

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16472 of 2022

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Priya Ranjan Kumar Singh Son of Rajeshwar Prashad Singh, Resident of
Village Sarsa, P.O. Risiap, P.S. Risiap, District Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secreary Government of Bihar, Old Secretariat Building, Patna.
2. The Principal Secretary Department of Mines and Geology, Government of Bihar, Patna.
3. The Director Mines-Cum-CEO, Bihar State Mining Corporation Ltd., Patna.
4. The District Magistrate, Bhojpur.
5. The District Mining Officer, Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Jai Vardhan Narayan, Advocate
For the Mines	:	Mr. Naresh Dixit, Spl. PP
		Ms. Kalpana, Advocate
For the Respondent/s	:	Mr Birendra Prasad Singh, AC to SC 19

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 09-05-2023

1. Heard learned counsel for the petitioner and learned
counsel for the respondents.

2. The petitioner has filed the instant writ application
for the following relief(s) :-

*“Issuance of directions, orders or writs in
the nature of certiorari setting aside the order
dated 16.09.2022 passed by the Director Mines-
Cum- Chief Executive Officer, Bihar State
Mining Corporation, Patna (ANNEXURE 9)*



which had been passed in an utmost arbitrary and illegal manner without appreciating the fact that the actual physical act of "of actual mining the minerals, allegedly illegally transporting them and/or selling them in market has not been established or certified by any official of the Mines Department or the District Administration." And moreover the Show Cause Notice dated 27.07.2022 issued by the Bihar State Mining Corporation has failed to bring out any such incident indicated above along with evidence and explanation filed by the petitioner has been rejected and the petitioner has been made liable to pay Rs. 1,25,42,450/-as penalty under Rule 56 for illegal mining/transportation of 9466 MT of sand through 2338 E-Challans and since balance of security deposit of the petitioner is 1,30,47,712/- therefore, after adjustment of the penalty amount of Rs. 1,25,42,450/-, it had been further ordered that a sum of Rs. 5,05,262/- be refunded to the petitioner and additionally it has also been ordered that since the petitioner had violated the provisions of Section 192 of the Motor Vehicles Act, 1988, the State Transport Commissioner may take further action against the petitioner as per law.

II Issuance of directions orders or writs in the nature of mandamus directing the Respondents to forthwith return the security deposit of the



petitioner in the tune of Rs. 1,30,47,712.00 which is lying with the department and had been illegally and arbitrary adjusted vide order dated 16.09.2022 passed by the Director cum CEO, Bihar State Mining Corporation Ltd. Patna under the garb of the Show Cause Notice inter alia alleging the use of unrealistic vehicles by the petitioner which is completely arbitrary and illegal and against the statutory provisions.

III Any other relief or reliefs for the petitioner which may be deemed entitle to.”

3. The case of the petitioner in brief is that being the highest bidder pursuant to the e-tender published on 29.12.2021, the petitioner was allotted cluster no. 29 Chilhauns sand ghat in the District of Bhojpur vide letter no. 24 Patna dated 12.1.2022 by the Bihar State Mining Corporation Ltd ('the BSMCL' in short) for carrying out mining activity. An agreement dated 11.2.2022 was entered into between the BSMCL and the petitioner which was valid till 31.3.2022. Subsequently another agreement was entered into and the tenure of the agreement was extended till 31.5.2022.

4. The petitioner was served with a show cause notice contained in letter no. 1536/Patna dated 27.7.2022 issued under the signature of the respondent no. 3 stating therein



that out of the total 18,779 e-challans generated by the petitioner during the contract period, on verification through the VAHAN portal it transpired that 2347 e-challans generated by the petitioner were for unrealistic vehicles which were used for transportation of 9580 MT of sand, the value of which comes to Rs. 1,26,93,500/-. As such the petitioner was asked to show cause within seven days as to why penalty amount/suitable compounding fee may not be realized from him. The petitioner filed his reply to the show cause notice on 4.8.2022.

5. By order contained in memo no. 1943 dated 16.9.2022 issued under the signature of the respondent no. 3, the explanation furnished by the petitioner was rejected and it was held that he was liable to pay Rs. 1,25,42,450/- as penalty under Rule 56 for illegal mining/transportation of 9466 MT of sand through 2338 e-challans. Adjusting the amount of penalty from the balance of security deposit, it was ordered that the petitioner be refunded an amount of Rs. 5,05,262/-. Learned counsel for the petitioner submitted that the respondent authorities failed to appreciate the contents of the reply to show cause filed by the petitioner. The procedure provided that e-challans had to be generated online through



the portal wherein the lessee is required to enter the details of the vehicle. A number of vehicles which were not registered, as such in place of the registration number, chassis number of those vehicles/tractors were mentioned and the same were accepted by the online portal and e-challans generated. No provision of any Rules has been violated by the petitioner and there is no application whatsoever of Rule 56 of the Bihar Minerals (Concession, Prevention of illegal Mining, Transpiration and Storage) Rules 2019 ('the Rules' in short).

6. Learned counsel for the petitioner submitted that from reading of Rule 56 and more particularly Rule 56(1) it would transpire that the same talks about transportation of mineral without a valid challan or licence. There is no such allegation against the petitioner in the show cause notice. Learned counsel for the petitioner further places reliance on the judgment of this Court dated 2.5.2023 passed in C.W.J.C. no. 111 of 2023 (M/s Harsh Construction v. the State of Bihar and ors.).

7. Learned counsel for the Mines Department submitted that a counter affidavit has been filed in the case on behalf of the respondents and sworn by the Mineral Development Officer of the Mines and Geology Department.



Referring to the contents of the counter affidavit and more particularly paragraph nos. 15, 17 and 20 thereof, learned counsel submitted that on scrutiny being done by the respondent Corporation it was found that the petitioner had issued 18799 e-challans from the sand ghat for transportation of the sand, out of which 2347 e-challans were found to be issued for fictitious vehicles with imaginary registration numbers showing transportation of 9580 MT of sand.

8. Thus, having violated the provisions of the tender document, the agreement executed between the parties and the Motor Vehicles Act, the petitioner was asked to a show cause regarding the illegality/irregularity and having filed his reply, the respondents not finding the reply of the petitioner to be satisfactory, rightly passed the order of penalty. It was finally submitted that the petitioner having acted in violation of the terms of the tender document, the agreement between the parties and the prevalent Rules, the penalty imposed under Rule 56 of the Rules for illegal transportation of sand is absolutely justified.

9. Having heard learned counsel for the petitioner and learned counsel for the Mines Department and having perused the material on record, the facts not in dispute are



that the petitioner having participated in the e-tender published on 29.12.2021 was a valid settlee. Agreement between the BSMCL and the petitioner entered into on 11.2.2022 was initially valid till 31.3.2022 and subsequently extended by another agreement. There is no doubt about the fact that there was a valid agreement between the parties is evident from the contents of the show cause notice dated 27.7.2022 also when the respondent no. 3 states that “it was found that during the contract period,…”

10. The show cause notice having been issued alleging violation of Rule 56 of the Rules and the order of penalty impugned herein being passed under Rule 56 of the Rules, it would be appropriate to quote Rule 56 (1) and (2) of the Rules herein below for ready reference :-

“[56. Illegal mining, transportation and storage of minerals.-(1) No person shall extract or remove or undertake any mining operation in any area without holding any mineral concession, permit or any other permission granted or permitted under these rules, or shall transport or stored or cause to be transported or stored any mineral without a valid challan or license.

***(2) Whoever contravenes the above sub-rule shall be punished with an imprisonment for a term, which may extend to two years or with a fine which may extend to five lakh rupees, or with both:
Provided that the mining officer of the***



district or the Assistant, Deputy Additional Director or Director Mines, or any other officer authorized by the Government, may either before or after the institution of the prosecution, compound the offence committed in contravention of the above rule, on payment of cost of mineral and compound fee as mentioned below:-

Sl. No.	Vehicle/Equipment	Compound fee (in Rs.)
1	Tractor trolley	25000
2	Matador/Half truck 407, 608	50000
3	Full body truck/Dumper(hydraulic 6 wheeler vehicle)	100000
4	10 or more than 10 wheeler vehicle	200000
5	Crane, Excavator. Loader, Power hammer, Compressor, Drilling machine etc.	400000

Note. Cost of the mineral shall be taken as twenty five times of royalty in lieu of rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority, etc.:

Provided that the amount of compound fee in cases other than specified as above shall not be less than rupees twenty five thousand and shall be in addition to the cost of mineral.

11. On reading of the title of Rule 56 it transpires that the same deals with illegal mining, transportation and storage of minerals. The allegations leveled by the BSMCL against



the petitioner as per the contents of the show cause notice as from the contents of the order of penalty is to the effect that the contractor (petitioner herein) issued 18799 number of e-challans from the sand ghat for transportation of sand out of which 2347 e-challans were *prama facie* found to be issued for fictitious vehicles with imaginary registration numbers.

12. In his reply to show cause the categorical stand of the petitioner was to the effect that in certain cases there may be possibility of entering an incorrect registration number while in some cases those tractors which have not been registered, the chassis number of the tractors have been mentioned which are all genuine vehicles. In any case there was no violation of Rule 56 of the Rules and the petitioner/lessee having issued valid challan which was generated through the online portal of the department, the order of penalty cannot stand.

13. In dealing with the petitioner's reply to the show cause notice, the respondent in the order impugned states that as per the clause of the tender document the contractor was under obligation to carry out mining activities with full compliance of the existing laws as well as the conditions of the agreement. He (the petitioner) was in violation of Clause



XXVII of part 4 of the agreement and as a result the consequential plying of the vehicle without a valid number plate was also punishable under section 192 of the Motor Vehicle Act.

14. In the opinion of the Court the question arising in instant case is as to whether the order of penalty impugned herein is sustainable having been passed under Rule 56(2) of the Rules. Neither in the show cause notice nor in the order of penalty have the respondents given any example of any incorrect registration number having been furnished by the petitioner/contractor. Further on perusal of Rule 56(1) it would transpire that the same provides that no person shall extract or remove or undertake any mining operation in any area “without holding a permit” and further that no person shall transport or store or cause to be transported or stored any mineral “without a valid challan or licence”. Neither the show cause notice nor the order of penalty speaks about the petitioner having undertaken any mining operation ‘without holding a permit’ or of having transported any minerals ‘without a valid challan for licence’. Thus in absence of there being specific allegations of violation of the conditions laid down in Rule 56(1) of the Rules made against the petitioner



and thereafter the same having been proved, an order of penalty under Rule 56 will not be sustainable.

15. For the reasons stated herein above, this Court is of the opinion that the order impugned contained in memo no. 1943 dated 16.9.2022 (Annexure-9) issued under the signature of the Director, Mines-cum-CEO, Bihar State Mines Corporation Ltd is unsustainable and is hereby set aside. As such consequently the Director, Mines-cum-CEO, Bihar State Mining Department, Patna (respondent no. 3) is directed to return the security deposit which was adjusted against the penalty imposed and the penalty amount deposited (if any) to the petitioner within a period of three months.

16. It is hereby clarified that the order in the instant application is limited to quashing the order of penalty under Rule 56(2) of the Rules only. So far as the proceeding recommended under the Motor Vehicles Act etc are concerned, this order is not to be construed as quashing that part of the recommendation nor to the effect that the Court has affirmed the same. Any proceeding under the Motor Vehicles Act which may be initiated will be decided on its own merit without being prejudiced by any observation made



in this order.

17. The writ application stands allowed.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

