

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6781 of 2018

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M/s Jai Mata Di Enterprises, Through Its Sole Proprietor, Shri Gopal Prasad
Son of late Mani Lal, Resident of Hanuman Complex, Main Road, Nawada,
P.S. Nawada, District-Nawada-805110

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Nawada
4. The Assistant Director Mines, Nawada.
5. The Mining Officer, Nawada.
6. Bihar State Mining Corporation Limited, A Government of Bihar Undertaking, Room No.164, Bhawan New
7. The Director of Mines, Bihar, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Satyabir Bharti, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha -GA-7
		Mr. Uday Shankar Pandey, AC to GA-7
For the Mines	:	Mr. Naresh Dixit, Advocate
		Mr. Utsav Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

3 03-08-2023 Mr. Satyabir Bharti, learned counsel for the petitioner seeks permission and is allowed to implead the Director Mines, Bihar, Patna as respondent no. 7 in course of the day.

Heard Mr. Satyabir Bharti, learned counsel for the petitioner as also Mr. Naresh Dixit, learned Special P.P. Mines.

*The petitioner has sought
following relief from the Court:*

(i) issuance of a writ of



mandamus, restraining the respondents from levying and recovering an amount equivalent to 5% of the sale value of the sand mined and sold by the petitioner, in the name and style of "BSMC Commission", which is wholly without any authority in law and violative of Article 265 of the Constitution of India;

(ii) to direct the respondents to refund a sum of Rs.42,20,736.00, unlawfully recovered from the petitioner under threat and coercion as 5% "BSMC Commission" on sale of sand made by the petitioner, for the period from 1.1.2018 to 25.1.2018 till 8.44 PM;

(iii) to pass such other order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.

The case of the learned counsel for the petitioner is that in the district of Nawada, the settlement of sand ghats were allotted to it. Pursuant to the tender notice, he being declared the



highest bidder for the sand ghats for Rs. 7,66,00,000/-. Accordingly, the Letter of Intent (LOI) was issued in his favour from 01.11.2014 and the period was from 01.01.2015 to 31.12.2019.

It is his further case that subsequently, the Department forced the allottees of the sand ghats and which they also relented and accordingly, vide memo no. 645 dated 01.02.2018 , it was decided that the 5% commission will have to be given to the Bihar State Mining Corporation. The petitioner being signatory to it, had to follow the said agreement between the sand ghats allottees/settlers and the Department.

However, his contention is that even before the said agreement was signed, the respondent authorities started levy 5% commission inasmuch as between 01.01.2018 to 25.01.2018, he had to cough up altogether Rs. 42,20,736/- as 5% BSMC commission on sell of sand made for the period 01.01.2018 to 25.01.2018 till 8:44 p.m.

He has taken this Court to the different challan which are part of Annexure-7 series in support of the contention. A perusal of one of the challan as serial no. 17 on 25.01.2018 supports the aforesaid claim of the petitioner.

Learned Special P.P. Mines, Mr. Naresh Dixit submits



that the petitioner being a signatory to the agreement to pay 5% commission to the BSMC, cannot backtrack the same and as such he tried to justify the commission that was taken between 01.01.2018 to 25.01.2018 .

However, despite filing of the counter-affidavit, nowhere it has been incorporated that there was an agreement between the parties on 01.02.2018 that this agreement will be given retrospective effect.

In that view of the matter, the petitioner has made out the case.

It is the contention of the learned Special P.P. Mines that there was no demand and as such it is surprising that vide letter dated 07.02.2018 (Annexure-8 to the petition) how the petitioner chose to pay Rs. 57,28,696/- for the period 01.01.2018 to 25.01.2018, if the said contention is correct.

Learned counsel for the petitioner, on the other hand, has drawn attention to the last two lines of the said annexure to show that the draft no., the date and the amount as also the fact that the same has been paid under protest stands incorporated and not refuted by the respondent authorities in its counter-affidavit.

At this stage, learned Special P.P. Mines submit that



he may be asked to file a representation before the Director, Mines, Bihar, Patna who shall look into the matter and if the contention of the petitioner is correct, the consequences has to follow.

Considering the aforesaid facts as also the materials on record, this Court is convinced that pursuant to the agreement signed as also there is no such document on record to show that the 5% commission to the BSMC was to be taken/given effective from 01.01.2018 and the petitioner, himself has stated that from 25.01.2018 at 8:44 p.m., the column of 5% commission itself came in the challan. Prior to that as there was no such column, he has been made to suffer by paying Rs. 57,28,696/-.

In that view of the matter, the petitioner is directed to file a representation bringing on record every documents within four weeks from today.

If such representation is filed within four weeks from today, the Director Mines, Bihar, Patna, the newly added respondent no. 7 will have to pass a reasoned order within a period of three months from the submission of representation.

The consequences of the said order has to be completed within next one month.



The writ petition stands disposed of.

(Rajiv Roy, J)

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