IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14899 of 2023

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Katyayni Contractor Private Limited having its office at Pareo, Bihta, P.S.-Bihata, District-Patna, through its Director Randhir Kumar, aged about 36 years (Male), son of Suraj Prasad Verma, Resident of Vilalge-Pareo, Bihta, P.S. Bihta, District-Patna.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Bihar, Patna.
2. The Principal Secretary cum Mines Commissioner, Mines and Geology, Bihar, Patna.
3. The Collector, Sheikhpura.
4. The Mineral Officer, Mines and Geology, Sheikhpura.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Fazle Karim, Advocate
	:	Mr. Chandan Kumar, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA 7
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P.
	:	Ms. Kalpana, Advocate

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL JUDGMENT

Date : 25-04-2024

Heard Mr. Fazle Karim, along Mr. Chandan Kumar learned counsels appearing on behalf of the petitioner; Mr. Gyan Prakash Ojha, learned GA 7, appearing on behalf of the State and Mr. Naresh Dikshit, learned Spl. P.P., along with Ms.

Kalpana, learned counsel appearing on behalf of the Mines.

2. The petitioner has filed the writ petition for the following relief(s):

> This writ petition is being filed for issuance of appropriate writ(s)/ order(s)/ direction(s) for quashing the order dated 08.08.2023 passed in Misc. Case No.02 of 2023 by which the application/representation of the petitioner in pursuance of order dated 20.06.2023 passed in CWJC No.13857 of 2022 by this Hon'ble Court has been rejected and further for quashing the order dated 11.08.2022 passed in Appeal No.01 of 2020 by learned court of Mines Commissioner, Bihar by which the appeal of the petitioner against the order dated 21.01.2020 passed in Misc. Case No.01 of 2019 was dismissed and further for quashing the order dated 21.01.2020 by which the petition against the demand notice dated 18.09.2019 issued by Mineral Development, Sheikhpura demanding an amount of Rs.68,28,000/- as fine was rejected by the District Magistrate, Sheikhpura and further for quashing the above mention order dated 18.09.2019 demanding the abovesaid amount of Rs.68,28,000/- and further for any other relief(s) for which the petitioner may found entitled to.

3. Petitioner was a lessee of Mines and Geology Department, State of Bihar, in respect of Block No.18, Mauza – Nirpur, Plot No.(1)(p), total area 12.50 acre, which was valid from 16.02.2016 to 16.02.2021. The Mineral Development Officer had inspected the mines site on 18.09.2019 and had found that minerals stones were stocked outside the mining area which was about 109500 cubic feet of 20mm stones and 1050000 cubic feet of stone dust, which amounted for a sum of Rs. 26,28,000/- in respect of stone chips and a sum of Rs. 42,00,000/- in respect of stone dust, total amounting to Rs.

68,28,000/-. The petitioner had represented before the Collector, Shekhpura against the assessment made by the District Mining Officer. The representation of the petitioner was registered as case 01 of 2019 (Mining) and after considering the representation of the petitioner, the District Magistrate had rejected his application by passing an order taking note of the fact that the District Mining Officer has observed in his order that in respect of the stock it was found that license number 13 of 2018 was issued and from the terms and conditions of the license it would appear that the licensee was required to submit his monthly return and renewal fee before 15th of December, which was in violation of rule 51(7)(II) of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the "Rules, 1972" for short) and has further observed that no interference is required with the order passed by the District Mining Officer Contained in Letter No. 969 of 18.09.2019. Against the said order, the petitioner had preferred an appeal before the Mines Commissioner and the Appellate Authority also relying upon the Rule 52(7)(II) of the Rules, 1972 has upheld the order passed by the Mineral Development Authority dated 21.01.2020 and the order passed by the District Magistrate dated 18.09.2019.

4. Learned counsel appearing on behalf of the petitioner submitted that the petitioner was having license in Form (L) to stock minor minerals(stone bolder and stone chips) at Mauza – Nirpur, Khata No.30 Khesra No.115/614,617 and 618 area 35 Dismil, District – Shekhpura on certain terms and conditions and the said license binds the petitioner to abide by the provision of the Rules, 1972 and the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2013 (hereinafter referred to as the "Rules, 2013" for short). The terms and conditions of the said rules are reproduced hereinafter:

> (1)Materials shall have to be removed within the prescribed time- limit.
> (2)Quarrying is not allowed beyond a depth of 3m from the surface.
> (3)Compensation, if any, shall have to be paid for damage to the land covered by permit.
> (4)Felling of trees is not allowed without prior permission of competent authorities within whose jurisdiction the area lies.
> (5)Surface operation shall not be done on any public prohibited and restricted place.
> (6)Every type of accident shall be reported to the Competent Officer immediately.
> (7)The party shall be liable to indemnify the claims of third parties. State Government shall not be responsible for such claims in any way.
> (8)The materials left after the cancellation of the permit shall be forfeited to Government and the same shall be deemed to be Government property.
> (9)No excess quantity of materials beyond this permit shall be removed without obtaining prior permit, otherwise the permit-holder shall be liable for action Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019.
> (10)Proper accounts for the extraction and removal shall be maintained in the prescribed form and a monthly return shall be submitted within the month following the month to which extraction relates.
> (11)e-challans in the prescribed form shall have to be

issued for the materials to be dispatched or sold from the area.

5. The license contained in Form L of the petitioner was renewed for a further period till 31.12.2018 on the similar terms and conditions, by the Mineral Development Authority. The petitioner, thereafter, submitted application in Form (L), in terms of Rules 67(3), alongwith monthly returns, giving the details of the stock stored before the order of renewal was passed by the Mineral Development Authority. The Mineral Development Authority, on the basis of the details of the stock, as contained in Form (H), submitted by the petitioner had passed an order imposing penalty of Rs.68,28,000/- by observing that he may file his clarification within a week and in case of failure, the stock will be put on auction. The petitioner had filed his clarification/representation before the District Magistrate -cum- Licensing Officer, who vide order dated 21.01.2020, without interfering with the order of penalty passed by the District Mining Officer, had observed that the petitioner has violated the terms and conditions as contained in Rule 52(7)(II) of the Rules, 1972, and as such, no interference is required with the penalty order passed by the District Mining Officer. The petitioner, thereafter, filed revision before the Mines Commissioner, who had also upheld the order dated 18.09.2019

passed by the District Mining Officer and the order dated 21.02.2020 passed by the District Magistrate. The petitioner, thereafter, preferred CWJC No.13857 of 2022 and a consent order was passed on 20.06.2023 that petitioner can avail the liberty to file representation before the respondent no.2-the Principal Secretary-cum-Mines Commissioner, Mines and Geology Department, Bihar. It is emphatically submitted by the petitioner that the Mines Commissioner, without taking into consideration of the relevant provision of the Rules, 1972, which is applicable in the case of the petitioner, so far as, stocking of stone chips is concerned and it is admitted by the parties that the petitioner was having license in Form (L1), duly granted upto 31.12.2018 and, thereafter, he had also applied on 21.12.2019 for grant of similar license in From (L1), may be for renewal of stock license, in accordance with the provisions of the Rules, 1972.

6. Learned counsel further submitted that from the order passed by the District Mining Officer, it would appear that he has not given reason as to there was any reason to believe whether the petitioner has violated any of the provisions of the lease agreement, which had already expired on 31.12.2018. Learned counsel further submitted that license in Form (L) is

granted in accordance with Rule 49 of the Rules, 1972 and any action, which is required to be taken by the District Mining Officer in the manner prescribed under Rule 49 of the Rules, 1972. In want of exercise of jurisdiction having been mentioned in the order, the order dated 18.09.2019 is vitiated in the eye of law and same can only be said to be without jurisdiction and the order is a nullity. Learned counsel further submitted that a representation was filed before the District Magistrate, who without considering the said provisions of Rules had relied on Rule 52(7)(II) of the Rules, 1972, which is in respect of outside mining and storage and is not applicable in the case of the petitioner, who was already having a storage license in Form (L). Learned counsel further submitted that sub-rule(3) of Rule 49 provides for imposition of fine of Rs.1000/- or imprisonment of one year and even considering the penal action and statutory provision of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the "Act, 1957" for short), the same is compoundable subject to the payment of fine. What was required by the Authorities of the Mines Department was to accept the fine and petitioner is ready to deposit the fine in accordance with the provision of Rule 49 for violation of any terms and conditions contained in Form (L).

Learned counsel further submitted that the petitioner, after he surfaced the order dated 18.09.2019, he had already applied for renewal of the license in Form (L) on 21.10.2019 and this aspect of the fact has not been considered either by the Collector-cum-Licensing Authority or by the Revisional Authority. On these grounds, learned counsel submitted that order passed passed by the District Mining Officer contained in letter no.969 dated 18.09.2009, the order dated 21.01.2020 passed by the District Magistrate and the order dated 11.08.2022 passed by the Mines Commissioner in Appeal No.1 of 2020 are fit to be set-aside and quashed. Learned counsel further submitted that petitioner has made out a case that his legal right has been violated, considering the fact that Article 48 of the Constitution of India allows mining right to the State Government only in respect of the State finds it proper that sustainable development of the area takes place and, at the same time, the Government generates revenue in public interest. The law in this regard is well settled.

7. *Per-contra*, Mr. Naresh Dikshit, along side Ms. Kalpana, learned counsel appearing on behalf of the Mines Department has raised objection that for similar relief, the petitioner had filed CWJC No.13857 of 2022 and he had chose to file representation before the Mines Commissioner and he is

in habit of not complying with the order passed by the District Mining Officer and the Superior Authorities of the Department, rather, in the present case, instead of depositing a huge sum of Rs.68,28,000/- on account of penalty in accordance with the provision of Rule 52(7)(II) of the Rules, 1972, the petitioner has preferred to file the present writ petition. Learned counsel emphatically submitted that once the petitioner has admitted the fact that he has not been able to obtain Form in Form (G), he has stocked stone chips and stone dust outside the lease area without having any e-challan and now petitioner can not turn around and take a somersault to take plea that the petitioner was not required to obtain requisite e-challan in accordance with the law, once having accepted the said fact. Learned counsel further submitted that even accepting the fact that the petitioner before expiry of the license on 31.12.2018, had applied for renewal of license on 03.11.2018 and license having not renewed in terms of provisions of Rule 49 of the Act, 1972, the same will be deemed to have been expired, without having any authority of law can not be permitted to not deposit the amount of penalty and his license was renewed on 31.11.2018. He again applied for renewal of the said license and it has been admitted that on the basis of separate order, which has been admitted by the petitioner, as would appear from the order dated 21.01.2019. On these grounds, learned counsel has vehemently opposed the relief as prayed for by the petitioner in the present writ petition and has submitted that the writ petition is devoid of any merit and is fit to be dismissed.

8. Heard the parties.

9. Having heard the rival submissions made on behalf of the parties, as well as, the fact that the petitioner was having license in Form (L), and the license was issued under Rule 49 of the Act, 1972, which is reproduced hereinafter:

> "49. (1) Every person who carried business of minor minerals beyond any lease hold area shall obtain a license from the [Competent Officer in Form 'L]" which shall be displayed at a conspicuous place of business] and shall maintain proper accounts of purchase and sale of all such minerals in a register in Form 'G' which shall be produced before the Commissioner, Director of Mines and Additional Director of Mines or Deputy Director of Mines or Competent Officer or any other Officers authorised by the Government, for inspection. [Every application for obtaining license in Form "L"] shall be accompanied with a fee of [Rs. 500 (Five 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. 1000 (One thousand Rupees)]
>
> (2) Every such person as mentioned in (1) shall issue a transport challan in Form 'F' to every carrier, truck, tractor or bullock cart while dispatching minerals for his stock.
>
> (3) If any person as mentioned in (1) fails to maintain a register in Form 'G' or [obtain Form 'L' or"] issue a challan in Form 'F', shall be punishable with a simple imprisonment which may extend to one year or with fine which may extend upto Rs. 1000/- (One thousand) or with both.]"

10. Sub-rule 3 of the Rule 49 provides for

imposition of penalty of Rs.1000/- in violation in any of the terms and conditions of the license issued in Form (L). The petitioner had surfaced the order dated 18.09.2019 passed by the Mineral Development Authority, who, without giving reason to assume jurisdiction, had passed an ex-parte order dated 18.09.2019 behind the back of the petitioner and had imposed a penalty of Rs.68,28,000/- without referring in what manner the petitioner has violated any of the terms and condition of the Act, 1957, Rules 1972 or terms and conditions of the license of the lease license or the license contained in Form (L). It is also not denied that the license contained in Form (L) was renewed on 18.09.2018 till 31.12.2018. Before the petitioner could apply for renewal of license, he surfaced the order passed by the District Mining Officer and, thereafter, the petitioner filed representation before the District Magistrate.

11. The Apex Court in the case of **Manoj Kumar v. Union of India & Ors.,** 2024 LiveLaw (SC) 143, has made following significant observations:-

> *" 17. Judicial review of administrative action in public law is qualitatively distinct from judicial remedies in civil law. In judicial review, constitutional courts are concerned with the exercise of power by the State and its instrumentalities.*
> *18. Within the realm of judicial review in common law jurisdictions, it is established that constitutional courts are entrusted with the responsibility of ensuring the lawfulness of executive decisions,*

rather than substituting their own judgment to decide the rights of the parties, which they would exercise in civil jurisdiction. It has been held that the primary purpose of quashing any action is to preserve order in the legal system by preventing excess and abuse of power or to set aside arbitrary actions… "

12. The question arises, as to whether, in absence of renewal, the petitioner's license in Form (L) will be deemed to have been renewed as per the provision of Rule 43, is a question of determination. The license of the petitioner had expired on 31.12.2018 and from the perusal of the information contained in paragraph no.7 of the writ petition it appears that before the license had expired on 31.12.2018, the petitioner had applied for renewal of license on 03.11.2018 and thereafter, on 20.12.2018, he again applied for renewal of the said license and in the Appellate Order the said fact has been admitted, as would appear from the order dated 21.01.2020.

13. The District Mining Officer, without discussing these facts, had exceeded his jurisdiction, even before any order could be passed or the license of the petitioner could be renewed on the basis of the application dated 20.12.2018, he had passed the Impugned Order on 18.09.2019. The conduct of the District Mining Officer cannot be said to be in accordance with the provision of the Act or the rules, as a consequence the order being without authority of law, can not be sustained. The

petitioner has been able to demonstrate from the pleadings made in the writ petition, as well as, the orders he has suffered and as such he can not be denied his legal right.

14. Taking into account the previously acknowledged position and the petitioner's prompt action in coming before this Court following the rejection of his representation by the District Magistrate and the Appellant Authority, by preferring CWJC No. 13857 of 2022, and this Court, without interfering with the order, instructed the petitioner to file representation before the Authority if they so choose.

15. The above admitted facts have not been considered by the Authority particularly the fact, as to whether, there is any violation of the Rule 49 of the Rules, 1972, which amounts to violation of terms and conditions of Form (L), having been issued to the petitioner after he had fulfilled all the criterion. In accordance with sub-Rule 3 of the Rule 49, the authority, at the best, could have fined him and failure to the same, he was required to be subjected to penal action of imprisonment of one year. The order dated 08.08.2023 and 11.08.2022 to be without jurisdiction are accordingly set-aside and quashed. The authorities concerned are directed to correct

the in action to the above effect in accordance with law.

16. Accordingly, the present writ petition is disposed of.

(Purnendu Singh, J.)

Niraj/-
Ashishsingh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.05.2024
Transmission Date	NA