

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7785 of 2018

=====

M/s. Mahadev Enclave Pvt. Ltd., a registered company having its registered office at B-37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through one of its directors namely Kartik Rathi, S/o Shri Ajay Rathi R/O 3-B 22 23 Sukhadia Nagar, Sri Ganganagar Rajasthan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna.
2. The Principal Secretary, Cum Commissioner, Department of Mines and Geology Govt. of Bihar, Patna.
3. The District Magistrate Cum Collector, Nalanda.
4. The Assistant Director of Mines, Nalanda.

... .. Respondent/s

=====

with

Civil Writ Jurisdiction Case No. 7899 of 2018

=====

M/s. Mahadev Enclave Pvt. Ltd. a registered company having its registered office at B-37, Ayodhya Marg, Hanuman Nagar, Jaipur, Rajasthan through one of its directors namely Kartik Rathi S/o Shri Ajay Rathi R/o 3-B 22 23 Sukhadia Nagar, Sri Ganganagar Rajasthan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary cum Commissioner, Department of Mines & Geology, Govt. of Bihar, Patna
2. The Principal Secretary Cum Commissioner, Department of Mines and Geology, Govt. of Bihar, Patna.
3. The District Magistrate Cum Collector, Banka.
4. The Mines Inspector Cum Competent Authority, Banka.

... .. Respondent/s

=====

Appearance :

(In Civil Writ Jurisdiction Case No. 7785 of 2018)

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
		Mr. Alok Kumar Jha, Advocate
		Mr. Mukul Kumar, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA- 7
For the Mines	:	Mr. Naresh Dixit, Spl. P.P.
		Mr. Brij Bihari Tiwari, Advocate

(In Civil Writ Jurisdiction Case No. 7899 of 2018)

For the Petitioner/s	:	Mr. Gautam Kumar Kejriwal, Advocate
		Mr. Aditya Raman, Advocate
		Mr. Akash Kumar, Advocate



For the State : Mr. Gyan Prakash Ojha, GA- 7
For the Mines : Mr. Brij Bihari Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL JUDGMENT
Date : 11-02-2025

This Court has heard Mr. Gautam Kumar Kejriwal, learned Advocate for the petitioners and the learned Spl. P.P. for the Mines Department. The State is represented through G.A.-7.

2. Considering the identical nature of claim based upon same set of facts raising identical issue, with the consent of parties, both the writ petitions are being heard together and disposed of by this common judgment.

3. Notably, the petitioner in both the writ petition is one and the same registered Company, who participated in the auction, pursuant to Notice Inviting Tender (NIT) issued by the Department of Mines and Geology, Government of Bihar, in relation to settlement of sand ghats at Nalanda and Banka districts, hence two writ petitions are filed for identical reliefs; hence for disposal of the cases, the Company is being referred as petitioner.

4. The petitioner has invoked the jurisdiction of this Court seeking issuance of a writ in the nature of mandamus directing the concerned respondent to grant 82 days of settlement for mining rights for the district of Banka and



likewise additional 63 days for mining right for the district of Nalanda with respect to the calendar year 2018. In the alternative, the petitioner prayed for issuance of a direction upon the concerned respondents to collect the balance of the settlement amount from the petitioner for the year 2018, reduced by a sum, which is payable cost, paid by the petitioner for those aforementioned days when the petitioner has not been allowed to perform mining activity without any rhyme and reason and without any jurisdiction and authority in terms of Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as 'the Rules, 1972'). Apart from the reliefs aforementioned, the petitioner has also prayed for additional consequential reliefs in para. 1 of the writ petitions.

5. The short facts, which led to the filing of the writ petitions are that the Government of Bihar in the Department of Mines and Geology vide Notification No. 2887 dated 22.07.2014 expressed decision to invite tenders for settlement of sand ghats located at different districts in the State of Bihar for the period 2015-2019, which included sand ghats at Nalanda and Banka district as well.

6. Pursuant to the aforesaid notification, NIT was published for settlement of sand ghats. The petitioner, a



registered company, intending to participate in the settlement process, submitted technical and financial bids. In the auction, the petitioner was declared as the successful bidder and, accordingly, awarded settlement of sand ghats at Nalanda and Banka districts, for the period 01.01.2015 to 31.12.2019. Pursuant to the terms of the agreement, the petitioner deposited the entire settlement amount for the year 2015 and likewise for the year 2016 and 2017. The petitioner also deposited the first installment of 50% of the settlement amount for the year 2018.

7. It would be worthwhile to mention that during the aforementioned period of settlement, the State of Bihar vide Notification No. 3018/M dated 10.10.2017 replaced the Rules, 1972 by the new Rules in purported exercise of powers under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as 'the Act, 1957'). The petitioner and other similar set of settlees approached this Court in C.W.J.C. No. 17125 of 2017, along with other writ petitions, challenging the validity of the entire Rules stating it being violative of the provisions of the Act, 1957 and in the teeth of the settled principles of law that the right of the petitioner, as a settlee, was governed by the Rules, 1972.

8. The learned Division Bench of this Court, prima



facie, on being satisfied the Rules suffered from severe legal infirmities, vide its order dated 27.11.2017 stayed the entire Rules and Regulations, in question, and directed that in the meanwhile the Rules, 1972 would be operative. Despite the aforesaid position, the respondent no.2 came out with different orders reiterating and reproducing the impugned provision of new Bihar Minor Mineral Rules, 2017 (hereinafter referred to as 'the Rules, 2017').

9. The petitioner along with others preferred interlocutory applications challenging the said new Orders referring it to be a clandestine move of respondent no.2 to overreach the orders of the Hon'ble Court. The learned Division Bench of this Court once again vide order dated 04.12.2017 directed to stay all the orders passed by the respondent no.2 and restrained the respondents from implementing any of the orders, in question, as the learned Division Bench held it a case of overreaching the order of this Court dated 27.11.2017.

10. It is also worthwhile to be noted that the petitioner had earlier challenged the powers of the respondents for fixing sale price of sand under Rule 48 of Rules, 1972, once the settlement is granted to the petitioner, in C.W.J.C. No. 9908 of 2016 wherein the learned Division Bench of this Court vide



its judgment/order dated 27.10.2016 has been pleased to allow the writ petition holding the State respondents have no power to fix the sale price of sand after settlement is awarded. The State respondents challenged the said judgment/order before the Hon'ble Supreme Court in Special Leave to Appeal (C) [Diary No(s).22075 of 2017, which was also dismissed vide order dated 08.09.2017, the copy of which is marked as Annexure-6 to the writ petition. During exercise of challenge given to the new Rules of 2017 by the petitioner and similarly such settlees, E-challans downloading facilitation was disabled by the respondent Department for different intervals.

11. Mr. Gautam Kumar Kejriwal, learned Advocate for the petitioner adverting the aforesaid facts, further contended that E-challans downloading facilitation was enabled only for the purpose of supply of sand to the Bihar State Mining Corporation alone, which was in direct conflict with the order of this Court. Thus, the petitioners of batch of the writ applications challenged the validity of new Rules, 2017 seeking a direction upon respondent no.2 to ensure implementation of the order dated 27.11.2017 and 04.12.2017 passed by the learned Division bench of this Court. The learned Division Bench of this Court vide order dated 11.12.2017 directed the concerned department



to implement the earlier order of this Court. Upon the order being passed by the learned Division Bench, the concerned respondent disabled the E-challans downloading facilitation from the Website. In the meanwhile, the respondents had approached the Hon'ble Supreme Court in Special leave to Appeal (C) No(s). 33129 of 2017, which came to be disposed of vide order dated 15.12.2017 refusing to interfere with the order dated 27.11.2017 and held that the issue would be decided by this Court.

12. After the order being passed by this Court as well as by the Hon'ble Supreme Court, over again on the directives of respondent no.2, E-challans downloading facilitation once again blocked without any prior notice or any authority. This issue was again taken up by the learned Division Bench of this Court in C.W.J.C. No. 15965 of 2017 and other analogous cases wherein by order dated 19.12.2017 it has been held that there existed all prohibitory orders against the respondent no.2 in so far as violation of earlier orders passed in the matter were concerned and the parties could approach this Court in writ jurisdiction for all fresh actions of respondent nos. 2 to 4, in case it is in teeth of the earlier order so passed.

13. The respondent authorities did not mend their



ways and again proceeded to defy the order of the Hon'ble Court and the entire mining activity of the petitioner and others had been put on halt by way of arbitrary action, which led to another round of litigation by filing C.W.J.C. No. 207 of 2018 and other analogous cases seeking a direction upon the respondents to restore E-challans downloading facilitation immediately. The petitioner and others categorically raised the grievance that by way of disabling E-challans downloading facilitation, the petitioner has already been made to suffer a huge loss at the hands of the respondent department. The petitioner also challenged the jurisdiction and authority of respondent Department of Mines and Geology and its authorities in compelling the petitioner to supply sand to the Bihar State Mining Corporation in C.W.J.C. No. 19407 of 2017 and other analogous cases. Learned Court, however, on being found, the respondents have already enabled the E-challans downloading facilitation disposed of the writ petitions granting liberty to the petitioner and similarly such other lease holders to raise all such issues in another proceeding.

14. Mr. Kejriwal, learned Advocate for the petitioner contended that notwithstanding the petitioner having complied all the formalities in terms of law as well as NIT



meant for settlement of mining rights of sand for the district of Nalanda and Banka for a period of five years from 2015 till 2019 had all the substantive rights to perform mining activity in the entire districts without any hindrance. The issuance of transit challans in terms of Rule 33 of Rules, 1972 is one of the most important part of business of mining to be performed, as every stock of sand released from mining site is to be accompanied by such transit challans alongwith vehicle. The Transit challan is to be verified by the respondent authorities and only upon verification and satisfaction, the stock is to be allowed to move further. Thus, in absence of transit challan no business could be transacted. The respondent Department of Mines and Geology came out with a new system of downloading of challan through official Website of the Department. Such down loaded challans had to be handed over to the vehicle carrying stock of sand. The said system was introduced in the month of June, 2017 by the Department. Once the petitioner had been granted settlement and the petitioner had paid the required amount of settlement as well as other statutory charges, the transit challans became the authority of the petitioner to issue to the vehicle carrying mineral. The respondent department or its authority did not allow the petitioner to perform mining mining activity for a



period of 63 days by way of disablement of E-challans downloading facilitation in the district of Nalanda and similarly for a period of 82 days in the district of Banka. It is the admitted fact that the petitioner has not been allowed to perform the mining activity for the aforementioned period, as such the petitioner has suffered a total loss of Rs.1,95,46,371.14 along with loss of profit at the rate of 10% in the district of Nalanda. Likewise, a total loss of Rs.9,36,84,172/- along with loss of profit at the rate of 10% in the district of Nalanda.

15. Referring to the entire gamut of the fact, learned Advocate for the petitioner thus contended that as a consequence of act of omission and commission on the part of the respondents, the fundamental rights granted to the petitioner under Article 14 and 19(1)(g) of the Constitution of India and constitutional right under Article 300A of the Constitution of India are being infringed.

16. It is lastly contended that the period aforesaid has already been passed and pursuant to an interim order dated 09.04.2019, this Court as an interim measure held the petitioner entitled for interim relief for proper adjustment in the amount of loss, which the petitioner has suffered in the year 2018, in the amount of next installment for the year, 2019 without any



admission made on the part of the State and without prejudice to his right and contention; hence, the interim order granted by this Court may be made absolute to meet the ends of justice.

17. Per contra, learned Spl. P. P. for the Mines and Geology Department has vehemently contended that the submissions of non-mining activities/operations carried out by respondents are false, as the petitioner had already excavated 1,73,87,800 cubic feet of sand till June, 2018 in the district of Nalanda and 4,28,05,425 cubic feet of sand in the district of Banka till June, 2018, which proportionately not less than of the sand excavated by the petitioner in the preceding year and thus they cannot claim of any loss incurred for 63 days in the district of Nalanda and 82 days in the district of Banka. The petitioner failed to hit the maximum excavation limit set by the environmental clearance issued by the State Environmental Impact Assessment Authority (hereinafter referred to as 'the SEIAA') by significant margin in the preceding years while they had ample opportunity to engage in mining activity in order to ensure no losses are incurred.

18. The petitioner's claim of loss on account of non-mining activities has not effected in terms of monetary loss. The petitioner was also given the year wise settlement for five



years of calendar basis with a condition of SEIAA fixing the capping limit for mineral excavation per year. Mr. Tiwari also urged before this Court that calculation chart, as brought by the petitioner, is also incorrect. The different heads under calculations such as Income Tax, VAT, Stamp Duty and District Mineral Foundation (DMF) are statutory and mandatory deduction are payable by the settlees as per the Mining Rules.

19. This Court has given anxious consideration to the submissions advanced on behalf of learned Advocate for the respective parties and also meticulously perused the record. The facts are not in dispute to the extent whereby the period, in question, the E-challan downloading facilitation was blocked or suspended. It is also admitted position that the transit challans or E-challans is sine qua non and important part of business of mining for transportation of sand, as every stock of sand released by the settlee from sand ghat is to be accompanied by such transit challans or E-challans along with vehicle and in absence of E-challans, the stock cannot be allowed to move. The Department of Mines and Geology itself introduced system of downloading of challans through official Website of the Department, which was an Online/Internet based operation through which a settlee had to access Website to download as



many challans as needed by filling particulars and by forming other necessary formalities. The downloaded challans had to be handed over to the vehicle carrying stock of sand. The disablement of E-challan downloading facilitation from the official Website of the Department clearly disallowed the settlee to perform mining activities and/or release of the stock of the sand from the mining ghat to different places.

20. It would be also pertinent to note that once the process of auction is completed and the person declared successful bidder in the auction, deposited the entire settlement amount in terms with the NIT and upon being final settlement is made, he would have all the substantive rights to perform mining activities in the area, in question, without any hindrance, subject to the statutory restrictions. Any impediment and hindrances causing prejudice and affecting the right of a settlee without authority of law is wholly arbitrary and illegal. Time without number, the Hon'ble Supreme Court held that a naked and arbitrary exercise of power is bad in law. Using the position for something, for which it is not intended is nothing but an abuse of the power.

21. True it is that an honest though an erroneous exercise of power or an indecision is not an abuse of power. A



decision, action or instruction may be inconvenient or unpalatable, but it would not be an abuses of power; albeit, an abuse of power must be in respect of such an incident, which would render the office holder unworthy of holding the said post and it must entail adverse civil consequences. The Hon'ble Supreme Court in the case of ***Shrisht Dhawan (Smt) v. Shaw Bros.***, reported in, **(1992) 1 SCC 534** has observed that abuse of power or mala fide exercise of power may arise due to overstepping the limits of power or defeating the provision of statute by adopting subterfuge or the power may be exercised for extraneous or irrelevant considerations.

22. The Welfare State denotes a concept of Government, in which the State plays a key role in the protection and promotion of economic and social well being of all its citizens. Article 19(1)(g) of the Constitution provides right to all the citizens to engage in trade or business, subject to reasonable restrictions.

23. A question was posed in the case of ***Shrilekha Vidyarthi (Kumari) vs. State of U.P.***, reported in **(1991) 1 SCC 212** as to whether guarantee of non-arbitrariness which is basic to rule of law under Article 14 of the Constitution of India stands excluded from the State action in contractual field. In



answer to this question, the Hon'ble Supreme Court observed that the Constitution does not envisage or permit unfairness in State actions in any sphere of its activity, it would be alien to the constitutional scheme to accept the argument of exclusion of Article 14 in contractual matters. The Hon'ble Supreme Court further observed that while private parties are concerned with their personal interest, the State while exercising its powers and discharging its functions, acts indubitably, as is expected of it, for public good and in public interest, for, and impact of every State action is also on public interest. This factor alone is sufficient to import, at least, the minimal requirements of public law obligations. Even in the actions of the State in contractual matters, the obligation of a State is of public character and that contractual obligation cannot divest the person aggrieved of the guarantee under Article 14 of the non-arbitrariness at the hands of the State in any of its actions.

24. The learned Division Bench of this Court in the case of **M/s Aditya Multicom Private Limited Vs. The State of Bihar & Ors.** (LPA No.1942 of 2016) where the Company feeling aggrieved with the order of prohibition of Mining operation for the months of July, August and September in terms of the order passed by the State Environment Impact



Assessment Authority, apart from a further prohibition in mining for period of 09.02.2016 to 01.04.2016, due to an order from National Green Tribunal had approached before the learned Single Judge with a prayer, inter alia, seeking direction to the respondents not to charge the instalment payable by the petitioner for the afore-noted period, in question, against grant of work order for mining and transporting sand, as the petitioner has been restrained from mining and transporting sand for such period, had approached this Court. On being dissatisfied with the order of the learned Single Judge, the petitioner preferred Letters Patent Appeal. The learned Division Bench of this Court having elaborately discussed the matter and placing reliance upon the report of **Kumari Shrilekha Vidyarthi** (supra) has held in its penultimate paragraph that there can be no manner of doubt that when the respondents communicated the prohibitory orders in the light of the orders passed by the State Level Environmental Impact Assessment Authority, it was incumbent upon the respondents to also proportionately reduce the instalment amount payable by the appellant, but the respondents, having failed to do so, acted in a manner detrimental to the interests of the appellant so far as its contractual obligations are concerned. Viewed from this



perspective, the act of the respondents was definitely found to be an arbitrary action, which cannot and does not stand the test of reasonableness under Article 14 of the Constitution.

25. The learned Division bench of this Court while adjudicating the *lis* and answering the issue as to whether the State, in changed circumstances, enjoy the liberty to unilaterally alter the terms of a contract affecting, materially and substantially, the rights of the private party, has painstakingly answered elaborately that if the appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty.

26. This Court thinks it worth benefiting to encapsulate some relevant paragraphs of the aforementioned decision for proper appreciation of the matter in issue:

“25. The Supreme Court further held, in **Lotus Hotels** (supra), that in the back drop of incontrovertible fact situation, the principle of promissory estoppel would also come into play



and placed reliance, in this regard, on the case of **Motilal Padampat Sugar Mills Co. (P) Ltd. v. State of U.P.**, reported in **(1979) 2 SCC 409**, wherein following observations were made;

“8. The true principle of promissory estoppel, therefore, seems to be that where one party has by his words of conduct made to the other a clear and unequivocal promise which is intended to create legal relations or affect a legal relationship to arise in the future, knowing or intending that it would be acted upon by the other party to whom the promise is made and it is in fact so acted upon by the other party, the promise would be binding on the party making it and he would not be entitled to go back upon it, if it would be inequitable to allow him to do so having regard to the dealings which have taken place between the parties, and this would be so irrespective of whether there is any pre-existing relationship between the parties or not.”

26. The concluding remarks, in **Lotus Hotels** (supra), are very important, wherein the Supreme Court held that if the appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause



harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition, under Article 226 of the Constitution, would certainly lie to direct performance of a statutory duty by “other authority” as envisaged by Article 12 and, therefore, the High Court was, therefore, fully justified in issuing a writ of mandamus to disburse the loan.

27. The relevant observations, appearing in **Lotus Hotels** (supra), are reproduced below;

“13. Now if appellant entered into a solemn contract in discharge and performance of its statutory duty and the respondent acted upon it, the statutory corporation cannot be allowed to act arbitrarily so as to cause harm and injury, flowing from its unreasonable conduct, to the respondent. In such a situation, the court is not powerless from holding the appellant to its promise and it can be enforced by a writ of mandamus directing it to perform its statutory duty. A petition under Article 226 of the Constitution would certainly lie to direct performance of a statutory duty by “other authority” as envisaged by Article



12.”

28. In the present case, since the appellant has not challenged the prohibitory order restraining the mining operations for the months of July, August and September, as passed by the State Environment Impact Assessment Authority, no writ of mandamus can be issued to the respondent to allow the mining operations for the prohibited months. It may also be pointed out here that it would not be permissible nor would it be advisable to extend the bid period from actual 45 months to the agreed period of 60 months inasmuch as such an exercise by the writ Court, by ignoring an expert opinion of State Environment Impact Assessment Authority, would not be proper. It is equally an admitted position that the respondents cannot be faulted for subsequent change of events since such events have been occasioned by the orders of a Statutory Authority. However, if the changed circumstances apply to the appellant, it would equally apply to the respondents as well; and it would, therefore, be highly prejudicial to appellant if it were to be saddled with the responsibility of paying the entire bid money even if it has been given lesser period of mining operations contrary to what had been agreed upon. Hence, such an act, on the part of the respondents, in not considering the representation of the appellant for proportionate reduction of the installments, is ex facie arbitrary, irrational,



unreasonable and unjust. This aspect of the matter has not been taken into account by the learned single Judge, while passing the judgment and order, under appeal. What prevailed upon the learned single Judge was the order, dated 09.09.2016, passed in CWJC 14619 of 2016, wherein, in a similar subject matter, a direction was given that the petitioner should approach the District Magistrate, Kaimur, who shall consider and dispose of the representation of the petitioner therein in accordance with law.”

27. In the afore-noted settled legal position, now coming to the case in hand, it is evident that the concerned respondent Department has not come out with the case that during the period, in which E-challan downloading facilitation were disabled, the same was done on account of any unavoidable reasons or pursuant to an order having sanction of law. Once the respondent authorities admitted the position, this Court has left with no option, but to direct the State respondents, especially respondent no.2 to adjust the amount of loss calculated for the days in question in the district of Nalanda and Banka as adjusted against the next installment, as has been done pursuant to the interim order passed by this Court on 09.04.2019, hence the interim order stands absolute, subject to the fresh calculation, qua the actual dates/period in which E-



challan downloading facilitation were disabled. It is also made
clar that if there is any error in the calculation, as has been
stated in the counter affidavit filed on behalf of respondent nos.
2 to 4 only to the extent of Income Tax, VAT, Stamp Duty and
District Mineral Foundation (DMF) the respondent may make a
fresh calculation after giving proper opportunity of hearing to
the petitioner preferably within a period of twelve weeks from
the date of receipt/production of a copy of this order.

28. Both the writ petitions stand allowed.

29. Pending application, if any, also stands disposed
of.

(Harish Kumar, J)

uday/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2025
Transmission Date	NA

