

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7742 of 2023

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Rohit Agarwal Son of Ashok Kumar Agrawal Resident of Arjun Road, Moti Nagar, Sindri Dhanbad through his authorised representative namely Aditya Kumar Singh male aged about 23 years son of Tapeswar Singh resident of village - Sarnarayan, P.O.- Saraiya, P.S.- Dariapur, Saraiya, District - Saran, Bihar - 841101.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Bihar State Mining Corporation Limited, Patna through its Managing Director.
3. The Managing Director, Bihar State Mining Corporation Limited, Patna.
4. The General Manager, Bihar State Mining Corporation Limited, Patna.
5. The Chief Executive Officer, Bihar State Mining Corporation Limited, Patna.
6. The District Collector, Jamui. (Cluster number 25 of river Kiul).

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha (Ga 7)
For the Mines	:	Mr. Naresh Dixit, Advocate
		Mr. Utsav Anand, Advocate
		Mr. Brij Bihari Tiwary, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 25-07-2024 Heard Mr. Gautam Kumar Kejriwal, learned Counsel
for the petitioner and Mr. Naresh Dixit, learned Spl. P.P., Mines.

2. The present petition has been preferred for the
following reliefs:-

*(i) for issuance of a writ in the nature of
certiorari for quashing of the letter dated
21.03.2023 issued vide reference number BSMC -
443 by the respondent number 4 whereby the*



petitioner has been saddled with a penalty for ₹ 34,44,684/- under rule 56 (2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as the rules 2019 for short) and was called upon to pay the same within a period of 3 days of such demand;

(ii) for issuance of a writ or order or direction upon the respondents to refund the sum of ₹34,44,684/- recovered from the petitioner in the name of penalty imposed under rule 56 (2) of the rules 2019 without any legal, valid and reasonable basis rather coercively by deactivating the user id and password of the petitioner to disable downloading of the challans for sale and transportation of mineral from the sandghats in cluster number 25 of river Kiul which was restored after such recovery from the petitioner;

(iii) for further issuance of a writ or order or direction upon the respondents to compensate the petitioner with adequate interest on the refund of the said sum of ₹ 34,44,684/- from the date of its payment by the petitioner till the date of refund as the said imposition and recovery of penalty from the petitioner is wholly unreasonable, illegal and without any authority in law;

(iv) for further issuance of a writ or order or direction upon the respondents to either ensure refund of the auction amount proportionate to the number of days for which the petitioner has



been deprived of carrying out mining activities in the mining site or to grant extension of the period of contract by the same number of days so as to compensate the petitioner for the financial loss suffered due to illegal, arbitrary and unreasonable act of the respondents;

(v) for further folding and a declaration that the petitioner being a valid contractor having executed agreement with the respondent corporation for mining activities, no powers could be exercised under rule 56 of the rules 2019 for imposition and recovery of penalty in terms of the impugned letter issued by the respondent number 4.

3. Learned Counsel for the petitioner submits that the petitioner succeeded in getting the award of contract for operation of sandghats namely, Pakri in Cluster No. 25 of River-Kiul till 31.03.2022 or further orders of the Hon'ble Apex Court.

4. He submits that the petitioner was working as per the contract and not beyond that but was surprised to receive the notice (letter no. 443 dated 21.03.2023) (Annexure-5 to the writ petition) by which the respondent- Managing Director, Bihar State Mining Corporation Limited, Patna (henceforth for short 'the Corporation') after alleging that the contractor has moved



beyond the allotted area and has done illegal mining, a fine of Rs. 34,44,484/- was imposed under Rule 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (henceforth for short 'the 2019 Rules').

5. He submits that the very next day (22.03.2023), the said amount was deposited (Annexure-6 to the petition) as the moment notice is issued, the issuance of chalan is stalled and only with the purpose not to get business hampered, the payment was made. The submission is that this demand was made without any notice and further the inspection was done behind their back.

6. Learned Counsel for the petitioner, Mr. Kejriwal submits that on the same day i.e. 22.03.2023 (Annexure-7 to the petition), he submitted another petition before the respondent no. 3 with a request to return the amount. It is his categorical submission that this letter was received in the office of respondent no. 3. but as no decision taken, the present writ petition.

7. A counter affidavit on behalf of the Collector, Jamui (respondent no.6) has been filed, there is no answer to the specific averment made by the learned Counsel for the



petitioner that no notice was issued and/or any of his representative was present at the time of inspection.

8. Learned Spl. P.P., Mines submits that once he deposited the amount without any protest, it will be deemed that he accepted his guilt and in that background, there was no need to give a re-look to his request.

9. This Court is afraid, such submission cannot be accepted. Depositing an amount pursuant to the demand notice does not mean that a person (the petitioner herein) has lost his right to challenge and bring on record the fact that the principal of natural justice has been violated.

10. Since the respondents have failed to answer to the specific averments made by the learned Counsel for the petitioner, an order passed by a co-ordinate bench in **M/s Uma Associates vs The State of Bihar & Ors. (C.W.J.C. No. 3400 of 2023, disposed of on 09.05.2023)** automatically comes into picture and this Court would like to incorporate paragraph nos. 7 to 9 for proper appreciation:-

“7. Having heard learned counsel for the parties, the Court is not going into all the points which has been raised on behalf of the petitioner except the specific statement that no notice was issued to the petitioner prior to passing of the order of penalty, impugned herein. On perusal of



the order contained in Letter no.514 dated 24.2.2023, it transpires that the same mentions about some inspection having been carried out by a Committee constituted in the Department on 12.3.2023 and 13.2.2023 and on the basis of the report submitted by the Committee, the order of penalty impugned herein has been passed holding the petitioner to be liable to pay penalty of Rs.2,37,95,800/- with a further direction that the same should be paid within a period of 3 days.

8. On perusal of the said order, the Court does not find that either the inspection by the so called departmental team was carried out in presence of the petitioner, whether the copy of the inspection report was provided to the petitioner or that proper opportunity to show-cause was issued to the petitioner prior to passing the order of penalty. In view of these facts, in the opinion of the Court the order of penalty dated 24.2.2023 issued under the signature of the Mineral Development Officer, Rohtas, Sasaram, is not sustainable and is hereby quashed, with liberty to the respondents that if so advised, they will be at liberty to proceed afresh in accordance with law.

9. The writ application stands allowed with the above observations.”

11. Taking into account the aforesaid facts as also the order passed in **M/s Uma Associates** (supra) and in that



background, as no notice was served upon the petitioner nor the copy of the Inspection Report was provided granting him an opportunity to reply, the order passed is not sustainable.

12. Accordingly, the letter no. 443 dated 21.03.2023 issued by the respondent no. 2 (Annexure-5 to the petition) is quashed.

13. The respondent-authorities are free to issue fresh notices upon the petitioner along with the Inspection Report so that he can answer to the allegation made pursuant to the alleged inspection dated 18.03.2023.

14. The petitioner will be duty bound to answer to the notice so that the respondent no. 2, the Managing Director of 'the Corporation' can take a decision.

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

(Rajiv Roy, J)

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