**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.17442 of 2023**
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M/s Shri Vijay Kumar Singh, a Partnership firm Company Registered Under the Partnership Act, 1956 having its registered Office at-In front of District Veterinary Hospital, Ambikapur, P.S. Ambikapur District Sarjuga, Chattisgarh, through its Partner Vikas Singh aged about 49 Yeats, S/o Shri Awadh Bihari Singh, resident of In front of District Veterinary Hospital, Ambikapur, P.S. Ambikapur District Sarjuga, Chattisgarh,

... ... 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 District Magistrate, Gaya.
4. The Mineral Development Officer, Gaya.
5. The District Mining Officer, Gaya.
6. The Bihar State Mining Corporation Limited, through its Managing Director, Room no. 164, Vikas Bhawan, (New Secretariat, Bailey Road, Patna.
7. The General Manager, Bihar State Mining Corporation Limited, Room no. 164, Vikas Bhawan, (New Secretariat), Bailey Road, Patna.

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rajeev Kumar Singh, Sr. Adv |
| For the State | : | Mr. Anil Kumar Verma, AC to AAG-9 |
| For the Mines Dept. | : | Mr. Naresh Dixit, Adv |
| For Res. Nos. 6 & 7 | : | Mr. Ranjeet Kumar Pandey, Adv |

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**CORAM: HONOURABLE MR. JUSTICE ALOK KUMAR SINHA**
**CAV JUDGMENT**

**Date : 01-08-2025**

Heard Learned Senior Counsel Mr. Rajeev Kumar Singh for the petitioner, learned counsel Mr. Naresh Dixit for the Mines Department, learned counsel Mr. Ranjeet Kumar Pandey for Respondent Nos. 6 and 7 and learned counsel Mr. Anil Kumar Verma for the State.

**2.** The present writ application has been filed seeking the following reliefs:

*(i) To issue an appropriate writ, order or direction in the nature of certiorari quashing Letter No. 403 dated 06.03.2023 issued by the Respondent General Manager, Bihar State Mining Corporation Ltd. (Respondent No. 7) whereby and whereunder a penalty of Rs. 45,25,781/- has been levied upon the petitioner for irregularities alleged to have been committed by the petitioner during mining activity at Parewa and Kenduai sand ghats (Cluster No. 11) on river Falgu in Gaya District.*

*(ii) This Hon'ble Court may further adjudicate and hold that Letter No. 403 dated 06.03.2023 issued by the Respondent No. 7 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 whatsoever to controvert the allegations upon which the penalty has been levied nor has been provided with a copy of the report of the so called inspection conducted by the authorities been provided or any other opportunity of hearing prior to the impugned letter imposing penalty.*

*(iii) This Hon'ble Court may further adjudicate and hold that the imposition of penalty upon the petitioner is in violation of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019.*

*(iv) To issue an appropriate order or direction upon the Respondent authorities to refund the amount of the abovementioned penalty that has already been deposited by the petitioner to save its skin and save the huge investment already made in taking settlement of the sand ghats in question since the authorities of the mining department and the Bihar State Mining Corporation had stopped issuing e-challans immediately after orders imposing penalty were passed.*

*(v) To grant any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.*

**3.** Learned Senior Counsel for the petitioner submits that the impugned Letter No. 403 dated 06.03.2023 whereby penalty of Rs. 45,25,781/- has been levied, has been challenged on various counts, one of them being that it has been passed in complete violation of the principles of natural justice and, therefore, it is squarely covered by judgment dated 09.05.2023 passed in CWJC No. 3400 of 2023 by a co-ordinate Bench of this Court in the case of ***M/s Uma Associates vs The State of Bihar and Ors***. Learned Senior Counsel has also relied upon another judgment of this Court delivered on 01.08.2024 in CWJC No. 9091 of 2023 in the case of ***Maa Bhawani Traders vs The State of Bihar & Ors***.

**4.** In support of the aforesaid contention, averments made in paragraphs 11 to 15 and 23 of the writ application has been referred to, which are quoted hereinbelow for needful:-

> *"11. That it is submitted that the imposition of penalty upon the petitioner is completely illegal and in violation of the principles of natural justice as well as the 2019 Mineral Rules.*
>
> *12. That it is submitted that the alleged inspection if at all done, was done behind the back of the petitioner as no prior intimation regarding the inspection was given nor has the alleged inspection been conducted in presence of the representative of the petitioner.*
>
> *13. That furthermore, neither the petitioner was provided with an inspection report nor was the petitioner issued any show cause or provided any opportunity of hearing to rebut the allegations levelled against the petitioner.*
>
> *14. That it is therefore evident that the petitioner has been condemned unheard without a reasonable opportunity having been provided to meet the allegations. It is settled proposition of law that no person can be condemned un-heard. The impugned imposition of penalty thus fails miserably when tested on the touchstone of "audi alteram partem".*
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> *15. That it is therefore evident that the action of the Respondent Authorities in imposing a*

*penalty upon the petitioner is in violation of the principles of natural justice as the same has been levied without issuance of an express show cause in this regard and affording a reasonable opportunity to the petitioner to rebut the allegations levelled against it.*

*23. That it is reiterated that the letter imposing penalty against the petitioner has been issued without providing it with a copy of the inspection report and without affording any opportunity of hearing against the alleged regularity found in the course of the purported inspection. As such the letter imposing penalty has been issued in gross violation of the principles of natural justice apart from having been issued by a person having no authority or jurisdiction in law to do the same and is fit to be set aside."*

**5.** Learned Senior Counsel further submits that since the settlement taken by the petitioner was for a very short period of time i.e. for a period almost of two months only and a huge investment had already been made by the petitioner for enabling it to do the mining activity in the Ghats settled with it, in order to save the investment, the petitioner being a first time settlee of sand ghats and to continue the mining operations which had come to a halt on account of the suspension of generation of E-Challans by the respondents, the petitioner was left with no other alternative, despite being aware of the illegalities committed by the respondents in imposing penalty against it, deposited the penalty amount on 13.03.2023. It is, therefore, specifically submitted that the payment of the penalty was not in any way on account of admission of the commission of the illegalities/irregularities as alleged in the impugned order but was made only to stay afloat in the business. The fact that in the case of similarly placed persons, settlements had been extended for a further period of three months only of such settlees who had deposited the penalty amount also weighed heavily in the minds of the partners of the petitioner in taking the decision to deposit the penalty amount. It is thus submitted that although the petitioner was fully aware of the illegalities manifest in the issuance of the letter imposing penalty and the manner in which the same had been issued in violation of 2019 Mining Rules, being new in the business of sand mining, the petitioner was still learning the ropes and being not fully aware of all the nuances and pit falls involved in the said trade was initially hesitant in taking on the might of the State Government and the Mineral Corporation, but later realised that legal action was required to be taken for the redressal of his grievances and, therefore, vide letter dated 20.10.2023 (Annexure P-5), the petitioner submitted a representation before the respondent no. 7 and the authorities of the Mining Department, Government of Bihar to the effect that the imposition of penalty against the petitioner in the manner as it was done was illegal and that the petitioner was entitled to refund of the penalty amount deposited by him. He further submits that no action has yet been taken on the representation filed by the petitioner, thereby compelling the petitioner to approach this Court.

**6.** *Per Contra*, learned counsels appearing for the Mines Department as well as for the Bihar State Mining Corporation Limited submitted that although it it true that the inspection based on which the impugned order was passed was conducted in the absence of the petitioner as no prior intimation regarding the inspection was given to the petitioner and also that no copy of the inspection report was given to the petitioner nor any show cause or opportunity of hearing was granted to the petitioner prior to passing of the impugned order imposing the penalty, the petitioner is not entitled to the relief as claimed for in the present writ application because the petitioner has accepted the penalty and deposited the same on 13.03.2023. Having deposited the penalty amount, now the petitioner cannot challenge the impugned order imposing the penalty as well as claim relief for refund of the same.

**7.** Having carefully considered the submissions made on behalf of both the parties, it is important to recall the judgment of this Court dated 09.05.2023 passed in CWJC No. 3400 of 2023 in the case of ***M/s Uma Associates vs The State of Bihar and Ors*** in which in paragraphs 7 and 8, it has been held as follows:

> *"7. Having heard learned counsel for the parties, the Court is not going into all the points which has been raised on behalf of the petitioner except the specific statement that no notice was issued to the petitioner prior to passing of the order of penalty, impugned herein. On perusal of the order contained in Letter no.514 dated 24.2.2023, it transpires that the same mentions about some inspection having been carried out by a Committee constituted in the Department on 12.3.2023 and 13.2.2023 and on the basis of the report submitted by the Committee, the order of penalty impugned herein has been passed holding the petitioner to be liable to pay penalty of Rs.2,37,95,800/- with a further direction that the same should be paid within a period of 3 days.*
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> *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."*

**8.** Relying on the aforesaid judgment delivered in M/s Uma Associates case (supra) another judgment has been passed by this Court on 01.08.2024 in CWJC No. 9091 of 2023 in the case of ***Maa Bhawani Traders vs The State of Bihar & Ors*** in which in paragraphs 7, 8 and 9, it has been held as follows:

*"7. From the aforesaid facts, it is clear that the inspection took place behind the back of the petitioner and/or his representative and no inspection report was provided either.*

*8. In that background, following the judgment of* ***M/s Uma Associates*** *(supra), both the letter no. 104 dated 23.01.2023 and letter no. 436 dated 21.03.2023 stand quashed. The respondents will be at liberty to move afresh in accordance with law and in presence of the petitioner and/or his representative.*

*9. In view of the fact that the two letters*

> *issued by the respondents stand quashed, the petitioner will be entitled to the refund which according to him has been paid by him under protest. The refund exercise has to be completed within a period of four weeks from the date a copy of the order is made available to the respondents."*

**9.** From the aforesaid judgments delivered by this Court, it is by now well settled that if an order imposing penalty is passed without allowing the petitioner to participate in the inspection; without giving any copy of the inspection report and without giving due opportunity of hearing to the petitioner, then the order imposing penalty has to be held as bad in law for violating the principles of natural justice. In the present case, it is not in dispute that the inspection based on which the impugned order has been passed was done behind the back of the petitioner. It is further not in dispute that no copy of inspection report was given to the petitioner and neither was the petitioner given any opportunity of hearing prior to passing the impugned order. This Court, therefore, has no hesitation in holding that the impugned order as contained in Letter No. 403 dated 06.03.2023 issued by the respondent, General Manager, Bihar State Mining Corporation Ltd. (respondent no. 7) imposing penalty of Rs. 45,25,781/- is completely bad in law and passed in violation of principles of natural justice.

**10.** So far as the issue relating to the petitioner having deposited the penalty amount on 13.03.2023 is concerned, the petitioner has elaborately explained the compelling circumstances under which the petitioner was constrained to deposit the penalty. Elaborate statement to this effect has been made in paragraphs 25 and 26 of the writ application. The respondent-Bihar State Mining Corporation Ltd. in its counter affidavit has not controverted or denied the averments made in paragraphs 25 and 26 of the writ application, thereby not disputing the contention of the petitioner that the penalty was not deposited voluntarily but under compulsion and that the deposit of the penalty amount did not amount to either accepting the liability or admitting the commission of the illegalities/irregularities as alleged in the impugned order.

**11.** Under the aforesaid facts and circumstances and for the reasons as given above, following the judgment of ***M/s Uma Associates*** (supra) and ***M/s Bhawani Traders*** (supra), the impugned Letter No. 403 dated 06.03.2023 issued by the respondent, General Manager, Bihar State Mining Corporation Ltd. (respondent no. 7) stands quashed. The respondents will be at liberty to move afresh in accordance with law and in presence of the petitioner and/or his representative. The petitioner will also be entitled to refund of the penalty amount of Rs. 45,25,781/- which was deposited by the petitioner not willingly or voluntarily but under compelling circumstances. The refund exercise must be completed within a period of four weeks from the date a copy of this order is made available to the respondents by the petitioner.

**12.** The present writ application stands allowed with the aforesaid observations and directions. All pending interlocutory application(s), if any, will also be deemed to have been disposed of.

**(Alok Kumar Sinha, J)**

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| **AFR/NAFR** | AFR |
| **CAV DATE** | 29.07.2025. |
| **Uploading Date** | 01.08.2025. |
| **Transmission Date** | |