

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.111 of 2023

M/S Harsh Construction through its Proprietor- Sarita Kumari, aged about 36 years Female, Daughter of Naresh Prasad Yadav, having its registered office at Village- Lohani Bigha, P.O.- Gonawan, P.S- Nawada, 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	:	M/s Pushkar Narain Shahi, Sr. Advocate Sudhir Kumar Singh
For the State	:	M/s Gyan Prakash Ojha, GA 7 Uday Shankar Pandey, AC to GA 7
For the Mines	:	M/s Naresh Dikshit, Spl.P.P. Mines Kalpana, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
Date : 02-05-2023

Heard learned senior counsel for the petitioner and
learned Spl.P.P., Mines for the respondents.

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

*“(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 214/22, 2008 of 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. 1,56,35,000 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 11,800 M.T. of sand through 14657 E- challans by imaginary vehicles.

(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.

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

3. The case of the petitioner in brief is that the petitioner is a private limited company incorporated under the Companies Act, 1956. Pursuant to the Hon'ble Supreme Court's order dated 10.11.2022 passed in Civil Appeal no. 3661-3662 of 2020 permitting the State Government to carry on mining activity, the Bihar State Mining Corporation Limited ('the BSMCL' in short) invited bid by e-auction for selection of contractors for operation of sand ghats of different places. This included sand ghat of cluster-33, Banahi sand ghat and Mahuama sand ghat of district Gaya. The petitioner being the highest bidder, earned the right to mine the minor mineral, the total bid amount being Rs. 53,92,236/-. In terms of the NIT, the petitioner deposited a total sum of Rs. 38,58,216/- and a post



dated cheque for the amount of Rs. 17,62,847/- was also deposited by way of second instalment of the bid amount. It is the case of the petitioner that on completion of the formalities stipulated in the NIT, work order was issued by the BSMCL on 8.12.2021 which clearly provides that the same is valid up to 31.3.2022. The same condition was also provided in paragraph no. 24(XXVIII) of the work order. A mining lease agreement dated 21.12.2021 was executed between the BSMCL and the petitioner.

4. It is the case of the petitioner that it started to carry out mining operation from the ghat in question ie cluster-33, Banahi sand ghat and Mahuama sand ghat of District Gaya and also started to transport the mined sand after obtaining e-challan from the portal of the BSMCL. During operation of the contract period, no complain whatsoever was raised with respect to illegal mining and/or transportation of the mined sand by petitioner. On the registration number/chassis number of the vehicles being uploaded by the petitioner on the portal of the BSMCL, e-challans were issued by the respondent Corporation without any objection.

5. Subsequently pursuant to the order dated 31.3.2022 passed in Civil Appeal no. 3661-3662/2020 by the



Hon'ble Supreme Court, the period of settlement of sand ghat with the petitioner was extended by eight weeks starting from 1.4.2022. The petitioner accordingly deposited an amount of Rs. 16,00,000/- on 31.3.2022 and the remaining amount of Rs. 9,81,360/- on 28.4.2022. However, as environmental clearance was provided only up to 20.4.2022, the mining was allowed only for the said period.

6. Mr. Pushkar Narain Shahi, learned senior counsel appearing for the petitioner submits that the BSMCL issued a show cause notice to the petitioner as contained in memo nos. 1596 and 1597 dated 27.7.2022 under the signature of the Director-cum-CEO, BSMCL alleging therein that out of the total number of 6063 e-challans generated by the petitioner, 909 e-challans were issued for unrealistic vehicles for transportation of 3656 MT of sand, the value of which comes to Rs. 48,44,200/-. Thus, as per the respondents the same revealed that the petitioner had transported a total of 3656 MT of minor minerals (sand) by using 909 unrealistic vehicles in contravention of section 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as 'the Rules') and clause XXVII of the agreement. As such it was stated that the petitioner was



liable to pay a total sum of Rs. 48,44,200/- as penalty for violating Rule 56 of the Rules, 2019 as also the terms and conditions of the agreement. The petitioner was directed to show cause within seven days as to why penalty amount / suitable compounding fees be not realized from him. The petitioner submitted his reply stating that Rule 56 of the Rules is not applicable in the petitioner's case. There has been no violation of Rule 56 and the BSMCL has no cause of action to proceed in the matter. With respect to clause XXVII of the agreement it was stated that the vehicle number as also the name of the owner was supplied to the BSMCL. It was categorically stated that no condition of the agreement provided that the mine mineral cannot be transported on a vehicle which has 'Applied For' its registration.

7. By order contained memo dated 26.9.2022 (Annexure-7) issued under the signature of the Director, Mines-cum-CEO, BSMCL, the explanation furnished by the petitioner was rejected and it was held that the petitioner was liable to pay Rs. 1,56,35,000/- as penalty under Rule 56 of the Rules for illegal mining / transportation of 11800 MT of sand through 14657 e-challans. After adjustment of the balance amount of security deposit which was Rs. 10,98,059/-, the petitioner was



directed to deposit Rs. 1,45,36,941/-.

8. It was submitted by learned senior counsel appearing for the petitioner that Rule 56 of the Rules deals with penalty for unauthorized extraction and removal of minor mineral. Rule 56 would be applicable only in cases of those persons who were extracting and removing minerals without any agreement or work order in their favour. The petitioner admittedly being the contractor with whom the respondent BSMCL had entered into an agreement, Rule 56 would not be applicable in the petitioner's case.

9. It was further submitted that the petitioner had been filling all the required details in Form-G as provided under Rule 41. In absence of the registration number of the vehicles, the petitioner supplied the chassis number of the vehicles and the respondent accepted the so filled up Form-G and issued e-challan.

10. As such, it was submitted by learned senior counsel that mentioning of registration number of a vehicle was not mandatory in the transit challans and in any case of the matter in the case of the petitioner Rule 56 would not be applicable. On this ground alone the order impugned dated 26.9.2022 (Annexure-7) imposing penalty of Rs. 1,56,35,000/-



on the petitioner is illegal, not sustainable and fit to be set aside.

11. The prayer made in the writ application was opposed by Mr. Naresh Dikshit, learned Spl.P.P., Mines appearing for the respondents. It was submitted by learned counsel that a counter affidavit has been filed on behalf of the respondents stating therein the various clauses of the tender document as also the agreement entered into between the respondent and the petitioner provided that the contractor was to keep the correct account of quantity of mineral mined out, dispatched from mine, mode of transport, registration number of vehicles, person in-charge of vehicle and mine plan. Learned counsel submitted that plying of vehicle without a valid number plate is punishable under section 192 of the Motor Vehicles Act, 1988 and vide letter dated 13.8.2020, the State Transport Commissioner directed all the District Transport Officers and other Enforcement Officers for its strict compliance.

12. Learned counsel for the Mines Department further submitted that the agreement dated 21.12.2021 was entered into between the parties which was initially valid till 31.3.2022, and the same was later extended till May, 2022. On scrutiny being done by the respondent Corporation, it was found



that the petitioner has issued 14657 e-challans from the sand ghat for transportation of sand out of which 2945 e-challans were found to be issued for fictitious vehicles with imaginary registration number showing transportation of 11800 MT of sand. The same being in violation of the provisions of the tender document and the agreement entered into between the parties, the petitioner was asked to show cause regarding the said illegality / irregularity and on receipt of reply and considering the contents thereof, the order impugned was passed. Learned counsel submitted that the petitioner cannot be allowed to indulge in transportation and selling of sand on the basis of unlawfully generated e-challans. As such the order of penalty dated 26.9.2022 is in accordance with law. There being no illegality in the same, the writ application be dismissed.

13. Heard learned counsel for the parties and perused the material on record.

14. The facts not in dispute are that pursuant to the BSMCL inviting bid by e-auction for selection of contractors, the petitioner being the highest bidder earned the right to mine minor mineral (sand) from the sand ghat in Cluster-33. On completion of the requirements, work order was issued by the BSMCL on 8.12.2021 which was valid up to



31.3.2022. On 29.3.2022, an agreement was entered into between the BSMCL and the petitioner. The petitioner was served with a show cause notice as contained in memo nos. 1596 and 1597 dated 27.7.2022 under the signature of the Director, Mines-cum-CEO, BSMCL, stating therein that as per information received 6063 e-challans were issued to the petitioner. On inquiry it was found that 909 e-challans were issued for unrealistic vehicles for transport of 3656 MT of sand whose value comes to Rs. 48,44,200/-. As such, as per Rule 56 of the Rules, the petitioner was liable to pay a total of sum of Rs. 48,44,200/- as penalty. Thus, the petitioner was directed to show cause within seven days as to why penalty be not realised from him. The petitioner filed his reply dated 3.8.2022 (Annexure-6) stating therein that admittedly the petitioner's firm mined the sand with a valid permit and submitted the Form-G challan. It was submitted that there was no violation of Rule 56 of the Rules, no breach of the condition of para XXVII of the agreement and thus it was submitted that the show cause be accepted and objection be disposed of.

15. By order dated 26.9.2022 issued under the signature of the Director, Mines-cum-CEO, BSMCL, the petitioner was held liable to pay penalty of Rs. 1,56,35,000/-.



16. It may be stated here that in exercise of power under section 15 read with section 23C and section 26 of the Mines and Minerals (Development and Regulation) Act, 1957 ('the Act' in short), the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 ('the Rules' in short) were framed.

17. At the stage, it would be important to take note of the fact that Chapter-V of the Rules deals with the settlement of sand. It consists of section 29-A to section 30. On perusal of the provisions under this Chapter it would transpire that the same contains the mode of settlement, restricted areas for sand quarrying, maximum depth of sand mining, fixation of minimum reserve value, failure on the part of the successful bidder, payment of security deposit etc. The last section under this chapter ie section 30 deals with penalty in case of breach of terms.

18. On the other hand Chapter-XIV of the Rules deals with offences and penalties. It contains sections 56 to 58 which deal with penalty for unauthorized extraction and removal of minor minerals, seigniorage fee from government projects and sale price of minor minerals.

19. For ready reference, both Rule 30 and Rule



56 of the Rules is being reproduced herein below:-

“30. Penalty In case of breach of terms.-*(1) In case of mining within restricted area or mining sand beyond a depth of 3 meters, a penalty of Rs. One Lakh shall be imposed by the Collector against the settlee for a first time violation.*

(2) For a second time violation a penalty ranging from Rs. Five lakh to rupees ten lakhs may be imposed against the settlee keeping in view the gravity of the violation.

(3) Wherever a settlee is found indulging in such offence for the third time or more the settlement of that particular sand ghat may be suspended by the Collector temporarily for a maximum period of one month until such breaches are rectified. If the breaches are not rectified in the time given by the Collector in this regard, action for cancellation of the settlement of the concerned sand ghat shall be taken in extreme condition.

(4) Transportation of sand shall be carried out through covered carriers only and no wet sand shall be loaded in carriers. The Competent Authority shall impose fine equivalent to market price of sand loaded in the said carrier for any transportation of wet sand and sand transported uncovered from the transporter.

[(5) Whoever contravenes the provision of sub-rule 30 (1), (2) & (4) and refuses to make payment shall be punished by the competent Court with imprisonment for a term which may extend upto two years.]

“[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:-

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

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 lax



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.** (1) 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 (1) 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.]

20. From reading of Rule 30, it is evident that the



same is in respect of penalty in case of breach of terms. The very use of the word 'breach of terms', in the opinion of the Court contemplates that certain terms ie agreement has been entered into between the department and the individual like the petitioner herein for mining and the terms of said agreement have been breached by the license holder.

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.



22. So far as the facts of the instant case is concerned, there is no dispute that pursuant to the petitioner being the highest bidder for the mine in question, work order dated 8.12.2021 (Annexure-1) was issued in his favour and subsequently an agreement was also entered into on 29.3.2022 (Annexure-2) between the BSMCL and the petitioner. Thus in the opinion of the Court the case of the petitioner would not come under Rule 56 of the Rules and the order impugned is not sustainable on this ground alone.

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 Sl. 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.

25. As such, the order impugned contained in memo dated 26.9.2022 (Annexure-7) issued under the signature of the Director-cum-CEO, BSMCL being illegal and non sustainable is fit to be set aside and is hereby quashed.

26. It is ordered that the Director-cum-CEO, BSMCL shall refund the security deposit to the petitioner within



a period of three months.

27. The writ application stands allowed.

(Partha Sarthy, J)

Spd/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.05.2023
Transmission Date	

