number 31 of river Kiul)

... ... Respondent/s

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with

Civil Writ Jurisdiction Case No. 12337 of 2023

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Rohit Agarwal Son of Ashok Kumar Agrawal resident of Arjun Road, Moti Nagar, Sindri Dhanbad through his authorised representative namely Aditya Kumar Singh male aged about 23 years son of Tapeshwar Singh resident of village - Sarnarayan, P.O. Saraiya, P.S. Dariapur, Saraiya, District - Saran, Bihar - 841101.

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Bihar State Mining Corporation Limited, Patna through its Managing Director.
3. The Managing Director, Bihar State Mining Corporation Limited, Patna.

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4. The General Manager, Bihar State Mining Corporation Limited, Patna.
5. The Chief Executive Officer, Bihar State Mining Corporation Limited, Patna.
6. The Mines Development Officer, Jamui.
7. The D.M., Jamui (Cluster number 31 of river Kiul)

... ... Respondent/s

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Appearance :
(In Civil Writ Jurisdiction Case No. 12335 of 2023)

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Adv.
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P.
		Mr. Braj Bihari Tiwari, Adv.

(In Civil Writ Jurisdiction Case No. 12337 of 2023)

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Adv.
		Mr. Alok Kumar Jha, Adv.
		Mr. Mukund Kumar, Adv.
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P.
		Mr. Utrav Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 14-09-2023

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(s) involved and the relief(s) prayed for by the petitioners are identical, hence they are taken up together for analogous hearing and disposed of by a common order 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

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'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, Jamui whereby the petitioners have been saddled with the penalties under Rule 56(2) of the Rules, 2019 was called upon to pay the same within a period of two days of such demand, have preferred the present writ petitions. The petitioners also sought a declaration that the impugned demand of penalty in terms of Rule 56(2) of the Rules, 2019 by the respondent no.6 is wholly illegal, without jurisdiction, unreasonable and arbitrary as the same is based on ex-parte inspection carried out by the authorities of the respondent-Department of Mines and Geology and also ex-parte determination of penalty without any opportunity of hearing afforded to them.

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**

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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

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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. The case of the petitioners is that they have been granted regular extension of the aforesaid contract since completion of the first period on 31.03.2022. They have been complying with all the terms and conditions as advised by the respondent-Corporation for the purpose of such contract and the last extension in this line has been granted vide Memo No. 492 dated 29.03.2023 by the respondent-General Manager of the Corporation. They have also been issued stock licence in Form K by the District Mining Officer, Jamui for two locations vide Memo No. 136 dated 25.01.2023 and Memo No. 245 dated 15.02.2023. While the petitioners were engaged in mining operation, in the meantime, they have received the impugned letter bearing reference nos. 914/Khanan dated 28.06.2023 and 926/Khanan dated 01.07.2023 issued under the signature of

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respondent no.6, whereby the petitioners have been saddled with a penalty for a sum of Rs.51,47,550/- and 10,20,600 under Rule 56(2) of the Rules, 2019 on the grounds of illegal mining and transportation carried out beyond the mining area given to them in terms of the contract. By the said order, the petitioners are required to deposit the penalty so imposed by respondent no.6 within a period of two days of the demand, failing which it has been proposed that the user id and password for transportation of sand from the sandghats of the petitioners would be requested to be suspended.

7. Learned counsel for the petitioners submits that the afornoted impugned order(s) have been assailed by the petitioners on the ground, *inter alia,* that the impugned letters issued by the respondent no.6, imposing penalty under Rule 56(2) of the Rules, 2019 as against them are wholly without jurisdiction as the respondents have no jurisdiction in terms of the aforenoted Rules to initiate any proceeding against them as they are 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 them. No opportunity of hearing has been afforded to the petitioners

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before taking such decision with serious financial implications was taken against them. Further, neither any inspection of the alleged mining area was carried out in presence of the petitioners nor the inspection report has ever been served to them, 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 petitioners have 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 petitioners that they have never violated the terms and conditions of the environmental clearance meant for the mining site given to them under contract. They have maintained the integrity and limitations of the mining area under the contract. They have never crossed the limits/boundary of the mining area awarded to them under the contract and, as such, the allegation of mining done by them beyond the mining site under environmental clearance are absolutely false and baseless. There is no eyewitness of such mining activity allegedly done by the petitioners.

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8. Learned counsel for the petitioners by elaborating his submissions further submits that neither any plant, machinery and tool installed by the petitioners have been seized from the mining area where the petitioners had allegedly carried out mining activity beyond the area under environmental clearance nor any vehicle of the petitioners 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."*

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9. On the other hand, Mr. Naresh Dikshit, learned Special P.P. for the Mines Department while refuting the contention of the petitioners, submits that the demands raised by the respondent no.6 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 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, he fairly submits that the learned coordinate Bench has elaborately answered the issue raised in the aforenoted judgments and interfered in the impugned orders of imposition of penalty.

10. 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 case of **Uma Associates (supra)** and accordingly in consequence thereof, the impugned orders of penalty dated 28.06.2023 vide reference number 914/Khanan Jamui and 01.07.2023 vide reference number 926/Khanan Jamui by

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respondent no.6, The Mines Development Officer, Jamui, are 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	20-09-2023
Transmission Date	

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