

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7887 of 2025

Hari Construction and Associates Pvt Ltd a compnay incorporated under the Companies Act, having it office at Keshawe, P.S. Barauni, District- Begusarai, through its authorised representative Sanjeev Kumar, about 54 years (Male), son of Rama Kant Chaudhary, Resident of Ward No.23, Road no. 1, Laxmi Nagar, P.S. Town, Begusarai, Bihar 851101.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, 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 Assistant Director, District Mining Office, Khagaria.
5. The Mineral Development Officer, District Mining Office Khagaria.
6. The Deputy Railway Manager, East Central Railway, Railway Division Sonpur.
7. The Deputy Chief Engineer, Construction (II), Railway Division Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Avinash Shekhar, Advocate Ms. Simran Kumari, Advocate
For the Railways	:	Ms. Parul Prasad, Advocate Mr. Vikash Hansa, Advocate
For the State	:	Mr. Yogendra Prasad Sinha, AAG-7

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
ORAL JUDGMENT

Date : 04-11-2025

Heard learned counsel for the petitioner; learned counsel for the State and learned counsel for the Mining Department.

2. The petitioner has moved the Court for the following reliefs:

“i) To issue an appropriate writ, order or direction in



the nature of certiorari for quashing letter no. 374 dated 26.06.2024 issued by Respondent Assistant Director-cum-In charge Mineral Development Officer, Khagaria, whereby and whereunder a penalty of Rs. 6,40,18,250/- (Rupees Six Crore Forty Lakhs Eighteen Thousand Two Hundred and Fifty only) has been levied upon the petitioner under provisions of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 (hereinafter referred to as the "2019 Rules") for allegedly excavating 70543.50 cubic meter soil.

- ii) During pendency of this writ application, this Hon'ble Court may direct the Respondents to not to take any other coercive steps against the petitioner for recovery of the penalty amount of Rs. 6,40,18,250/-*
- iii) This Hon'ble Court may further adjudicate and hold that letter no. 374 dated 26.06.2024 issued by the Respondent Assistant Director-cum-In charge Mineral Development Officer, Khagaria is bad in the eyes of law since the same has been issued in glaring violation of the principles of natural justice as the petitioner has not been afforded any show cause notice whatsoever to controvert the allegations upon which the penalty has been levied.*
- iv) This Hon'ble Court may further adjudicate and hold that the levy of penalty contained in letter no. 374 dated 26.06.2024 is in gross violation of the maxim audi alteram partem as the petitioner has been condemned unheard without an opportunity to defend the charges against it.*
- v) This Hon'ble Court may further adjudicate and hold that the imposition of penalty upon the petitioner is in violation of the 2019 Rules ?*
- vi) This Hon'ble Court may further adjudicate and hold that the levy of penalty contained in letter no. 374 dated 26.06.2024 is bad in the eyes of law as the same has been levied without compliance with Rule 59 of the 2019 Rules."*

3. The contention of the learned counsel for the petitioner is that the impugned order dated 26.06.2024 passed by the Assistant Director-cum-Incharge Mineral Development Officer, Khagaria by which penalty of Rs.6,40,18,250/- has been



imposed upon the petitioner has been passed without affording any opportunity of hearing to the petitioner.

4. The learned counsel for the petitioner submitted the brief facts relevant for the purpose of the present writ is that the East Central Railway had floated a tender for construction of sub-structure of Major Bridge No. 16 UP on well foundation, earthwork, blanketing and boulder pitching in approaches, transportation, erection, and launching of 61.0 m span, open web Gerd and other associated works of major bridge No.16 UP in connection with rebuilding of the aforesaid Bridge No.16 UP between Khagaria and Umesh Nagar in Sonpur division. The petitioner participated in the said tender process and emerged as the lowest bidder consequent to which the Letter of Award was issued on 05.10.2023 in favour of the petitioner. After execution of the agreement, the petitioner in January 2024 started the construction work of the railway bridge as the terms of the tender and LoA.

5. The learned counsel for the petitioner has further submitted that in order to meet the requirement of spoil for earthwork, entered into agreement with nearby land owners and agreed to pay charges to the land owner. Thereafter, the petitioner periodically raised bill with the railways and the



Railways deducted royalty charges from the bills of the petitioner. The petitioner has also brought on record three bills in order to substantiate this fact and it is submitted by the learned counsel for the petitioner that a perusal of the bills shall reveal the quantity of earth used by the petitioner and the amount of royalty deducted by the Railways from the bills of the petitioner. The aforesaid deduction from the bills of the petitioner was by virtue of Rule 57 of the 2019 Rules which reads as follows:

"Seigniorage Fee from Government Projects.-

- (1) All the Government Departments, particularly Works Departments using any minor mineral for their schemes or projects, shall deduct a Seigniorage Fee from their suppliers or works contractors of such minor minerals.*
- (2) Such Seigniorage Fee shall be at a flat rate of 10(ten) percent of the mineral value involved in the estimate and shall be deducted by the Works Department from their supplier/works contractors and deposited with the Mining Officer of the district.*

Provided that the State Government may increase or decrease the Seigniorage Fee from time to time."

6. Adverting to Rule 57 of the 2019 Rules the learned counsel has submitted that the aforesaid Rules contemplates that in cases where minerals is used in government projects, it is the responsibility of the department to deduct the royalty for the minerals and deposit the same with the mining office, considering the above, the petitioner entered into



agreements with the land owners for utilising the earth from their land and utilised the same in the railway project. It is submitted by the learned counsel for the petitioner that in the month of March 2024 the petitioner was asked by the District Mining Office to obtain a quarrying permit for excavation of earth/soil. In compliance thereto, the petitioner filed an application for grant of quarrying permit for 79,088 cubic meter of soil, further the petitioner also submitted a mining plan which was approved by the department *vide* letter no. 02 dated 09.04.2024 issued by the District Mining Officer, Khagaria. Consequent thereto, the petitioner was granted a quarrying permit dated 13.04.2024 for 10,000 cubic meter of soil. The petitioner also paid Rs. 3,63,000/- to the respondent mining department.

7. Thereafter, when the petitioner went to the District Mining Office for issuance of permit for additional quantity, the officials of the District Mining Office, Khagaria refused to grant further permit. On the contrary the petitioner was handed over letter no. 374 dated 26.06.2024 issued by Respondent-Assistant Director-cum-In charge Mineral Development Officer, Khagaria, whereby a penalty of Rs. 6,40,18,250 /- had been imposed upon the petitioner under



provisions of 2019 Rules for allegedly excavating 70543.50 cubic meter soil from six sites at Mauza Pragna falling under Mufassil Police Station.

8. Adverting to the aforesaid letter imposing penalty, the learned counsel for the petitioner has submitted that, it is not stated therein as to in what manner the excavation is illegal i.e. whether the excavation is beyond the permissible area or in excess of the permitted quantity. It is only alleged that the petitioner has excavated 70,543.50 cubic meter soil. Further, neither the petitioner was intimated about any inspection nor the alleged inspection was conducted in his presence. Moreover, no inspection report was provided to the petitioner. The petitioner has not been issued any show cause prior to imposing the aforesaid penalty. Therefore the petitioner was not issued any show cause to rebut the allegations levelled against him.

9. Lastly, it is argued by the learned counsel for the petitioner that the imposition of penalty of a huge amount to the tune of Rs. 6,40,18,250/- upon the petitioner is completely illegal and in violation of the principles of natural justice as well as the 2019 Rules. It is emphasised by the learned counsel for the petitioner that the petitioner has basically been condemned unheard without a reasonable opportunity to meet the



allegations. It is settled proposition of law that no person can be condemned unheard. The impugned imposition of penalty thus fails miserably when tested on the touchstone of "*audi alteram partem*". Furthermore, it is submitted that since the department of Railways has already deducted the royalty for the earth/soil utilised by the petitioner, the petitioner is not liable to pay any additional amount of royalty to the department of mines.

10. Learned counsel for the petitioner has relied upon a judgment of this Court in the case of *Ms. Uma Associates vs. The State of Bihar & Ors.* passed in *C.W.J.C. No. 3400 of 2023*.

11. Counter affidavit has been filed on behalf of respondent nos. 4 and 5 in which paragraph nos. 9, 10 and 11 reads as under:

“9. That it is further submitted that while conducting raids against illegal mining, transportation and storage under Khagaria district, Khagaria Muffassil P.S case no.- 175/2024 was registered. It is worth mentioning that Hari Construction is carrying out railway work between Umesh Nagar Railway Station and Budhi Gandak River, and the said contractor has deposited 50000 cubic meters of soil amounting to Rs. 18,15,000/- (eighteen lakh fifteen thousand rupees only) in the mining head, and the railway related contractors have



to deposit the mining royalty at the time of clearance of the bill, otherwise their bill is not cleared by the government. This makes it clear that the said amount has been deposited in the mining head office only after the raid the said amount was paid.

- 10. That it is pertinent to mention here that the persons present at the said place during the raid have been made to testify. In view of the work done by Hari Construction, an amount of Rs. 18,15,000/- (Eighteen lakh fifteen thousand rupees only) has been deposited in the mining head. A fine of Rs. 6,40,18,250/- (six crore forty lakh eighteen thousand two hundred fifty) has been imposed against the contractor/Petitioner, through letter no. 374 dated 26.06.2024, under the relevant sections of Bihar Minerals (Subsidy, Prevention of Illegal Mining, Transportation and Storage) Rules-2019, as amended by Rules 2021 for causing revenue loss and the contractor has been directed to deposit the above amount at the earliest.*
- 11. That it is humbly stated that in fact, the District Public Grievance Redressal Officer, Khagaria in complaint case no.- 421110123032406220, has duly heard the case and the answering respondents have also submitted their clarification contained in memo no.- 272 dated 15.04.2024 and memo no.- 292 dated 09.05.2024 and the DPGRO, Khagaria in his order dated 22.05.2024, has observed and held that the Petitioner is found to be liable to pay*



the Rs. 6,40,18,250/- and if such amount is not paid by the Petitioner then notices be issued to the petitioner and the Petitioner shall be directed to make the payment.”

12. I have considered the submissions of the parties and perused the materials available on record.

13. It is submitted by learned counsel for the petitioner that the impugned order does not mention the date of inspection and there is no inspection report available on record and the same has not even been brought on record by way of counter affidavit. He further submits that the alleged inspection was not done in his presence i.e., the petitioner was never issued any notice before the inspection. He further submitted that the impugned order dated 26.06.2025 by which the huge penalty of Rs. 6,40,18,250/- has been passed in complete violation of the principles of natural justice i.e., the order has been passed without issuing any notice to the petitioner and without hearing the petitioner.

14. This Court in the case of ***Uma Devi vs The State of Bihar (supra)*** in paragraph-8 has held as follows:

“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.”

15. The doctrine of *audi alteram partem* has three basic essentials. Firstly, a person against whom an order is required to be passed or whose rights are likely to be affected adversely, must be granted an opportunity of being heard. Secondly, the authority concerned should provide a fair and transparent procedure and lastly, the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order.

16. The penalty imposed upon the petitioner without issuing show cause notice and not affording them an opportunity of being heard cannot be sustained. Furthermore, since the impugned order has been passed on the basis of an alleged inspection about which no record is available and no date is mentioned and considering the complete violation of the principles of natural justice before passing the penalty order, this application deserves to be allowed and is accordingly allowed.

17. The impugned order dated 26.06.2024 issued by Respondent Assistant Director-cum-In charge Mineral



Development Officer, Khagaria, is hereby quashed with liberty to the respondent authority to proceed against the petitioner in accordance with law if so advised from the stage of inspection i.e. after conducting a fresh inspection in presence of the petitioner with advance notice to the petitioner.

(Sandeep Kumar, J)

P. Kumar

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	28.11.2025
Transmission Date	N/A

