

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.208 of 2023

M/s Eklavya Stone and Mines Pvt. Ltd. through its Director Nidhi Kumari, aged about 32 years, Female, Wife of Eklavya Kumar, having its registered office at Village- Pathra English, Post- Orhanpur, Police Station- 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. Bihar State Mining Corporation Ltd. through its Managing Director, Room No. 164, Vikash Bhawan (New Secretariat), Bailey Road, Patna- 800015.
5. The Chief Executive Officer, Bihar State Mining Corporation Ltd., Room No. 164, Vikash Bhawan (New Secretariat), Bailey Road, Patna- 800015.
6. The Administrative Officer, Bihar State Mining Corporation Ltd., Room No. 164, Vikash Bhawan (New Secretariat), Bailey Road, Patna- 800015.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sudhir Kumar Singh, Advocate
For Mines	:	Mr. Naresh Dixit, Advocate
	:	Mr. Utsar Anand, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha (Ga7)
	:	Mr. Uday Shankar Pandey Ac to Ga- 7

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

7 03-08-2023

Heard the parties.

2. The present writ application has been filed for the following reliefs:-

(i) for quashing/ setting aside the order dated 26.09.2022 passed by the Director, Mines-cum-CEO, Bihar State Mining Corporation Ltd., Patna contained in Memo No. 08/Balu 71/22, 2022



dated 26.09.2022 issued by the Administrative Officer, Bihar State Mining Corporation whereby and whereunder the petitioner has been held guilty and liable to pay a sum of Rs. 89,62,300/- as penalty under Rule 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation) Rules, 2019 as amended by Amendment Rules, 2021 for illegal mining / transportation of 6764 M.T. of sand through 1677 E-challans by unrealistic vehicles with imaginary number.

(ii) for a direction to the respondent Bihar State Mining Corporation to make refund of the security deposit along with consequential interest on delayed payment after quashing the order impugned dated 26.09.2022.

3. The case of the petitioner in short is/ are that pursuant to the order of the Hon'ble Apex Court in Civil Appeal No. 3661-3662 of 2022 dated 10.11.2021, the Bihar State Mining Corporation Ltd. (BSMCL) (henceforth for short 'the BSMCL') invited bid by E-auction for selection of Contractor for operation of sand ghats amongst other Malti Dariyapur,



Cluster No. 26 in the District of Gaya.

4. The petitioners being the highest bidder, bid amount was Rs. 6,13,20,393, the same was allotted and accordingly it deposited 4,12,39,962/- and further it gave postdated cheque of Rs. 2,05,52,440/-. The period was 01.01.2022 to 31.03.2022. The same was further extended from 01.04.2022 for next eight weeks for the total amount of Rs. 45,17,020/-.

5. However, the petitioner was surprised to receive show cause vide memo no. 1594 of 1595 both dated 27.08.2022 (Annexure 5 to the petition) by which after incorporating that 1678 of *E-challan* were *prima facie* found issued for unrealistic vehicle, after perusing the show cause, the same was rejected and a penalty of Rs.- 89,62,300/- was imposed under Rule 56 of the Bihar Mineral Rules 2019.

6. The case of the petitioners is that the vehicle number and registration number are two different things and the mentioning of registration number is not mandatory inasmuch as incorporation of chassis number/engine number will also suffice and which was regularly cleared by the respondent-authorities. As such, the notice of the respondent-authorities stating that *E-challans* for unrealistic vehicle is followed



without any basis.

7. He has taken this Court to an order of Patna High Court in **M/s Harsh Construction Vs. State of Bihar and Ors.** in **CWJC No. 111 of 2023** deposed on **02.05.2023** with specific reference to (paragraphs 21, 23, and 24) which incorporates herein below:-

“21. On the other hand Rule 56 of the Rules deals with penalty for unauthorized extraction and removal of minor minerals. Rule 56(1) of the Rules as quoted herein above is quite clear when it provides that whoever is found to be extracting or removing minor minerals or on whose behalf such extraction or removal is being made, otherwise than in accordance of these Rules, he would be liable for punishment, as provided under the said provision. Thus, in the opinion of this Court, the very heading of Rule 56 which talks about penalty for unauthorized extraction and removal of minor minerals, contemplates that the same is with respect to persons not having a valid license/agreement for extraction of minor minerals. In case, the person is having a valid license, the permission for extraction already being there, in case there is any breach, the provision of Rule 30 which deals



with penalty in case of breach of terms would come into play.

23. It may further be stated here that so far as the ground of incorrect e-challans being issued is concerned, it was submitted by learned senior counsel appearing for the petitioner that the petitioner was required to fill up Form-G and on the same being accepted that the mineral transit pass / e-challans is generated by the Department of Mines and Geology, Government of Bihar. Besides the details mentioned in Form-G, at SI. no. 16 thereof the vehicle number is required to be given. Learned senior counsel submitted that it is the categorical case of the petitioner that in absence of the registration number of the vehicle being available, with respect to the vehicle the petitioner supplied the chassis number of the vehicle and the respondents issued the e-challans for transportation of the mined sand.

24. On perusal of the counter affidavit and hearing learned Special P.P. Mines for the respondents, it transpires that the case of the respondent is that on a number of occasions the e-challans were generated with chassis number and AF (ie Applied For) mentioned in place of registration number which was in complete



violation of section 192 of the Motors Vehicle Act. Here also, the Court may observe that mentioning of chassis number and at the same time stating against the registration number that the same is 'Applied For, can in no manner be said that the vehicles in question were unrealistic, fictitious and that the registration number was mandatory. It is not the case of the respondents that an incorrect registration number was given with respect to any of the vehicles. In any case of the matter, the case of the petitioner would not fall in the category of a person on whom penalty under Rule 56 of the Rules would be leviable."

8. The counter affidavit has been filed on behalf of the respondent-Department Of Mines. However, to a query, it has been conceded by the learned Junior Counsel to Special PP Mines that the present case is also similar to the order passed in **M/s Harsh Construction (Supra)**.

9. Taking into account the aforesaid facts, the submission put forward by the rival parties, this Court is inclined to take the route that has been taken by the co-ordinate bench in **M/s Harsh Construction (supra)**.

10. The order contained in memo no. 71/2022 dated



26.09.2022 (Annexure 7 of the petition) issued by Director-cum- CEO, 'the BSMCL' is quashed .

11. The Director -cum- CEO, 'the BSMCL' shall be duty bound to refund the security deposit to the petitioner within a period of three months from today.

12. The writ petition stands disposed of with the aforesaid observation.

(Rajiv Roy, J)

Jagdish/Jyoti/-

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