IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17389 of 2024

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Lalan Kumar, son of late Mahendra Rai, Resident of Chitarchak, P.O. - Pahleja Badka, P.S.- Sonepur, District - Saran.

... ... Petitioner

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 District Magistrate Cum Collector, Patna.
5. The District Mining Officer, Patna.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Ms. Simran Kumari, Advocate Ms. Abhilasha Jha, Advocate
For the State	:	Mr. Surya Deo Yadav, AAG-9
For the Mines Department:		Mr. Naresh Dikshit, Spl. P.P. Mr. Brij Bihari Tiwari, Advocate Ms. Shruti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 15-07-2026

By way of this writ petition, the petitioner has prayed for the following reliefs:-

> *"i. To issue an appropriate writ, order or direction in the nature of mandamus commanding the Respondents to refund the proportionate royalty amount for a period of 77 days during which the petitioner was precluded from conducting mining activity at Sand ghat No.06, Patna*

on account of restriction imposed by the Respondent on generation of e-transit challans and also on account of restriction imposed by SEIAA contrary to the terms of the NIT and Agreement or to alternatively extend the settlement period by 77 days.

ii. *This Hon'ble Court may adjudicate and hold that the action of the Respondent Authorities in not granting proportionate remission in royalty for the period during which the petitioner was restrained / prohibited from conducting mining activity for absolutely no fault on its part, is completely illegal, arbitrary and non-est in the eyes of law.*

iii. *This Hon'ble Court may further adjudicate and hold that according to Rule 51(4) of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019, a settlee is obligated to pay royalty only for mineral "extracted" and "removed" by it.*

iv. *This Hon'ble Court may further adjudicate and hold that the action of the Respondents in obtaining the entire amount of royalty and not allowing the petitioner to conduct mining activity amounts to unjust enrichment.*

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

2. The brief facts of this case are that in the year 2022, the respondents floated an N.I.T. for settlement of sand *ghats* within the district of Patna for a period of five years. The petitioner participated in the auction which was held on 17.10.2022 and emerged as the highest bidder for Sand Ghat No.06 after quoting Rs.35,40,67,200/-. The reserve price of the aforesaid sand ghat was Rs.11,06,46,000/- and the earnest money deposit (EMD) was Rs.2,76,61,500/-. The petitioner paid the differential security deposit of Rs.6,08,55,300/- on 20.10.2022 and thereafter an in-principal work order was issued in favour of the petitioner vide letter dated 08.11.2022. Thereafter, the petitioner applied for grant of environmental clearance, which was granted by the State Environment Impact Assessment Authority, Bihar (SEIAA) on 20.10.2023 and consequent thereto, an agreement was entered into between the petitioner and the Mining Department. The Collector *vide* letter dated 29.11.2023 permitted the petitioner to commence mining at the said sand ghat.

3. It is the case of the petitioner that in February, 2024 a condition was imposed by the officials of the mining department to the effect that a settlee could not generate e-transit challans for more than 150-160 vehicles per day and this restriction was irrespective of the quantum of sand being transported on the said vehicles, rather the restriction was imposed on the number of vehicles itself.

4. It is further the case of the petitioner that under Rules 39 and 43 of the Bihar Mineral (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019, transportation of sand is permissible only through valid e-transit challans. As the petitioner was allowed to generate only 150–160 challans per day, it was effectively prevented from transporting and selling sand beyond that limit and therefore, it is the case of the petitioner that, the said restriction caused substantial financial loss to the petitioner. Accordingly, the petitioner, *vide* representation dated 01.04.2024, requested the Director, Mines and Geology, to increase the daily limit of e-transit challans but no action was taken upon the representation of the petitioner. Therefore, the petitioner submitted a representation dated 18.04.2024 to the Collector, Patna for increasing the slot limit of the petitioner but no steps were taken and therefore, the petitioner continued to suffer monetary loss on a daily basis. Finally, the petitioner vide letter dated 04.05.2024, surrendered the settlement of the sand ghat indicating the reasons to be the slotting system introduced by the mining department.

5. It is further the case of the petitioner that because the NIT and Agreement contemplated suspension of mining only during July, August and September, the subsequent condition imposed by SEIAA extending the suspension from mid-June to mid-October, as communicated by the Director, Mines vide Memo No. 2374 dated 14.06.2024, curtailed the mining period of the petitioner by an additional period of one month. Further, the restriction on generation of mining challans continued till 15.06.2024, after which excavation was completely stopped. It is further the case of the petitioner that since the sand could only be sold from the secondary loading area, the delay in providing the requisite ID and password till 05.07.2024 on the part of the respondents, prevented the petitioner from selling sand from 16.06.2024 to 04.07.2024. Besides this, generation of e-transit challans was also intermittently stopped/restricted by the Mining Department, causing further disruption. It is also the case of the petitioner that he had filed several representations before the respondent authorities but all of which have remained unanswered and no substantial steps were taken in this regard.

6. Learned counsel for the petitioner, at the outset, submits that the petitioner was precluded from carrying out mining activity for 77 days for no fault of his own and therefore he deserves to be refunded the proportionate royalty amount for the aforesaid period of 77 days during which he could not carry out the mining activity. The learned counsel for the petitioner has drawn strength from the decisions of the Hon'ble Supreme Court in the case of ***Jai Durga Finvest (P) Ltd. vs. State of Haryana & Ors.*** reported as ***(2004) 3 SCC 381*** and the observations of the Hon'ble Supreme Court in the case of ***Chitra v. State of Kerala,*** reported as ***(2016) 1 SCC 685.***

7. Learned counsel for the petitioner further submits that the action of the respondent in imposing the restriction on the generation of e-challans mid-way of the sand ghat lease settlement is arbitrary and the petitioner could not be saddled with the loses on account of such arbitrary policy. The petitioner had paid more than three times the reserve price for the settlement of the sand ghat, however, against 15.49 Lakh M.T. of sand the petitioner could only excavate about 9.49 Lakh M.T. of sand, therefore, the petitioner was precluded from excavating about 6 Lakh M.T. of un-utilized sand capping. It is further submitted that at the cost of approximately Rs.288.57 per M.T. the petitioner, has therefore, suffered a substantial loss for no fault of his own.

8. Lastly, it has been submitted by learned counsel for the petitioner that the action of the respondents in precluding the petitioner from operating his sand ghat and thereby, preventing him from excavating and removing the sand from his allotted sand ghat is illegal and arbitrary and the petitioner cannot be made to suffer monetary loss on account of inaction on the part of the respondents.

9. *Per contra*, learned counsel for the answering respondents, at the outset, has submitted that the present writ petition is wholly misconceived and not maintainable since the relief claimed are flowing from a contractual relationship between the petitioner and the respondents and therefore, cannot be agitated in writ proceeding. It is emphasized that the petitioner after having emerged successful in the bidding process, voluntarily and willingly entered into the agreement after having accepted all the terms and the clauses and as such, cannot now turn around to seek remedies which are not contemplated under such terms and conditions.

10. The learned counsel for the answering respondents has next submitted that the tender conditions are binding in nature and the petitioners after having participated in the same, cannot be permitted to turn around and challenge the same after having accepted and acted upon the terms and conditions of the tender.

11. Relying upon the decisions of the Hon'ble Supreme Court in the case of ***Rajasthan State Industrial Development Corporation vs. Diamond & Gem Development Corporation*** reported as ***(2013) 5 SCC 470*** and ***Balaji Ventures Pvt. Limited vs. Maharashtra State Power General Company Limited & Anr.*** reported as ***2022 SCC OnLine SC 1967,*** the learned counsel for the answering respondents have submitted that a party which has voluntarily entered into a contract with full knowledge of its terms and conditions and accepted its benefits by acting upon it, is estopped from later challenging the contractual conditions itself or seeking to avoid its consequences.

12. I have considered the rival contentions of the parties and perused the material on record.

13. The nucleus of the present case revolves around the fact that that the petitioner was precluded from operating the sand *ghat* for the reasons, which according to the petitioner, were not attributable to him.

14. The Hon'ble Supreme Court in the case of ***Jai Durga Finvest (P) Ltd. v. State of Haryana & Ors.***, reported as ***(2004) 3 SCC 381 : 2004 SCC OnLine SC 40*** has held as under:-

> *"10. The question, thus, which was required to be posed and answered was as to whether clause 18-A of the agreement would remain enforceable despite the fact that the appellant allegedly could not extract any sand by reasons of omission and commission on the part of the respondents concerned. The appellant herein has raised a plea that the contract became impossible to be performed as the landowners of the area in question did not receive compensation and despite request, the third respondent did not enforce clause 27 of the agreement.*
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> *11. It is not in dispute that the grant of mining lease in favour of the appellant herein for the extraction of mineral sand by the respondents is governed by the provisions of the Punjab Minor Mineral Concession Rules, 1964. In terms of Rule 33 the bidder is required to execute a deed in Form 'L'. Clause 27 of the agreement in Form 'L' obligates the respondents to comply with the request made in terms thereof. The Appellate Authority had not considered this aspect of the matter. The High Court also*

did not apply its mind in this behalf. The first question that arises is whether the respondents complied with their statutory obligations when the request was made by the appellant. If not, the second question would be the effect of non-compliance with the statutory obligation of the respondents which formed part of the contract insofar as they did not comply with the appellant's request as aforementioned which had a direct bearing on the right of the appellant to raise sand. The High Court, as noticed hereinbefore, has merely proceeded on the basis that the appellant had entered into the contract with his eyes wide open; but, the same would not, in our opinion, mean that they were bound to pay the contract amount, get its security amount forfeited, as also pay interest at the rate of 24 per cent, although it could not, by reason of acts of omission and commission on the part of the respondents, carry out the mining operation as per the terms of the agreement.

12. Whether in such a situation the doctrine of frustration will be invoked or not should have been considered by the High Court. [See M.D., Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. [(2003) 8 Scale 424 (2)]"

15. Further, the Hon'ble Supreme Court in the case of ***Chitra v. State of Kerala***, reported as ***(2016) 1 SCC 685 : 2015 SCC OnLine SC 745*** has held as under:-

> *"5. The facts are neither disputed nor are they convoluted. The appellant had submitted an application on 16-3-1990 for the grant of an FL 3 licence in respect of her Hotel Chanakya at Trivandrum, which had been granted. However, it transpired that a third party filed a suit in which the Munsif Court, Trivandrum granted an interim injunction restraining the Excise Commissioner from issuing the said licence to the appellant for user at her said hotel. This suit, along with another suit similar to it, was eventually dismissed on 29-9-1993. In an ensuing appeal, the District Judge granted an ad interim injunction on 15-4-1994, which came to be vacated on 3-6-1994. On 23-11-1994, the respondent rejected the appellant's application for the FL 3 licence due to an amendment to the Foreign Liquor Rules which had resulted in private parties being ineligible for FL 3 licences. Consequently, the appellant filed OP No. 18145 of 1994, which was allowed by the Single Judge. Acting in accordance with the Single Judge's directions, the Excise Commissioner granted the licence and raised a demand of only the proportionate licence fee which was duly deposited; but*

the matter was brought before the Division Bench in the subject appeal. As already mentioned, it seems most likely that the attention of the Division Bench which passed the impugned judgment was not brought to bear on the already existing binding decisions in R. Vijayakumar [1994 Supp (2) SCC 47] as well as Jayadevan v. Board of Revenue [1998 SCC OnLine Ker 209] wherein the Division Bench of the High Court of Kerala has held that the licensee is required to pay only the proportionate licence fee if the delay in granting the licence, or utilising it, as the case may be, are for reasons not attributable to the said licensee.

6. *We are in agreement with the learned Senior Counsel for the appellant that the legal principle to the effect that no person can be prejudiced because of an act of a court is apposite and relevant in the present case. We say this keeping in perspective the position that although the appellant had applied for the FL 3 licence which would ordinarily run the course of one financial year, due to interim orders passed by the courts, the appellant could only utilise it for a fraction of that period. We hasten to clarify that the appellant's application was not made in the duration of that year and was thus initially not for a fraction of the financial year. This Court*

has already held in R. Vijayakumar [1994 Supp (2) SCC 47], in the circumstances prevailing in that case, that the Department could not interfere with the utilisation of the FL 3 licence, provided that the licensee complied with all other conditions as well as "payment of annual rental proportionately". It is, therefore, clear that Rule 14 would not impede or inhibit the charging of annual proportionate fee so long as no failure is placed on the licensee or it is blameworthy itself. We must be quick to clarify that in the event that a party applies for a period which is obviously not effective for the entire financial year, such as applying for a licence midway that financial year, the full fee for that year may be claimable or chargeable and, therefore, would have to be paid. In other words, had the appellant applied for the licence even with the knowledge that because of external factors such as a pre-existing injunction order, etc., she would not have been able to exploit it for the entire year, she may not have been liable to pay the licence fee for the entire year. This is not the factual matrix which obtains in the case at hand; the licence could only be granted for the period from 21-12-1999 to 31-3-2000 i.e. till the close of that financial year, owing to unforeseeable circumstances beyond the *ken and control of the parties before us. We have already made a mention of the Division Bench judgment delivered in Jayadevan [1998 SCC OnLine Ker 209] which in turn was referred to in another Division Bench judgment in Rajagopalan Nair v. Commr. of Excise [1989 SCC OnLine Ker 387], wherein the Division Bench directed that the licensee was entitled to remission of payment of kisht because of being disabled to conduct its business on account of the interim orders passed by the Court. We affirm the conclusions arrived at in these decisions.* ***We hold that a party is entitled to seek a remission in the payment of licence fee if it is precluded from transacting business on the strength of that licence because of factors and reasons extraneous to it and/or if it is granted the licence on the direction of a court for only a portion of the financial year.***

7. *The appeal is accordingly allowed. The respondent State shall, within six weeks from today, refund to the appellant the balance amount of Rs.9,41,257 together with interest thereon @ 6% p.a. with effect from 11-8-2005. Failure to do so shall render the respondent State liable to refund the aforementioned sum of Rs 9,41,257/- together with interest @ 12% p.a. calculated from 11-8-2005 till the date*

of payment and also additionally liable for payment of costs quantified at R.s 15,000 (Rupees fifteen thousand only).

<u>Civil Appeal No. 4900 of 2006</u>

8. *The facts that arise in this appeal are somewhat complex in comparison to Chitra's foregoing appeal. The appellant had been granted an FL 3 licence for its Hotel Hackoba at Ernakulam for the period ending on 31-3-2001. Due to a dispute with its landlord it had to vacate its premises; and on locating to another, it applied for the renewal of the licence on 26-2-2002. This was obviously for the immediately succeeding year 1-4-2001 to 31-3-2002. The Excise Commissioner rejected the application for renewal on 4-9-2002 on the ground that the licence had become defunct; a decision which was upheld by the State Government. In these circumstances, the appellant successfully approached the High Court of Kerala which issued a direction to the State Government to issue the licence within two weeks. The Single Judge simultaneously directed the appellant to pay the licence fee for the years 2001-2002 and 2002-2003 by his judgment dated 27-1-2003. The appellant preferred an appeal, and on the first day of its hearing, the Division Bench passed an ad interim order directing the appellant to pay Rs 15 lakhs.*

Shortly after making this payment, on 25-3-2003, the licence was renewed. The Division Bench of the High Court of Kerala noted Rule 14 of the Foreign Liquor Rules as well as the fact that it had not been challenged. The Division Bench accepted the argument of the appellant that for the reason that it could not utilise the licence for the year 2001-2002 as its application had been disallowed it was not liable to pay any fee; viz. during this period it was prevented by extraneous elements and factors from utilising the licence. However, the Division Bench held that since the licence was renewed in March 2003, even though the appellant could conduct its business for less than a fortnight in that licence year, nevertheless the appellant was liable to pay the full fee for the year 2002-2003. It is these circumstances which have constrained the appellant to file the present appeal before us.

9. In order to eradicate any possibility of misunderstanding our present judgment, we hasten to clarify that had the appellant's application for renewal of the FL 3 licence found approval instead of rejection on 4-9-2002, the appellant would have been liable to pay the entire fee for the year 2001-2002. This is so for the simple reason that there was no third-party *interference or intervention which led to the non-utilisation of that licence for the previous portion of that year; it may be reiterated that the appellant had to locate fresh premises. However, after 4-9-2002, the appellant cannot be held responsible in any way for the non-utilisation of the licence up to the date it was eventually renewed i.e. 25-3-2003.*

10. On the predication of the legal analysis and discussion in Civil Appeal No.2246 of 2006 (supra), we are of the opinion that the appellant is only liable to pay the proportionate licence fee for the period in which it could avail of the licence, that is, 25-3-2003 to 31-3-2003. It would be fair to cogitate upon whether the appellant should have declined the licence for virtually a week in that year, and since it failed to exercise that option, whether it should be burdened with the fee for the full year. It seems to us that any person placed in the position of the appellant would not be in a position to decline to accept the renewal of the licence even though it was for less than a fortnight, since that would have led to the licence being rendered defunct; which may have then led to consequence of disentitlement for grant or renewal of the FL 3 licence in the future."

16. At this juncture, this Court has noted that in

C.W.J.C No.6991 of 2025, titled as **'*M/s Awanish Construction vs State of Bihar & Ors'*** which was decided together with the analogous cases, this Court had directed the respondent authorities to consider the representation of the petitioners therein and thereafter pass a reasoned and speaking order in light of the decision of the Hon'ble Supreme Court in the case of ***Jai Durga Finvest (P) Ltd. (supra)*** and the observations of the Hon'ble Supreme Court in the case of ***Chitra (supra).***

17. It is settled position of law that the petitioner can not be subjected to adverse civil consequence where the inability to exercise a statutory or contractual right is occasioned by the action or omission of the respondent authorities themselves. Consequently, where the non-utilisation of a licence is not attributable to the petitioner, the imposition of the full financial burden would be arbitrary and inequitable, and the petitioner should be entitled to proportionate remission.

18. In these circumstances, the petitioner is directed to approach the respondent authorities for appropriate calculation of the refund of the proportional royalty amount for the period during which he was precluded from the mining in the sand ghat settled in his favour, for reasons not attributable to him.

19. If such a representation is filed, the same shall be considered and decided by the respondent authorities within a period of eight weeks from the date of filing of such a representation by the petitioner and thereafter the respondent authority shall pass a reasoned and speaking order in accordance with law after affording an opportunity of hearing to the petitioner. While deciding the aforesaid representation of the petitioner, the respondent authority shall also consider the law laid down by the Hon'ble Supreme Court in the case of ***Jai Durga Finvest (P)Ltd. (supra)***.

20. This Writ petition is allowed in the aforesaid terms.

21. Pending interlocutory applications, if any, also stands disposed of.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R
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