

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 23099 of 2018

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Chandan Kumar son of Sri Bhado Singh @ Bhado Singh, resident of village Tulsiyahi, Police Station- Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Commission-cum- Principal Secretary, Department of Mines and Geology, New Sachivaya, Patna.
3. The Collector, Saharsa, Bihar.
4. Mines Inspector-cum- Competent Officer, Saharsa.

... .. Respondent/s

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Acts/Sections/Rules:

- *Rule 11A(C), 24(3) and (7) of the Bihar Minor Mineral concession (Amendment) Rules, 2014*

Cases referred:

- *LPA No. 379 of 2019 in CWJC No. 12859 of 2017 (Mr. Aman Sethi vs the State of Bihar & Ors)*
- *CWJC No. 6526 of 2017 (Chandan Kumar vs State of Bihar)*

Writ - *filed to quash the order passed by Mines Commissioner whereby the representation filed by the petitioner questioning the demand raised by the Mines Inspector for payment of enhanced bid amount of 20% in 2017 over the auction amount of 2016 had been rejected.*

Petitioner was declared the highest bidder for sand mining project in 2016. The bid amount was to be enhanced @ 20% in each subsequent year.

The petitioner deposited the requisite fee on 02.07.2016 but the sanction order was not issued. Finally, the Department of Mines and Geology

approved the mining plan only on 27.12.2016 i.e. five months after the mining plan was submitted on 29.07.2016. This followed the application for environmental clearance application on 23.01.2017 which came to be cleared on 16.03.2017. In the aforesaid circumstance, the petitioner wanted adjustment of settlement amount deposited in the year 2016 against the dues of 2017.

Held - *Petitioner could not operate the sand-ghats for even a single day in 2016 primarily because the Mining Department delayed the approval to the mining plan which was issued on 27.12.2016 and the delay was perpetuated by the State Level Environment Impact Assessment Authority in delaying the grant of environmental clearance. Yet, the State intends to pocket that amount by denying the benefit to the petitioner and penalizing him without any fault. (Para 37)*

The respondent authorities having failed to give necessary sanction orders in time to start mining operation in the year 2016 cannot arm twist the petitioner to pay through his noses taking the alibi of different clauses signed by him. He is liable to make payment treating the year 2017 as the base year so far as the increased 20% amount is concerned, as the actual operation took place pursuant to the environmental clearance given by the respondents. So far as the other demands are concerned, the petitioner shall be duty bound to make payment in line with the clauses envisaged which he accepted. (Para 42)

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... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
Ms. Aastha Ananya, Advocate
For the State : Mr. Gyan Prakash Ojha -GA-7
Mr. Abhinav Ashok, AC to GA-7
For the Mines : Mr. Naresh Dixit, Spl. P.P. Mines
Mr. Brij Bihari Tiwari, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 22-07-2024

Heard the parties.

2. The present petition has been preferred for the grant
of following reliefs:

(i) to quash the order dated
5.11.2018 passed in Misc. Case No.17/2018
by the Mines Commissioner, Bihar, Patna
whereby the representation filed by the
petitioner questioning the demand raised by
the Mines Inspector- cum-competent
authority Supaul for payment of enhanced
bid amount of 20% in 2017 over the auction
amount of 2016 by treating the year of
settlement as 2016 and consequently to



reduce the auction amount for 2018 proportionally by 20% treating 2017 as first year of settlement has been rejected and for remission from payment of proportionate amount of auction amount for the period 19.12.2017 to 29.1.2018 which order is illegal and unsustainable;

(ii) to quash a part of the letter no.105/M dated 8.12.2017 issued under the signature of competent Officer-cum-Mines Inspector, District Mines Office, Saharsa to the extent whereby the auction amount for 2017 in the work order has been fixed arbitrarily by enhancing the same by 20% over the previous year in teeth of the order passed by this Hon'ble Court and thus the respondent authorities has acted in defiance and in derogation of the order dated 10.11.2017 passed in C.W.J.C.No. 6526 of 2017, which is illegal and unsustainable;

(iii) for a writ of mandamus restraining the respondent authorities from enhancing the auction amount by 20% over the previous year for 2017 as the petitioner due to the fault of the respondent was not Issued work order and thus the period of settlement must be treated to commence not from the date of auction but from the date of work order;

(iv) to quash the letter no.242



dated 26.2.2018 issued under the signature of competent Officer-cum-Mines Inspector, District Mines Office, Saharsa, whereby the respondent authorities had yet again enhanced the auction amount by further 20% over the previous year i.e. 2017 treating the same as the third year of settlement in defiance of the order dated 10.11.2017 passed in C.W.J.C.No. 6526 of 2017 and further to restrict the respondent to charge only 20% over the 2016 auction amount. Consequently the demand notice dated 25.6.2018 raised by the respondent no.4 may also be quashed to the extent that it had illegally enhanced the settlement amount by 40% and refused to grant remission;

(v) to further quash the said letter no. 242 dated 26.2.2018 to the extent by which it had held that the petitioner is not entitled to claim remission for the period, the Mining Operation was deliberately closed by the respondent by blocking the e-challan.

(vi) for a writ of mandamus that the petitioner is entitled for remission from payment of proportionate amount of auction amount for the period in between 19 Dec. 2017 to 29.1.2018, when the Transit challan was blocked by the department and consequently no mining operation could be



carried out and the same may be adjusted against future payment.

3. The facts of the case as per the petitioner is/are as follows:

4. Pursuant to the advertisement published in the leading news paper for settlement of Balughat in the District of Saharsa for a period of 5 years, the petitioner and 2 others bidders submitted their bid document.

5. The bid submitted by all the 3 bidders were accepted by the technical committee on 21.06.2016 whereafter they participated in the open competitive bidding held on 23.06.2016. The petitioner was declared the highest bidder as he offered Rs.46 Lacs 80 thousand for the first year to be enhanced @ 20% in each subsequent year.

6. Accordingly, the tender committee settled the bid in favour of the petitioner and the Mines Inspector-cum-competent Officer issued the consequential letter, vide letter no.409/Mines dated 30.06.2016 incorporating therein about the settlement of the Balughat in the District of Saharsa in favour of the petitioner for 5 years commencing 2016. The petitioner was to deposit the requisite amount as also getting the environmental clearance in terms of the terms and conditions laid down in the tender document and after the approval by the Collector, the agreement



could be executed.

7. Further, as per the clause (xiii) and (xv) of the letter dated 21.06.2016, the successful tenderer is/was required to submit an approved Mining plan and environmental clearance certificate and only after approval of Mining plan and environmental clearance, the work order sanctioning the lease was to be issued by the competent authority. Thus, the condition precedent for issuance of in- principal sanction order/work order was that the lessee was required to submit an approved mining plan and environmental clearance from State environment impact assessment committee.

8. Accordingly, the petitioner deposited the required security deposit and the advance installment alongwith other payable taxes within stipulated time on 02.07.2016 as fixed in the letter dated 30.06.2016.

9. Thereafter, in terms of Rule 24(3) and (7) of the Bihar Minor Mineral concession (Amendment) Rules, 2014 (henceforth, 'the Rules 2014') the petitioner on 29.07.2016 within stipulated period of 90 days submitted five copies of Mining plan with progressive Mines closure of Saharsa Sand Mines to the Director, Mines and Geology, Bihar, Patna and the office of the Director issued the receiving in token of the receipt



of such application.

10. However, it was only on 27.12.2016, i.e. after five months that the department of Mines and Geology, Bihar, Patna approved the mining plan with progressive mine closure plan of Saharsa sand deposit.

11. The petitioner thereafter filed application on 23.01.2017 before the State Level Environment Impact Assessment Authority (henceforth, 'the Authority') for environmental clearance for the proponent sand mining project for 4 points. 'The Authority' in its meeting held on 18th and 19th February, 2017 recommended for environmental clearance for 3 project namely on Sursari river, Tilawe river at Tulsiyahighat and on Tilawe river at Danka Bhpattia ghat of District Saharsa. Based on the recommendation of SEAC, SEIAA communicated on 16.3.2017.

12. The petitioner thereafter filed representation dated 21.3.2017 to the Mines Inspector-cum-competent Officer, Saharsa for issuance of work order sanctioning the Mining lease in respect of 3 projects as he had fulfilled all the pre- requisite envisaged in the letter/order.

13. The stand of the petitioner further is that in terms of the rule 11A(C) of 'the Rules', it was obligatory on the part



of respondent no.3 to issue in principal sanction order sanctioning the Mining lease after deposit of 25% of auction amount but it was never issued in the year 2016. Thus the failure of the competent authority in not issuing the in Principal sanction order sanctioning the lease i.e. work order in 2016 means that there was no settlement made in favour of the petitioner in the year 2016.

14. As no work order was being issued even after the submission of necessary clearance orders, C.W.J.C.No. 6526/2017 was preferred by the petitioner before the Patna High Court. The respondents took the stand that the petitioner was required to deposit the remaining auction amount for the year 2016 and 20% enhanced auction amount for the year 2017 before the work order could be issued as the period of settlement will commence from date of auction irrespective of delay in grant of statutory approval by the Department.

15. Paragraph no.13 of the counter affidavit in CWJC No. 6526 of 2017 read as follows:-

“That in light of facts and circumstances stated herein above and admitted by the petitioner that the delay for grant of work order was made by the petitioner himself without any fault on the part of the respondents. It is further



submitted that as per the new sand policy and opinion in this regard (in the case of westlink Pvt.Ltd.) from law department, Bihar the petitioner has to deposit necessary installments and other deposits for the year 2017 before issuance of work order. No work order can be issued if the necessary deposits of installments and other deposits is made by the petitioner to deposit the same and thereafter the respondents will issue work order for quarry of sand forthwith.

16. After hearing the parties, this Hon'ble Court vide an order dated 10.11.2017 passed in C.W.J.C.No.6526 of 2017 held as follows:

"In my opinion, the circumstances discussed would confirm, that the State is litigating at its worse level for even when it is undisputed that the petitioner could not operate the Sand Ghats for even a single day in 2016 primarily because the Mining Department delayed the approval to the mining plan which was issued on 27.12.2016 and which delay was perpetuated by the State Level Environment. Impact Assessment Authority, Bihar in delaying the grant of environment clearance. The State yet intends to pocket that amount by denying the benefit to the petitioner and penalizing the petitioner without any fault. This can not be



allowed. The principle of unjust enrichment applies to all and in the present case the State can not be allowed to become unjustly rich at the cost of a bonafide settlee.

In the circumstances this writ petition is allowed. The authorities of the Mining Department more particularly the respondent no.3 and 4 are accordingly directed to raise a fresh demand within a period of 4 weeks of receipt/production of a copy of this order in accordance with law, for the remaining period of 2017 after adjusting the settlement amount realized from the petitioner for the year 2016 bearing in mind that more than 11 months has passed even in the year 2017.

17. It is relevant to state that pursuant to order dated 10.11.2017 passed in C.W.J.C.No. 6526/2017, the respondent no.4 issued the work order for the reminder period of 2017 vide letter no.105/M dated 8.12.2017 for 22 days. However, the State authorities with an intention to pocket an additional amount which the petitioner was not entitled to pay in terms of the aforesaid order, enhanced the auction amount by 20% over the previous year treating the settlement as if it had commenced from 2016 i.e. from the date of auction. The stand of the petitioner to that despite deliberately not allowing the petitioner



to carry out the Mining Operation in the year 2016, the respondents wanted to penalize the petitioner by realizing additional amount of 20% over the previous year. The contention is that when the demand raised for the year 2016 was quashed by Patna High Court, an additional increase of 20% was also implied quashed as the Court directed the respondent Nos. 2 and 3 to raise fresh demand for the remainder period of 2017, the respondents cannot arm twisting in enhance 20% taking the year 2016 as base year as it has to be done from the year 2017.

18. The further contention is that wherein 10 days of the commencement of excavation of mining operation, the department on 19.12.2018 blocked the Transit Challan, bringing to closure, the mining operation in the district of Saharsa. The petitioner thus closed the mining operation on the orders of respondent no.4. There was no valid explanation for closure of mining operation in Saharsa district.

19. It is further relevant to state that E-challan was finally restored on 30.1.2018 for the Saharsa district and thereafter the petitioner again commenced his mining operation. Thus he is/was also entitled for exemption for 19.12.2017 to 30.01.2018 period when the mining operation was closed on



account of blockade of E-challan by the respondent without any reason. Though the stand of the Department is that due to internet connectivity, the challan was blocked but the fact remains that it was blocked for the aforesaid period which could be verified from P.U. section of the department.

20. However, the petitioner was served with a demand notice dated 25.6.2018 issued vide letter no.VIII by respondent no.4, wherein he was directed to deposit Rs.16,84,800/- as the 2nd installment of auction amount and other statutory dues by enhancing the auction amount by over 40% in 2018 as the authorities refused to grant remission for the period, the mining operation was closed.

21. The petitioner challenged the aforesaid letters dated 08.12.2017 and 26.02.2018 issued under the signature of Mines Inspector-cum-competent Officer, Saharsa by preferring a writ petition vide C.W.J.C.No. 14814 of 2018. It was disposed of on 14.09.2018 granting liberty to the petitioner to approach the respondent Principal Secretary-cum-Mines Commissioner, Bihar within two weeks who shall disposed it of within four weeks by a speaking and reasoned order taking into account the judgment of this court delivered on 10.11.2017. Till then, interim protection was granted to the petitioner.



22. The respondent no. 2 took up the matter and vide order/memo no. 4190 dated 05.11.2018 rejected the representation on the sole ground that having signed the document accepting the different clauses, it cannot claim enhanced demand of 20% taking the base year as 2016.

23. Aggrieved, the present petition.

24. The stand of the respondent nos. 3 and 4 as per its counter affidavit is/are as follows:

“7. That the petitioner has made a categorical submission that since the public auction was done in the year 2016 and the work order was issued in December 2017, therefore year 2017 may be treated as first year of settlement and thereafter an enhancement of 20% be made on the Installments. That fact otherwise as. The work order is only given after the settlee submits an approved mining plan and Environmental Clearance from the competent authority and in this process the answering respondents are no where responsible for any delay. It is for the settlee/ Petitioner to submit such documents and obtain work order any delay in obtaining work order is entirely on the petitioner himself.

8. That the respondent authorities



have taken the steps and have raised demand/ installments as per the terms and conditions of the tender document and the agreement. That the petitioner filed a writ petition bearing CWJC NO. 14814 of 2018 which was heard by this Hon'ble court and petitioner was granted liberty approach the Commissioner, Mines for his grievances.

9. That the petitioner filed representation and the matter was heard in his length in presence of the counsel for the petitioner. That a Misc. Case No. 17/2018 was initiated on the application of the petitioner and the Commissioner, Mines, Bihar after hearing the parties in detail and considering the terms and conditions of the tender passed order on 5/11/2018. The instant order dated 5/11/218 has been challenged by the petitioner in the present writ petition.

11. That the Commissioner, Mines, Bihar considering the above provisions of the tender document which was duly signed by the petitioner consenting to abide by the terms and conditions. Therein which also indicates that the petitioner have knowledge about the mode/procedure for deposits payments of installments. After having knowledge of the same the petitioner after giving his signed consent is



challenging the same before this Hon'ble court.

12. That apart from the above issue one more prayer has been sought for by the petitioner for remission of certain period and to be adjusted accordingly in the installment amount. That Clause 19 (xii) of the tender document clearly speaks about this issue that there is no provision for compensation or remission for any kind of disruption in mining activity. That the respondent state is not liable to entertain any claim of compensation of any kind. Therefore the prayer of the petitioner was duly rejected by the Commissioner, Mines, Bihar in his order dated 5/11/2018 passed in Misc. Case no.1 7/2018. That the petitioner has obtained an EC with TPA (Tonne Per Annum) prescribed therein and as such he can excavate/ mine such prescribed limit within the calendar year any time, therefore the petitioner is not at loss on this account also.

13. That the order dated 5/11/2018 passed in Misc. Case no. 17/2018 by the Commissioner, Mines, Bihar is a detailed and reasoned order indication the Rules and terms and provisions condition therefore the same is legally correct and in accordance with law.”



25. Learned Spl. P.P. Mines with the help of the counter affidavit defended the decision of the respondent no. 2 and his submission is that having signed the document, the petitioner cannot turn around and ask for exemption for the year 2016. The further submission is that the first order dated 10.11.2017 of Patna High Court merged with the order dated 14.09.2018 i.e. the second order and as such the petitioner cannot claim exemption on the basis of the first order.

26. Learned Special P.P. Mines in support of the order passed by the respondent no. 2 has taken this Court to the Patna High Court's (Division Bench) order in **LPA No. 379 of 2019 in CWJC No. 12859 of 2017 (Mr. Aman Sethi vs the State of Bihar & Ors)** with reference to paragraphs 24 and 25 which read as follows:

24. "Thus, the petitioner being fully aware of the terms and conditions of lease as well as the Act and Rules chose to contest the same in view of the pendency of a reference before the Apex Court which the petitioner hoped would ultimately be answered in his favour. This hope and expectation of the petitioner of succeeding in litigation in future cannot absolve him of the contemporaneous liability of either getting the lease registered immediately after its



execution which would obviously be dependent on payment of Stamp Duty and, therefore, the petitioner was under a legal obligation to have tendered the Stamp Duty subject to his objections being accepted or otherwise in the litigation which has been preferred by him. This therefore was a clear voluntary risk undertaken by the petitioner through his litigative pursuit which he is entitled in law to pursue as a right to seek judicial review Whether the Sub Registrar had the authority to demand the extra Stamp Duty or not is a subject matter of C.W.J.C. No. 7034 of 2016 which in turn is dependent upon the outcome of the litigation before the Apex Court as referred to in the interim order dated 19.11.2016 passed therein, but that by itself cannot extend any benefit to the petitioner to absolve him of the liability of getting the agreement registered or paying the Stamp Duty. Any delay on that count is therefore at the cost of a voluntary risk of the petitioner who has chosen to challenge the validity of imposition of Stamp duty. The hope of a future success might result in refund of the Stamp Duty that could be the best possible outcome of the litigation being pursued by the petitioner. The terms of the lease cannot be altered on the basis of this speculation. It is informed by the counsel for



the State that all lease holders of the area had got their leases registered except the petitioner who was contesting the imposition of Stamp Duty. The petitioner may have a right of judicial review but the same does not dissolve the liability of Stamp Duty unless ordered otherwise.

25. The question of extension of the tenure or otherwise may be dependent on the terms and conditions of the contract which can be defined or altered to the advantage of the appellant by no one else than the State Government. This cannot be by way of a judicial review on the facts and circumstances of the present case. The judgment relied on by the learned counsel for the appellant in the case of Uberoi Mohinder Singh and Associates Vs. State of Haryana and others, reported in (1991) 2 SCC 362 does not come to the aid of the appellant in the given facts and circumstances of the present case as discussed hereinabove. The demand of Stamp Duty by the Registration Department cannot be termed as unlawful obstruction or an act of omission or unjust commission so long as the demand is not held to be unlawful. That stage has not arrived as yet.”

27. In reply, the learned counsel for the petitioner took



this Court to the paragraph 22 of the same order and submits that it was incorporated in the order that the petitioner can claim a right of exemption or concession in the event he ultimately succeeds. His submission is that he succeeded in CWJC No. 6526/2017 (Chandan Kumar vs State) and as such, was entitled for exemption/concession. It would be appropriate to incorporate the relevant paragraph 22 of Mr. Aman Sethi (Supra) order which read as follows:

“22. In our opinion, the respondents throughout were contesting this position and had not extended any concession to the petitioner, but at the same time they appear to have not been able to cancel the lease for the reasons aforesaid. Consequently, there was no default on the part of the Mining Department at all so as to gather any deficiency on their part. The High Court even while passing the interim order on 19.11.2016 did not grant exemption to the petitioner or concede to his request for not paying the Stamp Duty. To the contrary, the Court compelled the petitioner to extend the Bank Guarantee in favour of the Sub Registrar in order to ensure the registration of the lease. The petitioner, therefore, can only claim a right of exemption or concession in the event he ultimately



succeeds in C.W.J.C. No. 7034 of 2016 and not before that.” (underline mine).

28. Having heard the learned counsel for the petitioner as also learned Spl. P.P Mines, the facts which are not disputed is/are as follows:-

29. The petitioner was a successful bidder for the three sand ghats in the District of Saharsa as he was declared the highest bidder. This was for the period 2016-2019 and as per one of the clause, the amount was to be enhanced by twenty percent every year.

30. The petitioner deposited the requisite fee on 02.07.2016 but the sanction order was not issued. Finally, the Department of Mines and Geology, Bihar, Patna approved the mining plan only on 27.12.2016 i.e. five months after the mining plan was submitted on 29.07.2016. This followed the application for environmental clearance application on 23.01.2017 which came to be cleared on 16.03.2017. (Annexure-7 to the writ petition). In the aforesaid circumstance, the petitioner wanted adjustment of settlement amount deposited in the year 2016 against the dues of 2017.

31. The petitioner later approached this Court in **CWJC No. 6526 of 2017 (Chandan Kumar vs State of Bihar)** which was disposed of on 10.11.2017 by a bench of this Court



(Hon'ble Mr. Justice Jyoti Saran, as his lordship then was) and the writ petition was allowed with the following observation:-

“I have heard learned counsel for the parties and I have perused the records and while it is the submission of Mr. Ranjan, learned counsel appearing for the petitioner that the petitioner cannot be prejudiced by the delayed action of the respondents, it is the argument of Mr. Lalan Kumar, learned counsel appearing for the Mining Department that in view of the opinion received by the Department, the request could not be accepted.

In my opinion, the circumstances discussed would confirm, that the State is litigating at its worse level for even when it is undisputed that the petitioner could not operate the Sand Ghats for even a single day in 2016 primarily because the Mining Department delayed the approval to the mining plan which was issued on 27.12.2016 and which delay was perpetuated by the State Level Environment Impact Assessment Authority, Bihar in delaying the grant of environmental clearance. The State yet intends to pocket that amount by denying the benefit to the petitioner and penalizing the petitioner without any fault. This cannot be allowed.



The principle of unjust enrichment applies to all and in the present case the State cannot be allowed to become unjustly rich at the cost of a bona-fide settlee.

In the circumstances this writ petition is allowed. The authorities of the Mining Department more particularly the respondent no.3 and 4 are accordingly directed to raise a fresh demand within a period of 4 weeks of receipt/production of a copy of this order in accordance with law, for the remaining period of 2017 after adjusting the settlement amount realized from the petitioner for the year 2016 bearing in mind that more than 11 months has passed even in the year 2017.”

32. It is the case of the petitioner that subsequently, the work order was issued for the remainder period of the year 2017 but again treating his mining operation to be active from the base year 2016, the 20% amount was demanded. Further, the mining operation was also blocked on 19.12.2017 which finally was restored on 30.01.2018 and thus the period between 19.12.2017 to 29.01.2018, there was no mining operation.

33. The petitioner kept on agitating before the respondents to consider the base year as 2017 as also give concession for the brief period when the mining operation was



blocked but without any success. Thereafter, in continuation of the earlier demand made vide letter no. 105 dated 08.12.2017 (Annexure-10 to the writ petition), another letter vide letter no. 242 dated 26.02.2018 was issued by the District Mining Office, Saharsa in which ignoring the direction made in the earlier writ petition, the demand was made treating the 2016 as base year.

34. The petitioner moved this Court in **CWJC No. 14814 of 2018** which was disposed of on 14.09.2018 and the short order read as follows:-

“The learned counsel for the parties are in agreement that the dispute involved in the present writ petition can be better adjudicated by the respondent no. 2 in light of the earlier judgment of this Court dated 10.11.2017 passed in CWJC no. 6526 of 2017.

2. In view of the aforesaid, the petitioner is granted liberty to approach the respondent no. 2 within two weeks from today and file a detailed representation which shall be disposed of by the respondent no. 2 within four weeks thereafter by a reasoned and speaking order considering the aforementioned judgment of this Court dated 10.11.2017. Till the disposal of representation of the petitioner, the concerned authorities shall not raise any bill



for the 20% enhanced amount.”

35. The matter thereafter went before the respondent, Principal Secretary, Mines and Geology Department, Bihar, Patna and after hearing the parties (**Chandan Kumar vs. Collector, Saharsa and Others**), an order came to be passed and communicated to the petitioner vide memo no. 4190 dated 05.11.2018 by which the respondent, Principal Secretary held that the petitioner having accepted the terms and condition cannot now be allowed to turn around and demand concession. The relevant part of the order passed by the Principal Secretary is incorporated herein below:

“दोनों पक्षों को सुना एवं प्रस्तुत अभिलेखी दोनों को देखा। सहर्सा जिल्ला के सम्पूर्ण मटकी मदोबस्ती बेचाग वर्ष 2016 से 31.12.2010 तक के लिये जून 2016 में निविदा आमंत्रित की गई की। निविदा दस्तावेज में बालूघाटों की बंदोबस्ती के लिए शर्त एवं समज की करिव में निग्न शर्वत है-

(क)

(1) निविदा के शर्तों एवं बंधेजों के प्रत्येक पृष्ठ पर मुहर के साथ हस्ताक्षर।

(स) निविदा आवेदन पर मुहर के साथ हस्ताक्षर।



निविदा दस्तावेज के प्रत्येक पृष्ठ पर हस्ताक्षर कर तात्पर्य है कि निविदादाताको निविदा की सभी शर्तें नाम्य है। निविदा दस्तावेज की कड़िया-४ में उल्लिखित है कि बालूघाटों की बंदोबस्ती पंचांग वर्ष 2016 से 31.12.2019 तक के लिए मान्य होगी। द्वितीय वर्ष तथा उसके आगे के दर्द के पूर्व के वर्ष की बंदोबस्ती राशि के 120% के समतुल्य होगी। पार्टी कड़िका 12 में बंदोक्तधारी द्वारा भुगतान की प्रक्रिया का उल्लेख है। निविदा दस्तावेज की कड़िका-19(xiii) यह उद्धृत है कि सरल निविदादाता को विभागीय अधिसूचना सं०-2887 / एम०, दिनांक-2207.2014 में उल्लेखित संचालन के नियम एवं शर्तों का भी अनिवार्य रूप से पालन करना होगा। उक्त अधिसूचना के परिशिष्ट-१ की कंडिका-6 (iv) में भी यह निदेश निर्गत है कि बोली गई उच्चतम ठाक राशि प्रश्न वर्ष के लिए बंदोबस्ती राशि मानी जायेगी, द्वितीय तथा उसके आगे के वर्षों की बंदोबस्ती राशि उक्त वर्ष के पूर्व के बंदोबस्ती राशि के 120% के समतुल्य होगी। वर्णित प्रावधानों से स्पष्ट है कि बंदोबस्तधारी निविदा समर्पित करने के समय ही



इस तथ्य से अवगत है कि प्रत्येक वर्ष की चंदोबस्ती राशि पूर्व के वर्षों के 120% के समतुल्य होगी। सहरसा जिला के रामपूर्ण जिला की चंदोबस्ती पंचाग वर्ष 2018 से वर्ष 2019 तक के लिए कराई गयी है। इसलिए वर्ष 2016 ही बंदोबस्ती अवधि के लिए प्रथम वर्ष भानी जायेगी।

आवेदन के दूसरे बिन्दु के संबंध में निम्न प्रावधान व उल्लेख आवश्यक है-

निविदा दस्तावेज की कंडिका-19 (vii) में खनिज की अनुपलब्धता मार्ग व्यक्धान, सीमाना से संबंधित कोई व्यावधान अथवा अन्यान्य कारण से उत्तोलन में बाधा उत्पन्न होने पर सरकार द्वारा कोई अति देव नहीं होगी। खान निरीक्षक, सहरसा द्वारा समर्पित प्रतिवेदन में उल्लेख है कि आवेदनकर्ता द्वारा क्षतिपूर्ति की नाँग जित्त अवधि के लिए की जा रही है, उस अवधि में खनन कार्य पर कोई प्रतिबंध अधिरोपित नहीं था। चूंकि चंदोबस्ती की अवधि 31.12.2019 तक के लिये मान्य है तथा बंदोबस्तधारी की किसी त्रुटि अथवा अनियमितता के चलते प्रेषण प्रभावित हुआ तो



भी बंदीवरतधारी सक्षम प्राधिकार द्वारा निर्गत पर्यावरणीय स्वीकृति ने निर्धारित खनिज की अधिकतम मात्रा का उत्खनन/प्रेषण उक्त तिथि तक कभी भी कर सकते हैं। अतः वदोबस्तधारी के क्षतिपूर्ति का दावा निविदा दस्तावेज की कडिका-19 (xii) के आलाक न स्वीकार्य योग्य नहीं है। उपरोक्त के अनुसार यह अभ्यावेदन अस्वीकृत किया जाता है। आदेश की प्रति सभी संबंधित को भेज दी जाय।”

36. So far as the second part regarding the brief period which the petitioner claims the mining operation was blocked, learned counsel for the petitioner submits that in view of the terms and conditions, he is not pursuing the matter further. However, so far as the demand for the additional 20% treating the 2016 as base year is concerned, a perusal of the order would show that the respondent, Principal Secretary has not even cared to go through the order of the co-ordinate Bench in CWJC No. 6526 of 2017 (disposed of on 10.11.2017).

37. A perusal of the order dated 10.11.2017 would show that the Court held that the petitioner could not operate the sandghats for even a single day in 2016 primarily because the Mining Department delayed the approval to the mining plan



which was issued on 27.12.2016 and the delay was perpetuated by the State Level Environment Impact Assessment Authority, Bihar in delaying the grant of environmental clearance. Yet, the State intends to pocket that amount by denying the benefit to the petitioner and penalizing him without any fault.

38. In the considered opinion of this Court, the Principal Secretary failed to look into this aspect though learned Special P.P. Mines submitted that once the second order dated 14.09.2018 of this Court came by which the Principal Secretary was directed to dispose of the matter, the first order dated 10.11.2017 merged with it. This Court can safely observe that in the background of the fact that the said order dated 10.11.2017 was neither challenged by the authorities nor set aside, the merger theory put forward by the respondents is absurd, to say the least. The Principal Secretary was duty bound to take a look at the order dated 10.11.2017 before passing the order.

39. The order of Mr. Aman Sethi (Supra) is certainly not applicable in the present case as pointed out by the learned Spl. P.P., Mines. In the present case, there is a positive order dated 10.11.2017 of Patna High Court in favour of the petitioner which has been deliberately overlooked by the respondents.

40. Admittedly, the petitioner succeeded in CWJC No.



6526 of 2017 (Annexure-9 to the petition) and the writ Court vide an order dated 10.11.2017 clearly ordered to grant exemption to the petitioner. This order was neither challenged nor set aside.

41. In that background, the request/demand made by the petitioner cannot be said to be in the teeth of the decision of the Division Bench in **Mr. Aman Sethi** (Supra) case. The facts and circumstances of this case is very different from **Mr. Aman Sethi** (Supra) case.

42. This Court has also taken note of the two orders of Patna High Court and the decision taken by the respondent, Principal Secretary. The decision of the respondent in rejecting the request of the petitioner not to force him to pay 120% treating the year 2016 as base year has to be interfered with in the light of the facts incorporated above. The respondent authorities having failed to give necessary sanction orders in time to start mining operation in the year 2016 cannot arm twist the petitioner to pay through his noses taking the alibi of different clauses signed by him. He is liable to make payment treating the year 2017 as the base year so far as the increased 20% amount is concerned, as the actual operation took place pursuant to the environmental clearance given by the



respondents. So far as the other demands are concerned, the petitioner shall be duty bound to make payment in line with the clauses envisaged which he accepted.

43. Accordingly ordered. The order dated 05.11.2018 of the respondent no. 2 rejecting the claim of the petitioner so far as treating the base year as the year 2017 instead of the year 2016 for 20% enhancement is concerned, it is set aside. He will be liable to pay the enhanced amount of 20% treating the first year as 2017. It is once again made clear that this concession has been granted to the petitioner only with regard to the payment of enhanced 20%. For all other liabilities, he shall be duty bound to make payment as per the terms and conditions.

44. The writ petition is disposed of with the aforesaid observations.

(Rajiv Roy, J)

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