

(2023) 05 PAT CK 0007

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 111 Of 2023

M/S Harsh
Construction

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: May 2, 2023

Acts Referred:

- Bihar Minerals (Concession, Prevention of Illegal Mining. Transportation) Rules, 2019 - Rule 30, 41, 56, 56(1)
- Motor Vehicles Act, 1988 - Section 192
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 15, 23C, 26, 29A, 30, 56, 58

Hon'ble Judges: Partha Sarthy, J

Bench: Single Bench

Advocate: Pushkar Narain Shahi, Sudhir Kumar Singh, Gyan Prakash Ojha, Uday Shankar Pandey, Naresh Dikshit, Kalpana

Final Decision: Allowed

Judgement

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1. Heard learned senior counsel for the petitioner and learned Spl.P.P., Mines for the respondents.",,

2. The petitioner has filed the instant writ application for the following relief(s):-,,

â€œ(i) For quashing/ setting aside the order dated 26.09.2022 passed by the Director, Mines-cum-CEO, Bihar State Mining Corporation",,,

Ltd., Patna contained in Memo No. 08/Balu 214/22, 2008 of dated 26.09.2022 issued by the Administrative Officer, Bihar State Mining",,,

Corporation whereby and whereunder the petitioner has been held guilty and liable to pay a sum of Rs. 1,56,35,000 as penalty under Rule",,

56 of Bihar Minerals (Concession, Prevention of Illegal Mining. Transportation) Rules, 2019 as amended by Amendment Rules, 2021 for",,

illegal mining/transportation of 11,800 M.T. of sand through 14657 E- challans by imaginary vehicles.",,

(ii) For a direction to the respondent Bihar State Mining Corporation to make refund of the security deposit along with consequential,,

interest on delayed payment after quashing the order impugned dated 26.09.2022.,,

(iii) For any other relief or reliefs for which the petitioner will be found entitled for in the facts and circumstances of the present case.â€,,

3. The case of the petitioner in brief is that the petitioner is a private limited company incorporated under the Companies Act, 1956. Pursuant to the",,

Honâ€™ble Supreme Courtâ€™s order dated 10.11.2022 passed in Civil Appeal no. 3661-3662 of 2020 permitting the State Government to carry on,,

mining activity, the Bihar State Mining Corporation Limited (â€˜the BSMCLâ€™ in short) invited bid by e-auction for selection of contractors for",,

operation of sand ghats of different places. This included sand ghat of cluster-33, Banahi sand ghat and Mahuama sand ghat of district Gaya. The",,

petitioner being the highest bidder, earned the right to mine the minor mineral, the total bid amount being Rs. 53,92,236/-. In terms of the NIT, the",,

petitioner deposited a total sum of Rs. 38,58,216/- and a post dated cheque for the amount of Rs. 17,62,847/- was also deposited by way of second",,

instalment of the bid amount. It is the case of the petitioner that on completion of the formalities stipulated in the NIT, work order was issued by the",,

BSMCL on 8.12.2021 which clearly provides that the same is valid up to 31.3.2022. The same condition was also provided in paragraph no.,,

24(XXVIII) of the work order. A mining lease agreement dated 21.12.2021 was executed between the BSMCL and the petitioner.,,

4. It is the case of the petitioner that it started to carry out mining operation from the ghat in question ie cluster-33, Banahi sand ghat and Mahuama",,

sand ghat of District Gaya and also started to transport the mined sand after obtaining e-challan from the portal of the BSMCL. During operation of,,

the contract period, no complain whatsoever was raised with respect to illegal mining and/or transportation of the mined sand by petitioner. On the",,,
registration number/chassis number of the vehicles being uploaded by the petitioner on the portal of the BSMCL, e-challans were issued by the",,,
respondent Corporation without any objection.,,,

5. Subsequently pursuant to the order dated 31.3.2022 passed in Civil Appeal no. 3661-3662/2020 by the Honâ€™ble Supreme Court, the period of",,,
settlement of sand ghat with the petitioner was extended by eight weeks starting from 1.4.2022. The petitioner accordingly deposited an amount of Rs.,,,
16,00,000/- on 31.3.2022 and the remaining amount of Rs. 9,81,360/- on 28.4.2022. However, as environmental clearance was provided only up to",,,
20.4.2022, the mining was allowed only for the said period.",,,

6. Mr. Pushkar Narain Shahi, learned senior counsel appearing for the petitioner submits that the BSMCL issued a show cause notice to the petitioner",,,
as contained in memo nos. 1596 and 1597 dated 27.7.2022 under the signature of the Director-cum-CEO, BSMCL alleging therein that out of the total",,,
number of 6063 e-challans generated by the petitioner, 909 e-challans were issued for unrealistic vehicles for transportation of 3656 MT of sand, the",,,
value of which comes to Rs. 48,44,200/-. Thus, as per the respondents the same revealed that the petitioner had transported a total of 3656 MT of",,,
minor minerals (sand) by using 909 unrealistic vehicles in contravention of section 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, ",,,
Transportation & Storage) Rules, 2019 (hereinafter referred to as â€™the Rulesâ€™) and clause XXVII of the agreement. As such it was stated that",,,
the petitioner was liable to pay a total sum of Rs. 48,44,200/- as penalty for violating Rule 56 of the Rules, 2019 as also the terms and conditions of the",,,
agreement. The petitioner was directed to show cause within seven days as to why penalty amount / suitable compounding fees be not realized from",,,
him. The petitioner submitted his reply stating that Rule 56 of the Rules is not applicable in the petitionerâ€™s case. There has been no violation of",,,
Rule 56 and the BSMCL has no cause of action to proceed in the matter. With respect to clause XXVII of the agreement it was stated that the",,,
vehicle number as also the name of the owner was supplied to the BSMCL. It was categorically stated that no condition of the agreement provided",,,

that the mine mineral cannot be transported on a vehicle which has not Applied For its registration.,,,

7. By order contained memo dated 26.9.2022 (Annexure-7) issued under the signature of the Director, Mines-cum-CEO, BSMCL, the explanation",,,

furnished by the petitioner was rejected and it was held that the petitioner was liable to pay Rs. 1,56,35,000/- as penalty under Rule 56 of the Rules for",,,

illegal mining / transportation of 11800 MT of sand through 14657 e-challans. After adjustment of the balance amount of security deposit which was,,

Rs. 10,98,059/-, the petitioner was directed to deposit Rs. 1,45,36,941/-.".,,,

8. It was submitted by learned senior counsel appearing for the petitioner that Rule 56 of the Rules deals with penalty for unauthorized extraction and,,

removal of minor mineral. Rule 56 would be applicable only in cases of those persons who were extracting and removing minerals without any,,

agreement or work order in their favour. The petitioner admittedly being the contractor with whom the respondent BSMCL had entered into an,,

agreement, Rule 56 would not be applicable in the petitioner's case.".,,,

9. It was further submitted that the petitioner had been filling all the required details in Form-G as provided under Rule 41. In absence of the,,

registration number of the vehicles, the petitioner supplied the chassis number of the vehicles and the respondent accepted the so filled up Form-G and",,,

issued e-challan.,,,

10. As such, it was submitted by learned senior counsel that mentioning of registration number of a vehicle was not mandatory in the transit challans",,,

and in any case of the matter in the case of the petitioner Rule 56 would not be applicable. On this ground alone the order impugned dated 26.9.2022,,

(Annexure-7) imposing penalty of Rs. 1,56,35,000/- on the petitioner is illegal, not sustainable and fit to be set aside.".,,,

11. The prayer made in the writ application was opposed by Mr. Naresh Dikshit, learned Spl.P.P., Mines appearing for the respondents. It was",,,

submitted by learned counsel that a counter affidavit has been filed on behalf of the respondents stating therein the various clauses of the tender,,

document as also the agreement entered into between the respondent and the petitioner provided that the contractor was to keep the correct account,,

of quantity of mineral mined out, dispatched from mine, mode of transport, registration number of vehicles, person in-charge of vehicle and mine plan.",,

Learned counsel submitted that plying of vehicle without a valid number plate is punishable under section 192 of the Motor Vehicles Act, 1988 and",,

vide letter dated 13.8.2020, the State Transport Commissioner directed all the District Transport Officers and other Enforcement Officers for its strict",,

compliance.,,

Sl.No.,Vehicle /Equipment,"Compound fee (in

Rs.) Per unit

1,Tractor trolley,25000

2,"Matador/Half truck 407,

608",50000

3,"Full body

truck/Dumper(hydraulic

6 wheeler vehicle)",100000

4,"10 or more than 10

wheeler vehicle",200000

5,"Crane, Excavator.

Loader, Power hammer,

Compressor, Drilling

machine etc.",400000

like the petitioner herein for mining and the terms of said agreement have been breached by the license holder.,,

21. On the other hand Rule 56 of the Rules deals with penalty for unauthorized extraction and removal of minor minerals. Rule 56(1) of the Rules as,,

quoted herein above is quite clear when it provides that whoever is found to be extracting or removing minor minerals or on whose behalf such,,

extraction or removal is being made, otherwise than in accordance of these Rules, he would be liable for punishment, as provided under the said",,

provision. Thus, in the opinion of this Court, the very heading of Rule 56 which talks about penalty for unauthorized extraction and removal of minor",,

minerals, contemplates that the same is with respect to persons not having a valid license/agreement for extraction of minor minerals. In case, the",,,
person is having a valid license, the permission for extraction already being there, in case there is any breach, the provision of Rule 30 which deals",,,
with penalty in case of breach of terms would come into play.,,,

22. So far as the facts of the instant case is concerned, there is no dispute that pursuant to the petitioner being the highest bidder for the mine in",,,
question, work order dated 8.12.2021 (Annexure-1) was issued in his favour and subsequently an agreement was also entered into on 29.3.2022",,,
(Annexure-2) between the BSMCL and the petitioner. Thus in the opinion of the Court the case of the petitioner would not come under Rule 56 of the",,,
Rules and the order impugned is not sustainable on this ground alone.,,,

23. It may further be stated here that so far as the ground of incorrect e-challans being issued is concerned, it was submitted by learned senior counsel",,,
appearing for the petitioner that the petitioner was required to fill up Form-G and on the same being accepted that the mineral transit pass / e-challans,,
is generated by the Department of Mines and Geology, Government of Bihar. Besides the details mentioned in Form-G, at Sl. no. 16 thereof the",,,
vehicle number is required to be given. Learned senior counsel submitted that it is the categorical case of the petitioner that in absence of the,,
registration number of the vehicle being available, with respect to the vehicle the petitioner supplied the chassis number of the vehicle and the",,,
respondents issued the e-challans for transportation of the mined sand.,,,

24. On perusal of the counter affidavit and hearing learned Special P.P. Mines for the respondents, it transpires that the case of the respondent is that",,,
on a number of occasions the e-challans were generated with chassis number and AF (ie Applied For) mentioned in place of registration number,,
which was in complete violation of section 192 of the Motors Vehicle Act. Here also, the Court may observe that mentioning of chassis number and at",,,
the same time stating against the registration number that the same is "Applied For", can in no manner be said that the vehicles in question were",,,
unrealistic, fictitious and that the registration number was mandatory. It is not the case of the respondents that an incorrect registration number was",,,

given with respect to any of the vehicles. In any case of the matter, the case of the petitioner would not fall in the category of a person on whom",,

penalty under Rule 56 of the Rules would be leviable.,,

25. As such, the order impugned contained in memo dated 26.9.2022 (Annexure-7) issued under the signature of the Director-cum-CEO, BSMCL",,

being illegal and non sustainable is fit to be set aside and is hereby quashed.,,

26. It is ordered that the Director-cum-CEO, BSMCL shall refund the security deposit to the petitioner within a period of three months.",,

27. The writ application stands allowed.,,