IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17683 of 2023

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Shivshankar Kaushik Infrastructure Pvt. Limited a Company registered Under the Companies Act, having its retistered Office at C/o Manoj Kumar Singh, Kshatriya Colony, Ramnagar Andar Dhala, Siwan-841226, through its authorised Signatory Shashi Kapoor Prasad, aged about 30 Years (Male), Son of Raj Kumar Prasad, Resident of Village Tari, Tanri, P.S. Raghunathpur, District Siwan 841509.

... ... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
2. The Principal Secretary, Cum Mines Commissioner, Mines and Geology Department, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
3. The District Magistrate, Bhojpur.
4. The Mineral Development Officer, Bhojpur.
5. Bihar State Mining Corporation Limited, through its Managing Director, Room NO. 164, Vikas Bhawan, (New Secretariate), Bailey Road, Patna 800015.
6. The Managing Director, Bihar State Mining Corporation Limited, Room NO. 164, Vikas Bhawan, (New Secretariate), Bailey Road, Patna 800015.

... ... Respondents

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Appearance :

For the Petitioner	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar
For the State	:	Mr. Pramendra Kumar Singh, A.C. to G.A.-10
For the BSMC Ltd.	:	Mr. Ranjeet Kumar Pandey, Advocate Mr. Rajesh Kumar, Advocate
For the Mines	:	Mr. Naresh Dikshit, Spl. P.P. Ms. Shruti Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

C.A.V. JUDGMENT

Date : 27-01-2026

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

i. To issue an appropriate writ, order or

direction in the nature of certiorarı for quashing the notice contained letter no. 360 dated 03.03.2023 issued by the Respondent Managing Director, Bihar State Mining Corporation Limited whereby and whereunder a penalty of Rs.96,97,705/- has been levied upon the petitioner for allegedly excavating 90060 cubic feet sand from beyond the permissible environment clearance area;

ii. *Consequent to grant of relief no (i) above, this Hon'ble Court may issue further appropriate writ, order or direction in the nature of mandamus commanding the Respondents to refund the penalty amount of Rs.96,97,705/- deposited by the petitioner on 03.03.2023.*

iii. *This Hon'ble Court may further adjudicate and hold that Respondent Managing Director is not the competent authority to levy penalty upon a settlee under Rule 30(1) of the 2019 Rules.*

iv. *This Hon'ble Court may further adjudicate and hold that penalty cannot be levied upon a valid settee under Rule 56(2) of the 2019 Rules.*

v. *This Hon'ble Court may further adjudicate and hold that letter no. 360 dated 03.03.2023 issued by the Respondent Managing Director is bad in the eyes of law since the same has been issued in glaring violation of the*

principles of natural justice as the petitioner has not been afforded any show cause notice whatsoever to controvert the allegations upon which the penalty has been levied.

vi. This Hon'ble Court may further adjudicate and hold that the levy of penalty contained in letter no.360 dated 03.03.2023 is in gross violation of the maxim audi alteram partem as the petitioner has been condemned unheard without an opportunity to defend the charges against it.

vii. This Hon'ble Court may further adjudicate and hold that the imposition of penalty upon the petitioner is in violation of the 2019 Rules?"

2. It is the case of the petitioner that the respondent - Bihar State Mining Corporation Limited had published a notice inviting e-auction for selection of sub-contractors for operation of sand *ghats* in the district of Bhojpur. The petitioner had participated in the said tender process and being the highest bidder, he was awarded Khangaon (Bahiyara) sand *ghat* after quoting an amount of Rs.5,53,41,610/-. Thereafter, the petitioner had deposited the requisite amount and accordingly, work order was issued in his favour.

3. It is the case of the petitioner that an

agreement was also executed between the petitioner and the respondent- Bihar State Mining Corporation Limited which was registered on 27.06.2022. Thereafter, the petitioner started carrying out the mining activities, but all of a sudden the Managing Director of the Bihar State Mining Corporation Limited issued the impugned letter dated 03.03.2023, whereby a penalty of Rs.96,97,705/- was levied upon the petitioner for excavating the sand beyond the permissible mining area and the petitioner was directed to deposit the penalty amount within 24 hours.

4. According to the petitioner, he had deposited the penalty amount under compulsion and threat of restriction on generation of e-transit *challans*.

5. It has been submitted by learned counsel for the petitioner that the impugned order of penalty dated 03.03.2023 indicates that on 24.02.2023 and 25.02.2023 inspection was conducted and it was found that the signboard and boundary wall were not erected and the sand was found to have been excavated outside the permissible area, however, neither the petitioner was intimated about any inspection nor the alleged inspection was conducted in his presence. It has further been submitted that neither show-cause notice was issued to the

petitioner nor any inspection report was provided to him before imposing the penalty.

6. It is the categorical submission of learned counsel for the petitioner that the petitioner has not excavated the sand beyond the permissible area and the imposition of penalty of such a huge amount is completely illegal and in violation of the principles of natural justice as the same has been passed without issuance of any show-cause notice to the petitioner and without affording an opportunity to rebut the allegation.

7. In support of this submission, learned counsel for the petitioner has placed reliance on decisions dated 09.05.2023 passed by a coordinate Bench of this Court passed in ***C.W.J.C. No.3400 of 2023*** titled as ***M/s. Uma Associates vs. State of Bihar and Ors***.; the judgment dated 01.08.2025 passed in ***C.W.J.C. No.17442 of 2023*** titled as ***M/s. Shri Vijay Kumar Singh vs. The State of Bihar and Ors.*** and the judgment dated 01.08.2024 passed in ***C.W.J.C. No.9091 of 2023*** titled as ***Maa Bhawani Traders vs. The State of Bihar & Ors.***

8. Adverting to Rule 20 and 56 of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, learned counsel for the

petitioner submits that there is no provision in the aforesaid Rules, regarding recovery of price of mineral for illegal excavation as a compensation. Further, Rule-30 specifically provides that for the first time violation, a penalty of Rs.1,00,000/- can be imposed upon the setttlee, however, even assuming that the allegation against the petitioner is true then also the aforesaid imposition of penalty is totally illegal and not sustainable.

9. *Per contra,* learned counsel for the answering respondent nos.5 and 6 has submitted that in light of the order of the Director, Mines and Geology Department, a special investigating team was constituted to carry out inspection of sand *ghats*, illegal mining, transportation and storage of minerals in the District of Bhojpur and in the said inspection, it was found that the sand *ghat* which has been allotted to the petitioner had no signboard and mining was being done outside the permissible area, thereby making the petitioner liable for penalty. On the basis of the aforesaid inspection, the penalty of Rs.96,97,705/- was imposed upon the petitioner for illegally extracting 90060 CFT of sand beyond permissible area allotted to the petitioner under Rule 56(2) of the Rules, 2019. It has also been submitted that the above mentioned inspection

was done under Rule 59 of Rules, 2019.

10. The learned counsel for the answering respondent nos. 5 and 6 has argued that since the petitioner had deposited the amount of penalty on the very same day i.e. on 03.03.2023, the same clearly shows admission on the part of the petitioner regarding illegal mining activity carried out by him beyond the permitted area.

11. So far as the decision dated 01.08.2025 passed in the case of ***M/s. Shri Vijay Kumar Singh (supra),*** which has been relied upon by learned counsel for the petitioner is concerned, it has been submitted that against the aforesaid decision, the Bihar State Mining Corporation Ltd. has preferred an appeal being L.P.A. No. 887 of 2025 before the Division Bench of this Court.

12. It has further been submitted that the decision in ***M/s. Uma Associates (supra)*** and ***Maa Bhawani Trader (supra)*** are not applicable since the facts of the present case is different from the facts of both the cases. In the case of ***M/s. Uma Associates (supra)***, the petitioner therein had challenged the order of penalty without depositing the same and in ***Maa Bhawani Traders (supra)***, the penalty amount was deposited under protest. However, in the present case the

petitioner deposited the penalty amount without any protest on the same day of demand, which shows that the petitioner accepted the penalty and after about more than 9 months and even after completing the contract, he filed the present writ petition.

13. I have considered the submissions of the parties and perused the materials available on record.

14. In this case, the central argument of the learned counsel for the petitioner is that the impugned penalty order has been passed in complete contravention of the principles of natural justice as no show-cause notice was issued to the petitioner before imposing the penalty and even no opportunity of hearing was afforded to him.

15. I find substance in the submission of learned counsel for the petitioner that before passing the impugned order of penalty neither show-cause notice was issued to the petitioner nor he has been heard and further the enquiry report has also not been supplied to the petitioner. Even the learned counsel for the answering respondents is not in a position to show anything from the records indicating that before passing the impugned order either the show-cause notice was issued to the petitioner or that he has been heard. Further, the respondents

had provided only 24 hours time to deposit the penalty amount. In my opinion, the penalty could have been imposed upon the petitioner only after a proper inquiry conducted in his presence, which is absent in the present case.

16. Recently, the Hon'ble Supreme Court in the case of ***Krishnadatt Awasthy v. State of M.P. & Ors.*****,** reported as ***(2025) 7 SCC 545*** has emphasized on the imperativeness of principles of natural justice, particularly, before an administrative authority acting in a *quasi judicial* function and has held as under:-

> *"43.* ***The opportunity of hearing is considered so fundamental to any civilised legal system that the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds [Olga Tellis v. Bombay Municipal Corpn., (1985) 3 SCC 545]*** **.**
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> *44. It has been argued before us that if the failure to provide hearing does not cause prejudice, observing the principle of natural justice may not be necessary. In this context, a three-Judge Bench of this Court in S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] speaking through Chinappa Reddy, J. considered such arguments to be "pernicious" and held that* ***"[t]he non-observance of natural justice is itself prejudice to any man and proof***

<u>of prejudice independently of proof of denial of natural justice is unnecessary".</u> *The Supreme Court, however, has drawn out an exception where "on the admitted or indisputable facts only one conclusion is possible, and under the law only one penalty is permissible, then the Court may not compel the observance of natural justice" [Swadeshi Cotton Mills v. Union of India, (1981) 1 SCC 664 : (1981) 51 Comp Cas 210; Aligarh Muslim University v. Mansoor Ali Khan, (2000) 7 SCC 529 : 2000 SCC (L&S) 965].*

45. *Professor I.P. Massey [I.P. Massey, Administrative Law (8th Edn., 2012).] has commented on this shift as under:*

> *"Before the decision of the highest Court in S.L. Kapoor v. Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379], the rule was that the principles of natural justice shall apply only when an administrative action has caused some prejudice to the person, meaning thereby that he must have suffered some "civil consequences". Therefore, the person had to show something extra in order to prove "prejudice" or civil consequences. This approach had stultified the growth of administrative law within an area of highly practical significance. It is gratifying that in Jagmohan [S.L. Kapoor v. Jagmohan, (1980) 4 SCC 379] , the Court took a bold step in holding that a*

separate showing of prejudice is not necessary. The non-observance of natural justice is in itself prejudice caused. However, merely because facts are admitted or are undisputable it does not follow that the principles of natural justice need not be observed."

46. *In State Bank of Patiala v. S.K. Sharma [State Bank of Patiala v. S.K. Sharma, (1996) 3 SCC 364 : 1996 SCC (L&S) 717], the Supreme Court observed that where an enquiry is not convened by any statutory provision and the only obligation of the administrative authority is to observe the principles of natural justice, the court/tribunal should make a distinction between a total violation of the rule of fair hearing and violation of the facet of that rule. In other words, a distinction must be made between "no opportunity" or "no adequate opportunity". **In the case of the former, the order passed would undoubtedly be invalid and the authority may be asked to conduct proceedings afresh according to the rule of fair hearing. But in the latter case, the effect of violation of a facet of the rule of fair hearing has to be examined from the standpoint of prejudice.***

47. *In Dharampal Satyapal Ltd. v. CCE [Dharampal Satyapal Ltd. v. CCE, (2015) 8 SCC 519 : (2015) 33 GSTR 1], this Court dealt with the prejudice question as under: (SCC p. 540, para 42)*

"42. So far so good. However, an important question posed by Mr Sorabjee is as to whether it is open to the authority, which has to take a decision, to dispense with the requirement of the principles of natural justice on the ground that affording such an opportunity will not make any difference? To put it otherwise, can the administrative authority dispense with the requirement of issuing notice by itself deciding that no prejudice will be caused to the person against whom the action is contemplated? ***Answer has to be in the negative. It is not permissible for the authority to jump over the compliance of the principles of natural justice on the ground that even if hearing had been provided it would have served no useful purpose. The opportunity of hearing will serve the purpose or not has to be considered at a later stage and such things cannot be presumed by the authority.*** *This was so held by the English Court way back in the year 1943 in General Medical Council v. Spackman [1943 AC 627 (HL)]. This Court also spoke in the same language in Board of High School & Intermediate Education, U.P. v. Chitra Srivastava [Board of High School & Intermediate Education, U.P. v. Chitra Srivastava, (1970) 1 SCC 121] ...."*

48. In a more recent decision in State of U.P. v Sudhir Kumar Singh [State of U.P. v. Sudhir Kumar Singh, (2021) 19 SCC 706] , the position of law was summarised as under: (SCC pp. 748-49, para 42)

"42. ...42.1. Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.

42.2. Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.

42.3. No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to

> *the person complaining of the breach of natural justice.*
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> *42.4. In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*
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> *42.5. The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice." (emphasis supplied).*

17. It is a cardinal principle of law that no one should be condemned before being heard, which is also an integral part of the principles of natural justice. Considering the aforesaid decision of the Hon'ble Supreme Court in the case of ***Krishnadatt Awasthy (supra)***, it is clear that the principles of nature justice must be adhered to strictly. The doctrine of *audi alteram partem* has three basic essentials. *Firstly*, a person against whom an order is required to be passed or whose rights

are likely to be affected adversely, must be granted a reasonable opportunity of being heard. *Secondly*, the authority concerned should provide a fair and transparent procedure and *lastly*, the authority concerned must apply its mind and dispose of the matter by a reasoned and speaking order.

18. In the present case, it appears from the records that the inspection was conducted behind the back of the petitioner and after inspection the petitioner was neither provided the inspection report nor show-cause was issued to him, and the impugned order imposing penalty has also been passed without hearing the petitioner, which is in complete violation of principles of natural justice and therefore *non est*. Moreover, the respondent authorities had provided merely 24 hours' time to deposit the penalty amount and the petitioner under the threat of non-generation of his e-challans had deposited the aforesaid penalty amount. The action of the respondent authorities in grating only 24 hours time to deposit the huge penalty amount imposed upon the petitioner is totally arbitrary and therefore, unsustainable.

19. In view of the aforesaid discussions, the impugned letter dated 03.03.2023 imposing penalty upon the petitioner is hereby quashed and set aside. The matter is

remitted to the respondents to consider the matter afresh and pass a speaking order after giving a reasonable opportunity of hearing to the petitioner.

20. With the aforesaid observations and directions, the writ petition stands allowed.

(Sandeep Kumar, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	22.12.2025
Uploading Date	27.01.2026
Transmission Date	