

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17349 of 2022

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M/s Eklavya Stone and Mines Pvt. Ltd. through its Director Nidhi Kumari, aged about 32 years, Female, Daughter of Amarnath Singh, Resident of A-58, Police Colony, Near Park, Gandhi Vihar, Phulwari, Anisabad, P.S.-Gardanibagh, District-Patna, having its registered office at Village-Pathra English, P.O.-Orhanpur, P.s.-Muffasil, District-Nawada. Petitioner/s
Versus

1. The State of Bihar
2. The Additional Chief Secretary-cum-Principal Secretary, Mines and Geological Department, Govt. of Bihar, Patna.
3. The Director, Mines and Geological Department, Govt. of Bihar, Patna.
4. The District Magistrate, Nawada.
5. The Assistant Director, Mines, Nawada.
6. The Mining Development Officer, Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. P.N. Shahi, Sr. Advocate Mr. Gopal Bohra, Advocate
For the State	:	Ms. Sangh Mitra Ghosh, AC to GA 7
For the Mines	:	Mr. Naresh Dixit, Advocate Mr. Brij Bihari Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT

Date : 21-03-2023

Heard Mr. P.N. Shahi learned senior counsel for the petitioner, Ms. Sangh Mitra Ghosh, learned counsel for the respondent State of Bihar and learned counsel for the Mines Department.

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

“(i) For quashing/ setting aside the order contained in Letter No. 3176 dated 08.11.2022 passed by the Mining Development Officer,



Nawada, whereby and whereunder a sum of Rs. 61,61,33,325/- has been imposed towards unauthorized extraction of 5794196 CFT stone against the annual production capacity as approved in the Environmental Clearance under Rule 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation) Amended Rules, 2021 and a direction has been issued to pay the aforesaid amount within 15 days failing which a certificate case shall be lodged against the petitioner.

(ii) After quashing of the aforesaid the respondent may be directed to grant consequential benefit.

(iii) For any other consequential relief or reliefs for which the petitioner will be found entitled in the facts and circumstances of the present case.”

3. The case of the petitioner in brief is that pursuant to a notice inviting tender published (NIT) published on 12.12.2014 to auction seventeen blocks for the purpose of stone mining, one V.K. Roadlines Pvt Ltd submitted its tender for stone mining with respect to lands measuring an area of 12.36 acres, bearing Khata no.888, Plot no.4256, Block no.9 situated at Mauza Bhadokhara, Circle Nawada, P.O. Mufassil, District Nawada. Being the highest bidder for Block no.9, in token of settlement of the mining lease for the said Block, the Assistant Director, Mines, Nawada issued a letter of intent (LOI) contained in letter



no. 116 dated 10.2.2015 (Annexure-1) in favour of M/s V.K. Roadlines Pvt. Ltd. Environmental clearance was granted by the State Environment Impact Assessment Authority (SEIAA) on 27.6.2017. A mining agreement was entered into between the State of Bihar and M/s V.K. Roadlines Pvt. Ltd on 28.7.2017 and the agreement (Annexure-4) was registered on 31.10.2017. By letter no. 264 dated 5.11.2018 (Annexure-7) issued under the signature of the Principal Secretary, SEIAA, Bihar, on clearance being granted, by letter no. 924 dated 30.7.2018 (Annexure-5), the mining lease in favour of M/s V.K. Roadlines Pvt. Ltd was transferred in favour of the petitioner. Subsequently by letter no. 264 dated 5.11.2018 issued under the signature of the Principal Secretary, SEIAA, Bihar, the environmental clearance granted to V.K. Roadlines was also transferred in favour of the petitioner.

4. It is the case of the petitioner that the petitioner started to carry out the mining operation on transfer of the lease following the rules and directions of the authority concerned. The lease was for a term of five years starting on 28.7.2017.

5. The respondent authorities of the Mines Department issued a show cause notice to the petitioner stating therein that against the environmental clearance of 6,38,400 TPA in the



calendar year 2020, the petitioner in violation of Rule 18(3) and 47(2)(c) of The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation) (Amendment) Rules, 2019, had in the year 2020 illegally mined a total quantity of 8,70,800 tones of stone. As such the petitioner was asked to file his reply within three days. The petitioner submitted his reply. The respondent authorities issued a further show cause notice contained in letter no. 1002 dated 17.6.2022 (Annexure-11) stating that the petitioner had clearly violated Rule 18(3) and 47(2)(H) of the Bihar Minerals (Concession, Prevention of Illegal Mining, transportation & Storage) Rules, 2019 and was asked to show cause as to why recommendation be not made to the Collector for cancellation of the lease for the remaining period. The petitioner submitted his reply by letter dated 24.6.2022 as also 20.9.2022.

6. By order contained in letter no. 3176 dated 8.11.2022 (Annexure-16) issued under the signature of the Mining Development Officer, Nawada (respondent no. 6) it was held that in the year 2020 against the environmental clearance, the petitioner had indulged in excess mining of 57,94,196 CFT of stone and thus should ensure payment of the total sum of Rs. 61,66,33,325/- in terms of Rule 56 of The Bihar Minerals



(Concession, Prevention of Illegal Mining, transportation & Storage) (Amendment) Rules, 2021. It is against this order dated 8.11.2022 that the petitioner has preferred the instant writ application for the reliefs prayed for as stated herein above.

7. Mr. P.N. Shahi learned Senior counsel appearing for the petitioner submitted that on the face of it the order impugned dated 8.11.2022 passed by the Mining Development Officer, Nawada is not sustainable in law and fit to be set aside. It was submitted that although not admitting but accepting the case of the respondent authority for the sake of argument, the alleged excess mining as stated in the order is for the year 2020 while the impugned order imposing penalty of a sum of Rs. 61,61,33,325/- for unauthorized extraction of 57,94,196 CFT of stone has been done under the amended Rule 56, the amendment in the Rules having come about in the year 2021.

8. It was submitted that the amendment in the Rules came into effect vide notification no. 1652 dated 2.7.2021 and do not have retrospective application with respect to alleged excess mining for the year 2020. Further referring to Rule 56(1) of the Rules 2019 it is submitted that a bare reading of Rule 56(1) would show that the same is applicable in cases of extraction or removal or undertaking of mining operation



without a valid chalan or licence. The petitioner in the instant case admittedly was holding a valid permission. Thus the said Rule 56(1) would not be applicable here. Learned senior counsel submitted that Rule 51(7) of the Rules provided that the royalty in case of auction of the mine and minerals shall be the amount of auction and in cases where the royalty on dispatch quantity exceeds the auction amount the extra royalty for the excess quantity of mineral extracted shall also be payable. It was submitted that Rule 51(7) of the Rules was similar to Clause 36 of the lease (Annexure-4) which provided that the lessee shall have to pay extra royalty in case he extracts stone for the excess quantity (incorrectly spelt as quality) in comparison to bid amount in that calendar year. It was submitted that the environmental clearance as contained in letter dated 27.6.2017 (Annexure-3) did not provide the approved quantity production of 6,34,800 ton per annum (1,59,60,000 CFT as stated in the counter affidavit). Thus, it was submitted that by the order impugned dated 8.11.2022 (Annexure-16) imposing penalty of Rs. 61,61,33,325/- was not sustainable and thus be set aside.

9. The application was opposed by learned counsel appearing for the State and learned counsel for the Mining Department, both relying on the averments made in the counter



affidavit filed on behalf of respondent nos. 4 to 6 and sworn by the Mineral Development Officer, Nawada. It was submitted by learned counsel appearing for the respondent that pursuant to the NIT published on 12.12.2014 for auction of 17 blocks of stone for purpose of stone mining, a tender was submitted by M/s V.K. Roadlines Pvt. Ltd for Block no. 9. Being the highest bidder the same was settled on the offer price of Rs. 20,21,00,000/-. Being the successful bidder a letter of intent (LOI) contained in letter no. 116 dated 10.2.2015 was issued in favour of M/s V.K. Roadlines Pvt. Ltd for a period of five years. An agreement of mining lease was entered into on 30.7.2017. On an application filed by the present petitioner, under clause 13 of Part 7 of the lease agreement and Rules 21 and 23 of the Rules of 1972, the application was approved vide letter dated 30.7.2018 and the mining lease was transferred in favour of the petitioner. It was submitted by learned counsel appearing for the respondents that for the year 2020 the environmental clearance provided approved quantity of production of 6,34,800 ton per annum (1,59,60,000 CFT), however, it was detected that against the said capping limit, the petitioner had extracted altogether 2,17,54,196 CFT of stone from Block no. 9. It was thus submitted that the petitioner having extracted stone beyond the



permitted capping limit fixed by the SEIAA while granting environmental clearance to the petitioner, the same was clearly in violation of Rule 18(3) and 47(2) (i) of The Bihar Minerals Rule, 2019 and thus the petitioner was found guilty under Rule 56 and penalty imposed for the additional excavation done by the petitioner beyond the capping limit. It was submitted that an amount was chargeable for unauthorized extraction of 57,94,196 CFT of stone which is additional excavation beyond the capping limit and thus on calculation, as per the Rules, a sum of Rs. 61,61,33,325/- was to be paid by the petitioner company.

10. Heard learned Senior counsel appearing for the petitioner and learned counsels appearing for the respondents.

11. Having perused the materials on record the fact not in dispute is that pursuant to a notice inviting tender (NIT) published on 12.12.2014, M/s V.K Roadlines having submitted his tender for Block no. 9 and being the highest bidder, a letter of intent (LOI) was issued in his favour for a period of five years vide letter no. 116 dated 10.2.2015 under the signature of the Assistant Director, Mines, Nawada. An agreement of mining lease was entered into on 30.7.2017. Subsequently on an application filed by the petitioner, in terms of Clause 13 of the lease agreement as also the provisions of the Bihar Minor



Minerals Concession Rules, 1972, the mining lease was transferred in favour of the petitioner on 30.7.2018 with the approval of the District Magistrate, Nawada. The petitioner obtained the environmental clearance certificate from the competent authority ie SEIAA and proceeded with the mining.

12. It may be mentioned here that in exercise of powers conferred under section 15 read with sections 23C and 26 of the Mines and Minerals (Development and Regulation) Act, 1957, The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 was framed and published in the Bihar Gazette (Extra Ordinary) on 17.9.2019. Rule 56 of the Rules was amended vide Rule 7 of Amendment Rules 2021 vide notification no. 1652 dated 2.7.2021. Rule 56, as it stood at the time of framing of the Rules in the year 2019 and as it stood subsequent to the amendment on 2.7.2021 are both being quoted herein below for ready reference :

Before amendment

56. Penalty for unauthorized extraction and removal of minor minerals. - (1) Whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made he be an agent, a manager, an employee or a contractor or a sub-lessee, otherwise than in accordance with these Rules, shall be



presumed to be party to the illegal removal of the minor mineral and every such person shall be punishable with simple imprisonment which may extend upto two years or with fine, which may extend upto rupees five Lakhs or with both.

(2) If any person in charge of any carrier while carrying mineral fails to furnish the Challan in **Form "G"** or in the prescribed format or refuses inspection of such Challan by the Director of Mines or Additional Director of Mines or Deputy Director of Mines or Mining Officer or Mining Inspector or any officer authorised by the Collector, such officer shall recover from the person in charge of the carrier the value of the mineral alongwith fine which may extend upto Rs. Ten thousand.

In case of transportation of mineral without valid challan in Form "G", total value of mineral and fine which may extend upto Rs. Ten thousand shall be recovered from the person in charge of the carrier and deposited in the Govt. Head.

Provided that when the quantity of mineral loaded in carrier differs from the quantity mentioned in the challan the authorised officer shall recover value of the mineral for the difference quantity only along with fine which may extend upto Rs. Ten thousand. The quantity so assessed shall be based on actual measurement from weighbridge and not on the basis of eye estimation only.

For collection / deposition of penalties so imposed the department may issue Money Receipts to the concerned Mining Inspector/ Mineral Development Officer/Assistant Director who after realizing penalty through Money Receipts shall deposit it in State Exchequer.

(3) Whoever removes min or mineral without valid lease/



permit or on whose behalf such removal is made otherwise than in accordance with these Rules he be an agent, Manager, contractor or a sub-lessee, shall be presumed to be a party to the illegal removal of the minor mineral and shall be liable to pay the price thereof and the Government may also recover from such person rent, royalty or taxes as the case may be, for the period during which the land was occupied by such person without any lawful authority without prejudice to other action being taken against him under these Rules or any other law for the time being in Force.

After amendment (on 2.7.2021)

¹56. 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 store 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.

(3) Whenever any person, without a lawful authority, raises any mineral from any land other than under any mineral concession or any other permission and for that purpose bring on the land any tool, equipment, vehicle or other thing, such tool, equipment, vehicle etc. along with mineral, if any, shall be seized by the mining officer or a police officer of the district or any other officer authorized by the Collector, who shall give a receipt to the person from whose possession the property or mineral is seized:

Provided that every officer seizing any property or mineral under this rule, shall handover the property or mineral so seized to the nearest police station or police chauki.

Provided further that, the seized vehicle, equipment or mineral shall be released after deposition of cost of mineral along with the compound fee as specified in sub-rule (2).

Provided also that, where mineral so raised has already



been dispatched or consumed, the authorities mentioned in sub-rule (3) shall recover cost of mineral along with the compound fee as specified in sub-rule (2).

Provided also that where vehicle, equipment or mineral so seized is not released, the officer seizing the property or mineral shall make a report of such seizure within twenty four hours to the Collector.

(4) All property seized under this rule shall be liable to be confiscated by an order of the Collector if the amount equal to twenty five times of royalty in lieu of cost of mineral, rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority etc., along with compound fee is not paid by the offender within a period of one month from the date of commission of such offence or when the recoveries are not affected by that time:

Provided that on payment of these dues within the said period of one month, all properties seized shall be ordered to be released and shall be handed over to the offender or the owner of the property.

(5) Where the person committing an offence under these rules is a company registered under Companies Act, every person who at the time when the offence was committed, was in charge and was responsible to the company for conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly:

(6) The mines, revenue, police and transport department shall make coordinated efforts to vigil illegal mining or transportation of the mineral.

(7) Procedure for confiscation and auction of property seized under this rule. - (i) Subject to sub-rule (2), where the Collector upon production before him of property seized or upon receipt of report about seizure, as the case may be, is



satisfied that an offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate the mineral so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without undue delay to the Mines Commissioner.

(ii) No order confiscating any property shall be made under sub-rule 7 (i) unless the Collector—

(a) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the Collector to have some interest in such property;

(b) affords an opportunity to the persons referred to above, of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(c) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes. (iii) No order of confiscation under sub-rule (1) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the mineral seized shall be made if any person referred to in clause (b) of sub-rule 7(ii) proves to the satisfaction of the Collector that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of the offence.”

(iv) All tools, arms, boats, vehicles, ropes, chains or other articles confiscated would be auctioned as per government rules.

(v) Order of confiscation not to interfere with other



punishment. - The order of any confiscation under Rule shall not prevent imposition of any other punishment to which the person affected thereby is liable under these rules or any other law.8. A new rule 56(A) shall be inserted.

13. From reading of the provisions of Rule 56, before and after amendment, as quoted herein above it would transpire that note to proviso to amended Rule 56(2) provides that cost of the mineral shall be taken as 25 times of the royalty. This clause was not present in the unamended Rule 56.

14. Further from perusal of the order impugned dated 8.11.2022 (Annexure-16) it would transpire that the order specifically talks about violation in the quantity of extraction of stone for the year 2020 and specifically mentions about calculation of the penalty under the amended Rule 56.

15. The amendment in Rule 56 having come into effect on 2.7.2021, the same could not have been applied retrospectively by the respondent authorities with respect to alleged excess extraction of stone for the year 2020. The order impugned dated 8.11.2022 is thus not sustainable and the writ application is fit to be allowed on this ground alone.

16. So far as the submission of learned Senior counsel appearing for the petitioner that the amended Rule 56 would be applicable only in those cases where the extraction or removal



or undertaking of mining operation are carried out without a valid challan or licence is concerned, in the opinion of the Court, the said submission has no merits for two reasons. Firstly, as stated herein above the amendment to Rule 56 having come about on 2.7.2021, the same would not be applicable for a violation which occurred in the year 2020. Secondly the unamended Rule 56 as also quoted herein above is not similarly worded.

17. Further as per the mining plan (Annexure-2) submitted by the original applicant M/s V.K. Roadline Pvt. Ltd, it would transpire that the removal and production of minerals for the first five years in Block no. 9 has been mentioned in a chart form (at page no. 28). According to the same the permitted stone extraction for each year was to the tune of 6,38,400 TPA (1,59,60,000 CFT) but against the said permissible limit, according to the respondents, in the year 2020, the petitioner unauthorizedly extracted 57,94,196 CFT excess of stone. Even accepting the case of the respondents as stated in the order impugned the respondent authorities could not have proceeded against the petitioner under the amended Rule 56 but could have proceeded only under the unamended Rule 56, in accordance with law.



18. Having heard learned counsel for the parties and taking into consideration the submissions made, the materials on record and the relevant provisions, the Court is of the opinion that for the reasons stated herein above, for an alleged violation in extraction of stone for the year 2020, the order of penalty having been passed under the amended Rules 56 ie as amended by the The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) (Amendment) Rules, 2021, the order impugned as contained in letter no.3176 dated 8.11.2022 (Annexure-16) issued under the signature of the Mining Development Officer, Nawada is not sustainable and is quashed.

19. The writ application is allowed, however, with liberty to the respondents to proceed against the petitioner in accordance with law in view of the observations made herein above.

(Partha Sarthy, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

