

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7249 of 2018

M/s. Aditya Multicom Private Limited, a Company incorporated under the provisions of the Companies Act, 1956 having its registered office at 12, Waterloo Street, 2nd Floor, Kolkata-700069, through its Authorized Signatory, Kamlesh Gaurav @ Kamlesh Gouaraw, Son of Shri Surendra Singh, Resident of D/139, Keshari Nagar, P.O.- Rajeev Nagar, P.S.- Rajeev Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Mines and Geology, Government of Bihar, Patna.
2. The Principal Secretary-cum-Commissioner, Department of Mines and Geology, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Aurangabad.
4. The Joint Secretary-cum-Director, Directorate of Mines and Geology, Bihar, Vikas Bhawan, Bailey Roa
5. The Mineral Development Officer, Aurangabad.
6. The Bihar State Mining Corporation Limited, A Government of Bihar Undertaking, Room No.164, Vikas B

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Mr. Vijay Shanker Tiwari, Advocate Mr. Simran Kumari, Advocate Mr. Abhilasha Jha, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha, GA-7
For the Mines Deptt.	:	Mr. Naresh Dikshit, Advocate Ms. Kalpana, Advocate
For the Respondent No.6 (BSMCL)	:	Mr. Ranjeet Kumar Pandey, Advocate

CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA
ORAL JUDGMENT

Date : 15-07-2025

Heard learned counsel, Mr. Suraj Samdarshi for the petitioner and learned counsel, Mr. Naresh Dikshit appearing for the Mines Department.

2. The present writ application has been filed by the petitioner for setting aside part of the order dated 25.01.2018,



passed by Respondent no.2, the Principal Secretary-cum-Commissioner, Department of Mines and Geology, Government of Bihar in Revision Case No. 04 of 2017, as contained in Annexure-5 to the writ application, whereby the petitioner was allowed to resume sand mining with certain conditions, including the conditions that the petitioner shall pay BSMC charges at the prevailing rate for the sand sold by him and consequently 5% of the sale value of the sand has been charged by making entry at Sl. No.18 of the e-Challan. The prayer made in paragraph no.1 of the writ application reads as under :-

“(i) For setting aside part of the order dated 25.01.2018 passed by the respondent no.2 in Revision Case No.4 of 2017, wherein the petitioner was directed to make payment of BSMC charges at the prevailing rates against the sand sold by it.

(ii) For issuance of a writ of Mandamus, restraining the respondents from levying and recovering an amount equivalent to 5 % of the sale value of the sand mined and sold by the petitioner, in the name and style of “BSMC Commission”, which is wholly without any authority in law and violative of Article 265 of the Constitution of India.

(iii) For a direction to the respondents to adjust the amount of Rs.1,28,03, 153 unlawfully recovered from the petitioner under threat and coercion, as 5% “BSMC Commission” on sale of sand made by the petitioner, in the settlement amount to be



paid by the petitioner for the calendar year 2018.

(iv) For a direction to the respondents not to compel the petitioner to pay the BSMC commission for transactions after 05.03.2018 and for any other relief (s), order(s), direction(s) as your Lordships may deem fit and proper in the facts and circumstances of the case.”

3. It is further submitted by learned counsel for the petitioner that the petitioner is a Private Limited Company. An advertisement was published on behalf of Respondent no. 2 for settlement of sand ghats by auction in different districts of the State including the District of Aurangabad for the period 2015-19. The petitioner being the highest bidder, was awarded the tender. On complying with the terms stipulated in the NIT dated 08.01.2015, the work orders were issued for the District of Aurangabad and, accordingly, Agreement of Settlement was entered between the petitioner and the Department of Mines vide Agreement dated 24.7.2015 and after submitting mining plan and getting environmental clearance, the mining commenced.

4. Subsequently in 2017, the Respondent State framed Bihar Minor Mineral Rules, 2017 (hereinafter for brevity referred to as the Rules, 2017) superseding Bihar Minor Mineral Concession Rules, 1972 (hereinafter for brevity referred to as Rules, 1972) wherein the procedure for settlement and levy of



royalty and other charges were drastically amended. The petitioner and other settlees dissatisfied with the enforcement of the provisions under the new Rules, 2017, challenged the same in CWJC No. 15965 of 2017 (Pushpa Singh and Anr. Vs. State of Bihar and Ors.) and other analogous cases whereas the petitioner's writ application was numbered as CWJC No. 16527 of 2017. The Division Bench of this Court, vide order dated 27.11.2017, as contained in Annexure 6, while admitting the writ application stayed the operation of the new Rules, 2017 in its totality until further orders and further clarified that stay of Rules, 2017 will automatically revive Rules, 1972. In spite of the stay order, the Respondent authorities were implementing the provisions of Rules, 2017, hence the Division Bench further directed not to finalize any process without leave of the Court in which the tender has been floated. It has been informed by learned counsel appearing for the Mines Department that the new Rules, 2017 has been subsequently withdrawn by the State Government and in its place Rules, 2019 has come into existence with effect from 17.09.2019.

5. The Collector, Aurangabad, vide order dated 9.12.2017 cancelled the settlement of 12 ghats of the petitioner on the ground of breach of environmental clearance. The same was



challenged by the petitioner in Revision Case No. 4 of 2017 whereby the Mines Commissioner, Bihar, Patna vide order dated 25.1.2018, as contained in Annexure-5 allowed the petitioner to conduct mining on certain conditions including the payment of BSMC charges at the prevailing rates for all the sand sold by him, payment of pending royalty as well as the penalty for exceeding the environmental cap in certain ghats, along with interest, before 28.03.2018 and only to conduct mining within the boundaries earmarked by the survey conducted by the Deputy Director and his team and not to obstruct new settlee in conducting mining. A review was also filed by the petitioner vide Misc. Application No. 01 of 2018, seeking clarification of the order passed by the Commissioner, Mines dated 25.01.2018 in Revision Case No. 04 of 2017 which was disposed of by the Mines Commissioner, Bihar, Patna vide order dated 06.02.2018 with clarification that the petitioner will obtain the environmental clearance for 12 sand ghats which were cancelled, within one month and will abide by the conditions incorporated in order dated 25.01.2018 by submitting an affidavit to that effect before the Collector, Aurangabad. The petitioner had no other option than to accept such conditions, since the petitioner was not having equal bargaining power. The Respondent authorities from 25.01.2018,



incorporated a column for levy of 5% BSMC commission at Sl. No.18 of online e-Challan in Form-A being generated from the website of the Mines Department for transportation of sand. Hence, ultimately, the petitioner was left with no option but to realize 5% BSMC commission from the consumers. The said e-Challan has been brought on record as Annexure-7 Series. Consequently, the petitioner under apprehension of settlement being further cancelled, deposited 5% commission for the period from 8.01.2018 to 04.03.2018 and from 05.03.2018 to 08.04.2018.

6. Learned counsel for the petitioner submits that the State cannot levy any charge beyond what has been prescribed under Rule 26 of Rules 1972. Moreover, no levy can be made without any legislation to that effect. Learned counsel for the petitioner further submits that no legislation is in existence so far as levying of such charges is concerned, hence, the same is contrary to the provisions under Article 265 of the Constitution of India, which envisages that no tax shall be levied or collected except under the authority of law. He, therefore, submits that in the instant case, 5% BSMC charges has no legislative back-up and hence the action of Respondent authorities is violative of Articles 300A and 301 of the Constitution of India. It is lastly submitted that in similar circumstances the Respondent authorities have been



restrained to realize 5% of BSMC charges vide order dated 11.04.2018 passed in CWJC No. 6781 of 2018.

7. Per contra, learned counsel appearing for the Mines Department submits that 5% BSMC charges on the sand sold by the petitioner has been realized in pursuance to the revisional order dated 25.01.2018 and the petitioner is bound by an affidavit/undertaking to pay such charges. He further submits that the Hon'ble Supreme Court in catena of decisions has held that the State Government is competent under Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 to create monopolies in respect of minor minerals and moreover, such power of the State Government to create such monopolies has been recognized by the Hon'ble Supreme Court in various cases such as in the case of **State of Tamilnadu vs. Hind Stone** reported in **(1981) 2 SCC 205** and in judgment reported in **(1995) 2 SCC 413** and also in another judgment reported in **(2006) 4 SCC 517**.

8. Learned counsel appearing for the Mines Department also submitted that such levy has been realized in public interest for development of Bihar State Mining Corporation. He further submits that apart from the above being the reason for realization of 5% charges, he is not in a position to say whether there is any legislative mandate for levying such charges.



9. Considering the rival submissions of the parties, this Court finds that there is nothing on record to suggest that there is any legislative mandate for levy of 5% charges on the sand sold by the petitioner, much less there is no executive order to that effect. Article 265 of the Constitution of India clearly stipulates that no tax shall be levied or collected except by the authority of law. Hence, the action of the Respondent authorities is violative of settlees right guaranteed under Article 300A of the Constitution of India which mandates that no person shall be deprived of his property save by the authority of law and ultimately, it amounts to overreach the freedom of trade, commerce as incorporated under Article 301 of the Constitution of India and the provisions under Articles 303 and 304 which impose the restriction on the legislative powers of the Union and of the States with regard to trade, commerce and intercourse among the State.

10. The mode of settlement of sand as minor mineral has been prescribed through the public auction-cum-tender under Rule 11-A of Rules 1972, which has been substituted by the 2014 Amendment. Rule 26 of Rules, 1972 envisages three kinds of rent and royalty etc. to be charged from the lessee or the settlee, i.e. (a) dead rent to be charged at the rates specified in Schedule I, (b) royalty to be charged at the rates specified in Schedule-II and (c)



surface rent to be charged at the rate specified by the Collector from time to time from the area occupied or used by the lessee. Hence, Rule 26 does not envisage any BSMC charge on the sand sold at rate of 5%. The royalty is charged for mining sand and levy of any charge on its transportation, contrary to the terms of Agreement or Settlement and the provisions of the Rules, cannot be allowed to be sustained.

11. The submissions made by learned counsel appearing for the Mines Department, particularly, the reliance placed on the Supreme Court judgments are completely misplaced as the facts in those case under which those judgments were delivered are different from the facts involved in the present case. There is no issue of State's power to create monopolies involved in the present case.

12. The entire case of the Mines Department is based on the fact that the petitioner had submitted an affidavit/undertaking to pay 5% BSMC charges which was a condition based on which the mining lease was restored. The question, therefore, arises is that even if such an affidavit or undertaking was given by the petitioner, which is not denied by the petitioner, based on such concession could the Mining Department have levied 5% BSMC charges in absence of any legislative mandate. It is very well



settled that based on concession or consent, no jurisdiction can be conferred on any authority to demand something or to do particular Act which he is otherwise not empowered to do by the law. The learned counsel appearing for the Mines Department has completely failed to demonstrate that there exists any legislative mandate to demand 5% BSMC charges and therefore, the case of the Mining Department based on concession of the petitioner cannot be sustained. Consequently, the part of the order dated 25.01.2018, passed by the Respondent no.2 in Revision Case No. 04 of 2017 is quashed and set aside and the respondent authorities of the Mining Department are permanently restrained from levying and recovering an amount equivalent to 5% of the sale value of the sand mined and sold by the petitioner in the name and style of BSMC Commission. Further direction is issued to the respondent authorities of the Mining Department to refund the amount of Rs.1,28,03,153/- which they have unlawfully recovered from the petitioner as 5% BSMC commission on sale of sand made by the petitioner, for the reason that in the year 2021 the mining lease has expired. Had the mining lease been in subsistence this Court would have directed for adjustment of the amount.



13. The writ application is accordingly allowed in the aforesaid terms. All pending I.As if any will be deemed to have been disposed of. There shall be no order as to costs.

(Alok Kumar Sinha, J)

Prakash Narayan

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	15.07.2025
Transmission Date	N/A

