

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12414 of 2023

=====

M/s B.S.C.P.L Infrastructure Ltd. A Company registered under the Companies Act, 1956 having its registered Office at 08-02502/1/A Jivi Towers, Road No. 7, Hyderabad- 800034 represented through Sri Maganti Venkateswarlu (Attorney Holder)

... .. Petitioner/s

Versus

1. The State of Bihar Department of Mines and Geology through its Principal Secretary, Government of Bihar.
2. The Joint Secretary, Mines and Geology Department, Government of Bihar.
3. The Deputy Secretary, Mines and Geology Department, Government of Bihar.
4. The Collector, Nawada, District - Nawada, Government of Bihar.
5. The Director, Mines and Geology Department, Government of Bihar.
6. The Assistant Director, Mines and Geology Department, Government of Bihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Umesh Prasad Singh, Sr. Advocate

For the Mines : Mr. Naresh Dikshit, Advocate
Mr. Utrav Anand, Advocate
Mr. Brij Bihari Tiwary, Advocate

For the State : Mr. Vikash Kumar, SC 11
Mr. Gyan Prakash Ojha (Ga7)

=====

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 30-11-2023

Heard Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the petitioner; Mr. Naresh Dikshit, learned counsel along side Mr. Utrav Anand, Mr. Brij Bihari Tiwary, learned counsels for the Mines Department and Mr. Vikash Kumar, SC 11 along side Mr. Gyan Prakash Ojha, learned GA 7 for the State.



2. The petitioner has filed the writ application for the following relief:-

“(I) To issue a writ in the nature of a writ of Mandamus commanding upon the respondents to permit the petitioner through its authorized representative to remove and transport the excavated, broken stone chips, bounders and other aggregates lying at Mauza-Bhadhokhra at Block3, Khata No.888, Plot No.4256 Area 12.36 acres, District-Nawada the total quantities left out on 14.01.2021 and/or as determine by Joint Inspection Team on 10.08.2021;

(ii) To issue an order or direction to the respondents to issue E-Challan and to do all whatever legally required for removal of broken stone materials lying at the site.

(iii) To issue other appropriate order or orders, direction or directions to the respondents to facilitate removal of the broken stone chips, etc. for the purpose to complete the construction of National Highway No.31.

(Iv) To issue other appropriate writ or writs, direction or directions as this Hon’ble Court may deem fit and proper in the facts and circumstances of this case.”

3. Mr. Umesh Prasad Singh, learned senior counsel appearing on behalf of the petitioner, has submitted that Mines and Geology Department, Govt. of Bihar was pleased to allocate 2 numbers, Block No.3 and Block No.6 under district Nawada, Bihar through Award tender cum-Auction process to complete the Road Projects awarded by the State Government & Central Government under Bihar State Road Development Corporation Ltd. (BSRDCL), National Highway Authority of India (NHAI)



and Ministry of Road Transport & Highway (MoRT&H) and accordingly an area of 12.36 acres, Block No.3, Khata No.888, Plot No.4256 at Mauza- Bhadkohra, District- Nawada was awarded on 15.01.2015 in respect of which lease was executed on 31.12.2015 for a period of 05 years expired on 30.12.2020, another Block No.6, Khata No.888, Plot No.4256, area 12.51 acres, Mauza- Bhadhokhra, District- Nawada was awarded on 15.01.2016 for a period of 5 years and the lease expired on 14.01.2021.

4. It is further submitted that due to COVID-19 pandemic lockdown / restriction imposed by the State Govt./Central Govt. from time to time from March 2020 and during that period the lease period of the petitioner expired on 30.12.2020 and then on 02.06.2021 an inspection was done by Assistant Director, District Mines Office, Nawada to ascertain the quantities of the broken material existing at the site till the last date of expiry of the lease period in which it was found that 13, 45,400.00 CFT of broken stones were present on the Mining Site and vide Memo No.900 dated 02.06.2021 issued by Assistant Director, District Mines Office, Nawada the petitioner company was allocated a period of 04.06.2021 to 03.12.2021 for removal of broken stone chips and machines and materials



(Annexure R/A to the counter affidavit).

5. It is further submitted that on 04.08.2021 inspection was done and subsequently inspection report was prepared by joint inspection team vide memo No.1340 dated 11.08.2021 (Annexure R/C to the counter affidavit) in which it is mentioned that total quantity of 13,12,960.99 CFT of broken stone chips were left on the mining site.

6. It is next submitted that it is also admitted that vide Memo No.1387 dated 23.08.2021 issued by Senior Deputy Collector-cum-Mineral Development Officer, Nawada the petitioner company was allowed to remove machinery within two months but did not allow to remove broken stone chips as per the direction given by Mines and Geology Department vide letter no.2205 dated 12.08.2021 and in the said letter it is mentioned that an explanation was sought from Assistant Director, Mines, Nawada vide letter No.1438 dated 16.06.2021 in regard to grant permission to the petitioner company to remove broken stone chips and subsequently in explanation the then Assistant Director, Mines, Nawada stated that order of removal of broken stone chips was given to the petitioner company by him on the basis of the oral direction of the Collector, Nawada. The Collector, Nawada vide letter No.1373



dated 17.08.2021 permitted the petitioner company to remove all machinery and broken Stone chips boulders from 20.08.2021 to 19.02.2022 (Annexure R/E to the counter affidavit).

7. However, before completion of the said period, vide letter No.1420 dated 31.08.2021 issued by Collector, Nawada the petitioner company was allowed to remove all machinery, infrastructure within six months but did not allow to remove broken chips boulder. Thereafter even before the completion of the period granted vide letter No.1373 dated 17.8.2021, the Director, Mines vide letter No.2801/M dated 15.09.2021 directed the Collector, Nawada regarding forfeiture of property left on the mining site for more than six months after determination of lease.

8. Learned senior counsel next submitted that very surprisingly, no statement has been made as to what led the Director, Mines Bihar, Patna to write a letter no.2801/M dated 15.09.2021 (Annexure- R/G) for forfeiture of the property left on the mining site allegedly for more than six months after determination of lease. Aggrieved by the said action of the Director, Mines, the petitioner / company filed representation dated 21.02.2022 requesting for extension of three months in addition to earlier six months time granted by the Collector,



Nawada vide Letter No. 1373 dated 17.08.2021 (Annexure-R/E), for removal of machinery and other infrastructure because in the said representation, it was stated that within the earlier allocated time of six months (i.e from 20.08.2021 to 19.02.2022), the removal of machinery and other items could not be done. Thereafter, the petitioner / company again filed representation dated 27.08.2022 to obtain permission for transportation of extracted stone chips from block no.3.

9. *Per contra*, Mr. Naresh Dikshit, learned counsel appearing on behalf of respondent nos.4 to 6 submits that it is not clear as to whether the Assistant Director, Mines, Nawada had filed his written show cause, however, it is admitted by the respondents in paragraph no.11 that six months time was granted to the petitioner. The Assistant Director, Mines, Nawada has admitted in the said paragraph that on the basis of oral direction of the Collector, Nawada, he had allowed the petitioner to remove the broken chips from 04.06.2021 to 03.12.2022 vide Letter No. 900 dated 02.06.2021 (Annexure R/A to CA). Thereafter, the Collector had issued letter No.1373 dated 17.08.2021, permitting the petitioner/company to remove all machinery and broken Stone Chips from 20.08.2021 to 19.02.2022. However, due to inaction of the petitioner /company



even after extension of time, the petitioner could not remove machinery and infrastructure. Mr. Dikshit has shown his surprise as to what led the Collector-cum-licensing authority, Nawada to direct the petitioner/company vide letter no.1420 dated 31.08.2021 to allow the removal of all machinery and infrastructure within six months but before the petitioner could remove within six months from the date of issuance of letter no.1438 dated 16.06.2021, as would be evident from the records. Paragraph no.11 of the counter affidavit is reproduced hereinbelow:-

“That vide memo No.1387 dated 23.08.2021 issued by Senior Deputy Collector-cum-Mineral Development Officer, Nawada the petitioner company was allowed to remove machinery within two months but did not allow to remove broken stone chips as per the direction given by Mines and Geology Department vide letter no.2205 dated 12.08.2021 and in the said letter it is mentioned that a explanation was sought from assistant director mines Nawada vide letter No.1438 dated 16.06.2021 in regard to grant permission to the petitioner company to remove broken stone chips and subsequently in explanation the then assistant director mines, Nawada stated that order of removal or broken stone chips was given to petitioner company by him on the basis of the oral direction of the Collector, Nawada.”



10. Mr. Vikash Kumar, learned SC 11 on the request of this Court has appeared during the course of hearing. It is jointly submitted by Mr. Vikash Kumar, learned SC 11 and Mr. Gyan Prakash Ojha, learned GA7, on behalf of the State that the petitioner company is registered as per the provision of Central GST Act, 2017 and is being assessed to tax. Learned SC 11 refers to Section 15 of the Central GST Act, which, according to him, some protection be granted to State considering the fact that once the entire amount of stone chips is allowed to be lifted, there is every possibility that the petitioner will not make payment of the required tax, assessable under the provision of GST. The petitioner is making payment of Central GST.

11. Mr. Vikash Kumar, learned counsel appearing on behalf of the State, submits that considering the fact that agreement is no more in effect and as such there is every possibility that the petitioner company may not make payment of the GST, therefore some protection may be given to the State to the effect that the petitioner company may pay the tax pursuant to the contract given to the petitioner company for construction of road.

12. At this stage, learned senior counsel submitted that since the petitioner has paid the royalty which is in the nature of



tax, petitioner company is not required to pay any amount of GST. The petitioner company has discharged the tax/royalty liability by making payment of entire royalty and there is no question to not allow the petitioner company to lift the broken stone chips in absence of any reason by condoning the delay which has been caused due to COVID-19.

13. Heard the parties.

14. Before proceeding to pass order on merits, I find it proper to observe that the question relating to the power of the State Government to tax on royalty was questioned by 7-Judges Bench of Hon'ble Supreme Court in the case of **India Cement Ltd. vs. State of Tamil Nadu (1990 AIR 85)**, wherein it was held that royalty is a tax. However, the Hon'ble Supreme Court in the case of **State of West Bengal vs. Kesoram Industries Limited reported in (AIR 2005 SC 1646) [5-Judges Bench]**, disagreed with the decision of India Cement Ltd. (7-Judges Bench).

15. The Apex Court in the case of **Kesoram Industries Limited (supra)**, even though doubted the findings of India Cement Limited (supra) that royalty is a tax in common parlance but concluded that it is a compulsory impost and is in the nature of tax considering the meaning of the word 'taxation'



under article 366(28) of our Constitution which is reproduced hereinbelow:-

“Article 366(28) - “taxation” is the act of levying any tax or impost, whether general, local, or special, and the term “tax” is to be interpreted in this manner; “

16. Now, again the issue has been raised before the Apex Court for reconsideration and it is being heard by the 9-Judges Benches in **Civil Appeal Nos.4056-4064 of 1999 (Mineral Area Development Authority etc. Vs. M/s Steel Authority of India & Ors.)**.

17. The question with respect to the taxability of royalty or whether royalty is a tax is not the concern raised by the State counsel rather the concern of the State is that petitioner may not be allowed to put the State to loss pursuant to the contract to construct the road before it is built and is finally handed over to the State.

18. The Apex Court in context of Sales Tax and Value Added Tax has already set the said issue at rest in case of **Bharat Sanchar Nigam Ltd. and another vs. Union of India and others, reported in (2006) 3 SCC 1** where the issue has been discussed in detail considering the previous judgment particularly in reference to **Gannon Dunkerley and Company**



**and Ors. Vs. State of Rajasthan and Ors., reported in (1993)
1 SCC 364.**

19. Entry 50 of the State List confers powers to the State Legislature to make law to levy tax on mineral rights subject to limitations if any imposed by the regulations made by the Parliament under Entry 54 of the Union List. It suggests that the State Legislature has exclusive power to tax mineral rights subject to any limitation imposed by the Parliament. If the Parliament imposes any restriction or limitation on the States power to tax mineral rights by way of regulation made under Entry -54 of the Union List then the States are debarred from levying tax on mineral rights and States will be helpless.

20. Levy of GST under GST laws is on supply of goods or services. The term 'supply' is defined under section 7 of the Central GST Act in an inclusive manner and it includes all activities undertaken for consideration unless expressly excluded under schedule III. It can be considered that the assignment of right to use mineral rights by the Government is a supply of service and the payment of royalty is a consideration for the minerals extracted, therefore, it shall come within the ambit of GST liability if this service is not covered by Schedule III and not specifically exempted.



21. The representatives of the company are present in the court. A query has been made by this Court as to whether the company is required to pay or has paid GST for total quantity of broken stone chips amounting to 13,45,400.00 CFT as has been quantified in the Inspection Report dated 10.08.2021, they showed their ignorance on such facts.

22. However, it has been informed by Mr. Naresh Dikshit, learned counsel appearing on behalf of the Mines Department, that he will ensure that all the relevant data relating to the details of the stone chips which has been lifted and which is to be lifted, as prayed for in the present writ petition, to be communicated to the Commissioner, State Tax Department.

23. Now coming to the merits of the present case, it is admitted that the Assistant Director, Mines had allowed the petitioner company to remove broken stone chips after accounting the total quantity 13,45,400.00 CFT from the State after the expiry of the lease, which had expired on 30.12.2020, had allocated a further period of 04.06.2021 to 03.12.2021 for removal of broken chips and machine. However, due to COVID-19, total quantity of 13,12,960.99 CFT remained at the mining site and before expiry of period, i.e., 03.12.2021 vide memo no.1387 dated 23.08.2021 the Senior Deputy Collector-



cum-Mineral Development Officer, Nawada allowed only to remove machinery and not the remaining stone chips within two months. Thereafter, the Assistant Director, Mines vide letter no.1438 dated 16.06.2021 submitted his explanation that removal of stone chips were granted by him on the oral direction of the Collector, Nawada (Conversations are Annexures R/D to the counter affidavit). The respondent nos.4 and 6 in their counter affidavit have admitted in paragraph no.12 that vide letter No.1373 dated 17.08.2021 the Collector, Nawada had permitted the petitioner to remove all machinery and broken stone chips boulders from 20.08.2021 to 19.02.2022 (Annexure R/E to the counter affidavit). Thereafter, the Collector without assigning any reason vide letter no.1420 dated 31.08.2021, i.e., before expiry of the extended period on 19.02.2022 prohibited from allowing to remove the broken stone chips.

24. From above action of the respondent authority, it appears that vested with mala fide in a colourable exercise of power leading the petitioner to suffer loss at the same time the project of road construction could not be completed in time.

25. Rule 9(1)(a), 20 and 21(4) of the Bihar Minor Mineral Concession Rules, 1972 are reproduced hereinbelow:-

“9.1(a). A mining lease except of granite shall be granted by the Collector.



20. Refusal of application for grant and renewal of mining lease. - The Collector may, for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

21. 4) The Collector, if he is of the opinion that in the interest of mineral development it is necessary so to do, may, in any case with the previous approval of the Government, impose such further conditions as he thinks fit.”

26. From the perusal of the provision of aforesaid Rule, it appears that neither the Director nor the Assistant Director have the authority to interfere either with issuing of licence or its renewal. The rights vests exclusively in the Collector.

27. Hon'ble Supreme Court in the case of **State of U.P. v. Mohd. Nooh** reported in **1958 SC 86**, **Pratap Singh v. State of Punjab** reported in **AIR 1964 SC 72**, **Fasih Chaudhary v. D.G. Doordarshan** reported in **1989 (1) SCC 189** held that if the act complained of is without jurisdiction or is in excess of authority conferred by statute or there is abuse or misuse of power, a Court can interfere. In such an eventuality, mere fact that there is denial of allegation of malafide or oblique motive or of its having taken into consideration improper or irrelevant matter does not preclude the court from enquiring into the truth of allegations levelled against the authority and granting appropriate relief to the aggrieved party.



28. In number of cases Hon'ble Supreme Court ruled that every arbitrary action, whether in the nature of legislative or administrative or quasi-judicial exercise of power, is liable to attract the prohibition of Article 14 of the Constitution of India vide **AIR 1974 SC 555; E.P. Royappa v. State of Tamil Nadu, 1979 (3) SCC 489; R.D. Shetty v. International Airport Authority, 1978 (1) SCC 248; Maneka Gandhi v. Union of India, 1981 (1) SCC 722; Ajay Hasia v. Khalid Mujib, 1990 (3) SCC 223; Shri Sitaram Sugar Co. Ltd. v. Union of India.**

29. The Supreme Court in **2005 (5) SCC 181; State of NCT of Delhi and another v. Sanjeev alias Bittoo** upheld the right of judicial review under Article 226 on the basis of illegality in decision making process coupled with irrationally and perversity. While holding that decision is irrational and Court may look into the material on record. (Paragraphs 16, 17 and 21) Hon'ble Supreme Court further held in the case of **Sanjeev (supra)** that if the administrative or judicial power has been exercised on non-consideration or non- application of mind to relevant factors, such exercise shall stand vitiated. Relevant portion from the judgment of **Sanjeev (supra)** is reproduced as under:-

“If the power has been exercised on
a non-consideration or non-application of



mind to relevant factors, the exercise of power will be regarded as manifestly erroneous. If a power (whether legislative or administrative) is exercised on the basis of facts which do not exist and which are patently erroneous, such exercise of power will stand vitiated.”

30. This Court directs the respondent authorities to allow the petitioner company to lift the entire amount of broken stone material in respect of Block Nos.3 and 6, as has been quantified by the Joint Inspection Team within a period of two months. In case, any fresh determination is required, then the same be conducted within a period of one week in presence of representative of the petitioner company.

31. In any case, the authority must not delay to allow the petitioner company to lift the broken stone chips from the site, beyond the period of two months.

32. It is made clear that the petitioner ensures to make payment of royalty and GST, if any due is there, within the aforesaid period of two months.

33. The concern shown by Mr. Vikash Kumar, learned counsel appearing on behalf of the State, call for appreciation and can well be considered by the Commissioner State Taxes, as well as the Additional Chief Secretary, Mines and Geology Department.

34. The representative of the Company has agreed to



furnish details of GST paid for total quantity of the stone chips which were lifted from the place of query.

35. This Court further observes that the authorities of the Mines and Geology Department as well as the State Taxation Department to be more vigilant in future so that materials be not removed without accepting the requisite royalty and tax due to any person or any company in future.

36. With aforesaid observations and directions, the writ petition stands allowed.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.12.2023
Transmission Date	NA

