

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4759 of 2024

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Sainik Industries Pvt. Ltd. (name changed as Sainik Foods Pvt. Ltd. with effect from 25.06.2019) a registered company having its registered office at Flat No. 201 and 2012, Vikas Plaza, building No. 2, Local Shopping Centre, Kalkaji, New Delhi (South) - 110019 through its authorized representative Sanjeev Kumar Mishra male aged about 55 years son of Narayan Mishra resident of Village- Bazidpur, Meyari, P.O.- Bazidpur, Ward No. 11, Samastipur, Bihar - 848114.

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary Cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
2. The Principal Secretary cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The Director, Department of Mines and Geology, Govt. of Bihar, Patna.
4. The District Magistrate cum Collector, Gaya.
5. The Assistant Director, Mines and Geology, Gaya.
6. The Mineral Development Officer, Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate Mr. Alok Kumar Jha, Advocate Mr. Mukund Kumar, Advocate Mr. Akash Kumar, Advocate Mr. Aditya Raman, Advocate
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P. Mines
For the State	:	Mr. Kinkar Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 20-03-2024

Heard Mr. Gautam Kumar Kejriwal, learned counsel
appearing on behalf of the petitioner; Mr. Naresh Dikshit, Spl.
P.P. Mines and Mr. Kinkar Kumar, learned counsel for the State.

2. Petitioner has prayed *inter alia* for following
relief(s) in paragraph no. 1 of the writ petition:



"a) For issuance of a writ or order or direction in the nature of certiorari for quashing of the letter bearing memo number 653/khanan Gaya dated 23.02.2024 issued by the respondent Collector, Gaya and the corrigendum bearing memo number 686/ khanan, Gaya dated 29.02.2024 issued by the Mineral Development Officer whereby the blasting permit of the petitioner for stone mining rights with respect to Mouza Mirzapur, Circle Manpur, plot number - 2 (CS), Khata No. 61, area 12.50 acres has been suspended and the petitioner has been restrained from production and movement of minerals till further orders without any prior show cause notice served upon the petitioner much less any opportunity of hearing afforded before issuance of such order affecting fundamental, contractual and substantive civil rights of the petitioner;

b) For further issuance of a writ or order or direction restraining the respondents from taking any further coercive action against the petitioner in light of the impugned decision communicated vide bearing memo number 653/khanan Gaya dated 23.02.2024 by the collector Gaya and the corrigendum vide memo number 686/khanan, Gaya dated 29.02.2024 issued by the Mineral Development Officer;

c) For further issuance of a writ or order or direction upon the respondents especially the Collector, Gaya and other authorities in the district to allow the petitioner to carry on execution of mining activities in terms of the lease deed dated 16.12.2020 as the petitioner has already deposited 4 instalments out of 5 instalments required to be paid in terms of the lease deed and as such there is no scope of any financial loss to be suffered by the state exchequer;

d) For further holding and a declaration that in terms of Rule 47 (2) Of The Bihar Minerals (Concession, Prevention Of Illegal Mining, Transportation And Storage) Rules, 2019 (hereinafter referred to as the rules 2019 for short), the respondent Collector Gaya was obliged in law to issue a prior show cause notice upon the petitioner and only after hearing the petitioner against proposed issues could pass an order of the nature which is communicated vide impugned bearing memo number 653/khanan Gaya dated 23.02.2024;

e) For further holding and a declaration that the letter bearing reference number 500/khanan Gaya dated 09.02.2024 claimed as a show cause notice in the impugned bearing memo number 653/khanan Gaya dated 23.02.2024 is thoroughly misconceived and contrary to records as by no means of interpretation can such letter be accepted as a show cause notice and therefore the impugned decision of the respondent Collector Gaya suffers from the error of violation of principles of natural justice as well as the



provision of law enshrined under rule 47 (2) of the rules 2019;

f) For further holding and a declaration that the lease period of the petitioner being operative till the year 2025 and the settlement amount of the petitioner already lying with the respondents, there could be no question of violation of rule 22 (3) of rules 2019 especially when no such demand of excess of royalty was raised by the respondents;

g) For grant of any other relief of reliefs to which the petitioner is found entitled to in the facts and circumstances of the case."

BRIEF FACTS

3. The brief facts are that the respondent Department of Mines and Geology, Government of Bihar vide letter No. 4067/M dated 12.11.2014 expressed its decision to invite tenders for settlement of stone mines located at different districts in the State of Bihar for a period of 5 years from the date of execution of agreement/deed.

4. The petitioner participated in the tender with respect to block number 1 in Mauza Mirzapur, Circle Manpur, Thana No. 286, Khata No. 61, Plot No. 2 [CS], Area- 12.50 Acre in which having the highest bidder, he succeeded settlement for an amount of Rs. 17,06,00,000/- made in his favour.

5. Before starting mining activities, as per the terms of the deed, the petitioner was required to obtain letter of acceptance, approved mining plan, execution of agreement in Form B, Water and Air Consent, Information regarding National



Park, Forest Land and Wildlife Sanctuary, Inspection Certificate, approval of TOR, Cluster Certificate, Environmental Clearance, Consent to Operate, Consent to Establish, permission for conducting deep hole blasting and issuance of work order as per the guidelines issued in the year 2019 .The petitioner submitted the mining plan duly approved by the departmental authorities. The Director of Mines Safety, Koderma vide Letter dated 22.07.2021 granted permission to the petitioner valid for a period of five years. The letter dated 22.07.2021, communicated to the petitioner contains the governing conditions *inter alia* requiring an aggregate of 6mm to 8mm size to be used as stemming material, particularly in water holes to prevent flyrock and to reduce noise and air over-pressure only Nodal with DTH initiation system was to be used for the blasting zone of 100 to 300 m from the residential houses/village structure. Also, the surface detonating cord was to be covered with at least 15 cm thick sand.

6. Initially, the environmental clearance was declined to the petitioner by the competent authority on grounds of the habitation in the area. Subsequently, it was found that in the same location, with respect to another block being block number 04 similarly situated settlee was granted Environmental



Clearance Certificate by the SEIAA. The Department of Mines And Geology, Government of Bihar reconsidered the petitioner's case for revival of settlement having found factually similar to that of the settlee for block number 04 after obtaining affidavits from the petitioner that he undertakes to not carry out mining activity within a distance of 50 m from any habitation. The case of the petitioner was forwarded once again to the SEIAA which had granted the petitioner Environmental Clearances.

7. Thereafter the mining site was inspected by a committee headed by the Director, Department of Mines And Geology on 19.03.2023.

8. The petitioner was communicated vide letter number 500/khanan Gaya dated 09.02.2024 whereby some irregularities at the mining site were found, which were required to be meted by the petitioner within 48 hours from communication. The petitioner could submit the compliance report on 13.02.2024.

9. Thereafter, the petitioner was served with the impugned letter bearing memo number 653/khanan Gaya dated 23.02.2024 issued by the respondent Collector and the corrigendum issued by the Mineral Development Officer vide memo no. 686/Khanan, Gaya dated 29.02.2024 whereby the



blasting rights of the petitioner has been suspended with immediate effect together with the suspension of production and removal of minerals from the aforesaid mining site on the alleged ground.

SUBMISSION

10. Learned counsel for the petitioner submitted that, the petitioner has been carrying out mining activities in the aforesaid mining site and complying with all the statutory requirements in accordance with law, the Mines And Minerals (Development And Regulation) Act 1957 (hereinafter referred to as the Act, 1957) and *The Bihar Minerals (Concession, Prevention Of Illegal Mining, Transportation And Storage) Rules, 2019* (hereinafter referred to as the rules 2019 for short) like payment of all taxes and duties and charges in the concerned department of the government, filing of returns in terms of rules 2019 and all other statutory requirement.

11. Learned counsel further informs that an inspection was made with respect to the mining site leased out to the petitioner by a team of geologist headed by the Director, which has allegedly found certain irregularities and for violation of the provision of the lease deed dated 16.12.2020 and the provisions of the Act, 1957 and Rules, 2019, the petitioner was served



letter bearing Reference No. 500/Khanan, Gaya dated 09.02.2024. In compliance of the said letter, the petitioner had submitted compliance report vide Letter dated 13.02.2024 giving answer to the queries contained in Letter No. 500/Khanan dated 09.02.2024 in a categorical manner. The Letter dated 13.02.2024 has been annexed as 'Annexure-2 to the writ petition'. As no further communication was made to the petitioner, the petitioner under impression that the authorities are satisfied with the report submitted by the petitioner and no further notice was issued in that regard. The petitioner was surprised to receive letter contained in Memo No. 653/Khanan, Gaya, dated 23.02.2024 issued under the signature of Collector, and corrigendum to the said letter issued by the Mining Development Officer contained in Memo No. 686/Khanan, Gaya dated 29.02.2024 by which it has been communicated that a decision has been taken to suspend the blasting rights of the petitioner with immediate effect together with suspension of production of removal of minerals from the aforesaid mining site. A report was sought from the Geology Department, which reported that Clause 4 (3) of the report finds violation with respect to upper layer of the Mines RL 103 m including two poclain machine in operation, which affected RL 92 m, which



has allegedly been substantiated from the fact that after blasting, stones were stored, which was found to be in breach of Bench Level provided for fourth year lease, however, the petitioner Bench Level related with respect to third year lease. It has been communicated in the said order that the same is in violation of Letter No. SIA/1(a)/1260/2020, dated 07.12.2020 granting Environmental Clearance by SEIAA, Bihar, which provided the upper capping of 364000 tones of production per year. The petitioner was found to have exceeded by 44081 tones and, as such, petitioner has violated Rule 22 (3) of Rules, 2019, although only 237247.41 tones of stones were extracted and considering the said fact it has been alleged by the Collector that it cannot be said that petitioner was not engaged in illegal mining of stones and the blasting rights of the petitioner was suspended with respect to Plot No. 2 (C.S.) Khata No. 61, total area 12.50 acre relating to Cluster-01.

12. The main contention of the petitioner is that the petitioner had not received any notice/letter in the nature of a show cause notice seeking any explanation giving gist of accusation for alleged violation of provisions of the Mines And Minerals (Development And Regulation) Act 1957, Rules 2019, and terms and conditions of the lease deed dated 16.12.2020 or



any conditions of environmental clearance issued by the competent authority in connection with the aforesaid mining site. Learned counsel relying on the provision of Sub-Rule 2 of Rule 47 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019, (hereinafter referred to as the 'Rules, 2019') submitted that the same provides or opportunity of hearing and in these backgrounds, learned counsel seeks for setting aside and quashing of the impugned order dated 23.02.2024.

13. In support of his relief(s), learned counsel has made a specific statement in paragraph no. 17 of the writ petition, which is reproduced hereinafter:

" That it is humbly submitted that the impugned order passed by the respondent Collector, Gaya communicated vide letter bearing memo number 653/khanan Gaya dated 23.02.2024 and corrigendum letter bearing memo number 686/khanan Gaya is wholly illegal, misconceived and without jurisdiction and as such liable to be quashed and set aside by this honourable court on the basis of following grounds:

i. It is an ex-parte and as such violative of the principles of natural justice.

ii. It is violative of rule 47 (2) which empowers the Collector of the district to suspend or cancel any mineral concession only after reasonable opportunity of hearing has been awarded to the lessee which is not complied within the instant case.

iii. The letter bearing reference number 500/khanan Gaya dated 09.02.2024 has been baselessly and falsely claimed as a show cause notice as it was simply a letter requiring necessary compliance of the petitioner within 48 hours of its communication. The petitioner had duly complied with such requirements and communicated the same to the respondents.

iv. The reply submitted by the petitioner vide letter dated 13.02.2024 was not at all an explanation rather



a compliance report as the petitioner was never called upon to submit any explanation against any allegation/charge.

v. There is no violation of rule 22 (3) of the rules 2019 as the petitioner has never been called upon by the respondents to pay any excess of royalty towards alleged excess of mining carried out in the mining site. It is an allegation based on mere misconception. Secondly, the petitioner has never been served with any show cause notice proposing violation of such provision of rule 22 (3) of the rules 2019 and therefore the order passed on the basis of such violation by the petitioner is wholly an ex-parte and unilateral decision unsustainable in the eye of law.

vi. The petitioner was never handed over the inspection report purportedly submitted by the inspecting team on the basis of which the impugned decision was taken by the respondent Collector Gaya.

vii. The alleged issue of RL of upper level of mines having been found at 103 m and the functional bench at 92 m in the third year which was actually meant for fourth-year of mining is based on simple eye estimation and not on the basis of practical measurement done by use of proper instruments, tools or devices. As such, no impugned decision affecting the petitioner's vital rights of mining could be taken on the basis of simple eye estimation without any procedure adopted to add credibility to it.

viii. The honest gesture of the petitioner has not at all been appreciated that the excess of mineral incidentally produced by the petitioner was reflected in the returns furnished with the respondent Department. Not only that, the stock actually removed from the mining site is lesser in quantity than that produced which would further show that the petitioner has not drawn any financial benefit of such excess of production allegedly done.

ix. The alleged excess of production of mineral was simply on account of incidental output of the blasting exercise as whenever blasts are done in the identified spots in the mining site, the quantity of production depends upon the nature of the site and many a times it does not match exactly with the estimation of the petitioner."

14. *Per contra*, Mr. Naresh Dikshit, learned Spl. P.P.

appearing on behalf of the Mines and Geology, submitted that though the counter affidavit has not been filed but considering the non-compliance of procedure prescribed in provision of



Sub-Rule 2 of Rule 47 of Rules, 2019, petitioner having not provided with adequate opportunity of hearing, the matter can be remitted back to the District Magistrate cum Collector and Licensing Officer, Gaya, for passing order afresh on the basis of records and after providing due opportunity of hearing to the petitioner following the principle of natural justice.

15. Heard the parties.

FINDINGS

16. The tussle between fast-paced developments and deplorable degradation of the natural resources to fuel the development is growing at an alarming rate. "Mining within the principle of sustainable development comes within the concept of balancing whereas mining beyond the principle of sustainable development comes within the concept of banning."

17. The Constitution has laid the foundation of Articles 48A and 51A for a jurisprudence of environmental protection. Today, the State and the citizen are under a fundamental obligation to protect and improve the environment including forests, lakes, rivers, wildlife and to have compassion for living creatures. Duty is cast upon the Government under Article 21 to protect the environment and the two statutory principles, "which govern the law of environment are :(i) the



principles of sustainable development, and (ii) the precautionary principle.

18. In *M.C. Mehta Vs. Union of India & Ors., (2006) 11 SCC 582*, the Apex Court directed the Monitoring Committee to inspect the mining activity being carried on in the area in question and report the impact, if any, of continuing mining activity on the environment and the safeguards, if any, adopted to minimise the adverse effects on the environment and any other suggestions relevant to the issue of impact of mining activity on degradation of the environment.

19. In *T.N. Godavarman Thirumulpad (104) Vs. Union of India & Ors., (2008) 2 SCC 222*, the Apex Court held that adherence to the principle of sustainable development is now a constitutional requirement. The courts are required to balance development needs with the protection of the environment and ecology. It is the duty of the State under the Constitution to devise and implement a coherent and coordinated programme to meet its obligation of sustainable development based on inter-generational equity.

20. In view of above considering the fact that the Environmental Clearance was issued on 07.12.2020, with the conditions like General and Specific conditions to find out any



violation of the conditions especially the specific conditions. It is apt to *inter alia* reproduce specific conditions, which are as follows:

SPECIFIC CONDITIONS:-

"1. Prior to stone mining, the proponent shall get the studies on vibration due to blasting (Zone of influence) and best suitable blasting method specific to location project shall be done by a recognized Institute e.g. Indian Institute of mines (ISM), Dhanbad or Central Mine and Fuel Research Institute, Dhanbad and submit report to SELAA office before mining operation. If mining activities is carried out without the vibration studies, the Environmental Clearance shall be considered revoked automatically.

2. The project proponent before starting any activity/ preparation of ground, on the leased area shall demarcate his lease hold by RCC pillar erected at the cost of lease holder after certification of the mining officer. On each pillar Geo-Coordinate shall be written with permanent paint mark as described in the mining plan.

3. Human habitation if any within the zone of influence (500 meter radius from the periphery) of the project site shall have to be rehabilitation and resettlement before commissioning mining activity on the proposed site. The cost of rehabilitation will be borne by the Project Proponent.

4. The project proponent shall adopt best mining practice. In the mining area, adequate numbers of check dams, retaining walls, garland drains and settling ponds should be provided to arrest the wash-off with rain water in catchment area.

5. The natural water bodies and streams which are flowing in and around the village should not be disturbed. The water table should be monitored so as not to go down below the pre-mining period. Regular monitoring of water in the open dug well located in the villages should be done to ascertain the impact over the ground water table.

6. The Proponent must ensure that specifically at night noise levels are kept within prescribed limits as fixed by MoEF&CC, GoI.

7. The Project proponent should not disturb the grazing ground for cattle.

8. Main Haulage road in the mine should be provided with permanent water sprinklers as well as other roads shall also be wetted with water tankers fitted with sprinklers.



9. The Project proponent shall ensure that the productivity of the agricultural crops is not adversely affected due to mining operations.

10. Transportation of the minerals by road passing through the village should be allowed only by the consent of the villages or else shall Construct Bypass road at the expense of the proponent. Proponent shall bear the cost towards widening and strengthening the existing public road network in case the same is used for the project.

11. The Project Proponent shall comply with the provisions contained in this Ministry's OM vide F. No.- 22-65/2017-IA.III dated 1st May 2018, as applicable, regarding Corporate Environment Responsibility.

12. The Environmental Clearance is coterminous with mining lease by the Department of Mines & Geology, Government of Bihar to Project Proponent and all other Statutory Conditions as imposed by various agencies/ District Authorities.

13. No mining shall be undertaken in the forest area without obtaining requisite prior Forest Clearance. Minimum distance shall be maintained from Reserved / Protected Forest as stipulated in MoEF&CC, Gol. Guidelines.

14. Environmental Clearance is subject to obtaining clearance under the Wildlife (Protection) Act, 1972 from the competent authority, as may be applicable to this project (in case any endangered fauna occurs/is found in the Project area). No damage is to be done to fauna If found in Mining Lease (ML) area (as mentioned in various schedules). In case fauna Round they should be given protection, collected alive with the help of the expert and transferred them or handing over them to the concerned authorities. Conservation Plan, if applicable has to be adhered to.

15. The top soil, if any shall temporarily be stored at earmarked site(s) only and it should not be kept unutilized for long. The topsoil shall be used for land reclamation and plantation.

16. There shall be no external dump(s). Monitoring and management of rehabilitated areas shall continue until the vegetation becomes self-sustaining. Compliance status shall be submitted to the SEIAA, Bihar / BSPCB, Patna on six monthly basis.

17. Catch drains and siltation ponds of appropriate size shall be constructed around the mine working, sub-grade and mineral dump(s) to prevent run off of water and flow of sediments directly into the agricultural fields and other water bodies. The water so collected should be utilized for watering the mine area, haul roads, green belt development etc. The drains shall be regularly desilted particularly after the monsoon and maintained properly.

18. Dimension of the retaining wall at the toe of



the Over Burden (OB) benches within the mine to check run-off and the siltation shall be based on the rainfall data.

19. Wherever it is possible three tier plantation shall be undertaken to develop a greenbelt shall be developed all along the mine lease area. The Project proponent shall take up tree plantation area equivalent to 33% of the leased area preferably along the periphery and in vacant space within the lease area. Fast growing and local species will be planted. Plantation should be completed within 3 Years tree density 2,500 tree/ha.

20. Toilet for BPL family must be provided and facilities of drinking water for villagers for its established of a tank for drinking water.

21. Effective safeguard measures such as regular water sprinkling shall be carried out in critical areas prone to air pollution and having high levels of particulate matter such as loading and unloading point and transfer points. Extensive water sprinkling shall be carried out on haul roads which should be made pucca with suitable water drainage arrangements. It should be ensured that the Ambient Air Quality parameters conform to the norms prescribed by the Central Pollution Control Board in this regard.

22. The project proponent should implement suitable conservation measures to augment ground water resources in the area in consultation with the Water Resource Department, Government of Bihar/Central Ground Water Board.

23. Vehicular emissions shall be kept under control and regularly monitored. Measures shall be taken for maintenance of vehicles used in mining operations and in transportation of mineral. The mineral transportation shall be carried out through the covered trucks only and the vehicles carrying the mineral shall not be overloaded. No transportation of minerals outside the mine lease area shall be carried out after the sunset.

24. No blasting shall be carried out after the sunset. Blasting operation shall be carried out only during the daytime within a safe distance from any human habitation in accordance with applicable rules and/or orders of various courts and/or Tribunals. Controlled blasting shall be practiced. The mitigative measures for control of ground vibrations and to arrest fly rocks and boulders should be implemented.

25. Drills shall either be operated with the dust extractors or equipped with water injection system.

26. Effective safeguard measures should be taken to control fugitive emissions so as to ensure that concentration of PM10 and PM 2.5 levels are within the national Ambient Air Quality Standards.

27. Pre-placement medical examination and periodical medical examination of the workers engaged in



the project shall be carried out by registered medical practitioner/specialized occupational health and records maintained.

28. Provision shall be made for the housing of construction labour within the camping site with all necessary infrastructure and facilities such as fuel for cooking, mobile toilets. Septic tanks, safe drinking water, medical health care, etc. The housing may be in the form of temporary structures to be removed after the completion of the project.

29. Proper safety measures as per statutory requirement are to be implemented around the mined out Pit prior to closure of site.

30. The progressive mine reclamation shall be implemented.

31. The Project Proponent shall obtain Consent to Establish and Consent to Operate from the Bihar State Pollution Control Board, Patna and effectively implement all the conditions stipulated therein.

32. All along the boundary of mine lease 7.5 meter width shall be maintained as safety zone and developed as a green belt area.

33. Ground water shall not be abstracted without prior permission of competent authority i.e., CGWB/SGWB, if applicable.

34. The Proponent in consultation with CGWB/SGWB will install Piezometer to monitor the fluctuation in ground water level due to mining and data shall be submitted CGWB/ SGWB; BSPCB, Patna; SEIAA, Bihar and MoEF&CC, Gol.

35. The mining lease holders shall, after ceasing mining operations, undertake re-grassing the mining area and any other area which may have been disturbed due to their mining activities and restore the land to a condition which is fit for growth of fodder, flora, fauna, etc.

36. The Project Proponent should advertise in at least two local newspapers widely circulated in the region, one of which should in the vernacular language, informing that the project has been accorded Environmental Clearance and copies of clearance letters are available with the State Environment Impact Assessment Authority, Bihar, and the same may also be sent to Bihar State Pollution Control Board (B.S.P.C.B.), Patna. The advertisement should be made within 10 days from the date of receipt of the Clearance letter and a copy of the same should be forwarded to the Regional Office of MoEF&CC at Ranchi."

(emphasis supplied)

21. The petitioner has sought interference of this



Court to quash the order dated 23.02.2024 passed by the Collector, Gaya, on the ground of violation of principle of natural justice as no opportunity of hearing was afforded to the petitioner before the mining right of the petitioner has been suspended on the basis of report dated 19.03.2023 submitted by the Director, Mines and Geology which has allegedly been passed without serving a copy of the same to the petitioner. The report was prepared behind the back of the petitioner and in this regard, specific pleading has been made in paragraph no. 17 of the writ petition.

22. It is well settled principle of law that the legal right that can be enforced must ordinarily be the right of the petitioner himself, who complains of infraction of such right and approaches the Court for relief as regards the same. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. In ***Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413*** the Apex Court held that



"the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter."

23. The Apex Court in the case of ***Chairman State Bank of India and Anr. v. M.J. James*** reported in (2022) 2 SCC 201 in paragraph nos. 28 and 29 has held as under :-

"28. Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case."

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between "adequate opportunity" and "no opportunity at all" and held that the prejudice exception operates more specifically in the latter case. This judgment also



speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)

“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.

24. Equally the mining plan is an important document to assess the Mines owner to operate the mining in a scientific manner. From the perusal of impugned order contained in Memo No. 653 dated 23.02.2024, it is not clear that there has been judicial abuse of the natural resources, which has caused effect to the environment in absence of sustainable development. It is also not apparent from the impugned order that the inspection, which was conducted by a team of geologist was examined by the SEIAA to confirm, as to whether, the same has amounted to violation of the mining guidelines apart from the terms and conditions contained in mining lease. The District Magistrate had not taken any measures to ascertain the impact of any disaster caused by the petitioner on the basis of the



estimated extra mining made in the assigned cluster leading to hydrological and social impact under pinning sustainable economic development. It is no doubt that Department dealing with the mining activity in respect of approved D.S.R. at the level of SEIAA and not taking Annual Replacement Study (A.R.S.) in consideration, the considered discrepancy between the quantity of query of stone approved year wise also lead to misuse of Environmental Clearance if such illegal mining has been found to have been allegedly done by the petitioner. The mandate of Article 39 (b) imposes no restriction on the means adopted to sub-serve common good and larger public interest to maximise revenue. Revenue maximisation is not the only way in which the common good can be sub-served. Therefore, revenue maximisation is an objective of a policy, being considered *qua* that resource at the point of time to be best way to sub-serve the common good and in absence of a definite discussion in this regard by the District Magistrate, will only lead to frustrate the principle of sustainable mining in violation of the guidelines. This Court is concerned about the manner in which the District Magistrate has considered to pass order contained in Memo No. 653 dated 23.02.2024.

25. There has been violation of Sub-Rule 2 of Rule 47



of Rules, 2019, which provides to give reasonable opportunity of hearing to affected parties before passing any order having civil consequences.

26. The order contained in Memo No. 653 dated 23.02.2024 for having been passed in violation of procedure prescribed in Rule 47 of Rules, 2019 without serving any report as contained in Letter No. 1840 dated 04.04.2023 of the Mines and Geology Department, Government of Bihar and without giving any opportunity of hearing to the petitioner, is hereby set aside and quashed. The District Magistrate is required to take abundant caution in allowing the petitioner to carry on the mining specifically in terms of the lease agreement and provisions of Act, 1957 and Rules, 2019 and guidelines issued from time to time in this regard, maintaining the principle of sustainable development and the precautionary principle.

27. With above observations and directions, the present writ petition is disposed of.

(Purnendu Singh, J)

Niraj/-

AFR/NAFR	A.F.R.
CAV DATE	N/A
Uploading Date	03.04.2024
Transmission Date	N/A

