

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9091 of 2023

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Maa Bhawani Traders through its Proprietor Vikash Kumar Singh, aged about 36 years, Male, Son of Brij Kishore Singh, Resident of Village - Rampur AAMI, Post Office - Dighwara, Police Station - Dighwara, District- Chhapra, Saran, Pin Code- 841207.

... .. 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 Ltd., through its Managing Director, Vikash Bhawan, Bailey Road, Patna.
3. The Managing Director, Bihar State Mining Corporation Ltd., Vikash Bhawan, Bailey Road, Patna.
4. The General Manager, Bihar State Mining Corporation Ltd., Vikash Bhawan, Bailey Road, Patna.
5. The Chief Executive Officer, Bihar State Mining Corporation Ltd., Vikash Bhawan, Bailey Road, Patna.
6. The District Collector, Jamui (Cluster Number 18 Kolua Jamui)
7. The Mining Development Officer, Jamui.
8. The Mining Inspector, Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Alok Kumar, Adv. Mr. Sujit Kumar, Adv. Mr. Birendra Kumar Singh, Adv. Mr. Raghwendra Pratap Singh, Adv.
For the Respondent/s	:	Mr. Naresh Dikshit, Spl. PP, Mines Mr. Utsav Anand, Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 01-08-2024 Heard Mr. Alok Kumar, learned counsel for the petitioner and Mr. Naresh Dikshit, learned Special Public Prosecutor for the Mines.

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

“(i) For setting aside of letter bearing Memo No. 104 dated 23.01.2023 issued under signature of respondent no. 7 whereby and whereunder a penalty of Rs. 12,05,654/- has been imposed against petitioner under Rule 56 of the Bihar Mineral (Concession Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (here-in-after referred to as the Rules, 2019) for illegal mining of sand from outside of the mining area with a direction to deposit within 3 days without affording opportunity of hearing to the petitioner.

(ii) For setting-aside of letter bearing Memo No. BSMC-436 dated 21.03.2023 issued under signature of respondent no. 4 whereby a further penalty of Rs. 98,92,495/- has been imposed against petitioner under Rule 56 of Rules, 2019 for illegal mining of sand outside of the mining area with a direction to deposit the same within 3 days without affording opportunity of hearing to the petitioner.

(iii) For directing the respondents authorities to return the deposited amount of Rs. 12,05,654/- + Rs. 98,92,495/- total Rs. 1,10,98,149/- to the petitioner with statutory interest as the game has been deposited by the petitioner under protest

with a fear of stoppage of mining activities of the mining site/blacklisting.”

3. Learned counsel for the petitioner submits that the matter relates to Ghanshyam Sthan Koluha Barnar River (Cluster 18 situated in the District of Jamui) and the petitioner was one of the successful bidder to it was granted the contract for the period 01.12.2021 to 31.03.2022/ till further order by the Hon'ble Supreme Court in the S.L.P. (Civil Appeal) Nos. 3661-3662 of 2020. Following the procedure of the deposit demanded, the petitioner started mining the area exclusively granted to him. However, he was surprised to receive the notice vide letter no. 104 dated 23.01.2023 issued by the Mineral Development Officer, Jamui claiming that he has done mining beyond the area allotted to him and as such, Rs. 12,05,654/- is to be paid within a period of three days (Annexure- P/5). He further submits that close on the heels, another letter no. 436 dated 21.03.2023 was issued by the Bihar State Mining Corporation Ltd. (Annexure- P/7) by which another demand of Rs. 98,92,495/- was to be deposited within three days.

4. Mr. Alok Kumar, learned counsel for the petitioner submits that a perusal of the two orders would show that neither it contains the inspection report, nor there is anything on record to show that such exercise was taken up by the respondents in

presence of either the petitioner and/or his representative. His submission is that in absence of the petitioner and/or his representative in the alleged raid and further non-supply of the inspection report, the principle of natural justice has been violated.

5. He has taken this Court to an order of the Coordinate Bench in ***C.W.J.C. No. 3400 of 2023 (M/s Uma Associates Vs. The State of Bihar & Ors.)*** disposed of on ***09.05.2023***, whose paragraph 7 to 9 reads as follows:-

“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.”

6. Mr. Naresh Dikshit, learned Special Public Prosecutor for the Mines armed with the counter-affidavit filed by the Mineral Development Officer, Jamui submits that upon raid conducted, the petitioner was found doing illegal mining outside the area allotted. On the query of the Court, whether it was conducted in presence of the petitioner and/or his representative and further whether the inspection report was

provided to the petitioner, the answer is in negative.

7. From the aforesaid facts, it is clear that the inspection took place behind the back of the petitioner and /or his representative and no inspection report was provided either.

8. In that background, following the judgment of *M/s Uma Associates* (supra), both the letter no. 104 dated 23.01.2023 and letter no. 436 dated 21.03.2023 stand quashed. The respondents will be at liberty to move afresh in accordance with law and in presence of the petitioner and/or his representative.

9. In view of the fact that the two letters issued by the respondents stand quashed, the petitioner will be entitled to the refund which according to him has been paid by him under protest. The refund exercise has to be completed within a period of four weeks from the date a copy of the order is made available to the respondents.

10. The present writ application stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

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