

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.160 of 2023

Ashok Kumar Son of Late Krishna Prasad Resident of Village- Pathra
English, P.S.- Muffasil, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief secretary Cum Principal Secretary, Mines and Geological Dept., Govt. 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 the Respondent/s	:	Mr. Gyan Prakash Ojha, GA- 7
		Mr. Ajit Kumar, AC to GA.-7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P. (Mines)
		Mr. Brij Bihari Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT

Date : 14-09-2023

Heard Mr. Suraj Samdarshi, learned counsel for the petitioner and Mr. Naresh Dikshit, learned Special P.P. for the Mines. Mr. Gyan Prakash Ojha, learned GA 7 representing the State.

2. The petitioner, who was engaged as contractor to carry out Mining activities on behalf of the Bihar State Mining Corporation Limited (hereinafter referred to as 'the



Corporation') wherein the Corporation is a concessionaire/ lease holder as defined under Rule 2(XVII) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as 'the Rules, 2019' being aggrieved by the order contained in Memo No. 1969 dated 23.09.2022 passed by the Director Mines-cum-Chief Executive Officer, Bihar State Mining Corporation Limited, whereby the petitioner has been saddled with penalties under Rule 56 of the Rules, 2019 for allegedly transporting 56 MT of sand upon 14 incorrect e-transit challan, has preferred the present writ petition. By the impugned order he has also been debarred from participating in further auction till the penalty is paid. The petitioner has also prayed for a direction upon the respondent Corporation to refund the security deposit of Rs.38,42,500/-.

3. The petitioner having been declared successful bidder, awarded the contract for operation of different sand ghats till 31.03.2022 or till further orders of the Hon'ble Supreme Court in the case of State of Bihar and Ors. Vs. Pawan Kumar and Others (Civil Appeal Nos. 3661-3662 of 2020).

4. After having completed all the paraphernalia, including the payment of auction amount in installment,



execution of agreement and its registration of payment of stamp duty, payment of Income tax etc. with an undertaking to strictly observe the terms and conditions of approved Mining plan and environmental clearance, the respondent Corporation issued work order(s) in favour of the petitioner in connection with the contract awarded for mining operations. The engagement of the petitioner as contractor was to carry out mining operations in terms of the provisions of Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act, 1957'), the Corporation had engaged the petitioner to extract minerals from the sand ghat identified by the corporation and to sell/supply the same to the purchasers/customers. The quantity of sand exist in the sand ghat was already assessed by the respondent Corporation and the minimum reserve price of such stock of sand was indicated in the auction notice. The auction amount was the actual cost of minerals already recovered by the Corporation from the petitioner. As per the relevant terms of the tender notice, especially Clause 24 thereof it prescribes that every vehicle (including boat) engaged in transportation of sand shall have to be registered with the respondent Department of Mines and Geology. All such vehicles, which are registered with the Department would have to install GPS (which can be



communicated with the monitoring system of the Department) so that its movement can be monitored by the department. Further Clause 31(i) deals with obligation to the contractor to issue E Challan to the driver of the vehicle for transportation of sand.

5. Thus, the role and obligation of the petitioner was confined to the sale of sand to a purchaser, who would be allowed to collect such sand from the petitioner's sandghat in a vehicle, which is registered with the Department of Mines and Geology. In case, such vehicle would not be registered with the Department, no challan would be generated by the portal of the department and vice versa would hold true that a challan generated by the portal of the Department implies that such vehicle had appropriate registration with the department entitling it to transport sand from one place to other.

6. It is the case of the petitioner that all on a sudden he received show-cause notices wherein the respondent Corporation alleged the petitioner of having issued E-challan in favour of unrealistic vehicles for transportation of sand. By the aforesaid show-cause notice, the petitioner has been shown liable for penalty in terms of Rule 56 of Rules 2019. The petitioner submitted a detailed reply in response to the said



show-cause notice, vehemently opposing the proposed penalty, that the terms of Rule 56 of Rules 2019 is not at all applicable in the case of the petitioner, who happen to be a valid licensee in terms of the agreement executed by the respondent Corporation. Pursuant to the reply submitted by the petitioner, the respondents has passed the impugned order(s) whereby the liability of penalty to the tune of alleged excess of transportation of sand has been imposed in exercise of powers under Rule 56 of the Rules, 2019 on the ground of each challan having been incorrectly/wrongly issued by the petitioner to the unrealistic vehicles and also debarred the petitioner from participating in tenders of sand ghat in the State of Bihar till such time, the payment is made.

7. It is submitted on behalf of the petitioner that the impugned orders issued by the respondent Chief Executive Officer of the Corporation imposing penalty under Rule 56 of the Rules, 2019 as against the petitioner is wholly without jurisdiction and unsustainable in the eyes of law on the grounds enumerated in their respective petitions. Some of the relevant grounds, inter alia, are that the respondent Corporation and its authority had no jurisdiction to impose penalty under Rule 56 of the Rules, 2019 for an offence allegedly committed in terms of



Section 192 of the Motor Vehicles Act, 1988. That apart, the authority had no jurisdiction in terms of the Rule 56 of the Rules, 2019. The petitioner in his writ petition has raised various other grounds, including the grounds quoted hereinbelow:

“(c) No jurisdiction in terms of rule 56 of rules 2019 to initiate any proceeding as against the petitioner as the petitioner is a contractor with valid license to carry out mining activities in terms of agreement with the Corporation. Besides, the petitioner is not a transporter engaged in transportation of sand nor has caused such transportation of sand.

Rule 56 of the rules 2019 is in two parts-one is that which applies to a case of persons carrying out mining activities and another to persons engaged in transportation of minerals. Petitioner herein is a mining contractor and not at all a transporter. As such it is the said part of rule 56 dealing with engagement of a person in mining operations which would apply and not that which applies to the case of transporter.

(d) The petitioner is simply a contractor engaged by the Corporation to carry out mining operations which includes excavation and extraction of sand from the sandghats wherein the last activity to be



performed is sale of sand from the sandghats. The petitioner is not concerned at all with the mode and mean of transportation of such sand from the point of sale. The petitioner is simply a seller of sand from the sandghats awarded under contract.”

8. While concluding the arguments, as discussed hereinabove, it is submitted that in similar circumstance, the learned coordinate Bench of this Court while adjudicating the identical issue vide order dated 02.05.2023 passed in C.W.J.C. No. 111 of 2023 (**M/S Harsh Construction Vs. The State of Bihar and Others**) has put a quietus to the issue/claim and held as follows:

“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.”

9. Needless to observe that in the aforementioned case Mr. Naresh Dikshit, learned Special P.P. for the Mines Department was representing the case of the respondents. Today, he fairly submits that the issue involved in the writ application has been elaborately answered by the learned co-ordinate Bench in the case of M/S Harsh Construction (supra).

10. Taking note of the aforesaid facts, this Court also feels it apt and proper to dispose of the writ petition in terms of the order passed by the learned Coordinate Bench of this Court in the case of **M/S Harsh Construction** (supra) and accordingly in consequence thereof the order(s) under challenge passed by the concerned respondent authority in the writ petition is hereby quashed and cancelled. The Chief Executive Officer, Bihar State Mining Corporation Limited, Patna is directed to refund the respective security of the petitioner within a period of three months from the date of receipt/production of a copy of this order. Further, in case, the petitioner, who was



forced to make additional payment of fine besides the security deposits, shall also be entitled for refund from the respondents.

11. The writ petition stands disposed of in the afore-noted terms.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.09.2023
Transmission Date	NA

