

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.676 of 2025

In
Civil Writ Jurisdiction Case No.6873 of 2025

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1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Vikash Bhawan, Bailey Road, Patna.
 2. The Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
 3. The Additional Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road Patna.
 4. The Director, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
 5. The District Magistrate cum Collector, Sheikhpura.
 6. The Mineral Development Officer, Sheikhpura.

... .. Appellant/s

Versus

Arena Food and Agro Industries Private Limited a Company incorporated under the provisions of the Companies Act, 1956, having its registered office at Village Nimi, P.S. Shekhopur, District Sheikhpura, through its Director, Shreekrishan Kumar, aged about 39 (male) Son of Harangi Singh, resident of village Nimmi, P.S. Shekhopur, District- Sheikhpura.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. P.K. Shahi, AG Mr. Ajay, GA-5 Mr. Ajit Kumar, GA-9 Mr. Pratik Kumar Sinha (AC to GA-5) Mr. Saurav Kumar, Advocate Ms. Nivedita, Advocate
For the Respondent/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Ms. Simran Kumari, Advocate Ms. Abhilasha Jha, Advocate

CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT



(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date : 11-07-2025

Re: Interlocutory Application No. 01 of 2025

The learned Advocate for the appellants/ applicants presses the instant interlocutory application for condoning the delay of 28 days in preferring this appeal.

2. This appeal has been listed on special mentioning by the learned Advocate General under very peculiar circumstance. We, therefore, deem it appropriate to ignore all the defects pointed out by the Stamp Reporter.

3. For the reasons stated in the application, the delay of 28 days in preferring this appeal is condoned.

4. I.A. No. 1 of 2025 stands allowed.

Re.: L.P.A.No. 676 of 2025

1. The challenge to the judgment dated 05.05.2025, passed by a learned Single Judge in CWJC No. 6873 of 2025, is only on the limited ground of the lawyer appearing for the Mines Department having agreed to a proposal offered by the writ petitioner, pursuant to which the judgment was passed, and for which concession, the lawyer did not have the express mandate of the Department



of Mines.

2. It has also been argued that without substantiation by any written instruction/affidavit or any express instruction to the lawyer, the concession given by him, even if in the end result is financially beneficial to the Department, cannot bind the Department. On this slender issue, the appeal aims at having the judgment set aside and the matter remanded to the learned Single Judge to decide afresh.

3. It would not be very necessary to refer to the facts of the case in detail. What is required to be stated for appreciation of the argument on behalf of the appellants/State is that the writ petitioner had obtained a mining lease in Sheikhpura for Rs.29 crores for 05 years, which expired sometime in the year 2022. According to the lease agreement, the amount of Rs.29 crores was to be deposited in five equal installments. Since the lease was auctioned, therefore, the settlement amount was actually the royalty. The writ petitioner also had taken the environmental clearance by the State Environment Impact Assessment Authority, which had proposed the capacity of



production at 11,41,250 tons per annum.

4. It appears from the judgment impugned that the learned Single Judge took note of the fact that a lesser amount of minerals could be extracted during the five-year tenure. However, after the expiry of the lease, some stones were found to be stowed on the mining site, for which additional royalty was demanded. Some part of the additional demand was met by the petitioner, though claimed to have been done on wrong advice; but the petitioner litigated with respect to the rest of the royalty amount, which ran in about Rs. 6 crores.

5. The learned Single Judge also took note of the fact that the stowed mineral at the mining site was contemplated to be auctioned at a much lesser price. In that context, the conclusion of a judgment in CWJC No. 13532/2023 was taken into account, which read as follows:

“6. Considering the submissions made on behalf of the parties and taking note of the bonafide undertaking of the petitioner that he is ready to deposit the additional royalty amount within a period of six months, this Court deems it apt and proper to allow the petitioner to pay the amount in six equal instalments on monthly basis

7. However, it is needless to observe that the



permission to lift the boulder/stones shall be issued only after payment of first installment, before 10th of November, 2023. It is also made clear that within six months i.e., upto 10.04.2023 the entire payment of additional royalty of Rs. 6,25,34,581/- must be made within six equal monthly installments. Failure of any installment in any month would lead to cancellation of the order, giving liberty to respondents to take appropriate action. Further, this order will not prevent the Mines Department to make any settlement with any lessee in connection with the site, in question, but during this period of six months, the site, in question, will not be handed over to the successful bidder.”

6. Though on behalf of the Mines Department, it was initially submitted that the directions were very clear that upon failure of payment of any installment, there would be cancellation of the order granting liberty to the respondents to take appropriate action, and the Mines Department would be free to make any settlement with any party in connection with the minerals lying at the site through auction.

7. After having noted the various stages of litigation between the parties, i.e., the Mines Department



and the writ petitioner, the learned Single Judge agreed to the plan offered by the petitioner for payment of additional royalty with the permission to the writ petitioner to lift the minerals already stowed at the site. But before doing this, the learned Single Judge asked for the response of the Mines Department.

8. The learned Advocate for the Mines Department, with initial reluctance, agreed to ratify the plan proposed by the writ petitioner and agreed to by the Writ Court, considering that the result in effect would only bring financial benefits to the Mines Department.

9. Today, the learned Advocate General submits that if it were the decision of the learned Single Judge, it might or might not have been challenged; but the decision is primarily based on the concession of the lawyer appearing for the Department, who did not have the express instructions to agree to such a plan. The Writ Court also did not ask for any affidavit or written instructions to be placed on record.

10. Hence, the challenge and the request for remanding the matter to the learned Single Judge for



writing out a fresh judgment on the claim of the writ petitioner after the matter is wrested by both the parties.

11. On being questioned by the Court that if the plan set out in the order was not on the instructions/concession of the Mines Department, then, perhaps, acceptance of money in terms of the order amounted to a clear acquiescence, the learned Advocate General submitted that such aspect should, for the moment not be looked into, and pointed out that since 1990, the consistent judicial view is that *any concession made by a government pleader cannot bind the government, as it is obviously always unsafe to rely on the wrong or erroneous or wanton confession made by the counsel appearing for the State, unless it is in writing on instructions from the responsible officer*. [refer to ***Periyar and Pareekanni Rubbers Ltd. v. State of Kerala; AIR 1990 SC 2192***].

12. He has further pointed out that in ***Periyar and Pareekanni Rubbers Ltd.*** (supra), it was clarified that the same yardstick cannot be applied when the Advocate General makes a statement across the bar. Since the Advocate General makes the statement with responsibility



and in that case, any concession made would be binding.

13. In the present case, the Department had not given any express instruction to the lawyer concerned for agreeing to the proposal of the writ petitioner even though, in the long run, it would have been beneficial for the Department financially.

14. In order to buttress his submissions, a few paragraphs from the decision of the Supreme Court in ***Himalayan Coop. Group Housing Society v. Balwan Singh & Ors.; (2015) 7 SCC 373*** were brought to our notice.

15. We consider it to be more expedient and profitable to extract those paragraphs in their entirety for appreciating the law of agency applicable in a client-lawyer relationship.

“22. Apart from the above, in our view lawyers are perceived to be their client's agents. The law of agency may not strictly apply to the client-lawyer's relationship as lawyers or agents, lawyers have certain authority and certain duties. Because lawyers are also fiduciaries, their duties will sometimes be more demanding than those imposed on other agents. The authority-agency status affords the lawyers to



act for the client on the subject-matter of the retainer. One of the most basic principles of the lawyer-client relationship is that lawyers owe fiduciary duties to their clients. As part of those duties, lawyers assume all the traditional duties that agents owe to their principals and, thus, have to respect the client's autonomy to make decisions at a minimum, as to the objectives of the representation. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. The law is now well settled that a lawyer must be specifically authorised to settle and compromise a claim, that merely on the basis of his employment he has no implied or ostensible authority to bind his client to a compromise/settlement. To put it alternatively that a lawyer by virtue of retention, has the authority to choose the means for achieving the client's legal goal, while the client has the right to decide on what the goal will be. If the decision in question falls within those that clearly belong to the client, the lawyer's conduct in failing to consult the client or in making the decision for the client, is more likely to constitute ineffective assistance of counsel.

31. Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any



concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.”

16. It has further been submitted that generally if an admission of a fact is made by counsel, it would be binding on the principal as long as it is unequivocal. In case of any doubt, it would be safer for the court not to accept such admission until and unless the counsel making it is authorised by his principal to make such admission. Lastly, he has submitted that a client, and in this case, the Department is not bound by a statement of admission, which his lawyer was not authorised to make. [Also refer to ***Bar of Indian Lawyers through its President Jasbir Singh Malik v. D.K.Gandhi PS National Institute of Communicable Diseases & Anr.; (2024) 8 SCC 430; Paragraph 51***].

17. Mr. Suraj Samdarshi, the learned Advocate for the writ petitioner/respondent has laid stress on the



Department having accepted that offer and gone ahead and, therefore, the department of the government be not permitted to adopt a wavering approach and be permitted the latitude of changing their mind for no apparent good reason.

18. True it is, it has been further argued, that the lawyer for the Mines Department initially objected to the proposal made by the writ petitioner, but ultimately agreed for bona fide reasons. If the judgment was complied with initially, as some part of the payment of additional royalty was made by the writ petitioner and accepted by the Department, any back-pedaling on the issue would be damaging to the institution and also would be unfortunate, as under many circumstances, a court of law passes a judgment on the acceptance of the proposition by the parties unequivocally. That apart, the concession was not of the kind which militated against the financial or any other interest of the Department.

19. After having heard the learned Advocates for the parties, we are of the view that it is correct that the concession by the lawyer for the Department was made



without any instruction. It would, therefore, be an unauthorised statement of a counsel which remained unsubstantiated by any appropriate material or affidavit.

20. Thus, it was a concession without a mandate.

21. We do not wish to express our opinion on the correctness of the approach of the Department for the present only for the reason that such a defect in the judgment could easily be cured if the matter is remitted to the learned Single Judge to decide afresh on merits, uninfluenced by any earlier concession made by the counsel for the Department.

22. Needless to state that this exercise by the learned Single Judge would only be done after affording opportunity to both sides to file an affidavit or place on record the material which would be necessary for the disposal of the case.

23. We, therefore, set aside the judgment impugned in the present appeal and remit it to the learned Single Judge to pass a fresh judgment, not based on the concession made by the lawyer for the Department.

24. We further clarify that we have not opined on



the merit of the judgment in any manner whatsoever.

25. Till the time the writ petition is decided afresh, the *status quo*, as on date, shall be maintained.

26. The appeal stands disposed of accordingly.

27. Interlocutory application, if any, shall also stand closed.

(Ashutosh Kumar, ACJ)

(Partha Sarthy, J)

Sujit/Avinash

AFR/NAFR	NAFR
CAV DATE	N/A
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