

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No 2746 of 2020

Westlink Trading Private Limited A Company registered under the Companies Act, 1956 having its Registered office at D-504, Building No.27, Sunshine Co- Op HSG SOC Ltd, Mahada Colony Chandivali, Mumbai- 400072 having its branch office at Mohalla Kailashpuri, P.O. and P.S.- Banda, District Banda, Uttar Pradesh and local office at 1st Floor, Shivam Apartment, Anandpuri, West Boring Canal Road-800001 through its Director Abhishek Kumar Singh, Aged 46 male, S/o Devendra Mohan Singh, Resident of 1st Floor, Shivam Apartment, Anandpuri, West Boring Canal Road- 800001

... .. Petitioner/s

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The State of Bihar Through the Commissioner-Cum- Principal Secretary, Department of Mines and Geology, Vikas Bhawan, Bailey Road, Patna-800001.
3. The Joint Secretary-Cum- Director Directorate of Mines and Geology, Vikas Bhawan, Bailey Road.
4. The Collector Jamui, District- Jamui, Bihar.
5. The Collector Lakhisarai, District Lakhisarai, Bihar.
6. Mineral Development Officer District Mining Office, Jamui, District Jamui, Bihar.
7. Mineral Development Officer District Mining Office, Lakhisarai, District Lakhisarai, Bihar.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr Shashi Anugrah Narain, Sr Advocate with Mr Mrigank Mauli, Advocate
For the State	:	Mr Gyan Prakash Ojha, GA VII
For the Mines	:	Mr Brij Bihari Tiwary, Special PP



CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

Date : 11-01-2021

Learned counsel for the parties are present today when the matter is listed *For Judgment* in actual physical Court proceedings after having been heard earlier through virtual mode.

2 The petitioner is a settlee of Sand Mining Lease in the two districts of Jamui and Luckeesarai for the period 2016 – 2019.

3 The prayer made in the writ petition is for quashing of

(i) Letter dated 27.12.2019 (Annexure P/32) whereby the Government has taken a policy decision for extension of the terms of lease of the existing settlees of sand ghats, subject to enhancement of 50% of the settlement amount.

(ii) quashing of Memo dated 31.10.2019 whereby petitioner's prayer for extension of the terms of its lease was rejected by the Department.

(iii) to treat the petitioner's operative settlement to be three years from the date of issuance of "work order" and consequential reliefs.

4 On behalf of the petitioner, learned Senior Counsel Mr Shashi Anugrah Narain has made submissions. Mr Brij Bihari Tiwary, learned Special PP (Mines) has appeared for the Mines



Department. Mr Gyan Prakash Ojha, learned GA VII has appeared for the State Government.

5 The brief facts relevant to the case are that an Advertisement was published on 24.06.2016 for settlement by auction of sand ghats at Luckeesarai and Jamui districts for the period 2016 – 2019. Reserve price had been fixed separately for the two districts.

6 The petitioner participated in the auction and was declared the highest bidder. The combined bid amount submitted by the petitioner for the two units in the two Districts was Rs 49 crores, which placed the petitioner as the highest bidder. Petitioner was, thus, declared eligible/selected for settlement of the two sand ghats for sand mining.

7 “In-principal” approval in terms of Clause 9 (i) of the Tender Document for mining was issued by the Collector, Jamui on 22.07.2016 and for the sand ghats located in Luckeesarai on 23.07.2016 by the Collector, Luckeesarai. Extract of the relevant Clause 9 of the Tender reads as follows:

“

9. चयन के बाद की औपचारिकताएँ :-

- (i) सफल डाकवक्ता को सम्पूर्ण प्रतिभूति राशि (नीलामी की राशि का 25 प्रतिशत) का भुगतान (अग्रधन की राशि को समायोजित करते हुए) नीलामी की तिथि से एक सप्ताह के अंदर करना होगा। इसके पश्चात् ही सैद्धान्तिक स्वीकृति प्रदान की जायेगी।



(ii) सफल डाकवक्ता को बालू उत्खनन की अनुमति प्रदान की जा सकती है वशर्ते कि वे प्रथम किस्त की राशि का सम्पूर्ण भुगतान कार्यादेश निर्गत होने के पूर्व कर सकते हैं एवं यह साक्ष्य समर्पित करते हैं कि उनके द्वारा माईनिंग प्लान (90 दिनों के अंदर) एवं पर्यावरण स्वच्छता प्रमाण-पत्र (90 दिनों के अंदर) प्राप्त करने हेतु नियमानुसार कार्रवाई की जा चुकी है तथा निर्धारित समय सीमा के अंदर उक्त कागजात को वे विभाग को उपलब्ध करा देंगे।

... ..”

8 The undisputed facts are that in terms of Clause 9 of the Tender Document, 25% of the security amount after adjusting the amounts earlier paid was to be tendered within a week from the date of auction. It is only thereafter that “in-principal” approval was to be granted. From bare reading of sub-clause (ii) of Clause 9, it is apparent that a Work Order can be issued to the successful bidder, subject to conditions that the entire first installment of the settlement amount (50%) is paid prior to issuance of the Work Order. Successful bidder was also required to submit evidence that for obtaining Mining Plan and Environmental Clearance Certificate, they have taken all steps in accordance with the Rules and that the same would be submitted within a specified time limit. The admitted position is that sub-clause (ii) of Clause 9 has not been complied with by the petitioner.

9 The learned Senior Counsel for the petitioner has submitted that the Company could not have obtained environmental clearance unless the Mining Plan was approved by



the Department. Authorities are responsible for the delayed approval of the Mining Plan, which finally came to be issued on 29.06.2017, even though it was required to be approved within 30 days in terms of Clause 5 (ka) of the 2013 Sand Policy. Contrary to all expectations, the Authorities approved the same after a long delay of 7 months. Resultantly, the work order was issued much later, i e, more than two years after “in-principal” approval of the Mining Plan.

10 It is submitted by the learned Senior counsel for the petitioner that even though the respondents are responsible for the delay in approval of the Mining Plan which resulted in delayed issuance of the work order, the petitioner’s right to actual mining has been restricted to about sixty (60) days, although the lease had been granted to it for a period of three years.

11 The second report of the Comptroller and Auditor General of India for the year 2018 (Annexure P/34) also supports the petitioner’s contention that the authorities have delayed approval of the Mining Plan. The learned Senior Counsel has placed reliance on the judgment in the case of *All India Groundnut Syndicate Limited -Versus- Commissioner of Income Tax, Bombay City, AIR 1954 Bombay 232*. Paragraph 2 of the said judgment is emphasized, where the High Court has observed:



“But the most surprising contention is put forward by the Department that because their own officer failed to discharge his statutory duty, the assessee is deprived of his right which the law has given to him under sub-section (2) of S 24. In other words, the Department wants to benefit from and wants to take advantage of its own default. It is an elementary principle of law that no person - we take it that the Income-tax Department is included in that definition - can put forward his own default in defence to a right asserted by the other party. A person cannot say that the party claiming the right is deprived of that right because “I have committed a default and the right is lost because of that default.”

12 In the circumstances, the learned Senior Counsel for the petitioner submits that refusal of extension by the Department under order dated 31.10.2019 (Annexure P/30) is illegal, unsustainable as the same has the result of penalizing the petitioner for the default of the Respondent-Authorities. This order has been issued without considering the fact that the delay in approval of the Mining Plan was due to the Respondent-Authorities.

13 It is the petitioner’s case that after issuance of the work order on 04.11.2019, just 60 days of the lease period was left for actual mining. Thus, even after issuance of belated Work Order on 04.11.2019 (Annexure P/31), lease period lapsed immediately, i e, on 31.12.2019. The petitioner, therefore, could actually carry on mining from the sand ghats merely for a period



of 60 days though the petitioner has made deposit of the security money in terms of the order passed on his revision application by the Mines Department. The payments made by the petitioner have also been brought on record in the supplementary affidavit filed by the petitioner on 28.09.2020.

14 The learned Senior Counsel for the petitioner has also submitted that the letter of the Government dated 27.12.2019 (Annexure P/32) granting extension subject to enhancement of the settlement amount by 50% is not sustainable in the eyes of law. The petitioner cannot be saddled with enhancement of settlement amount to the tune of 50% since there was no provision providing for such stark and arbitrary enhancement of settlement amount under the Tender Document, General Terms and Conditions or the extant Sand Policy, under which the petitioner was granted settlement for the period 2016 – 2019.

15 The learned Special PP for the Mines Department Mr Brij Bihari Tiwary has submitted that in so far as submission of the petitioner's learned Senior Counsel that the Mining Plan Approval was delayed due to the lapses of the Respondent-Authorities, findings in the order dated 07.05.2019 passed on the petitioner's earlier writ proceedings (*CWJC No 5429 of 2019*) for the same relief, is conclusive. It is submitted that this Court at page 9 of the



judgment has recorded findings regarding petitioner's "*careless approach*" and "*delay*". In view of these findings, it does not lie in the mouth of the petitioner to contend now again in these proceedings that the delay in approval of the Mining Plan was due to the State-Authorities. The Writ Court, in the said proceedings where the same prayer was made, which has been made in the instant proceedings, has declined to issue any order with regard to extension of the period of the same lease for three years from the date of issuance of the work order.

16 This Court refused to exercise writ jurisdiction to issue any direction for extension of lease. It, however, recognized the liberty of the State Government to either extend or reduce the settlement period. It has clearly held that such discretion was within the jurisdiction of the State Government. In this background, considering the fact that the petitioner had submitted an application on 21.01.2019 before the Respondent for extension of the lease period and that the same was still pending before the Commissioner-Cum-Principal Secretary, Department of Mines and Geology, this Court has issued a direction to the petitioner to agitate the matter before the said Authority. Accordingly, the writ petition has been disposed of with a direction to the petitioner to



agitate the same and corresponding direction to the Authority to dispose of the application.

17 Bare perusal of the order passed in the earlier writ proceedings makes it clear that the issue regarding delay attributable to the respondent-authorities has finally been adjudicated between the parties. The findings to this extent, taken note of hereinabove, have not been assailed by the petitioner and, as such, in the instant proceedings, by way of a fresh writ petition, the petitioner cannot be permitted to reargue the same issue.

18 Second writ petition for the same relief is clearly not maintainable. To overcome the issue of maintainability of the second writ petition for the same relief, the petitioner has indulged in suppression of relevant and material facts. In Annexure P/28, i.e., copy of the judgment in CWJC No 5429 of 2019, earlier filed by the petitioner, the petitioner has deliberately removed Page 9 and in its place, Page 9 of another judgment has been annexed. By doing so, petitioner has indulged in suppression of the relevant and material conclusive findings of this Court regarding petitioner's "*careless approach*", and "*delay*" attributable to the petitioner. Based on such suppression, petitioner has also indulged in willful and deliberate misrepresentation that the Respondent-Authorities



were responsible for the delay, as if the issue is still open and yet to be determined.

19 The learned Special PP, Mines has also submitted that rejection of petitioner's claim for extension of the mining lease period is also after taking into consideration decision of Division Bench of this Court in *LPA No 379 of 2019 (Mr Aman Sethi -Versus- The State of Bihar & Others)* that claim for such extension can only be based on the terms and conditions of the tender. Even in the Sand Policy of 2013 under which the petitioner obtained the settlement, there is no such provision that if the settlee is unable to obtain the environmental clearance then he would have any claim for extension of the lease period.

20 Lastly, he has submitted that Annexure P/32, i e, the extension granted under letter dated 27.12.2019 was a general policy decision to provide for sand mining during the period when applications for environmental clearance of the new/current settlees was pending consideration before the National Green Tribunal. The Department, thus, gave an option to all earlier existing settlees whose mining lease settlement was coming to an end on 31.12.2019 that if they so desired, they could have availed of an extension subject to the terms and conditions contained in the said letter itself. The petitioner, like all other existing settlees,



had the option of accepting limited extension of the lease on new terms. It was not in any manner binding on the petitioner and, therefore, the petitioner cannot claim to be aggrieved by such option which was uniformly granted to all existing settlees, similarly situated as the petitioner.

21 Learned counsel for the State Mr Gyan Prakash Ojha submits that the State adopts the stand of the Mining Department. He submits that in view of the submissions advanced by the learned Special PP for the Mining Department, the petitioner is not entitled to any relief in the instant proceedings.

22 In so far as submission of petitioner's counsel that the delay in obtaining environmental clearance and submission of Mining Plan could not be attributed to the petitioner, or that the respondent-authorities were in fact responsible for the same, this Court would observe that the petitioner had earlier approached this Court on the same grounds and for the same relief, in CWJC No 5429 of 2018. After considering the submissions advanced by the petitioner and the respondent-authorities, this Court was of the opinion that there was no occasion to issue any direction to the respondents for extending the lease period. Specific findings have been recorded by this Court in CWJC No 5429 of 2019, earlier filed by the petitioner holding the petitioner liable for the delay.



This Court would consider it useful to reproduce the relevant paragraphs, at page 9 of the judgment, where findings against the petitioner has been recorded:

*“... ..Having heard the parties in detail, this Court finds that it is a matter of record that the relevant “in principal sanction orders” was issued to the petitioner’s company on 22.07.2016 (Jamui) and 23.07.2016 (Luckeesarai) respectively. The mining plan for the same was submitted by petitioner before the concerned authorities under the Department for approval on 13.10.2016 after 80/81 days after the “in principal sanction” orders were issued in favour of the pensioner's company. **This illustrates the careless approach adopted by the petitioner's company which had led to delay in commencing the mining operations on the relevant Sand Ghats in question “emphasis mine”.** It further appears that letter bearing Memo No 7 dated 12.10.2017 was addressed to the Department by the Collector, Jamui and it was stated in this letter that a process of physical verification was carried on by the concerned authorities under the Department on the relevant Sand Ghats settled in favour of the petitioner’s company and during the process of verification, certain irregularities with respect to the amendment of names of 6 out of 55 Ghats in question were found. The copy of the said letter has been annexed as Annexure A to the counter affidavit. In this respect, clarifications/queries were sought from the petitioner's company and **due to delay in furnishing those relevant clarifications by the petitioner’s company, delay occurred in approval of mining plan “emphasis mine”.** The appraisal committee of the Department found certain irregularities including inter alia, the absence of the names, mauza and coordinates of several Sand Ghats as well as the lack of clarity over the relevant Sand Ghats and the circles they were situated in during this exercise of physical verification carried out by the concerned authorities under the Department. In the light of such development, the Department issued a letter dated 30.12.2016 addressed to the District Magistrate of Jamui to take steps towards removal of these irregularities as per report of physical verification of Sand Ghats settled in favour of the petitioner's company. Thereafter, by letters dated 11.01.2017 and 12.01.2017, reports with respect to the removal of irregularities were submitted before the Department by the District Magistrate, Luckeesarai and District Magistrate, Jamui respectively.*”



Following the submission of these reports, the mining plan submitted by the petitioner's company was approved by the appraisal committee for the Department on 23.01.2017 and by the intra – department committee on 20.02.2017 and in light of these approvals, a notification bearing memo No 1666 dated 29.06.2017 was issued by the Department informing the petitioner company that the mining plan submitted by the petitioner company before the Department stood approved”

“... ..This Court, after hearing the arguments of both the sides, find that work order has not been issued to the petitioner because petitioner has not obtained Environmental Clearance from SEIAA in terms of the “in principal” approval issued in favour of the petitioner by the Collectors, Jamui and Luckeesarai on 22.07.2016 and 23.07.2016 respectively as per clause 9 (i) of the tender document “emphasis mine”. The aforesaid letter stated that formalities had to be completed before the work order was to be issued and it included (i) submission and approval of the Mining Plan from the Department of Mines and Geology (ii) getting Environmental Clearance from SEIAA (iii) payment of 50% of the bid amount for the first year”

*“... ..Therefore, this Court is of the view that writ of mandamus cannot be issued in vagueness. **In the instant case, the work order in favour of petitioner has not been issued till date. The work order has not been issued till date because petitioner has not submitted Environmental Clearance as required under Section 25 (1) of Bihar Mines Mineral Concession Rules, 1972 “emphasis mine”.***

This Court finds that in terms of Section 11 (c) of the Bihar Minor Mineral Concession Rules 1972, the State Government shall be at liberty to either extend or reduce the settlement period whenever required for the reasons to be recorded in writing. As such, it is within the jurisdiction of the State Government to either extend or reduce the settlement period whenever required.

Learned counsel for the petitioner has submitted that necessary application dated 21.01.2019 has been filed before Respondent No 1 vide Annexure P/27 making request to extend the period of Sand Ghats for a period of three years from the date of



issuance of work order, which is still pending before Respondent No 1.

In such circumstances, this Court does not feel it proper to issue any direction to the Respondent with regard to the relief claimed by the petitioner in paragraphs 1 to 4 of the writ application. “emphasis mine”

Accordingly, this writ petition is disposed of with direction to the petitioner to agitate the matter before Respondent No 1 who shall pass appropriate order in accordance with law on the pending application of the petitioner dated 21.01.2019 as contained in Annexure P/27 within a period of one month from the date of receipt/production of this order.”

23 This Court, in the earlier writ proceedings seeking the same relief, had clearly come to a finding that the petitioner had no legal claim, enforceable by issuance of a direction in a writ proceedings under Article 226 of the Constitution of India for extension of the lease for 3 years from the date of work order. These findings have been accepted by the petitioner, as no appeal is said to have been preferred against the findings recorded in the petitioner’s earlier writ proceedings. It, therefore, does not lie in the mouth of the petitioner, in these proceedings, to again contend that respondent-authorities were responsible for delay in mining plan approval, issuance of Environmental Clearance, or the delay in issuance of the Work Order, for which delay, the petitioner has already been found to be responsible.

24 Had there been any default on part of the respondent-authorities, there may have been an occasion for the



petitioner to place reliance on judgment of the Bombay High Court in the case of *All India Groundnut Syndicate Limited (supra)*. On the contrary, this Court would find that already there are findings regarding petitioner's default in the order passed in *CWJC No 5429 of 2019* earlier filed by the petitioner for the same relief of extension of lease period which have now become final and binding inter parties. Facts of the instant case are distinguishable from the facts in *All India Groundnut Syndicate Limited (supra)* and reliance placed on the said judgment is misplaced and unsustainable.

25 Judgment of the Division Bench of this Court in the case of *Mr Aman Sethi (supra)* relied upon by the State Counsel is also relevant to the petitioner's claim for extension of period of lease by asserting that petitioner is entitled to operate the lease for three years from the date of issuance of work order. In the case of *Mr Aman Sethi (supra)* also the petitioner had contended that delay in initiation of mining activity was due to lapse on the part of the State-Authorities. The petitioner's case was as follows :

“This appeal has been filed questioning the correctness of the judgment of the learned Single Judge contending that the appellant should be allowed to operate his mining lease for a full period of five years from the date he was actually permitted to commence mining operations and he should not be compelled to pay royalty other than the mineral “removed and consumed” by the petitioner under the lease. This contention is



being advanced by the appellant grounded on the fact that for no fault of the appellant, he was, on account of the obstruction created due to excessive demand of Stamp Duty, prevented from operating the mining lease as it could not have been done without getting the lease-deed registered. This in turn was based on the apprehension that since the law requires registration of the lease, its violation could have resulted in its cancellation.”

26 The Division Bench of this Court dismissed the plea of the petitioner for extension of the lease period after the following consideration:

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

26. The royalty therefore has to be paid which can, however, be subject to any adjustment by the State Government in case it so desires to do so or even for that matter to consider the extension of the period of mining operations. However, the said issue does not call for any further deliberations without prejudice to the rights of the petitioner that may be dependent upon the outcome of the litigation in the Stamp Duty matter or by any other decision to be taken by the State Government in this regard.”



27 Such declaration of the Division Bench, in the facts and circumstances of that case is applicable to the facts of the instant case, since this Court in *CWJC No 5429 of 2019*, earlier filed by the petitioner, has already concluded that delay in issuance of Work Order in favour of the petitioner was due to petitioner's lapses. On this ground also, the petitioner cannot claim extension of the lease period.

28 This Court would observe that on 31.10.2019, the petitioner was already communicated the decision not to extend his lease period beyond 31.12.2019. Subsequent to this rejection, work order was issued to the petitioner on 04.11.2019 for the remaining period of the original settlement. The work order has been accepted without any demur. In fact, it is petitioner's own case that it has carried on actual mining activities for 60 days under the Work Order dated 04.11.2019. Specific averment to this effect has been made in paragraph 48 of the writ petition, as well as paragraph 12 of the second supplementary affidavit filed by the petitioner. If the petitioner was in any way aggrieved by rejection of his claim for extension of the lease period under order dated 31.10.2019, he was required to challenge the same with due diligence. Facts of the case, on the contrary, show that he has in fact chosen not to do so, and taken advantage of the consequent



Work Order dated 04.11.2009 for remaining of the original lease period, and carried on actual mining activity under the same.

29 Having elected not to assail the order dated 31.10.2019 rejecting his request for extension of lease, and by gainfully operating the mining lease in terms of the Work Order dated 04.11.2019, the petitioner has waived its right to claim anything in excess of the Work Order dated 04.11.2019. For this reason also, now it cannot be permitted to turn around and challenge the decision dated 31.10.2019 rejecting its claim for extension of lease beyond 31.12.2019.

30 The petitioner is estopped from now raising a plea that the delay was attributable to the Respondent-Authorities as (i) it has elected to remain silent and accepted the findings recorded in the earlier order passed in *CWJC No 5429 of 2019*, and (ii) without any objection, or challenge to rejection of its request for extension of lease under communication dated 31.10.2019, has in fact operated the mining lease for the remaining period, i e, from the date of consequential work order dated 04.11.2019 till 31.12.2019, being the last date of the original lease period. This is a glaring example of estoppel by election which is one of the species of equitable estoppel, being a rule of equity. The said principle was pressed into application by the Apex Court while



considering the maintainability of second writ petition filed under Article 226 of the Constitution of India, under similar circumstances, in the case of *Joint Action Committee of Air Line Pilots' Association of India (for brevity, ALPAI) & Others -Versus- Director General of Civil Aviation & Others*, reported in *(2011) 5 Supreme Court Cases 435*. In the said case also, some of the petitioners had earlier filed a writ petition in the year, 2007 seeking a declaration that amendment dated 27.07.2007 of Civil Aviation Requirements (for brevity, *CAR*) was illegal, irrational and inconsistent with the settled principles of law and practice; and for consequential reliefs.

31 In the said writ proceedings, petitioners had submitted that Aeronautical Information Circular (for brevity, *AIC*) No 28 of 1992 was the most scientific and properly formulated directions and that the impugned amendment of *CAR* of 2007 was based on a draft which had shocking deviations and selective exclusion from safety reasons which was adopted and accepted internationally.

32 The Authorities, in the said case, were directed to maintain status quo with respect to the Flight Time and Flight Duty Time Limitation as on June, 2007. The petitioners, thereafter,



submitted that the grievance had already been redressed and they do not wish to pursue the writ petition. The same was withdrawn.

33 Since the earlier writ petition wherein the CAR of 2007 was challenged was withdrawn by the writ petitioners without even reserving their right to file a fresh petition challenging the same, such conduct was not found worthy of approval by the Apex Court on the principles of waiver and estoppel.

34 In this case also, petitioner accepted the findings of its default leading to delay in issuance of Work Order for mining recorded in the judgment passed on its earlier writ petition (*CWJC No 5429 of 2019*). It has, without assailing those conclusive findings, consciously decided to comply with the directions contained in *CWJC No 5429 of 2019* to agitate the matter before the State Authorities as this Court has considered the State Authorities to be at liberty to extend or reduce the settlement period, whenever required for the reasons to be recorded in writing. On the same set of facts, in the petitioner's earlier writ proceedings, seeking the same relief, this Court held that it was within the jurisdiction of the State Government to either extend or reduce the settlement period, whenever required. Such findings and observations, have not been assailed by the petitioner, and has



attained finality between the instant petitioner and the Respondent-Authorities in so far as the instant mining lease is concerned.

35 In view of the aforesaid facts and circumstances, this Court is of the view that the prayer made in the instant writ proceedings for extension of the same lease, again on the same plea that delay in obtaining mining lease is attributable to the State authorities is barred by estoppel.

36 This Court would consider it useful to reproduce paragraphs 12 and 13 of judgment of the Apex Court in the case of

Joint Action Committee of ALPAI (supra):

“12. The doctrine of election is based on the rule of estoppel – the principle that one cannot approbate and reprobate inheres in it. The doctrine of estoppel by election is one of the species of estoppels in pais (or equitable estoppel), which is a rule in equity. By that law, a person may be precluded by his actions or conduct or silence when it is his duty to speak, from asserting a right which he otherwise would have had. Taking inconsistent pleas by a party makes its conduct far from satisfactory. Further, the parties should not blow hot and cold by taking inconsistent stands and prolong proceedings unnecessarily.

13. In view of the above, it is clearly evident that some of the present appellants had challenged CAR 2007, wherein it had been submitted that AIC 28 of 1992 was based on better scientific studies. The same remained in operation for more than 17 years and no one had even raised any grievance in respect of its



contents or application. However, it appears that during the pendency of the said writ petition, grievance of those petitioners stood redressed and, thus, they withdrew the writ petition. They did not even ask the court to reserve their right to file a fresh petition challenging the same, in case the need arose, as required in the principle enshrined in Order 23 of the Code of Civil Procedure, 1908. Such a conduct of those appellants in blowing hot and cold in the same breath is not worth approval.”

37 In respect of the submissions of the parties regarding the impugned Departmental Letter dated 27.12.2019, this Court would find that several litigations were pending before the National Green Tribunal regarding the Mining Policy of 2019 and process of fresh auction for the next session. The State of Bihar, in the meantime, between lapse of subsisting mining leases throughout the State on 31.12.2019, and till the next settlement of the Sand Ghat by auction, took a policy decision to provide for continuance of sand mining activity. An option was, thus, granted to all existing lessees, including the petitioner to have their terms of lease extended till fresh settlement of the Sand Ghats leased out to them, or till 31.10.2020, whichever was earlier, but on uniform new terms and at a new rate.

38 This was not imposed on the petitioner. Petitioner cannot claim to be aggrieved by the same by alleging that that settlement amount has been enhanced by 50%. The petitioner, like



all other settlees, had the option to accept, or reject the same. The impugned letter dated 27.12.2019 is not in response to petitioner's representation dated 21.01.2019 for extension of tenure of the lease based on alleged default on part of the State Government, which had already been rejected on 31.10.2019.

39 As per averments made in the pleadings, the petitioner has not opted to obtain mining rights for the limited period in terms of Letter dated 27.12.2019. The petitioner, however, has assailed the general option given to all existing lessees in the instant proceedings treating/presuming it as an extension of its individual lease for the period, 2016 – 2019 by imposing excessive and unjust terms. The Letter dated 27.12.2019, however, in the considered opinion of this Court noted above, is nothing more than an option given under a policy decision, uniformly to all lessees, whose lease was to lapse on 31.12.2019 to take lease afresh subject to 50% enhancement of the settlement amount for a limited period, till conclusion of a fresh auction for the area or till 31.10.2019, whichever is earlier, and independent of the terms and conditions of subsisting lease. The petitioner has chosen not to avail mining rights in terms of Letter dated 27.12.2019. Clearly, there are no grounds or opportunity for



the petitioner to assail the decision contained in Letter dated 27.12.2019.

40 Another submission on behalf of the petitioner that the enhancement of the settlement amount could not be more than 20% in terms of Clause 2 of the Tender Document, in the circumstances, is clearly misconceived. Clause 2 of the General Terms and Conditions contained in Tender Document No 1 of 2016 dated 04.07.2016, is concerned with the determination of reserve price and not the settlement amount. The same is not attracted in the determination of settlement amount that also for a fresh lease, independent of the subsisting lease of the lessees, including the petitioner, as contemplated under the Letter dated 27.12.2019.

41 The benefit of the Work Order dated 04.11.2019, issued pursuant to decision dated 31.10.2019, has been availed of by the petitioner till the last date of unextended mining lease period being 31.12.2019. It is only thereafter that the petitioner, on 13.01.2020, has filed the instant writ petition seeking to assail the order dated 31.10.2019, by raising a smoke screen of challenge to the Letter dated 27.12.2019, which this Court has already held, caused no injustice to the petitioner, and was a general policy decision to go for a fresh mining agreement at fresh settlement



rates for a limited duration, till settlement of the sand ghats was done afresh, or till 31.10.2020, whichever was earlier.

42 Even though, there is no occasion or legal basis for the petitioner to assail the Letter dated 27.12.2019, the same has been assailed in the instant proceedings. This Court finds that by doing so, the petitioner has laid the premise for making a collateral challenge to the earlier decision dated 31.10.2019 of the Government (Annexure P/30) rejecting the petitioner's claim for extension of its mining lease which otherwise it is estopped from assailing, having waived its right to do so by carrying out mining operations and thereby deriving gains under the decision dated 30.10.2019, as also in view of the above discussions and conclusions.

43 If the terms and conditions laid down therein was not suitable or acceptable to the petitioner, it could have simply ignored the same. The petitioner is in no way aggrieved by the said option dated 27.12.2019, as no grounds have been made out to assail the said option.

44 This Court would observe that in the circumstance, the policy decision dated 27.12.2019 could not form the basis of a collateral challenge to rejection of petitioner's request dated



31.10.2019 for extension of tenure on grounds which had already been decided against the petitioner in CWJC No 5429 of 2019.

45 In view of the consideration and reasons above noted, this Court finds that the petitioner's challenge to the order of rejection dated 31.10.2019 is clearly unsustainable and claim for extension of tenure or challenge to the option contained in Letter dated 27.12.2019 are without any merit.

46 Writ petition is dismissed.

(Madhuresh Prasad, J)

M.E.H./-

AFR/	AFR
CAV DATE	NA
Uploading Date	03.03.2021
Transmission Date	NA

