

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No.13213 of 2023**

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M/s Starnet Marketing Private Ltd. a registered company under the Companies Act, 2013 through its authorized signatory namely Nitish Dubey, aged about 24 years, Gender - Male, Son of Sanjay Dubey, resident of Village Manipur, Post- Doiyan, P.S. Dinara, District Rohtas. ... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The District Magistrate -cum- Collector, Kaimur at Bhabhua.
3. The Mineral Development Officer, Department of Mines and Geology, Kaimur at Bhabhua.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Suraj Samdarshi, Advocate  
Mr. Jai Vardhan Narayan, Advocate  
For the State : Mr. Gyan Prakash Ojha ( GA- 7 )  
Mr. Sangha Mitra Ghosh, AC to GA-7  
For the Mines : Mr. Naresh Dikshit, Advocate  
Mr. Brij Bihari Tiwary, Advocate

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**CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH**  
**ORAL JUDGMENT**

**Date : 09-02-2024**

Heard Mr. Suraj Samdarshi, learned counsel appearing on behalf of the petitioner; Mr. Brij Bihari Tiwary, learned counsel appearing on behalf of the Mines Department and Mr. Gyan Prakash Ojha, learned GA-7 for the State.

2. In the present writ petition, main challenge is made to the order dated 24.02.2023 passed by the Competent Authority-cum-Collector, Kaimur contained in Memo No. 182 and for setting aside the order dated 11.08.2023 passed by the Mines Commissioner, Bihar-cum-Additional Chief Secretary, Department of Mines & Geology, Government of Bihar, Patna,



by which, 'In-Principal approval/settlement' has been cancelled and further, the security deposit of Rs. 51,50,000/- has been forfeited allegedly on the ground that even after lapse of 6 years 07 months, petitioner has failed to produce the Environmental Clearance and the installment amount and other amount, as well as, other important documents for execution of 'Form-B' violating the rules as provided under Rule 28 of the 2019 Rules. The petitioner is aggrieved by the arbitrary order dated 11.08.2023 passed by the Additional Chief Secretary, Department of Mines and Geology, who has upheld the order passed by the Competent Authority.

3. Apart from the above main grievance of the petitioner, in paragraph no. 1 of the writ petition, the petitioner has prayed for following relief(s):

*"I. Issuance of directions, orders or writs in the nature of certiorari setting aside the order dated 11.08.2023 passed by the Mines Commissioner, Bihar-cum-Additional Chief Secretary, Department of Mines & Geology, Government of Bihar, Patna in Appeal No. 02/2023 (M/S Starnet Marketing Private Ltd. vs. Collector Kaimur and Others) whereby and whereunder the order dated 24.02.2023 passed by the Collector, Kaimur vide Memo No. 182 has been upheld and the Appeal filed by the petitioner has been rejected affirming the order of the Collector and the security deposit in the tune of Rs. 51,50,000 deposited by the petitioner has been ordered to be forfeited and the in-principal approval of the Madurna Stone Mining Project (Stone Block No. 01) situated at village Madurna, Thana Bhabhua, District Kaimur, Bihar, total area admeasuring 8.937 hectares and with an approximate production 495285.12 PPA has also been ordered to be annulled which was settled in the name of the petitioner subsequent to competitive bidding process held on 24.05.2016 for which the Initial Letter of Intent (LOI)*



was issued by the competent authority on 26.07.2016 vide Letter No. 1033.

*II. Issuance of directions, orders or writs in the nature of mandamus directing the Respondents to forthwith issue work order in favour of the petitioner in the light of the order passed in C.W.J.C. No. 17521 of 2022 whereby it was directed that as and when the petitioner shall approach the authority, a decision on the petitioner's request shall be taken in accordance with the law, also accounting for the communication dated 27.05.2022 annexed as (Annexure 27) Page 116 of the writ petition.*

*III. Issuance of directions orders or writs in the nature of mandamus directing the respondents to forthwith take appropriate steps in procuring the Environmental Clearance Certificate since the petitioner had completed all the necessary formalities and procedures for obtaining the same and the aforesaid Environmental Clearance Certificate in an utmost arbitrary manner has not been issued in favour of the petitioner.*

*IV. Issuance of directions orders or writs in the nature of mandamus directing the Respondents to forthwith enable and grant sufficient time to the petitioner for execution of formal lease after submitting the Environmental Clearance Certificate obtained from the concerned authority as the Competent Authority is empowered under Rule 28 to permit the execution of the formal lease even after the expiry of 180 days if the Collector is satisfied that the person to whom such lease has been granted is not responsible for the delay and the same is the case of the petitioner where the petitioner has completed all the formalities as and when required and is not at all responsible for the delay in execution of the formal lease for want of Environmental Clearance Certificate.*

*V. Any other relief or reliefs for which the petitioner may be deemed entitled to."*

4. Considering the fact that the pleadings are complete, the parties have agreed for disposal of the present writ petition at the stage of admission itself.

5. The facts necessary for disposal of the writ petition are that a bidding process was held on 24.05.2016, and an initial 'Letter of Intent'(LOI) was issued on 26.07.2016, after the petitioner was declared successful bidder for settlement of



Madurna Stone Mining Project situated at Village Madurna, Thana Bhabhua, District- Kaimur, Bihar relating to total area measuring 8,937 Hectares with an approximate production of 495285.12 T.P.A. The petitioner had submitted the progressive mining closure plan before the competent authority on 22.09.2017, and after it being approved, the petitioner was communicated vide Letter No. 2857 dated 22.09.2017, issued by the Under Secretary, Department of Mines Geology, Government of Bihar, Patna. The Chairman, State Environmental Impact Assessment (SEIAA) Patna, Bihar was requested by the petitioner for Environmental Clearance (EC) of the proposed stone mining project, which was received on 12.02.2018 for which the petitioner had deposited Rs. 1 lakh in favour of Member Secretary, State Environmental Impact Assessment Authority (SEIAA) in Terms of Reference (TOR) on 07.07.2018. The Mining Officer-cum-Competent Authority, Kaimur (Bhabhua) had issued a letter bearing Letter No. 2069 dated 24.12.2019, directing the petitioner to obtain Environmental Clearance and to complete the procedures and formalities relating to the mining plot which had been auctioned and allotted on 24.05.2016, and settled for the period of five years. The petitioner had also made a request before the



Divisional Forest Officer, Kaimur Forest Division, Bhabhua with regard to verification of the GPS point so as to ascertain whether the proposed project is outside the eco-sensitive zone. Thereafter, the Divisional Forest Officer vide Letter No. 892 dated 19.03.2020, communicated the petitioner after verification that the Madurna Stone Mining Plot is 4.8 kilometers from the Kaimur Forest and 3.2 kilometers from the Reserved Forest. The petitioner had also submitted a demand draft of Rs. 1,50,000/- in favour of Member Secretary, Bihar State Pollution Control Board, Patna and requested for public hearing on the above mentioned site to be conducted soon. Thereafter, 'Terms of Reference' for obtaining Environmental Clearance was approved for the project on 09.07.2020 vide F-J1115/63/2019-1A.II(M) by the competent authority. Paper publications for public hearing was also published on 11.09.2020, fixing the time at 11:00 A.M. The public meeting was organized on the said date and it was found that the local people shall avail the benefit of employment by engaging themselves in mining activities and the said project was appreciated.

6. The Bihar State Pollution Control Board had informed the Director, Environment Forest and Water Resources Department, Government of India vide Letter No. 1956 dated



22.10.2020, with regard to the submission of minutes of meeting for public hearing and for taking necessary action in that regard. The Ministry of Environment, Forest and Climate Change, Government of India had taken some time in scrutinizing and granting the Environmental Clearance. The petitioner had requested for early submission of final EIA report of the proposed stone mining project vide Letter dated 10.11.2020, and again reminded on 10.08.2021, considering the fact that since final EIA, TOR was submitted to the Ministry of Environment, Forest and Climate Change, New Delhi. The hard copy of the District Survey Report (hereinafter referred to as “DSR”) was also submitted to the Competent Authority as advised by them. The Centre of Advanced Study, Department of Ancient History, Cultural and Archaeology, Banaras Hindu University had submitted a report to the Director, Archaeological Survey Bihar that there is no archaeological and historical monuments situated at Mauja Madurna, Block No. 1, Plot No. 4840 (P).

7. Petitioner being aggrieved for non-issuance of Environmental Clearance had filed CWJC No. 17521 of 2022, which was disposed of by this Court on 30.01.2023, in which, *inter alia* following order was passed:

*“Learned counsel appearing on behalf of the respondents states that the issue, subject matter of the present petition, can be conveniently addressed by*



*respondent no. 3 namely, the Principal Secretary, Department of Mines and Geology, Government of Bihar, Old Secretariat Building, Patna, should the petitioner approach the said respondent afresh by placing on record the entire material.*

*As and when the petitioner approaches the said authority, a decision on the petitioner's request shall be taken in accordance with law, also accounting for the communication dated 27.05.2022 (Annexure-27 Page 116).*

*Needful be done within a period of two months thereafter.*

*Without expressing any opinion on merits, leaving all questions of fact and law open, the present petition is disposed of.*

*Interlocutory application, if any, shall also stand disposed of."*

8. Learned counsel appearing on behalf of the petitioner submitted that the petitioner has invested a huge amount on stone machinery and had deposited earnest money to the tune of rupees five crore pursuant to the grant of "In principal sanction" order on 26.07.2016, for the Stone Block at Mauza Madurna, Thana No. 167, Kaimur as per the approved mining plan communicated vide letter no. 2857 dated 22.09.2017, but in the year 2019, the entire world was affected by Corona Virus Pandemic-2019 and no step was taken by the Competent Authority. Aggrieved by the undue delay on part of the authorities concerned, the petitioner was forced to file CWJC No. 17521 of 2022 wherein vide order dated 30.01.2023, directions were issued, taking into consideration the request of the petitioner and also communication dated 27.05.2022, to do the needful within a period of two months. In compliance to the



direction of this Court, the petitioner filed representation before the Secretary, Department of Mines and Geology, Government of Bihar, Patna, on 18.04.2023. But before any decision could be taken by the Department concerned, the District Magistrate vide Memo No. 182/M dated 24.02.2023, cancelled the in principal approval and ordered for forfeiture of the security deposit in the tune of Rs. 51,50,000/-.

9. Learned counsel submitted that the delay cannot be attributable only to the petitioner but the same is also attributable on the part of the several Departments. In view of the order dated 30.01.2023 passed in CWJC No. 17521 of 2022, the grievance of the petitioner was to be considered by the Secretary, Department of Mines and Geology, Government of Bihar and action was required by the Additional Chief Secretary on the basis of the representation of petitioner dated 18.04.2023. The competent Authority under the Act as per the provision of Rule 24(1)(a) of Bihar Minerals (Concession, Prevention Of Illegal Mining, Transportation & Storage) Rules, 2019 (hereinafter referred to as “the Rules”) is the Collector, the Principal Secretary, Department of Mines and Geology, is the Appellate authority in accordance with the provision of Rule 67 of the Bihar Minerals (Concession, Prevention Of Illegal



Mining, Transportation & Storage) Rules, 2019. He further submitted that the order was not considered in its true spirit by the Additional Chief Secretary within the specified period, while the competent authority had passed the order dated 24.02.2023, contained in Memo No. 182 *ex-parte* against the petitioner, in complete ignorance of order dated 30.01.2023 in CWJC No. 17521 of 2022. Learned counsel submitted that the competent authority passed the order without providing opportunity of hearing to the petitioner to place his cause, which was the subsequent order upheld vide order dated 11.08.2023, passed by the Principal Secretary, Department of Mines and Geology in appeal. The order passed by the competent authority being in disregard of the order of this Court by passing *ex parte* order in violation of Natural Justice then appellate order which is non-speaking is not sustainable. Learned counsel has relied upon a judgment of the Apex Court in case of ***State of Punjab v. Davinder Pal Singh Bhullar and others*** reported in **(2011) 14 SCC 770**. Paragraphs no. 107 to 110 of the said judgment is reproduced hereinafter:

*“107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim *sublato fundamento cadit opus* meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.*

*108. In *Badrinath v. Govt. of T.N.* [(2000) 8 SCC 395 :*



*2001 SCC (L&S) 13 : AIR 2000 SC 3243] and State of Kerala v. Puthenkavu N.S.S. Karayogam [(2001) 10 SCC 191] this Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.*

*109. Similarly in Mangal Prasad Tamoli v. Narvadeshwar Mishra [(2005) 3 SCC 422] this Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.*

*110. In C. Albert Morris v. K. Chandrasekaran [(2006) 1 SCC 228] this Court held that a right in law exists only and only when it has a lawful origin. (See also Upen Chandra Gogoi v. State of Assam [(1998) 3 SCC 381 : 1998 SCC (L&S) 872] , Satchidananda Misra v. State of Orissa [(2004) 8 SCC 599 : 2004 SCC (L&S) 1181] , SBI v. Rakesh Kumar Tewari [(2006) 1 SCC 530 : 2006 SCC (L&S) 143] and Ritesh Tewari v. State of U.P. [(2010) 10 SCC 677 : (2010) 4 SCC (Civ) 315 : AIR 2010 SC 3823] )”*

10. Learned counsel further points out that otherwise also, on this fact, the orders are not sustainable and submitted that the petitioner had given last presentation before the E.A.C. on 15<sup>th</sup> to 17<sup>th</sup> September, 2021, which was the 37<sup>th</sup> meeting and during the said presentation, the members of E.A.C. had asked for the valid ‘Letter of Intent’, which was not updated during the date of the aforesaid presentation. The petitioner’s firm had received “Poor Performance” comment from EAC for not having uploaded the documents in absence of valid ‘Letter of Intent’ in spite of the repeated request made to the petitioner’s firm for presentation while the petitioner had fulfilled all the requirement and had also furnished the required document. The only requirement which remained was on the part of the respondent no. 1 to take effort to obtain Environmental



Clearance and issue work order along with detailed contract for final settlement of the lease after approval by the Central Government.

11. Learned counsel further submitted that a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition is maintainable either for the purpose of enforcing a statutory or legal right, or when there is a complaint that there has been a breach of statutory duty on the part of the Authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which jurisdiction is resorted to. The Court/Tribunal can of course, enforce the performance of a statutory duty by a public body, using its jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the jurisdiction of the courts/Tribunals. It is implicit in the exercise of such extraordinary jurisdiction that, the relief prayed for must be one to enforce a legal right. In-fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court.

12. *Per contra*, Mr. Brij Bihari Tiwary, learned



counsel appearing on behalf of the Mines Department submitted that there is no infirmity in the order passed by the Collector-cum-Licensing Authority and the appellate order affirming the order dated 24.02.2023, passed by the Additional Chief Secretary, Department of Mines and Geology, don't call for any interference. Admittedly, the petitioner had appeared before the Additional Chief Secretary and he was given due opportunity of hearing. He, however, admits that no objection was raised on behalf of the respondent State at the time of hearing of CWJC No. 17521 of 2022 when the order dated 30.01.2023, was being passed informing to the Court that the appropriate authority would be the Collector-cum-Licensing Authority. Referring to the statement made in para 17 of counter affidavit filed on behalf of the respondent, he submits that Rule 25(1) of Bihar Minor Mineral Rules, 1972 has been substituted by Rule 28 of the Bihar Minor Minerals (Concession Illegal Mining and Storage) Rules, 2019, which provides for execution of lease deed within 180 days from the date of approval of settlement auction. Learned counsel further informs that no third party right has been created till date.

13. He submitted that the specific statement has been made in the counter affidavit, that the Collector/Competent



Authority has rejected the application of the petitioner because the petitioner could not obtain Environmental Clearance and did no deposit other documents, as well as, installment even he has taken 6 years 7 months though the petitioner was issued notice on several dates as contained in 'Annexure-R/A series'. Learned counsel further submitted that vide Letter No. 2857 dated 22.09.2017, the Mining Plan was approved by the Department and Clause 04 of the said Mining Plan stipulates that the petitioner has to obtain all relevant and necessary approvals from the Competent Authority, however, the petitioner failed to do so even expiry of nearly 6 years 7 months considering that the "In Principal Sanction Order" was issued on 26.07.2016 in favour of the petitioner for settlement of the stone mines mentioned. The Collector had no alternative than to cancel the "In Principal Sanction Order" and security deposit was forfeited by order contained in Memo No. 182 dated 24.05.2023. Learned counsel further submitted that the action taken by the Additional Chief Secretary and accordingly, the respondent no. 1 affirmed the order passed by the Collector after considering the detailed facts and the pleadings of the petitioner in absence of Environmental Clearance and deposit of other documents, as well as, installment and unnecessary causing loss to the



development work of the State, as well as, impact on the State, no relief can be granted to the petitioner.

14. Heard the parties.

15. The petitioner company M/s Starnet Marketing Private Ltd., is a company registered under the Companies Act. Pursuant to the notice inviting tender, the bidding process was held on 24.05.2016, and the petitioner Company was declared successful bidder for settlement of Madurna Stone Mining Project situated at Village Madurna, Thana Bhabhua, District- Kaimur, Bihar relating to total area measuring 8,937 Hectares with a approximate production of 495285.12 T.P.A. and an initial Letter of Intent (LOI) was also issued on 26.07.2016, in favour of the petitioner.

16. It is admitted that the petitioner had participated in online bidding process and he was declared highest bidder on 24.05.2016, and the “In Principal Saction Order” for the area described was issued. The Mining Plan was approved vide Letter No. 2857 dated 22.09.2017, by the Department wherein as per Clause 04, the settlee has to obtain all relevant and necessary approvals and permission granted from the Competent Authority.

17. The petitioner had applied for issuance of



Environmental Clearance Certificate after having submitted required clearances but till date the matter has been kept pending by the department. Thereafter, the petitioner had filed CWJC No. 17521 of 2022 and by order dated 30.01.2023, this Court had directed the petitioner to approach the authorities by passing *inter alia* following order:

*“Learned counsel appearing on behalf of the respondents states that the issue, subject matter of the present petition, can be conveniently addressed by respondent no. 3 namely, the Principal Secretary, Department of Mines and Geology, Government of Bihar, Old Secretariat Building, Patna, should the petitioner approach the said respondent afresh by placing on record the entire material.*

*As and when the petitioner approaches the said authority, a decision on the petitioner’s request shall be taken in accordance with law, also accounting for the communication dated 27.05.2022 (Annexure-27 Page 116).*

*Needful be done within a period of two months thereafter.*

*Without expressing any opinion on merits, leaving all questions of fact and law open, the present petition is disposed of.*

*Interlocutory application, if any, shall also stand disposed of.”*

18. The petitioner had filed his detailed representation on 18.04.2023 before the Additional Chief Secretary, Mines Department, however, before the Secretary considered the representation, the Collector passed the impugned order dated 24.02.2023, and the same was affirmed by the Additional Chief Secretary by which security deposit was forfeited annulling the PPA on the ground of delay and latches to submit even after delay of 6 years and 7 months.



19. Prior to any decision that could be taken by the Additional Chief Secretary- Respondent No. 1, in the light of the order passed by the Hon'ble High Court, the District Magistrate vide memo no.182/M dated 24.02.2023, had cancelled the in-principal approval/settlement and had further been pleased to forfeit the security deposit to the tune of Rs.51,50,000/-, alleging that the petitioner even after lapse of six years and six months had failed to produce the Environmental Clearance and the installment amount and other amount, as well as, other important documents for execution of Form-B and, as such, the petitioner had violated the rules as provided under Rules 28 of the 2019 Rules.

20. The Additional Chief Secretary upheld the District Magistrate order.

21. In the counter affidavit, the ground taken for denying the settlement of stone mines that in terms of the Clause 4 of the Mining Plan, which was communicated vide Letter No. 2857 dated 22.09.2017. The petitioner failed to furnish Environmental Clearance, as well as, other documents and deposits for the execution of mining lease for about a period of 6 years 7 months. 'In Principal Sanction Order' given to the petitioner was cancelled and security deposit was forfeited by



the Collector, Kaimur vide order dated 24.02.2023 contained in memo no. 182 (Annexure P/27 to the writ petition). However, main ground of rejection is on account of the delay and laches of 6 years 7 months in non-submission of Environmental Clearance, no other reason has been assigned in the rejection order by the Collector, Kaimur.

22. It has not been denied in the counter affidavit that the petitioner had already submitted the requisite documents having been approved by the competent authority in regard to mining plan including Progressive Mine Closure Plan. The required presentation before the EAC has also been made by the petitioner and the requisite public hearing had also been undertaken by the competent authority and the suggestions have been duly accepted and incorporated for the working improvement of the Madurna site. The minimum distance from the wild life sanctuary which is required to be quantified from the Wild Life Sanctuary and Reserved Forest had also been notified as 4.8 Kilometer to 3.2 Kilometer by the competent authority and has approved without any objection. Considering the fact that the petitioner has also satisfied all the objections as raised by the Environmental Ministry for obtaining the Environmental clearance and if nothing is left to be performed



on the part of the petitioner then the authorities must not delay further to issue the environmental clearance in favour of the petitioner.

23. The petitioner can not be held solely responsible for the delay in the execution for the formal lease as the entire formalities for procuring the Environmental Clearance had duly been completed by the petitioner and the E.A.C. have been redressed and public hearing had also been conducted in accordance with law and the shortcomings that were pointed during the course of public hearing have also been assured to be taken care of by the settlee and the recommendation as suggested in public hearing has appeared to have been dealt with by the petitioner.

24. The petitioner in compliance of the order 30.01.2023, passed in CWJC No. 17521 of 2022 had filed a representation before the Secretary, Department of Mines & Geology, Government of Bihar, Patna on 18.04.2023, and it was requested by the petitioner before the authorities that pursuant to the order passed by this Court, considering the communication dated 27.05.2022 (Annexure-27) to the writ petition, the work order is required to be issued in favour of the petitioner.

25. The Counter affidavit filed by respondents is



also devoid of any denial that no DSR was prepared before auction was issued with respect to settlement of Madurna Stone Mining Project situated at Village Madurna, Thana Bhabhua, District- Kaimur, Bihar relating to total area measuring 8,937 Hectares with an approximate production of 495285.12 T.P.A., nor is there any denial that DSR was not approved by State Expert Appraisal Committee (hereinafter referred to as “SEAC”) and the State Environment Impact Assessment Authority (hereinafter referred to as “SEIAA”) who are the authorities concerned granting approval to the DSR. However, the date of approval of DSR has not been mentioned by respective parties.

26. The Hon“ble Supreme Court in the *State of Bihar Vs. Pawan Kumar & Ors.*\_(Civil Appeal No. 3661-3662 of 2020) decided on 10th November, 2021 taking note of *observation* and in the judgment of at paragraph 10 in Special Leave Petition (C) No.19628-19629 of 2009, in the matter of *Deepak Kumar etc. Vs. State of Haryana and Others* reported in (2012) 4 SCC 629 has held that prior to any auction process it is mandatory to have a valid DSR. Thus, the e-auction dated 26.07.2016 could not have been valid on the basis of an old DSR prepared 6 years in the year 2016.



27. The observation made by the Hon'ble Supreme Court of India in *State of Bihar and Ors vs. Pawan Kumar and Ors etc (Civil Appeal No. 3661-3662 of 2020)* decided on 10th November, 2021 considered the essentiality and prerequisite of DSR and held as follows:

*“8. It cannot be in dispute that though the developmental activities are not stalled, the environmental issues are also required to be addressed. A balanced approach of sustainable development ensuring environmental safeguards, needs to be resorted to. At the same time, it also cannot be ignored that when legal mining is banned, it gives rise to mushroom growth of illegal mining, resulting into clashes between sand mafias, criminalisation and at times, loss of human lives. It also cannot be disputed that sand is required for construction of public infrastructural projects as well as public and private construction activities. A total ban on legal mining, apart from giving rise to illegal mining, also causes huge loss to the public exchequer.*

*9. Taking into consideration these aspects of the matter, we propose to issue certain interim directions.*

*10. The Tribunal, in Satendra Pandey [Satendra Pandey v. Ministry of Environment, Forest & Climate Change, 2018 SCC OnLine NGT 2388] , has found that the Notification dated 15-1-2016, which provided environmental clearance to be given by the District Environment Impact Assessment Authority (hereinafter referred to as “the DEIAA”) was not in consonance with the judgment of this Court in Deepak Kumar v. State of Haryana [Deepak Kumar v. State of Haryana, (2012) 4 SCC 629] . The Tribunal therefore in Satendra Pandey [Satendra Pandey v. Ministry of Environment, Forest & Climate Change, 2018 SCC OnLine NGT 2388] , had directed Ministry of Environment, Forest and Climate Change (hereinafter referred to as “MoEF and CC”) to take steps to revise the procedure laid down in the Notification dated 15-1-2016. It is to be noted that MoEF and CC, in accordance with the directions of the Tribunal, had issued Enforcement and Monitoring Guidelines for Sand Mining (hereinafter referred to as “the 2020 Guidelines”) in the month of January 2020.*

*11. Chapter 4 of the 2020 Guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clauses 4.1.1(a), (o) and (p) of the 2020 Guidelines:*

*“4.1. Identification of possible sand mining sources and preparation of District Survey Report*



(DSR)

4.1.1. Preparation of District Survey Report.

(a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (“LoI”) by Mining Department or department dealing the mining activity in respective states.

(o) Potential site for mining having its impact on the forest, protected area, habitation, bridges, etc. shall be avoided. For this, a Sub-Divisional Committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.

(p) Public consultation—The comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the Sub-Divisional Committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & patta land/khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure V. The details regarding cluster and contiguous cluster needs to be provided in Annexure VI. The details of the transportation need to be provided in Annexure VII.”

12. It could thus be seen that in accordance with the 2020 Guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity in the respective States. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a Sub-Divisional Committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. The Sub-Divisional Committee is further required to record its reasons for selecting the mining lease in the patta land. Various details are required to be given in the annexures



*appended to the said policy.*

**13.** *It is further to be noted that Appendix X of the Notification dated 15-1-2016, issued by MoEF and CC also provides for composition of the Sub-Divisional Committee:*

*“A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geology or Mining Officer shall visit each site for which environmental clearance has been applied for and make recommendation on suitability of site for mining or prohibition thereof.”*

**14.** *It is to be noted that with the advent of modern technology, various technological gadgets like drones and satellite imaging, etc. can be used for identification of the potential sites and preparation of the DSR and also to check misuse and unauthorised mining.*

**15.** *We further find that when the 2020 Guidelines as well as the notification issued by MoEF and CC of 2016 itself provide for constitution of Sub-Divisional Committees comprising of the officers of the State Government from various Departments for identification of the potential sites for mining, there would be no necessity of the DSRs being prepared through private consultants as directed by the Tribunal in the impugned order [Pawan Kumar v. State of Bihar, 2020 SCC OnLine NGT 2848] . The Sub-Divisional Committee consists of various officers from Revenue Department, Irrigation Department, State Pollution Control Board, Forest Department and Geology and Mining Department of the State Government. They are better equipped to visit the sites and prepare the draft DSR for the district concerned. Apart from that, preparation of DSR through private consultants would also unnecessarily burden the public exchequer. We are therefore of the view that the direction in that regard issued by the Tribunal requires to be modified. We are further of the considered view that until the DSRs are finalised and granted approval by SEAC and SEIAA, it is appropriate that certain necessary arrangements are permitted so that the State can continue with legal mining activities. This apart from preventing illegal mining activities, would also ensure that the public exchequer is not deprived of its share in legalised mining.*

**16.** *We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14-10-2020 [Pawan Kumar v. State of Bihar, 2020 SCC OnLine NGT 2848] , with the following directions:*

**16.1.** *The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all*



*the districts shall be undertaken afresh. The draft DSRs shall be prepared by the Sub-Divisional Committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or Mining Officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs are prepared, the District Magistrate of the district concerned shall forward the same for examination and evaluation by SEAC. The same shall be examined by SEAC within a period of 6 weeks and its report shall be forwarded to SEIAA within the aforesaid period of 6 weeks from the receipt of it. SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon.*

**16.2.** *Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed.*

**16.3.** *Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”*

28. In accordance with the guidelines, the DSR is required to be prepared before the auction/e-auction/grant of mining lease by Mining Department or Department dealing with mining activity. It is further provided that the potential site for mining having its impact on the forest, protected area, habitation and bridges should be avoided. For this, a sub-divisional committee is required to be formed which, after the site visit, is required to decide regarding the suitability of the sites for mining. A Sub-Divisional Committee comprising of Sub-Divisional Magistrate, Officers from Irrigation department,



State Pollution Control Board or Committee, Forest department, Geology or mining officer shall visit each site for which environmental clearance has to be applied for and make recommendation on suitability of site for mining or prohibition thereof.

29. Amended Rule 28 of the Bihar Mines Minerals (Concession Illegal Mining and Storage) Rules, 2019 provides that lease deed can be executed within 180 days from the date of approval of settlement auction. As per Clause 06 of the Tender Documents, the responsibility to obtain Environmental Clearance lies upon the settlee/actioneer. The condition requires petitioner to procure the consent letter from Water Pollution Control Board for operating the mines and the petitioner had submitted the same. The earnest money and security deposit has been deposited by the petitioner. The loss quantified could not be held to be rational considering the fact that the different authorities have delayed in issuing the respective certificate and 'No Objection' or grant of consent letter to the petitioner in spite of the fact that petitioner had fulfilled all the conditions and had also deposited percentage of the total bid amount i.e. rupees five crore. The authorities by not executing only on the ground that Environmental Clearance



Certificate has not been submitted by the petitioner and that future of security deposit and earnest money by rejecting the application of the petitioner, the respondent/s cannot be held to be justified and to have the impugned order as contained in 'Annexure-P/27 and P/28'. It is well settled that earnest money is part of purchase price when the transaction goes forward, it is forfeited when the transaction falls through, "by reason of all a failure of the vendee".

30. It is also admitted fact that during the period 2019-20, the entire globe faced COVID-19 pandemic and the same cannot be lost sight of while considering that the delay was not only attributable to petitioner and the State Authorities, but the delay was also the result of COVID-19 pandemic.

31. The petitioner, in paragraph no. 34 of the writ petition has stated that "*.....right from 2016 onwards there has also been a huge revenue loss to the government exchequer as also to the petitioner though the department had already taken the earnest deposit amounting to Rs. 5,00,00,000/-.*" In paragraph no. 39, the petitioner has alleged that before any decision could be taken by the Department of Mines and Geology, Government of Bihar, Patna, in light of the order passed by the Hon'ble High Court, the District Magistrate vide



Memo No. 182/M dated 24.02.2023, had cancelled the “in-principal approval/settlement” and had further been pleased to forfeit the “security deposit” amounting Rs. 51,50,000/- alleging that the petitioner, even after lapse of six years and six months, had failed to produce the Environmental Clearance and the installment amount and other amount, as well as, other important documents for execution of Form-B and as such the petitioner had violated the rules as provided under Rule 28 of the 2019 Rules (Annexure-P/27 to the writ petition). Thereafter, the order of the Collector was upheld by the Commissioner Mines, Bihar in Appeal No. 2 of 2023 vide order dated 11.08.2023 (Annexure-P28 to the writ petition) ignoring the representation dated 18.04.2023 filed by the petitioner.

32. The Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 provides for forfeiture of security deposit in the event of failure on the part of successful bidder. The relevant part of the aforesaid Rule is produced hereinafter:

*“22. .... (c) Amount equivalent to 10[ten percent] of auction amount as security which shall be adjusted with the last installment of auction amount if the mining leaseholder is not otherwise defaulter in payment. In case of unsuccessful bidder the security deposit shall be refunded by the Collector.*

*(6) Failure on the part of the successful bidder.-In case the successful bidder fails to deposit the required security deposit along with other payable taxes within the prescribed time*



*limit as referred to in the prevailing notification of the State Government in this regard, his security deposit shall be forfeited and a fresh settlement process through public auction shall be initiated."*

33. It is not clear from the counter affidavit that the respondents have taken action on the basis of tender before the approval of the DSR as per the guidelines of 2012 in case of Deepak Kumar (Supra) and as per the direction of the Apex Court in the case of Pawan Kumar (Supra) case, the interim DSR was subject to the DSR being finalized after completion of the entire process and after auction notice and LOI was issued in favour of the petitioner and only Environment Clearance certificate is required after granting the DSR approval. It is admitted by the respondents several report were granted approval and no objections have been issued by the department concerned and only requirement remains is of execution of contract.

34. The legal right that can be enforced must ordinarily be the right of the Appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who



suffers from a psychological or an imaginary injury; a person aggrieved must therefore, necessarily be one, whose right or interest has been adversely affected or jeopardized. In ***Laxminarayan R. Bhattad v. State of Maharashtra, (2003) 5 SCC 413*** the Apex Court held that "the manner in which a statutory authority had understood the application of a statute would not confer any legal right upon a party unless the same finds favour with the Court of law dealing with the matter."

35. Apart from the statutory duty it is incumbent upon every authority to give reasonable opportunity of hearing to affected parties before passing any order having civil consequences. The Apex Court in the case of ***Chairman State Bank of India and Anr. v. M.J. James*** reported in ***(2022) 2 SCC 201*** in paragraph nos. 28 and 29 has held as under :-

*"28. Traditional English law recognised and valued the rule against bias that no man shall be a judge in his own cause i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasised that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak v. Union of India [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] the Constitution Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which*



*facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.”*

*29. Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364] a Division Bench of this Court distinguished between “adequate opportunity” and “no opportunity at all” and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infringed, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words : (SCC p. 389, para 32)*

*“32. Now, coming back to the illustration given by us in the preceding paragraph, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counterproductive exercise.*

36. Lease is a contract. But in a lease, a lessor, allows the other party, the lessee, use of the property for a period of time in exchange for consideration usually a monthly sum of money, and the original owner ultimately retains title to the property. In the present case, the owner of the stone cluster for which “in principle sanction order” has already been issued



in favour of the petitioner and petitioner has almost furnished the documents required whether judicial review of the action taken by the respondents is permissible. It is well settled that a writ is not remedy for enforcing contractual obligation. Equally, the existence of alternative remedy does not affect the jurisdiction of Court to issue writ, but ordinarily it would be a good ground for refusing to exercise jurisdiction under Article 226 of the Constitution of India. In the case at hand, the extraordinary jurisdiction is being invoked by this Court on the ground that order passed by the competent authority and the revisional authority has already been quashed and right has been accrued in favour of the petitioner because the order leading to adverse civil consequence can be questioned in the writ petition under Article 226 of the Constitution of India. Secondly, the decision has been taken in arbitrary exercise of power

37. The Apex Court reiterating the aforesaid principle in the case of *South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV), (2021) 9 SCC 166*, has observed as follows:-

*“22. We would like to state the issue whether a concluded contract had been arrived at inter se the parties is in turn dependent on the terms and conditions of the NIT, the LoI and the conduct of the parties. The judicial views before*



*us leave little doubt over the proposition that an LoI merely indicates a party's intention to enter into a contract with the other party in future. [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751; Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd., (1996) 10 SCC 405] No binding relationship between the parties at this stage emerges and the totality of the circumstances have to be considered in each case. It is no doubt possible to construe a letter of intent as a binding contract if such an intention is evident from its terms. But then the intention to do so must be clear and unambiguous as it takes a deviation from how normally a letter of intent has to be understood. This Court did consider in Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] that there are cases where a detailed contract is drawn up later on account of anxiety to start work on an urgent basis. In that case it was clearly stated that the contract will come into force upon receipt of letter by the supplier, and yet on an holistic analysis—it was held that the LoI could not be interpreted as a work order.*

*23. Similarly if we construe the documents as discussed in the judgment of this Court in Jawahar Lal Burman case [Jawahar Lal Burman v. Union of India, (1962) 3 SCR 769 : AIR 1962 SC 378] it is unequivocally mentioned that “contract is concluded by this acceptance and formal acceptance of tender will follow immediately on receipt of treasury receipt”. Thus, once again, it has been stipulated as to at what time a contract would stand concluded even though it was later subject to deposit of the security amount. It was in these circumstances that the requirement of security deposit was treated not as a condition precedent but as a condition subsequent. We have to also appreciate the nature of contract which was for immediate requirement of the full quantity of coconut oil to be supplied within 21 days. It was also explicitly mentioned in the LoI itself that any failure to deposit the stipulated amount would be treated as a breach of contract. This is not the case here, where the consequence was simply forfeiture of the bid security amount, and cancellation of the “award” and not the “contract”.*

*24. If we compare the aforesaid scenario in the present case, the period for execution of the contract was one year. The respondent worked at the site for a little over the month, facing certain difficulties—it is immaterial whether the same was of the own making of the respondent or attributable to the appellants. No amount was paid for the work done. The*



*respondent failed to comply with their obligations under the LoI. It is not merely a case of the non-furnishing of performance security deposit but even the integrity pact was never signed, nor work order issued on account of failure to execute the contract. We are, thus, of the view that none of the judgments cited by the learned counsel for the appellants would come to their aid in the contractual situation of the present case. The judgments referred by the learned counsel for the appellants, Jawahar Lal Burman case [Jawahar Lal Burman v. Union of India, (1962) 3 SCR 769 : AIR 1962 SC 378] and Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751] , if one may say so are not directly supporting either of the parties but suffice to say that to determine the issue what has to be seen are the relevant clauses of the NIT and the LoI.*

*25. On having discussed the non-compliance by the respondent of the terms of the LoI we turn to the NIT. Clause 29.2 clearly stipulates that the notification of award will constitute the formation of the contract “subject only” to furnishing of the performance security/security deposit. Thus, it was clearly put as a precondition and that too to be done within 28 days following notification of the award. The failure of the successful bidder to comply with the requirement “shall constitute sufficient ground for cancellation of the award work and forfeiture of the bid security” as per Clause 30.2. If we analyse Clause 34 dealing with the integrity pact the failure to submit the same would make the tender bid “as not substantially responsive and may be rejected”.*

38. In *Shrijee Sales Corporation v. Union of India* reported in *(1997) 3 SCC 398*, it was observed that once public interest is accepted as the superior equity which can override individual equity the principle would be applicable even in cases where a period has been indicated for operation of the promise. If there is a supervening public equity, the Government would be allowed to change its stand and has the



power to withdraw from representation made by it which induced persons to take certain steps which may have gone adverse to the interest of such persons on account of such withdrawal. Moreover, the Government is competent to rescind from the promise even if there is no manifest public interest involved, provided no one is put in any adverse situation which cannot be rectified. Similar view was expressed in *Pawan Alloys and Casting (P) Ltd. v. U.P.SEB [(1997) 7 SCC 251]* and in *STO v. Shree Durga Oil Mills [(1998) 1 SCC 572]* and it was further held that the Government could change its industrial policy if the situation so warranted and merely because the resolution was announced for a particular period, it did not mean that the Government could not amend and change the policy under any circumstances. If the party claiming application of the doctrine acted on the basis of a notification it should have known that such notification was liable to be amended or rescinded at any point of time, if the Government felt that it was necessary to do so in public interest.

39. It is now well settled that a letter of intent merely indicates a party's intention to enter into a contract with the other party in future. A letter of intent is not intended to bind either party ultimately to enter into any contract. This Court



while considering the nature of a letter of intent, observed thus in ***Rajasthan Co-operative Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service (P) Ltd*** : [(1996) 10 SCC 405]:

*" The letter of intent merely expressed an intention to enter into a contract. There is no binding legal relationship between the appellant and respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not".*

40. First of all, the question arises, as to whether, the amount of security deposited could have been forfeited when agreement was not entered and the subsequently also the contract was not executed. As the security deposit is made for ensuring satisfactory completion of contract and default in that process shall entail forfeiture thereof, in other words performance guarantee. Before addressing upon the aforesaid question, it is considered apposite to refer to the judgment of Hon. Supreme Court in the matter of ***Saurabh Prakash Vs. DLF Universal Ltd. (2007) 1 SCC 228***; wherein, distinction has been drawn and explained between words earnest money and security deposit in the context of contractual matter and consequence flows therefrom. For ready reference para 42 & 43 of the aforesaid judgment is quoted hereinbelow:-



"42. The distinction between a security and an earnest money has also been pointed out by this Court in *Maula Bux v. Union of India* [(1969) 2 SCC 554] in the following terms:

"4. Under the terms of the agreements the amounts deposited by the plaintiff as security for due performance of the contracts were to stand forfeited in case the plaintiff neglected to perform his part of the contract. The High Court observed that the deposits so made may be regarded as earnest money. But that view cannot be accepted. According to Earl Jowitt in *Dictionary of English Law* at p. 689; "Giving an earnest or earnest- money is a mode of signifying assent to a contract of sale or the like, by giving to the vendor a nominal sum (e.g. a shilling) as a token that the parties are in earnest or have made up their minds". As observed by the Judicial Committee in *Kunwar Chiranjit Singh v. Har Swarup*, AIR 1926 PC 1,:

"Earnest money is part of the purchase price when the transaction goes forward; it is forfeited when the transaction falls through, by reason of the fault or failure of the vendee."

In the present case the deposit was made not of a sum of money by the purchaser to be applied towards part payment of the price when the contract was completed and till then as evidencing an intention on the part of the purchaser to buy property or goods. Here the plaintiff had deposited the amounts claimed as security for guaranteeing due performance of the contracts. Such deposits cannot be regarded as earnest money."

43. Referring to [Section 74](#) of the Indian Contract Act, it was observed:

"There is authority, no doubt coloured by the view which was taken in English cases, that [Section 74](#) of the Contract Act has no application to cases of deposit for due performance of a contract which is stipulated to be forfeited for breach, *Natesa Aiyar v. Appayu Padayachi*; *Singer Manufacturing Company v. Raja Prosad*; *Manian Pattar v. Madras Railway Company*. But this view is no longer good law in view of the judgment of this Court in *Fateh Chand* case. This Court observed at p. 526: "[Section 74](#) of the Indian Contract Act deals with the measure of damages in two classes of cases: (i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other stipulation by way of penalty,' The measure of damages in the case of breach of a stipulation by way of penalty is by [Section 74](#), reasonable compensation not exceeding the penalty stipulated for.' "

The Court also observed:

"It was urged that the section deals in terms with



*the right to receive from the party who has broken the contract reasonable compensation and not the right to forfeit what has already been received by the party aggrieved. There is however no warrant for the assumption made by some of the High Courts in India, that [Section 74](#), applies only to cases where the aggrieved party is seeking to receive some amount on breach of contract and not to cases whereupon breach of contract an amount received under the contract is sought to be forfeited. In our judgment the expression "the contract contains any other stipulation by way of penalty"*

*comprehensively applies to every covenant involving a penalty whether it is for payment on breach of contract of money or delivery of property in future, or for forfeiture of right to money or other property already delivered. Duty not to enforce the penalty clause but only to award reasonable compensation is statutorily imposed upon courts by [Section 74](#). In all cases, therefore, where there is a stipulation in the nature of penalty for forfeiture of an amount deposited pursuant to the terms of contract which expressly provides for forfeiture, the court has jurisdiction to award such sum only as it considers reasonable, but not exceeding the amount specified in the contract as liable to forfeiture, and that, "There is no ground for holding that the expression 'contract contains any other stipulation by way of penalty' is limited to cases of stipulation in the nature of an agreement to pay money or deliver property on breach and does not comprehend covenants under which amounts paid or property delivered under the contract, which by the terms of the contract expressly or by clear implication are liable to be forfeited."*

41. In the present case, the contract for mining lease did not come into existence. The earnest money was deposited and the security amount was also deposited for guaranteeing due performance of contract. Section 74 of the Indian Contract Act deals with the measure of damages in two classes of cases:

(i) where the contract names a sum to be paid in case of breach, and (ii) where the contract contains any other



stipulation by way of penalty than reasonable compensation not exceeding the penalty stipulated for is statutorily imposed. Therefore, considering the fact that the petitioner having furnished all the documents mere on the ground of delay caused, which cannot be said to have happened solely on the part of the petitioner in obtaining certificates from different departments and Ministry. Interference is called for considering the fact that a copy of DSR was submitted as Annexure no. XI to the Ministry of Environment, Forest and Climate Changes of Central Government. However, during the presentation (EAC meeting held on 19.08.2021), the committee had advised to submit the copy of DSR. As required vide letter dated 19.08.2020, requirement has almost been satisfied by the petitioner and the petitioner, thereafter, has again applied for Environmental Clearance on 19.08.2021 (Annexure-P22) which is pending till date. iv) The impugned order dated 24.02.2023, passed by the Collector, as contained in Memo No. 182 and subsequent order dated 11.08.2023, of the Mines Commissioner, Department of Mines & Geology, Government of Bihar, Patna, upholding the order of Collector dated 24.02.2023, whereby In Principal approval/settlement has been cancelled and security deposit of Rs. 51,50,000/- has been forfeited, *is hereby set aside*



*and quashed.*

42. In light of the order passed in CWJC No. 17521 of 2022, the Competent Authority cum District Magistrate is directed to extend the time and issue work order followed by final settlement of contract of lease, within a period of 6 weeks.

43. The second point which is required to be considered by this Court is that whether any direction can be issued to the respondents considering the fact that the Letter of Intent (LOI) and “In Principal Sanction Order” has already been issued in favour of the petitioner, under the facts and circumstances mentioned above, whether the valid LOI is required to be issued on same terms and conditions in light of the direction of the Apex Court and DSR report in accordance with the order passed in Deepak Kumar (Supra) and Pawan Kumar (Supra) is required to be submitted before the respondents to the Ministry of Environment, Forest and Climate Change, Government of India for issuance of Environmental Clearance with respect to the cluster to the petitioner so that work order may be issued in favour of the petitioner.

(i) To answer the above issue it is required to summarize the steps taken by the several departments and the



petitioner, pursuant to the Letter of Intent which was issued to the petitioner on 26.07.2016, thereafter, the Chairman, State Environmental Impact Assessment Authority (SEIAA), Patna, upon deposit of Rs. 1 lakh in favour of Member Secretary, issued Terms of Reference (TOR) on 07.07.2018.

(ii) The Mining Officer-cum-Competent Authority, Kaimur Bhabhua had issued a letter being Letter No. 2069 dated 24.12.2019 directing the petitioner to obtain Environmental Clearance (EC) and complete the procedure and formalities in view of Letter of Intent (LOI) dated 24.05.2016 after nearly three years which entails to consider that the provision of Bihar Minor Minerals (Concession Illegal Mining and Storage) Rules, 2019, were relaxed and settled for a period of five years.

(iii) The Divisional Forest Officer, Kaimur Forest Division, Bhabhua, after verifying the GPS point found that the Madurna Stone Mining Plot is 4.8 kilometers from the Kaimur Forest and 3.2 kilometers from the Reserve Forest.

(iv) The Environmental Impact Assessment (EIA) and Terms of Reference (TOR) was submitted to the Ministry of Environment, Forest and Climate Change, Government of India, New Delhi and the hard copy of DSR is



required to be submitted by the Competent Authority.

(v) The petitioner had requested for early submission of final Environmental Impact Assessment (EIA) by reminding vide letter dated 10.11.2020 and again on 10.08.2021.

(vi) The Center of Advanced Study, Department of Ancient History, Cultural and Archaeology, Banaras Hindu University had also submitted a report with respect to the report regarding archaeological and historical monuments.

(vii) Petitioner filed writ petition being CWJC No. 17521 of 2022, which was disposed of on 30.01.2023 with a direction to the Principal Secretary, Department of Mines and Geology, Government of Bihar (Respondent No. 1) to consider the request of the petitioner in accordance with law considering the communication dated 27.05.2022 annexed as (Annexure-7) to the said writ petition.

(viii) The entire world was faced with COVID-19 pandemic and call for interference with the orders passed by the District Magistrate dated 24.02.2023 and the Additional Chief Secretary dated 11.08.2023 pending the application filed by the petitioner dated 18.04.2023 before the Secretary, Department of Mines and Geology, Government of Bihar.

44. The action of the Collector who proceeded to



cancel the lease and imposed penalty as has been held to be against the law laid down by the Apex Court and accordingly the order passed by the Additional Chief Secretary inasmuch as he has upheld the order passed by the Collector requires interference, as it was taken by them just before the Environmental Clearance could be granted to the petitioner and without disposal of the representation of the petitioner dated 18.04.2023.

45. In light of the judgment passed in case of *Deepak Kumar (Supra)* and *Pawan Kumar (Supra)*, admitting the fact that in counter affidavit, the DSR is required to be finalized in the light of the judgment passed in case of *Pawan Kumar (Supra)* on 10.11.2021. In the present case, pursuant to the initial DSR which was prepared for the cluster of stone lease in question pursuant to which, the auction was held in favour of the petitioner and Letter of Intent (LOI) was issued and in Terms of Reference (TOR), the petitioner having qualified after submitting the entire documents before the action can be taken by the state authorities. The entire globe faced COVID-19 pandemic because of *Force Majeure* from 2020 till the date the Standard Operation Procedure (SOP) being relaxed in view of the judgment dated 10.11.2021 passed by the Apex Court. The



DSR of year 2016 is subject to the DSR being finalized after the petitioner once the entire procedure has been followed and the State Authorities have to take action. In the present case, counter affidavit is silent when the final DSR was submitted before the State Environmental Impact Assessment Committee to be finally approved as per the guidelines of Ministry of Environment, Forest and Climate Change, Government of India. The petitioner had already submitted presentation in EAC meeting held on 29.08.2021, and the DSR and renewed LOI is required to be submitted by the State Government to Central Government to issue Environmental Clearance (EC) in view of the application made by the petitioner on 19.08.2021 (Annexure-P/22). Article 39 (c) of the Constitution of India stipulating that, the State shall, in particular, direct its policy towards securing that the operation of the economic system which does not result in the concentration of wealth and means of production to the common detriment.

46. The Hon'ble Supreme Court in *M.C. Mehta vs. Kamal Nath [1997 (1) Supreme Court Cases 388]* made it clear that if there is a law made by the State legislature, the Courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review:



*“35. We are fully aware that the issues presented in this case illustrate the classic struggle between those members of the public who would preserve our rivers, forests, parks and open lands in their pristine purity and those charged with administrative responsibilities who, under the pressures of the changing needs of an increasingly complex society, find it necessary to encroach to some extent upon open lands heretofore considered inviolate to change. The resolution of this conflict in any given case is for the legislature and not the Courts. If there is a law made by Parliament or the State Legislatures the courts can serve as an instrument of determining legislative intent in the exercise of its powers of judicial review under the constitution.” (Emphasis Supplied)*

*43. The quarrying operations, even in those quarries where there are shoals of sand, must be undertaken only by abiding the norms and conditions of the environmental clearance. The quarry site shall be closed immediately after removing the available shoals of sand. The area and the depth of the quarry shall be in accordance with the permission granted by the environmental authorities. Such quarrying operations would be subject to the result of the Special Leave Petition pending before the Hon'ble Supreme Court in SLP No. 2831 of 2018.*

*45. The Government must undertake a scientific study with the help of experts to identify the mineral deposits and its exact location. The State must excavate the minerals only from the places identified by the experts and by following the conditions imposed by the environmental authorities. Interlinking roads inside the river must be removed to check the illegal mining and transportation of minerals. The levelling of roads inside the river shall be done on a phased manner and giving priority. The sand mining shall not be undertaken in respect of locations where illegal sand mining has already been carried out.*

*46. The State must ensure that the sand quarries would adhere to the norms regarding extent and depth. The boundary of the quarry shall be demarcated by following the procedure set-out under Clause 2 (ii) of the conditions imposed by the environmental authority.”*

**47. The State must consider that in *Kasturi Lal***



***Lakshmi Reddy & Ors. v. State of J&K & Anr., (1980) 4 SCC 1***

case, deviation from the auction cannot be ruled out when the object of the State Policy is to promote domestic development consideration the fact that auction, an economic choice of disposal of the natural resources is not constitutional mandate because the action means alienation of all natural resources and order the judicial review should depend on the facts and circumstances of each case, in consonance of the principle, which has been culled out hereinabove. Failing which, the Court, in exercise of judicial review shall term the executive action as arbitrary, unfair, unreasonable and capricious due to its antimony with Article 14 of the Constitution.

48. It must be taken note of the fact that already more than six years have lapsed and no third party right has been created, therefore, the Competent Authority-cum-the District Magistrate and the Additional Chief Secretary, considering that the Online proposal No. IA/BR/MIN/109225/2019 submitted by the Proponent of Project (PP) before the Ministry of Environment, Forest and Climate Change, Government of India, and considering the said proposal in detail as would appear from Letter dated 9<sup>th</sup> July, 2020 for considering of 'Term of Reference' (TOR), hereinabove



petitioner having satisfied, the Competent Authority is required to take decision for issuing modified D.S.R. expeditiously without further delay. The modified DSR Report and based on the same valid LOI is required to be submitted expeditiously to the MOEF & CC, for taking appropriate action as required, so that Environmental Clearance Certificate can be issued for starting the mining activity after having complied with all the requisite formalities.

49. It is admitted fact that DRS has been verified by the competent authority pursuant to which the petitioner was granted LOI prior to the order passed by the Apex Court in case of *Pawan Kumar (Supra)* on 10.11.2021 and in view of the direction issued in the said case by the Apex Court, the State authorities, who had already initiated the process, are required to submit DSR along with valid Letter of Indent and similar TOR before the Ministry of Environmental Forest Climate Change, Central Government for environmental clearance. The time is, therefore, required to be extended considering the Covid notification relaxation notification by the MOEF & CC. The petitioner has already applied for fresh EC before the Ministry of Environmental Forest Climate Change, Central Government for Environmental Clearance. Thereafter, upon



issuance of EC the respondents are directed to issue work order and execute deed of final settlement of the agreement of lease.

50. The Ministry of Environment, Forest and Climate Change, Central Government, must not delay in issuing Environmental Clearance. The MOEF & CC is directed to take decision to issue Environmental Clearance Certificate forthwith.

51. In any case, the above exercise is required to be carried out by the petitioner and respective respondents well within a period of eight weeks from the date of communication of this order.

52. Accordingly, the present writ petition is disposed of.

53. There shall be no order as to costs.

**(Purnendu Singh, J)**

Niraj/-

AFR/NAFR	N.A.F.R.
CAV DATE	N/A
Uploading Date	20.02.2024
Transmission Date	N/A

