

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17439 of 2023

Shivshankar Kaushik Infrastructure Private Limited a company registered under the Companies Act, having its registered office at C/o Manoj Kumar Singh, Kshatriya Colony, Ramnagar Andar Dhala, Siwan - 841226, through its authorised signatory Shashi Kapoor Prasad, aged about 30 years (male), son of Raj Kumar Prasad, Resident of Village Tari, Tanri, P.S. Raghunathpur, District Siwan 841509.

... .. Petitioner/s

Versus

1. The State of Bihar Through the principal Secretary, Mines and Geology Department Government of Bihar, Patna.
2. The Principal Secretary cum Mines Commissioner, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The District Magistrate, Bhojpur.
5. The Mineral Development Officer, Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate
	:	Mr. Avinash Shekhar, Advocate
For the State	:	Mr. Government Pleader 5
For the Mines Dept.	:	Mr. Naresh Dikshit, Special PP Mines

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 26-09-2024 Heard Mr. Suraj Samdarshi, learned counsel for the
petitioner and Mr. Naresh Dikshit, learned Special PP Mines.

2. The present petition has been filed for the grant of
following reliefs:-

*i) To issue an appropriate writ, order or
direction in the nature of mandamus
commanding the Respondents to refund Rs.
11,17,80,000/- deposited by the Petitioner as
Security Deposit for settlement of Bhojpur Sand
Ghat no. 21, considering the fact that State*



Environment Impact Assessment Authority, Bihar has rejected the petitioner's proposal for grant of Environment Clearance vide Ref No. 360 dated 16.10.2023.

ii) This Hon'ble Court may adjudicate and hold that since the State Environment Impact Assessment Authority, Bihar has rejected Petitioner's proposal for grant of environment clearance, which is an essential prerequisite for conducting mining activity under Rule 18 (2); Rule 28 and Rule 29(A)(1)(e) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, the petitioner is entitled for refund of Rs. 11,17,80,000/- deposited as Security Deposit for settlement of Bhojpur Sand Ghat no. 21.

iii) This Hon'ble Court may further adjudicate and hold that since the State Environment Impact Assessment Authority, Bihar, has rejected petitioner's proposal for grant of environment clearance for Bhojpur Sand Ghat no. 21, the performance of contract arising out of letter of intent contained in letter no. 4649 dated 22.11.2022 and in principal approval contained in letter no. 4724 dated 25.11.2022 has become impossible on the part of the petitioner leading to frustration of contract and therefore the petitioner is entitled to refund of security deposit of Rs. 11,17,80,000/- deposited for settlement of Bhojpur Sand Ghat no. 21.



iv) This Hon'ble Court may further adjudicate and hold that petitioner cannot be penalised for non-issuance of environment clearance by State Environment Impact Assessment Authority, Bihar for carrying on mining activity.

v) This Hon'ble Court may further adjudicate and hold that the action of the Respondents in not refunding the security deposit to the petitioner is highly illegal, arbitrary and unreasonable.

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

3. The facts of the case is/are as follows:-

4. The petitioner had participated in an auction conducted by the Mines and Geology Department (henceforth for short 'the Department') for settlement of **sand ghat no. Bhojpur Son -21, in the district of Bhojpur.**

5. The reserve price for sand ghats no. Bhojpur Son -21 was Rs.24,84,00,000/-. The petitioner had deposited earnest money deposit of Rs. 6,21,00,000 for participating in the auction. The auction was conducted on 21.11.2022 and the petitioner emerged as the highest bidder after quoting Rs.44,71,20,000/-

6. The respondent Mineral Development Officer,



Bhojpur thereafter issued letter no. 4649 dated 22.11.2022 by which the petitioner was directed to deposit the security deposit of Rs. 11,17,80,000/-. Since the petitioner had deposited EMD of Rs. 6,21,00,000 for participating in the tender, he was required to deposit the deficit amount of Rs. 4,96,80,000/-.

7. Accordingly, the petitioner deposited the requisite amount whereafter, an in principal approval was issued in his favour vide letter no. 4724 dated 25.11.2022 by the Respondent Mineral Development Officer, Bhojpur.

8. Further, according to the Rule 18 (2); Rule 28 and Rule 29(A)(1)(e) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 (henceforth for short 'the Rules'), a mineral concessionaire is required to obtain a prior environment clearance before the commencement of mining activity under the provisions of Environment (Protection) Act, 1986 (henceforth for short 'the Act') and the notifications issued thereunder.

9. This requirement of obtaining prior environment clearance with respect to mining of minor mineral was for the first time prescribed under notification bearing SO 1533 dated 14.09.2006 which was subsequently amended in the year 2016 vide SO 141 (E) dated 15.01.2016 by which requirement for



preparing a district survey report and mining plan for minor minerals was incorporated.

10. Further, according to the aforesaid notification SO 1533 dated 14.09.2006 and SO 141 (E) dated 15.01.2016 the process of obtaining environment clearance is as follows:

- a) preparation of District Survey Report (DSR) by District Level Environment Impact Assessment Authority (DEIAA) with the assistance of all concerned department of the state government for the entire district.*
- b) preparation of mining plan and pre-feasibility report for the project by the Recognised qualified professional on the basis of the DSR.*
- c) submission of proposal application of prior environment clearance along with pre-feasibility report and mining plan to MOEF/ State Environment Impact Assessment Authority (SEIAA) / District Environment Impact Assessment Authority (DEIAA).*
- d) preparation of Terms of Reference by Expert Appraisal Committee (EAC)/ State Expert Appraisal Committee (SEAC)/District Expert Appraisal Committee (DEAC) and providing the same to the project proponent for preparation of draft Environment Impact Assessment (EIA)/ Environment Management Plan (EMP) by the State or State Nominated agency.*
- e) public hearing/consultation on the EIA/EMP*



to be conducted by the State Pollution Control Board.

f) finalisation of the Draft EIA/EMP by the project proponent on the basis of the inputs of the public hearing.

g) appraisal or scrutiny of the Final EIA/EMP by the EAC/SEAC/DEAC and categorical recommendation thereupon for either grant or prior Environment Clearance or rejection of the application.

h) MoEF/SEIAA/DEIAA to either grant or reject the application for prior Environment Clearance on the basis of recommendation of the EAC/SEAC/DEAC.

11. The petitioner thus submitted a mining plan to the Department for its approval which was approved by 'the Department' vide letter no. 6110 dated 13.12.2022 issued by its Joint Secretary.

12. Consequent thereto, the petitioner applied to the State Environment Impact Assessment Authority (henceforth for short 'the SEIAA') along with prefeasibility report and mining plan for grant of prior environment clearance. Consequent thereto, the Terms of Reference was issued to the petitioner vide letter dated 27.01.2023.

13. The petitioner thereafter in the light of the above,



prepared a draft EIA/EMP and submitted the same to the Member Secretary, Bihar Pollution Control Board (henceforth for short 'the Board') vide letter dated 18.04.2023 along with a sum of Rs. 1,50,000/- as cost of public hearing with the request to conduct the public hearing. The Member Secretary of 'the Board' vide letter no. 682 dated 24.04.2023 requested the District Magistrate Bhojpur to fix the date, time and place for conducting the public hearing.

14. Thereafter, in the light of the schedule provided by the District Magistrate, the Member Secretary of 'the Board' vide letter no. 707 dated 02.05.2023 fixed 31.05.2023 as the date of public hearing and requested the District Magistrate, Bhojpur to chair the said public hearing.

15. The public hearing was conducted on 31.05.2023. Consequent thereto, the Member Secretary 'the Board' vide letter no. 991 dated 09.06.2023 submitted the minutes of public hearing to 'the SEIAA' and a perusal of the minutes shall reveal that the local villagers had raised objection on the project stating that there is no sand in the area; mining is being conducted in excess of 10 meters depth illegally; illegal mining is prevailing in the entire area. Upon the objections, the Mining Inspector had suggested that if after monsoon, sand becomes



available then the project may be considered for approval. The petitioner thereafter waited for lapse of monsoon season and submitted its final EIA on 14.09.2023. It was considered by the SEAC, Bihar in its 27th meeting dated 22.09.2023 and 23.09.2023 as Agenda Item no. 3 and petitioner proposal was recommended to be rejected on account of the objections raised by the locals regarding non-availability of sand. This fact would be evident from a perusal of relevant portion of minutes of 27th meeting of SEAC contained in ref no. 344 dated 05.10.2023.

16. Accordingly, the petitioner's proposal for grant of environment clearance was considered by 'the SEIAA', Bihar in its 43rd meeting held on 09.10.2023 and 10.10.2023, upon consideration of the recommendation of SEAC, Bihar, it rejected the petitioner's application for grant of environment clearance. This fact would be evident from a perusal of minutes of meeting of the 43rd meeting of 'the SEIAA' Bihar contained in ref no. 360 dated 16.10.2023.

17. Since the grant of environment clearance of the petitioner was rejected by 'the SEIAA', Bihar, the petitioner could not have conducted mining activity at the mining site. Therefore, the petitioner vide letter dated 20.10.2023 requested the Respondent Mineral Development Officer, Bhojpur to



refund the security deposit given by the petitioner for sand ghat no. Bhojpur cluster 21. Meanwhile 'the SEIAA' vide letter no. 384 dated 02.11.2023 officially intimated the petitioner regarding rejection of its proposal for grant of prior environment clearance for proposed sand mining project of Bhopur Sand Ghat No. 21.

18. The petitioner had deposited a huge sum of Rs. 6,21,00,000/- as EMD for participating in the auction and consequent to being declared as the highest bidder deposited an additional amount of Rs. 4,96,80,000/- in the light of letter no. 4649 dated 22.11.2022. Thus, the petitioner had deposited an amount of Rs. 11,17,80,000/- as Security Deposit for settlement of Bhojpur Sand Ghat no. 21.

19. The petitioner is facing a huge financial crunch on account of said amount of Rs.11,17,80,000/- getting stuck while he did not get any opportunity to mine the sand ghat allotted to him.

20. A counter affidavit has been filed on behalf of the respondent nos.4 and 5 and according to them:-

i. as per conditions of tender document, the petitioner have to obtain Environmental Clearance, which is issued by the State Environment Impact Assessment Authority,



Bihar; but the petitioner has not made respondent to him.

ii. instead of trying for environmental clearance, the petitioner wants to somehow withdraw from the auction and get the amount back which is violation of terms and conditions of tender document.

iii. the fact of the case is that the petitioner after having fully satisfied with terms and conditions of tender document and availability of sand deposit, participated in auction for settlement of Sand Ghat No. 21 and having bidden highest was declared the highest bidder. After the petitioner deposited the requisite amount (Security Deposit), the principal approval was issued on 25.11.2022.

iv. as per the Rule 18(2); Rule 28 and 29(A)(1) (e) of 'the Rules' the petitioner was required to obtain statutory clearance from competent authority before commencement of mining operations.

v. that as per the provision, petitioner submitted the Mining Plan which approved thereafter an application before SEIAA for pre-feasibility report/Draft EIA was submitted. As per provision public hearing was conducted by the Pollution Control Board on 31.05.2023 wherein local villagers have raised objection about having no sufficient sand is available in the area. The Mining Officials suggested that after



monsoon sufficient sand will be available/replenished for the sand ghat/project.

vi. the above objection has been raised so that the ghat does not become operational and the illegal mining continues.

vii. in the year 2022-23, Mines and Geology Department, Bihar has conducted Replenishment Study through (Central Mine Planning and Design Institute) CMPDI, Ranchi wherein the availability of sand was said to be 112%. Apart from this, in the monsoon season 2023-24 sufficient amount of sand has been replenished in the Sone river. However without considering above fact SEIAA, Bihar rejected the environmental clearance.

viii. the petitioner made a representation before the District Mining Office, Bhojpur for refund of security deposit considering the representation of the petitioner and availability of sand at BHOJ SON-21, Collector, Bhojpur vide letter no. 4657 dated 13.11.2023 has directed the petitioner to again initiate all requisite process and reconduct public hearing for grant of EC because monsoon season lapsed and sand is replenished at that sand ghat.

ix. a perusal of the aforesaid letter dated 13.11.2023 wherein reference to Clause 42(xix) of the Tender Document has been made would show that the bidder before participating in the auction process shall visit and assess the



availability of sand, route transportation/exit and other NOC is from Water Resources Department. On being satisfied with the factual aspect, shall participate in the tender process.

x. after the completion of auction no objection / claim shall be accepted. The petitioner being satisfied for all such provisions and availability of sand has participated in the e-auction and even must have assessed the market demand and only assessing such facts has emerged as highest bidder. However, in one of the public hearing, objections was raised about the non availability of sand, but for the year 2022-23, Mines and Geology Department, Bihar has conducted a Replenishment Study by CMPDI, Ranchi wherein the rate of replenish of sand was said to be 112%. Apart from this, in the monsoon season 2023-24 sufficient amount of sand has been replenished in the Sone river. Referring to all these factual aspects, the petitioner was requested to have a reconduct public hearing in the interest of State Revenue.

xi. however, the petitioner started demanding security money without making any second attempt to get EC and filled this writ petition. Considering the attitude of the petitioner, the Collector, Bhojpur vide letter no. 4959 dated 13.12.2023 addressing the petitioner directed him to appear before him on 06.01.2024 at 4:00 P.M. In the aforesaid letter provisions of Clause



19(iii) and 21(v) has been mentioned which says that the successful bidder if fails to perform the required procedure, the security money shall be forfeited and debarred for two years in future auction process. Clause 21(v) speaks that without any valid reason, if the E.C. is not obtained or interest is not shown in obtaining E.C., in such situation the Collector may forfeit the security deposit and fresh auction shall be initiated.

xii. apart from the aforesaid letter, the Department of Mines & Geology vide letter no 6099 dated 29.12.2023 has also requested the SEIAA and Bihar Pollution Control Board to reconsider the decision of rejection of EC of Sone Sandghat No- 21.

xiii. due to non- presence of a valid lease holder, the illegal excavation/mining is on rampant speed and such elements do try to frustrate the valid/legal mining, causing loss of revenue to the State, although the regular vigilance/inspection is being done to control the illegal mining activity. That shows that the respondents are equally trying their best to get the EC for the sand ghat no-21.

21. Having heard the parties, the fact that emerges is/are that on one hand, the case of the petitioner is that pursuant to he being the successful tenderer, a huge amount of Rs.11,17,80,000/- was deposited, as subsequently, 'the SEIAA'



rejected the case, pursuant to the demand made by the respondents, contrary to the statement made in the counter affidavit, the petitioner has deposited money for the second attempt to get the environmental clearance but for no fault of his, the payment made on 22.11.2022 is being withheld for almost two years.

22. The respondents came out with a settlement of Bhojpur sand ghat no.21, pursuant there to the petitioner participated in it, being declared a successful tenderer, he deposited altogether Rs.11,17,80,000/-. The fact remains that subsequently, environmental clearance was not approved and in the meantime, two years have lapsed.

23. Though, the learned sepcial PP, Mines took this Court to the request being made by the respondents to 'the SEIAA' vide letter no.6099 dated 29.12.2023 (Annexure R/D) to show the bonafide of the Department, this Court is afraid, nine months have passed without any further persuasive action on behalf of the respondents.

24. A tender was issued for the concerned ghat, the petitioner participated in it, deposited an amount, subsequently failed to get an environmental clearance, the natural demand will be to refund the amount. The respondents cannot keep on directing the petitioner to take steps for seeking environmental



clearance when already two years have lapsed since he deposited the amount. The respondent no.2, the Principal Secretary of the Department has to give a hearing to the cause of the petitioner to pass a comprehensive order.

25. In that background, the writ petition stands disposed of with the direction that the petitioner will be preferring a petition along with all the documents in next two weeks before respondent no.2, the Principal Secretary, Mines and Geology Department, Bihar, Patna.

26. If such petition is filed, thereafter, the concerned respondent will be duty bound to look into the matter and pass a comprehensive order on the cause of the petitioner within a period of three months thereafter.

27. If the concerned respondent comes to the conclusion that the petitioner is entitled to the refund, the same has to be cleared within a period of four weeks from the date, the decision is taken by the said respondent.

28. The writ petition stands disposed of.

(Rajiv Roy, J)

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