IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.5698 of 2023

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M/s Prakash Iron, through its Proprietor Om Prakash Prasad, aged about 44 Years (male), Son of Shrikant Prasad resident of Village and P.o. Amiyawar, P.S. Nasriganj District-Rohtas. Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary Cum Commissioner, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The District Magistrate Cum Collector, Aurangabad.
4. The Mineral Development Officer Aurangabad.
5. The Bihar State Mining Corpiration Limited, Through its Managing Director, Room No. 164, Vikas Bhawan, (New Secretariate), Bailey Road, Patna 800015.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Suraj Samdarshi, Advocate
For the State	:	Mr.Gyan Prakash Ojha (Ga 7)
For the Mines	:	Mr. Brij Bihari Tiwari, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT
Date : 25-04-2024

Heard the parties.

2. In paragraph No.1 of the writ petition, petitioner *inter alia* has sought for for following relief(s):-

> *(I) To issue an appropriate writ, order or direction in the nature of certiorari for quashing order dated 20.01.2023 passed by the Respondent District Collector, Aurangabad in Mining Case No.140/2022 whereby and whereunder the well-founded appeal of the petitioner against letter no.2032 dated 18.11.2022 issued by the respondent Mineral Development Officer, levying a penalty of Rs.3,06,01,150/- upon the petitioner, has been dismissed on wholly erroneous consideration without considering the facts and circumstances of the case.*
>
> *ii) To issue an appropriate writ, order or direction in the nature of certiorari for quashing letter*

no.2032 dated 18.11.2022 issued by the respondent Mineral Development Officer, whereby a penalty of Rs.3,06,01,150/- (Rupees Three Crores Six Lakhs One Thousand One Hundred and Fifty Only) as cost of sand, has been levied upon the petitioner purportedly under Rule 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage), Rules, 2019 for allegedly excavating 2,81,700 CFT sand from outside the permissible environment clearance area.

iii) During pendency of this writ application, this Hon'ble Court may direct the respondents not to take any coercive steps against the petitioner for recovery or Rs.3,06,01,150/- or any part thereof.

iv) This Hon'ble Court may adjudicate and hold that the respondent District Collector has committed grave error by ignoring the report contained in letter no.109 dated 06.12.2022 and letter no.1094 dated 22.12.2022 which practically exonerate the petitioner.

v) This Hon'ble Court may further adjudicate and hold that the impugned order dated 20.01.2023 passed by the respondent District Collector, Aurangabd is a mechanical order devoid of any fathomable reasons and passed without any application of mind and without even alluding to the grounds raised by the petitioner in the memo of appeal and thus bad in the eyes of law.

vi) This Hon'ble Court may further adjudicate and hold that the respondent District Collector, Aurangabad has committed grave error by relying upon letter No.62 dated 16.01.2023 submitted by the respondent Mineral Development Officer considering the fact that hearing in the appeal had concluded on 23.12.2022.

vii) This Hon'ble Court may further adjudicate and hold that the order passed by the respondent District Mineral Development Officer levying a penalty of Rs.3,06,01,150/- upon the p, ,is bad in the eyes of law since the inspection dated 16.10.2020 has not been conducted in the presence of the petitioner or its representative and the petitioner has not been provided with the inspection report.

Viii) This Hon'ble Court may further adjudicate and hold that the respondent Mineral Development Officer being a quasi – judicial authority was required to consider the show cause reply and letter dated 09.11.2022 and pass a reasoned order.

ix) This Hon'ble Court may further adjudicate and hold that there is no provision under the 2019 Rules which authorizes the department to recover price of mineral, illegally excavated and disposed of, as compensation.

X) This Hon'ble Court may further adjudicate and hold that since there is no proposal for compounding the alleged offence, Rule 56 is not applicable in the *present case.*

xi) This Hon'ble Court may further adjudicate and hold that penalty under rule 56(2) of 2019 Rule is applicable only in case of persons who are non-settlees and the offences is being compounded.

Xii) This Hon'ble Court may further adjudicate and hold that even if respondents are entitled to recover price of 2,87,100 CFT of sand as compensation, the price of sand has to be calculated on the basis of auction amount.

Xiii) To grant any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case."

BRIEF FACTS

3. The Bihar State Mineral Development Corporation hereinafter, referred to as the ('BSMDC') established as per the provision of Rule 28 of Bihar Sand Mind Policy, 2019 read with Rule 31 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the Rules, 2019) had entered into a lease agreement with the petitioner, in respect of sand ghat cluster no. 18 Tejpura, falling in the district of Aurangabad for a total auction amount of Rs. 2,71,21,468/- as per the terms and conditions of letter of intent and guidelines of year 2019, issued in that regard. The petitioner had deposited the requisite security deposit in terms of Rule 29(B) of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the Rules, 2019) and the first installment of royalty. A work order was issued to the Petitioner

vide letter no. 107 dated 13.01.2021, which specified that the proportionate royalty required to be paid by the Petitioner amounted to Rs. 1,17,72,505/-. The agreement was in force till 31.03.2022. The total minable quantity of sand was 18,15,825 CFT. The price of sand was fixed Rs. 6.48 per CFT. Petitioner was granted extension of time, which was subsequently registered on 05.08.2022, specifying royalty to be paid Rs. 90,40,489 / and the minable quantity allotted to the Petitioner was 12,87,169 CFT @ Rs. 7.02 per CFT of sand. Subsequently, it was extended from 01.10.2022 till 25.12.2022 *vide* memo no. 2148 dated 29.09.2022. The claim of the petitioner is that it never defaulted in payment of proportionate royalty during the extended period admitted in letter no. 2334 dated 10.10.2022 issued by BSMCL to Mineral Development Officer, Aurangabad. It is admitted that the royalty paid by the Petitioner amounted Rs. 1,28,15,639 for the minable quantity of 19,53,725 CFT @ Rs. 6.5 per CFT.

4. The Petitioner is aggrieved by the action of the Mineral Development Officer, who *vide* letter no. 1844 dated 17.10.2022, intimated the Director, Mines and Geology that one Roza Hussain had complained against the contractor of Tejpura sand ghat alleging that by carrying illegal mining, sand were

transported. An inspection was conducted on and it was found that illegal mining was being carried out at 1.5 Km from Tejpura, outside the permissible EC area, from where, allegedly an estimated 2,81,700 CFT (290"x 165"x 6"), sand was found to be excavated from the site and recommended for suspending generation of e- transit challans for alleged violation of Rule 56 of the 2019 Rules. The General Manager, BSMCL *vide* letter no. 2459 dated 16.11.2022, directed the Mineral Development Officer, to levy penalty upon the Petitioner in light of the provisions contained in 2019 Rules. Consequent thereto, the Respondent Mineral Development Officer, *vide* letter no. 2032 dated 18.11.2022, levied a penalty of Rs. 3,06,01,150 / (Rupees Three Crores Six Lakhs One Thousand One Hundred and Fifty Only) as cost of sand for alleged violation of Rule 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 for mining 2,81,700 CFT sand from outside the permissible Environment Clearance area. Aggrieved by the levy of penalty, the petitioner submitted a representation dated 18.11.2022 before the Additional Chief Secretary, Mines and Geology, stating that the allegation of illegal mining levelled by the mineral development officer was incorrect. The inspection was not conducted in presence of any representative/employee/agent of the petitioner company. No plants and machinery of the petitioner were seized from the place of occurrence. Thereafter, he petitioner had filed an appeal before the District Magistrate, Aurangabad, being Mining Case No.140 of 2022 under Rule 67(1) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019.

5. The Collector, Aurangabad *vide* letter no. 9252 dated 30.11.2022 had directed the Sub- Divisional Public Grievance Redressal Officer, Daudnagar to conduct an inquiry and submit a report. The Sub- Divisional Public Grievance Redressal Officer, Daudnagar vide letter no.109 dated 06.12.2022 submitted a report based on inspection dated 16.10.2022 regarding illegal mining in the area, during the period 10.10.2022 to 17.10.2022 but the report is silent that the petitioner had conducted illegal mining outside the permissible area. During course of hearing, District Mineral Development Officer has admitted that no illegal mining has been conducted outside the permissible area, since there was no road leading to the sand ghat outside the EC Area, as reported in a fresh inspection report submitted by three men committee dated 16.12.2022 vide memo no.2676 contained in letter no. 1094

dated 22.12.2022 was submitted by the District Minority Welfare Officer, Aurangabad and the District Mineral Development Officer, Aurangabad, who had informed that there was no evidence to suggest that the petitioner had conducted illegal mining, neither any articles were seized nor any FIR was lodged in absence of any evidence lodged against the petitioner. The second report was submitted on 20.01.2023 contained in Memo No.140 of 2022.

6. In spite of the two reports, the Collector, Aurangabad *vide* order dated 20.01.2023 has dismissed the appeal filed by the petitioner. Learned counsel submitted that on bare perusal of the impugned order, it appears that the order is based upon letter no. 62 dated 16.01.2023 of the Mineral Development Officer while the appeal was heard for considering the two reports contained in letter no. 109 dated 06.12.2022 and letter no. 1094 dated 22.12.2022. He further submitted that hearing in the appeal had concluded on 23.12.2022 and as such, consideration of letter no.62 dated 16.01.2023 containing fresh report, so the said was not supplied to the petitioner. The impugned order, has been passed in the most mechanical manner, without application of mind and without considering the facts and the grounds raised by the

petitioner in the Memo of Appeal, is fit to be set aside and quashed.

7. Learned counsel, in support of his contention, submitted that the Collector, being a quasi - judicial authority, is bound by law to pass reasoned orders, recording definite reasons giving ground for rejection. Learned counsel submitted that in respect of allegation of excavating 287100 CFT sand from outside the Environment Clearance hereinafter referred to as the 'EC") area is concerned, the same is based upon the complaint of one Roza Hussain, who had subsequently withdrawn the complaint on 26.10.2022. Learned counsel alternatively submitted that as the inspection dated 16.10.2020 was conducted behind the back of the petitioner and absence of its representatives is in complete violation of principles of natural justice. The order is based on suspicion and presumption that illegal mining activity outside the permissible EC area, however, no plants equipment or transport vehicle belonging to the petitioner were seized in that regard, any FIR was lodged against the petitioner to show that it had indulged in an illegal mining. Learned counsel further submitted that in terms of Rule 29-C of the 2019 Rules, a settlee has to observe the terms and conditions of the mining plan, as well as, the terms and

conditions of the Environment Clearance. It further provides that if a settlee violates the terms and conditions of the mining plan and/or the environment clearance and conducts mining within restricted area then under Rule 30 (1) of the 2019 Rules a penalty of Rs.1,00,00 may be imposed for a first time violation, Thereafter, for second violation, a penalty of Rs. Five - Ten lakhs may be imposed. For, third time violation, the settlement may be suspended temporarily for a period of one month, whereafter the settlement may be cancelled.

8. Learned counsel next submitted that even if the allegations levelled against the petitioner are considered to be true then in that case an order is required to be passed under Rule 30 (1) of the 2019 Rules, which entail a penalty of Rs. One Lakh and that too after affording reasonable opportunity of hearing to the settlee. Learned counsel further clarified that Rule 56 only prescribes for compounding of the offence, however, in absence of the jurisdictional facts, it can not be alleged that any offence, has been committed in violation of Rule 56. It is further submitted that penalty under rule 56 (2) prescribes for 25 times the cost of mineral for compounding of the offences. Moreover, the said levy is not in the nature of compensation and is applicable only in case of persons who are

non-settlees and the offences is being compoundable. He proceeded to clarify that in the present case, the petitioner is a valid settee. Therefore, Rule 56 has no application in this case. In alternative, he submitted that even if it is assumed that the department is entitled to recover price of 2,87,100 CFT of sand as compensation, the price of sand has to be calculated on the basis of auction amount and in this regard, he refers to Schedule III A of the 2019 Rules to clarify that in case of auction, rate of mineral shall be decided on the basis of auction amount and as clarified in Schedule III A, the price of per CFT sand during the second extension period was Rs. 6.5. Therefore, the price of 2,87,100 CFT sand would come to Rs. 18,66,150/- only. In these backgrounds, learned counsel submitted that the demand of Rs. 3,06,01,150/- is unreasonable and unjustified and dehors the provisions of 2019 Rules. Learned counsel further submitted that the petitioner was entrusted the mining authority on behalf of the BSMCL.

9. Learned counsel further submitted that committee has not taken into account whether some other person had excavated the huge quantity of sand prior to the complaint. No inspection was ever conducted by the Mining Development Officer, nor he has produced any inspection conducted by him at

any point of time and it has not found any illegal mining conducted by the petitioner. The environment clearance of the sand ghat was in the name of BSMCL. According to the agreement, BSMCL had to ensure that all mining activity is in accordance with the mining plan and the environment clearance. Moreover, in case of violation of Environment clearance, SEIAA/DEIAA is the competent authority to take any action against the settlee under the Environment Act. That it is therefore evident that the impugned order dated 20.01.2023 passed by the Respondent Collector is bad in the eyes of law. In the background, learned counsel for the petitioner submitted that order dated 20.01.2023 is fit to be quashed to have been passed in gross violation of law leading to violation of his legal right. The petitioner seeks to file a detailed representation before the competent authority, so that fresh inspection is done in presence of the petitioner and appropriate decision is taken.

10. *Per contra*, learned counsel appearing on behalf of the Mines department clearly submitted that 287100 CFT sand was transported illegally by the petitioner from outside their demarcated area. The respondent no. 4 had informed the

Director, Mines and Geological department, Bihar Patna vide letter no. 1844 dated 17.10.2022 to impose the penalty pursuant to the Bihar Minerals (Concession, Prevention of illegal Mining, Transportation & Storage) Rules 2019 and amended Rules 2021 and further to stop the transit E-Challan with immediate effect as the alleged sand ghat was operational under BSMC. In view of the aforesaid letter no. 2548, a report was submitted by the Mineral Development Officer, Aurangabad (respondent no. 4) containing the entire incident related to the irregularities committed by the petitioner.

11. Learned counsel admits that on request of the petitioner, enquiry committee comprising of three members i.e. (i) Deputy Collector Cum District Public Grievance Redressal Officer, Aurangabad, (ii) Mineral Development Officer, Aurangabad and (iii) District Minority Welfare Officer, Aurangabad was constituted vide order bearing memo no. 2679/LC dated 16.12.2022 for physical inspection of the mining site relating to Geo Co-ordinate Lat-25°1'57"N, Long-84°19'58" (details of which is at paragraph no.19 of the counter affidavit), and the team too found that sand had been excavated on a large scale near the said site, as well as, an accessible route was also found available for the evacuation for sand-laden

vehicles. The excavation site was about 1.5 Km away from the alleged allotted site of the Tejpura-A sand ghat. 28. He further submitted that after matching with the departmental PMU portal, 11430 MT (285750 CFT) of sand was found illegally transported by the contractor during the period from 10.10.2022 to 17.10.2022, whereas, on 16.10.2022, during the on-site inspection, the Mining Inspector, Aurangabad reported the excavation of 287100 CFT of sand (area 290'X165'X6') from the aforesaid Geo Co-ordinate Lat- 25°1'57"N, Long-84°19'58". Learned counsel submitted that Environment Clearance is for a specific area and it was his duty to have demarcation live and further not to excavate beyond the said limitation, however, the petitioner did not comply with the same and thus, he is under obligation to make payment of price of sand and penalty. In accordance with the provision of sub-Rule 56(2), substituted under Section 7 of the Amendment Rules, 2021, provides that no person shall extract or remove or undertake any mining operation in any area without any mineral concession, permit or any other permission granted or permitted under these Rules and violation of the same twenty-five times of royalty in lieu of rent, royalty, compensation degradation and tax chargeable on the land occupied on the basis of the cost of mineral. Learned counsel further clarified that in Part IV, of agreement, specific conditions have been enumerated which the contractor/settlee has to comply and the petitioner having conducted illegal mining activity against the approved mining plan and conditions in Environmental Clearance & statutory clearance. Clause II of Part IV which provides that operation of mining in time Schedule shall be as per the Bihar Minerals Rules, 2019 as amended from time to time. Clause III of Part IV stipulates that there cannot be any mining beyond 03 meter or up to water level whichever is less. In these backgrounds, learned counsel submitted that the petitioner has violated the terms and conditions of the Agreement and has violated the Rules, 2019 as amended and thus, is liable to pay the penalty, so imposed.

12. Learned counsel further clarified that Rule 30 of Bihar Mineral Rules, 2019 provides for penalty in a condition wherein illegal mining is done in restricted area or mining sand beyond a depth of 3 meters, whilst in the instant case, the petitioner has excavated sand beyond the determined area in the mining plan which is illegal mining under the Rules.

ANALYSIS

13. Heard the parties.

14. The petitioner is aggrieved by the order dated 18.11.2022, passed by Mineral Development Officer,

Aurangabad, by which penalty of Rs.3,06,01,150/- has been imposed against the petitioner for alleged mining outside the vicinity of the area for which initially the petitioner was granted mining lease for a period from 25.01.2022 till 31.03.2022 and the same was renewed from time to time and lastly renewed till 25.12.2022.

15. A complaint was filed by one Roza Hussain against the contractor alleging therein that he is carrying on illegal mining and transportation of sand about which the Mineral Development Officer vide letter dated 17.10.2022 had intimated to the Director, Mines and Geology Department. Thereafter, the District Magistrate, Aurangabad constituted a committee to enquire into the matter. The committee submitted its report on 16.12.2022. It is alleged by the petitioner that the committee has not taken into consideration the exact position where the petitioner was allotted mines lease and has also not taken into consideration, as to whether, some other person had excavated the huge quantity of sand, as prior to the complaint, no inspection was ever conducted by the Mineral Development Officer, Aurangabad. It is submitted that the petitioner had not violated any terms and conditions of the lease deed and considering the conduct of the petitioner, the lease deed which

was valid till 31.03.2022 was extended from time to time and remained in force till 25.12.2022. He further submitted that the BSMCL is required to make payment of royalty etc., which as per the agreed terms, was deposited by the petitioner and the BSMCL has also not found any illegal mining in the area. It is also apparent from the impugned penalty order dated 18.11.2022 that the Managing Director or his authorized agent was not issued any notice, while only show cause was issued against the petitioner communicated through the Corporation. The petitioner is only a sub-lessee, while his principal is the BSMCL. Learned counsel further submitted that a very vague statement has been made in the counter affidavit in respect of assessment made by the committee for imposition of penalty for alleged illegal mining of total quantity 2,87,100 CFT. Learned counsel further submitted that the assessment of huge quantity of illegal sand which was illegally excavated near the vicinity of the petitioner leased area was not carried in presence of the petitioner or any officer of the BSMCL, who had allotted mining lease to the petitioner. Learned counsel in above background submitted that even considering the provision of Section 56 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as the "Rules, 2019") which prescribes for imposition of fine. He next submitted that from a reference to Rule 29(C) of the 2019 Rules, it would appear that a settlee has to observe the terms and conditions of the mining plan, as well as, the terms and conditions of environment clearance and if a settlee violates the terms and conditions of the mining plan and environment clearance and conducts the mining within restricted area, then in accordance with Rule 30(1) of the Rules, 2019, a penalty of Rs. one lakh can be imposed for the first time violation and similarly for consequent violation, different quantity of penalty has been prescribed.

16. It is gainful to deal with the relevant provisions of law governing the sand mining activities in the state of Bihar.

17. Pursuant to Entry 54 of the Union List, the Parliament of India has enacted the Mines and Minerals (Development and Regulation) Act, 1957 (the MMDR Act), which is the main source of legislation governing the development and regulation of mines and minerals in India. The MMDR Act declares that it is in the public interest that the Union should take the regulation of mines and the development of minerals under its control, to the extent provided in the MMDR Act.

18. In ***D.K. Trivedi and Sons & Ors. Etc. v. State of Gujarat & Ors.*** reported in ***AIR 1986 SC 1323***, the Apex Court has taken note of that the power to make rules conferred by section 15(1) which includes the power to make rules charging dead rent and royalty. Rent is an integral part of the concept of a lease. It is the consideration moving from the lessee to the lessor for demise of the property to him. Section 105 of the Transfer of Property Act, 1982, contains the definitions of the terms "lease", "lessor", "lessee", "premium" and "rent". Royalty connotes the payment made for the materials or minerals won from the land.

19. Provision of Section 17 of the Mines and Mineral (Development and Regulation) Act, 1957 read with Rule 26(1)(a) and Rule 26(a) of Bihar the Bihar Minor Mineral Concession Rules, 1972 and Rules, 2019 provide for payment of royalty, dead rent, surface rent and other dues to be paid by the lease holder. The Apex Court in ***State of Bihar Vs. Pawan Kumar & Ors. (Civil Appeal No. 3661-3662 of 2020) decided on 10th November, 2021*** has taken into consideration of the Rules, 2019 and the Bihar Sand Mining Policy, 2019.

20. The definition of 'mining lease' as provided in Section 3 (c) of the Mines and Minerals (Development and

Regulation) Act, 1957 includes a sub-lease as well.

21. The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, makes detailed provisions for regulation of mining activities in the state of Bihar.

22. Rule 11 of Rules, 2019 provides that no person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or, as the case may be, a mining lease, granted under these rules.

> *"Rule 11.* ***Prohibition of mining operation without permit or mining lease****.-(1) No person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or, as the case may be, a mining lease, granted under these rules;*
>
> *Provided that nothing in this sub-rule shall affect any mining or quarrying operations undertaken in any area in accordance with the terms and conditions of a mining lease or quarrying permit granted before the commencement of these rules which is in force at the time of such commencement.*
>
> *(2) No quarrying permit or mining lease shall be granted otherwise than in accordance with the provisions of these rules."*

23. Rule 28 of the Bihar Sand Mining Policy, 2019 is reproduced hereinafter:

> *"28. Role of Bihar State Mining Cooperation:- The State Government may entrust all or any of the mining activity or trade to Bihar State Mining Corporation. The Corporation may undertake, in particular, mining activities, wholesale trading, retail trading, storage, and transportation etc. of sand. The Corporation may also enter into an arrangement with any government or semi government or private undertaking for the said purpose."*

24. Rule 29 (C) deals with mining plan, which is reproduced hereinafter:-

29 (C). Observance of terms and conditions of mining plan/environmental clearance.- The Settlee shall observe the terms and conditions of the mining plan as well as the terms and conditions laid down in the environmental clearance pertaining to the concerned settlement.

Rule 30(1) provides for Penalty in case of breach of terms, *which is reproduced hereinafter:- 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.*

Rule (31) provides for Activities by the Bihar State Mining Corporation.- *(1) The State Government may entrust of the mining activity all or any of the mining activity or trade to Bihar State Mining Corporation. The Corporation may undertake, in particular, mining activity Mining wholesale trading, retail trading, storage, and transportation etc. of sand*.

(2) The Corporation may enter into an arrangement with any Government or semi Government or private undertaking for the said purpose."

Rule (32) provides for *Corporation to buy minerals at prescribed rates. The Department may direct all Mineral Concession Holder to sale some proportion of their produce which should not exceed 50% of their total produce to the corporation at pit head cost.*

Here it is made clear that Bihar Sand Mining Policy, 2019 provides Rule 28, which is same as sub-rule (2) of Rule 31."

Rule (33) provides for **Grant of quarrying permits.** - (1) On an application made to him, the Mining Officer may grant a quarrying permit in Form *"D"* to any person to extract and remove from any specified land within the limits of his jurisdiction any mineral except sand & stone not exceeding Ten thousand cubic meters in quantity under anyone permit, on pre-payment of royalty at the rates specified in Schedule III'A'. Before granting such permit, the Competent Officer shall satisfy himself that the requirement of the permit is genuine and that it does not obviate the necessity of obtaining a mining lease in the area in respect of which the permit for extraction of the mineral has been applied for.

(2) The Mining Officer may refuse the issue of such permits for reasons to be recorded by him in writing.

(3) The permits for extraction of ordinary earth under this rule shall not be granted for excavation beyond a depth of three feet for areas where *"sand deposits"* are available below the ordinary earth/clay/soil. No raiyat can claim for any permit from any specific land already leased/ settled to anybody for mining.

(4) The department may issue instructions for ban of granting Quarrying Permit for any particular mineral or minerals.

Rule (34) provides for **Application for quarrying permit.** - (1) An application for quarrying permit shall be submitted to the Mining Officer in Form 'C'.

(2) Every application for quarrying permit shall be accompanied by a fee of [Rs.5,000/-]. (for Bangla Brick kiln the fee for quarrying permit shall be Rs. 500/- only).

(3) Every application for quarrying permit shall be accompanied by a valid and up-to-date clearance certificate of payment of mining dues, if any. Every application of a quarrying permit shall, if the lands from which the minor mineral is to be extracted are raiyati lands, be accompanied by a written consent letter from the occupant of such lands to the effect that he has no objection to the extraction of the mineral by the applicant.

(4) The application fee and royalty shall not be refunded if the raiyat subsequently refuses permission to the permit holder to work in the raiyati area.

(5) Every application for the extension of the period of the permit shall be accompanied by a fee Rs. 1000.

(6) The area applied for grant of quarrying permit shall be in a compact block covering not more than 5 hectares.

Rule (35) provides for **Disposal of application for quarrying permit.** - (1) An application for the grant of quarrying permit shall be disposed of by the Mining Officer within 30 days from the date of its receipt.

(2) If any application is not disposed of within the period specified in sub-rule (1), it shall be deemed to have been rejected."

Rule (36) provides for ***Conditions on which the quarrying permit shall be granted***.- *(1) Every quarrying permit granted under rule 33(1), shall contain a condition that the depth of the pit below the surface shall not exceed 3 meters.*

(2) Any quarrying permit granted under rule 33(1) may contain such other conditions as deem necessary in regard to the following matters, namely:-

(a) Time limit, mode and place of payment of rents and royalties;

(b) Compensation for damage to the land covered by permit;

(c) Felling of trees in consultation with Divisional Forest Officer in case of forest areas and in consultation with the Additional Collector in other areas;

(d) Restriction on surface operation in any area prohibited by any authority:

(e) Reporting of accidents;

(f) Indemnity to Government against claims of third parties;

(g) Period within which the minor mineral shall be extracted and removed and delivery of possession over lands on the expiry of such period or on the removal of the quantity of the minor mineral for which the permit is valid;

(h) Forfeiture of property left after cancellation of the permit; and

(i) Disposal of minerals in stock at site after expiry of the permit.

(3) In case of breach of any of the conditions subject to which the permit is granted, the Mining Officer may cancel the permit issued by him. On cancellation of the permit, the quarried material lying on the land from which they are extracted shall become the absolute property of the

Government and shall be sold by public auction by the Mining Officer.

(4) The Mining Officer after enquiry and verification shall assess amount of royalty and penalty for the excess quantity at the end of the prescribed period.

(5) Every permit holder shall obtain a prior environmental clearance as specified in Rule 18 (2).

(6) Every permit holder shall also abide by the following conditions-

(i) The activity associated with mining/excavation of brick earth and ordinary clay/earth for purpose of brick manufacturing, construction of roads, embankments etc. shall not involve blasting.

(ii) The mining/excavation activity shall be restricted to a maximum depth of 3m below normal ground level at the site.

(iii) The mining/excavation activity shall be kept above the ground water table at the site.

(iv) The mining/excavation activity should not alter the natural drainage pattern of the area.

(v) The mines/excavated pit shall be restored by the project proponent for useful purpose(s).

(vi) Appropriate fencing all around the mines/ excavated pit shall be made to prevent any mishap.

(vii) Measures shall be taken to prevent dust emission by covering of mines/excavated earth during transportation.

(viii) Safeguard shall be adopted against health risks on account of breeding of vectors in the water bodies created due to mining/ excavation of earth.

(ix) Workers/ labourers shall be provided with facilities for drinking water and sanitation.

(x) A berm shall be left from the boundary of adjoining filed having a width equal to at least half the depth of proposed excavation.

(xi) A minimum distance of 15 m from any civil structure shall be kept from the periphery of any excavation area.

(xii) No mining of earth / excavation of 'brick earth' or ordinary earth shall be permitted in case the area of mining excavation is within 1km of boundary of national parks and wild life sanctuaries:

Provided that the permit holder shall abide by any other condition imposed or any instruction issued by the Central Government/ State Government in this regard."

Rule (39) provides for ***(1)*** *Every person who carried business of minor/major mineral beyond any lease hold area shall obtain a stockist license from the Mining Officer in Form-K which shall be displayed at a conspicuous place of business and shall maintain accounts of purchase and sale of all such minerals in a register in form H, which shall be produced before the Mines Commissioner, Director of Mines, Additional Director of Mines or Deputy Director of Mines or Mining officer of any other officers authorized by the Government, for inspection. Every application for obtaining license in Form-K shall be accompanied with a fee of Rs. 10,000/- (Ten Thousand Rupees)*

(a) Every such license shall be valid for one calendar year,

(b) Every such license may be renewed on application which shall be accompanied by a fee of Rs. 2000 (Two Thousand Rupees)

(2) Every such person as mentioned in (1) shall issue a transport challan in Form-'G' or in the prescribed format to every carrier, while dispatching minerals from his stock.

(3) Whosoever fails to obtain a license in Form K, or issue a challan in Form G or maintain the register in Form H, or is found to violate the rules, would be liable for punishment under Rule 56.]

(4) No person shall be permitted to erect, install or operate a stone crusher outside a lease hold area.

Provided that the existing stockist license held for stone mineral used for crusher shall remain operational till the validity of their license period, on the condition of the licensee abiding by all the relevant rules/provision of law/conditions stated in their license/ conditions stated in CTE & CTO issued by BSPCB failing which the license shall be *cancelled.*

Provided further that the department may allow installation of any crusher including mobile crusher within a periphery of 500 meters of the lease hold boundary to the lease holder or person directly engaged in construction activity on conditions as decided by the department.

Rules 40 provides for *Usage of Electronic Procedures. The Mines Commissioner may, by notification, require all Mineral Concession Holder or any other Stake Holder to file their returns, statements and activities electronically and undertake all or any operations through electronic mode. Government shall implement all the working System of the Department through e-office system and ultimately convert to paperless working.*

Rule 41 provides for E-Challan*. The movement of all minor minerals, whether by Mineral Concession Holder or by the Corporation, shall be monitored through e-Challan in Form G or in the prescribed format.*

Rule 42 provides for Mining MIS *. (1) The Department may also require all the Mineral Concession Holder, the Corporation and other persons engaged in the transport and trade of minor minerals to come under the purview of the provision of these rules and under take their activities as per the Mining MIS system to be developed by the Department.*

(2) The Department may lay down detailed guidelines for its MIS.

Rules 56 provides for 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 mineral without a valid challan or license.*

(2) <u>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:</u>"

25. Petitioner has entered into lease agreement on 25.01.2022 with BSMCL in respect of Cluster No.18,

Tejpurawhich was subsequently renewed from time to time and the same had expired on 25.12.2022. Part 8 of the said lease agreement relates to termination of agreement. The allegation is that of illegal sand mining and as per the terms and conditions of the agreement, the BSMCL can terminate the agreement and forfeit security deposit and would take suitable action against the erring contractor.

26. As per the terms of the agreement dated 25.01.2022 (Annexure-3), the petitioner, was to be referred as the “Contractor”, and consequently, the petitioner was to work for and on behalf of BSMCL on contractual basis as per the provisions of Bihar Minerals(Concession, Prevention of Illegal Mining, Transportation and Storage) rules, 2019. In terms of the agreement, no right or interest of a lessee bestowed upon the petitioner as the sand ghats remained the property of the State of Bihar. Furthermore, all the statutory licences and clearances were to be obtained in the name of BSMCL and not the petitioner.

27. As per Part-III, clause (X) of the agreement, the petitioner was required to maintain daily excavation, transportation and sale registers at the sand ghat which would be subjected to periodical inspection by Mining Officers/ Agency

authorized by BSMCL. Also, Part -IV, clause (XXVII), mandates that the petitioner keep a correct account of quantity mined out, dispatched from the mine, mode of transport, registration number of vehicles, person in-charge of vehicle and mine plan and the same be produced before officers of Central Government, State and BSMCL for inspection.

28. The BSMCL is required to make payment of royalty etc., which as per the agreed terms, was deposited by the petitioner and the BSMCL has also not found any illegal mining in the area. It is also apparent from the impugned penalty order and appellate order dated 18.11.2022 that the Managing Director or his authorized agent were not issued any notice, while only show cause was issued against the petitioner by the BSMCL. A very vague statement has been made in the counter affidavit in respect of assessment made by the committee before imposition of penalty for alleged illegal mining of total quantity 2,87,100 CFT. The assessment of huge quantity of illegal sand allegedly illegally excavated near the vicinity of the petitioner leased area was not carried in presence of the petitioner or any officer of the BSMCL but the same was based on a complaint of private person.

29. The provision of Section 56 of Bihar Minerals

(Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 prescribes for imposition of fine. Rule 29(C) of the 2019 Rules, mandates a settlee has to observe the terms and conditions of the mining plan, as well as, the terms and conditions of environment clearance and if a settlee violates the terms and conditions of the mining plan and environment clearance and conducts the mining within restricted area, then under Rule 30(1) of the Rules, 2019, a penalty of Rs. one lakh can be imposed for the first time violation and similarly different quantity of penalty has been prescribed for such violation.

30. Petitioner has claimed that the petitioner was not involved in illegal mining and admittedly in that regard no action was taken by the BSMCL. The three men Committee in its report dated 22.12.2022 did not find it proper to inform the BSMCL for any illegal work which has been alleged against the petitioner.

31. It is case of the petitioner that he has strictly done the mining work in accordance with the agreement entered with BSMCL and provisions of the Rules, 2019. The petitioner has alleged that he was not informed about the inspection of site while a vague statement has been made in paragraph no.19 of

the counter affidavit wherein, it has been stated that petitioner had exceeded mining beyond the demarcation as per the Geo-coordinate. It is not the case of the respondents that any of the pillar demarcated by the petitioner were not found and any villager or any person had ever made any complaint in that regard. The parties have admitted that the complaint was made by one Roja Hussain but she had withdrawn the complaint on 26.10.2022. The committee has submitted the report on the basis of the complaint and it is not denied in the counter affidavit that the the petitioner was given any notice of inspection or he was present when the team members of the committee had assessed the illegal mining.

32. According to the agreement, BSMCL had to ensure that all mining activity is done in accordance with the mining plan and Environment Clearance. An inspection was done on 16.10.2020, which was also not in presence of the petitioner's company, any of the representatives or staff. It is also admitted that as per the provision of Rule 56, no items were seized, like vehicle or machinery involved in mining activity outside the permissible EC area, nor any FIR was lodged to suggest that the petitioner was indulged in an illegal mining. The second inspection was done by three members of a Committee,

constituted by the Collector and the Committee also submitted an ex parte report on 22.12.2022. A copy of complaint made by Roja Hussain, as well as, the report contained in letter No.109 dated 06.12.2022 and letter no.1094, dated 22.12.2022 were not handed over to the petitioner, nor the petitioner was given any prior intimation about the inspection. The hearing of appeal had already concluded on 23.12.2022, while the order dated 20.01.2023 passed by the Collector is based on the letter No.62, dated 16.01.2023 of the Mineral Development Officer is based on inspection dated 22.12.2022 which apparently shows that before the conclusion of hearing, the report contained in letter No.1094 dated 22.12.2022 was not known to the petitioner, I find that there has been complete violation of principle of natural justice, considering the fact that no opportunity to rebut the allegation made against the petitioner which is on the basis of the complaint of Roja Hussain and the inspection report was given to the petitioner.

33. It is well settled principle of law that every action of the executive Government must be informed with reason and should be free from arbitrariness. That is the very essence of the rule of law and its bare minimal requirement. And to the application of this principle it makes no difference whether the

exercise of the power involves affectation of some right or denial of some privilege.

34. It is *prima facie* established that the report is ex parte and is the handi work of the Mineral Development Officer in garb of vested interest. The impugned order based on the assessment made on the basis of an *exparte* report cannot be sustained. In absence of valid inspection and report submitted by the committee, duly constituted, the petitioner seeks that he may be given opportunity to appear before the committee, so constituted, and in presence of the petitioner, as well as, in presence of the officer of the BSMCL, the assessment is required to be done which has not been done and his show cause has also not been considered, the impugned orders are fit to be set aside and quashed.

35. This Court is of the view that the allegations against the petitioner for illegal mining could not be clearly established and merely stating that large quantity of the minerals have been extracted by them would not *ipso facto* prove that the petitioner had been involved in illegal mining. It is the duty of the State to obtain and produce credible evidence in support of the allegations to bring home the charges.

36. In the facts and circumstances of the case, I find it

proper to set aside the letter no.2032 dated 18.11.2022 communicated by the Mineral Development Officer, by which he has levied a penalty of Rs.3,06,01,150/-, as well as, the appellate order dated 21.01.2023 passed by the Collector in connection with Mining case No.140 of 2022, having been passed in gross violation of principle of natural justice and the penalty imposed as per the provision of Sub-rule (2) of Rule 56 is also not sustainable in absence of specific finding that the petitioner who has been granted licence for the demarcated Geo-coordinate as per the EC issued in that regard had illegally conducted mining outside the area for which, no licence has been granted to him and 56 is attracted which is application in case where illegal mining is conducted by non-licensee and the same compoundable.

37. The authorities are directed to hold inspection in presence of petitioner and representative of the officer of the BSMCL to make the assessment of any illegal mining conducted in the area.

38. In case representation is made before the District Magistrate, he is directed to consider the representation of the petitioner in accordance with law preferably within a period of six weeks from the date of its filing.

39. The writ petition stands disposed of.

(Purnendu Singh, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.05.2024
Transmission Date	NA