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**(2013) 3 EFLT 131 : (2012) 4 JLJR 506**

**Jharkhand High Court**

**Case No:** Writ Petition (C) No. 6652 of 2005

Md. Sayem Ali

APPELLANT

Vs

State of Jharkhand and  
Others

RESPONDENT

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**Date of Decision:** Sept. 10, 2012

**Acts Referred:**

- Explosive Substances Act, 1908 - Section 3, 4, 5

**Citation:** (2013) 3 EFLT 131 : (2012) 4 JLJR 506

**Hon'ble Judges:** Aparesh Kumar Singh, J

**Bench:** Single Bench

**Advocate:** A.K. Sinha and Nitu Sinha, for the Appellant; Shamim Akhtar and Arvind Kumar Mehta, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Aparesh Kr. Singh, J.

Heard learned counsel for the parties. This writ petition was filed against the order as contained in Memo No. 1234 dated 1st July, 2003 passed by the respondent no. 4, the Assistant Mining Officer, Pakur, Jharkhand by which the petitioner was informed of the cancellation of his mining lease pursuant to the order dated 28th June, 2003 passed by the Deputy Commissioner, Pakur, respondent no. 2, on the allegation that the petitioner was found to have indulged in use of explosives without licence. The petitioner has also sought for quashing of the revisional order dated 24.9.2005 passed by the Mines Commissioner, Ranchi as contained in Annexure-6 on the same ground.

2. The brief facts of the case are that the petitioner was granted a mining lease for quarrying stone in an area of 1.21 acres in Mauja-Lakhipahari of District-Pakur in the month of September, 2002 for 10 years, which was to expire on 5th September, 2012. It

is submitted on behalf of the petitioner that he was carrying on business of stone from the said leasehold area in terms of the rules and regulations and had not indulged in any use of explosives. However, the area was inspected in absence of the petitioner without any notice to him by the Executive Magistrate, who reported the matter to the Assistant Mining Officer, which led to lodging of an FIR against the petitioner and one other person under the provisions of Sections 3 /4/5 of Explosives Substances Act (Annexure-1). On notice, the petitioner replied to the Assistant Mining Officer that he was never indulged in any use of explosives and the order of cancellation of his lease was not proper. However, the petitioner's lease was cancelled by the impugned order, which was communicated to the petitioner as contained in Memo No. 1234 dated 1st July, 2003, Annexure-5. The petitioner being aggrieved by the same, preferred a revision, which was rejected by the Mines Commissioner vide order dated 24th September, 2005, as contained in Annexure-6, in Revision Case No. 77/2003. It is submitted on behalf of the petitioner that on the basis of said inspection carried out by the Executive Magistrate on other leasehold area for similar allegation, FIR was lodged against a number of lessees but some of the mining lease was not cancelled.

3. The petitioner approached this Court and an interim order granting status quo was passed on 23rd March, 2006 enabling the State Counsel to produce the records of the case and the order passed by the Deputy Commissioner cancelling the mining lease of the petitioner and thereafter the matter was taken up on 14th May, 2012 and further time was allowed to the State Counsel to seek instruction and file a counter affidavit but no counter affidavit has been filed till date.

4. On the other hand, learned counsel for the petitioner submits that the criminal case, which was initiated pursuant to the FIR bearing Pakur (M) P.S. Case No. 57/2003 (G.R. No. 16/2003) leading to the Sessions Case No. 188/2006 against the petitioner and one other person under the relevant provisions of Explosive Substances Act, ended in acquittal of the petitioner as the prosecution has failed to prove the charges levelled against the accused persons and the petitioner was held not guilty and discharged from the liability of his bail bonds. The said judgment was passed on 19th January, 2012, which is contained in Annexure-11 to the supplementary affidavit.

5. By referring to the order passed by the Deputy Commissioner dated 28th June, 2003 annexed to the said supplementary affidavit, learned counsel for the petitioner submits that out of 12 persons, whose lease were cancelled, few of them approached this Court in WP(C) No. 6649/2005 assailing the impugned action of cancellation of the lease. This Court vide order dated 27th February, 2007, after hearing the counsel for the parties, quashed the impugned orders relating to cancellation of lease as also the revisional order passed by the Mines Commissioner. From a perusal of the said order, it appears that this Court found that the order of cancellation of the lease of said persons was based upon an inquiry report, which was never served upon the said petitioners and the impugned orders passed by the original authority as well as the revisional authority proceeded on the basis of said inquiry report in a mechanical and non-speaking manner.

6. It is submitted on behalf of the petitioner that the petitioner's case stands on a better footing than that of those persons as the petitioner's case has ended in acquittal vide judgment dated 19th January, 2012 as stated hereinabove in Sessions Case No. 188/2006 passed by the Sessions Judge-1, Pakur, Annexure-11 to the supplementary affidavit. In the aforesaid facts and circumstances, it is submitted on behalf of the counsel for the petitioner that the impugned orders are no longer sustainable in law and deserve to be set aside.

7. However, learned counsel for the respondents, has not been able to refute the aforesaid contentions of the petitioner, which have been brought on record and supported by documents.

8. Since enough time was granted to the counsel for the respondents to seek instruction and file counter affidavit but no counter affidavit has been filed, this Court does not find it proper to grant any further time to the respondents and in view of the specific facts brought on record by the petitioner, this case is decided on merit today after hearing the counsel for the parties and going through the impugned order including the relevant material brought on record. It is apparent that the impugned order of cancellation as contained in Annexure 5 is based upon the order passed by the Deputy Commissioner dated 28th June, 2003, which is also brought on record by way of supplementary affidavit, which was based upon the inquiry report of the Executive Magistrate relating to use of explosives by the petitioner in respect of quarrying on stones over the said mining lease. The said allegations led to the institution of an FIR against the petitioner, which also ended in acquittal on failure of the prosecution to prove the charges against the petitioner and one other person. It is also apparent from the order passed in WP(C) No. 6649/2005 dated 27th February, 2007, Annexure-12 that the order of cancellation of lease and the revisional order passed in the case of other persons have been set aside earlier by this Court on the ground that the order passed was mechanical and non-speaking order and based on an enquiry report, which was never served upon the petitioner.

9. In view of the aforesaid facts and circumstances, it appears that the impugned orders are not sustainable in law and deserve to be quashed. Accordingly, the impugned orders as contained in Annexures-5 and 6 are quashed and this writ petition stands allowed.