

IN THE HIGH COURT OF JUDICATURE AT PATNA

M/s Vibha Raj Construction

vs

The State of Bihar & Ors.

Civil Writ Jurisdiction Case No. 2669 of 2023

03 August 2023

(Hon’ble Mr. Justice Rajiv Roy)

Issue for Consideration

Whether the orders dated 17.11.2022 and 28.11.2022 are liable to be quashed for violation of principles of natural justice.

Headnotes

Facts are admitted that before the orders have been passed without granting any opportunity to the petitioner and thus the principles of natural justice have admittedly not been followed. - Since no notice was issued, the orders in question has/have to go. (Para 11, 16)

Petition is allowed. (Para 18)

Case Law Cited

State Bank of India & Ors. v. Rajesh Agarwal & Ors., (2023) 6 SCC 1

List of Acts

Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019

List of Keywords

Natural justice; Audi alteram partem; Quashing of orders; Mining lease; Bihar Minerals Rules, 2019; Imposition of fine; Opportunity of hearing

Case Arising From

Challenge to orders dated 17.11.2022 and 28.11.2022 imposing fine of Rs. 5,58,84,731/- for alleged violation of Bihar Minerals Rules, 2019.

Appearances for Parties

For the Petitioner(s): Mr. Umesh Prasad Singh, Senior Advocate, Mr. Sanjeev Kumar, Mr. Mukesh Kumar, Mr. Vaibhav Veer Shankar, Mr. Priya Ranjan, Advocates

For the State: Mr. Gyan Prakash Ojha, GA 7, Mr. Uday Shankar Pandey, AC to GA 7

For the Mines Department: Mr. Naresh Dixit, Spl. P.P., Mr. Utsav Anand, Advocate

Headnotes Prepared by Reporter:- Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2669 of 2023

M/s Vibha Raj Construction through its Director Eklavya Kumar, aged about 38 years, (Male), Son of Sri Rajballabh Prasad, Resident of Village - Pathara English, P.S. - Muffasil, District – Nawada. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary-cum-Principal Secretary, Department of Mines and Geology, Bihar, Patna.
2. The Additional Chief Secretary-cum-Principal Secretary, Department of Mines and Geology, Bihar, Patna.
3. The Director, Department of Mines and Geology, Bihar, Patna.
4. The District Magistrate, Sheikhpura, Bihar.
5. The Mineral Development Officer, Sheikhpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Umesh Prasad Singh, Senior Advocate Mr. Sanjeev Kumar, Advocate Mr. Mukesh Kumar, Advocate Mr. Vaibhav Veer Shankar, Advocate Mr. Priya Ranjan, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA 7 Mr. Uday Shankar Pandey, AC to GA 7
For the Mines Dept.	:	Mr. Naresh Dixit, Spl. P.P. Mr. Utsav Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL JUDGMENT

Date : 03-08-2023

Heard Mr. Umesh Prasad Singh, learned Senior Counsel for the petitioner and Mr. Naresh Dixit, learned Special P.P. Mines.

2. The prayer is for quashing of the:

(i) order contained in memo no. 5621 dated 17.11.2022 issued by the Department of Mines and Geology by which the District Magistrate, Sheikhpura has been directed to impose a fine of Rs. 5,58,84,731/- and

(ii) for quashing of the order as contained in letter no. 1418 dated 28.11.2022 issued by the District Magistrate,



Sheikhpura by which the petitioner has been directed to deposit Rs. 5,58,84,731/- (Five Crores Fifty Lakhs Eighty four Thousand Seven Hundred Thirty one Rupees) as fine for having violated rule 39 and 56 of the Bihar Minerals (Concession, Prevention Of Illegal Mining, Transportation and Storage) Rules, 2019 as the ground of having stored stone mineral at his site which is bad and illegal and based on totally misconceived provisions of law and further for any other relief(s) for which the petitioner may found entitled to.

3. The facts of the case narrated is/are as follows:-

4. The petitioner was granted a mining lease at Mauza-Matokar, Surdaspur, District -Sheikhpura, P.O.- Sheikhpura Khata No. 272 and 132, Plot No. 1030(P), Block No. 5.

5. He as such, was acting in accordance with the notification no. 15 of 2018 issued on 28.11.2018 by the District Mining Office, Sheikhpura (Annexure 1 to the writ petition).

6. However, he was surprised to receive the two letters in quick succession. His case is that before asking him to pay Rs. 5,58,84,731/-, he was never issued any notice.

7. It has been submitted by the learned Senior Counsel that a perusal of the letter no. 5621 dated 17.11.2022 issued by



the Joint Secretary of the Mines and Geology Department, Bihar, Patna as also the letter no. 1418 dated 28.11.2022 issued by the Collector, Sheikhpura (Annexure 15 and 16 respectively to the writ petition) clearly shows that :-

(i) the petitioner was not put on notice before the said orders were passed;

(ii) there is non-application of mind on the part of the Collector, Sheikhpura and he has simply followed the direction of the Joint Secretary of the Department;

(iii) the Joint Secretary had no authority to give any such direction to the Collector.

8. He as such, submits that on this count alone, the orders in question is/are fit to be quashed.

9. He has taken this Court straightway to a recent order of Hon'ble the Apex Court in the **State Bank of India & Ors. vs. Rajesh Agarwal & Ors.** reported in (2023) 6 SCC 1 with specific reference to paragraph 36 which read as follows:-

“36. We need to bear in mind that the principles of natural justice are not mere legal formalities. They constitute substantive obligations that need to be followed by decision-making and adjudicating authorities. The principles of natural justice act as a guarantee against arbitrary action, both in terms of procedure and substance, by



judicial, quasi-judicial, and administrative authorities. Two fundamental principles of natural justice are entrenched in Indian jurisprudence: (i) nemo judex in causa sua, which means that no person should be a Judge in their own cause; and (ii) audi alteram partem, which means that a person affected by administrative, judicial or quasi-judicial action must be heard before a decision is taken. The courts generally favour interpretation of a statutory provision consistent with the principles of natural justice because it is presumed that the statutory authorities do not intend to contravene fundamental rights. Application of the said principles depends on the facts and circumstances of the case, express language and basic scheme of the statute under which the administrative power is exercised, the nature and purpose for which the power is conferred, and the final effect of the exercise of that power.”

10. He has further drawn attention of this Court to paragraph 45 of the said order which read as follows:-

“45. In Canara Bank v. V.K. Awasthy, a two-Judge Bench of this Court succinctly summarised the history, scope, and application of the principles of natural justice to administrative actions involving civil consequences in the following terms: (SCC pp. 331-32, para 14)



"14. Concept of natural justice has undergone a great deal of change in recent years. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be in a given case must depend to a great extent on the fact and circumstances of that case, the framework of the statute under which the enquiry is held. The old distinction between a judicial act and an administrative act has withered away. Even an administrative order which involves civil consequences must be consistent with the rules of natural justice. The expression "civil consequences" encompasses infraction of not merely property or personal rights but of civil liberties, material deprivations and a citizen in his civil life."

(emphasis supplied)

11. He submits that to cut short the matter, since no notice was issued, the orders in question has/have to go.

12. On 23.06.2023, the direction was issued to the respondent nos. 3 to 5, the Department of Mines and Geology, Bihar, Patna to file counter affidavit which has now been filed. This Court has gone through the reply filed by the respondents and the specific averment made by the petitioner in paragraph



24 that he was never put on notice before the order was passed, has not been replied *inasmuch* as and in other words, the respondents have accepted that the said orders were issued without providing an opportunity to the petitioner.

13. Mr. Naresh Dixit, learned Spl. P.P. Mines took this Court to the different rules of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation and Storage) Rules, 2019 with specific reference to Rules 39 and 56 which read as follows:-

*39. (1) Every person who carried business of minor/major mineral beyond any lease hold area shall obtain a stockist license from the Mining Officer in **Form-K** which shall be displayed at a conspicuous place of business and shall maintain proper accounts of purchase and sale of all such minerals in a register in **Form-H** which shall be produced before the Mines Commissioner, Director of Mines, Additional Director of Mines or Deputy Director of Mines or Mining officer or any other officers authorised by the Government, for inspection. Every application for obtaining license in **Form-K** shall be accompanied with a fee of Rs 10,000/-(Ten Thousand Rupees)*

(a) Every such license shall be valid for one calendar year;

(b) Every such license may be renewed



on application which shall be accompanied by a fee of Rs. 2000 (Two Thousand Rupees)

*(2) Every such person as mentioned in (1) shall issue a transport challan in **Form-'G'** or in the prescribed format to every carrier, while dispatching minerals from his stock.*

*[(3) Whosoever fails to obtain a license in **Form K**, or issue a challan in **Form G**, or maintain the register in **form 'H'**, or is found to violate the rules, would be liable for punishment under Rule 56.]*

(4) No person shall be permitted to erect, install or operate a stone crusher outside a lease hold area.

Provided that the existing stockist license held for stone mineral used for crusher shall remain operational till the validity of their license period, on the condition of the licensee abiding by all the relevant rules/provision of law/conditions stated in their license/ conditions stated in CTE & CTO issued by BSPCB falling which the license shall be cancelled.

Provided further that the department may allow installation of any crusher including mobile crusher within a periphery of 500 meters of the lease hold boundary to the lease holder or person directly engaged in construction activity on conditions as decided by the department.

[56. Illegal mining, transportation and storage of minerals.-(1) No person shall extract or



remove or undertake any mining operation in any area without holding any mineral concession, permit or any other permission granted or permitted under these rules, or shall transport or store or cause to be transported or stored any mineral without a valid challan or license.

(2) Whoever contravenes the above sub-rule shall be punished with an imprisonment for a term, which may extend to two years or with a fine which may extend to five lakh rupees, or with both:

Provided that the mining officer of the district or the Assistant, Deputy Additional Director or Director Mines, or any other officer authorized by the Government, may either before or after the institution of the prosecution, compound the offence committed in contravention of the above rule, on payment of cost of mineral and compound fee as mentioned below:-

<i>Sl. No.</i>	<i>Vehicle/Equipment</i>	<i>Compound fee (in Rs.) Per unit</i>
<i>1.</i>	<i>Tractor trolley</i>	<i>25,000/-</i>
<i>2.</i>	<i>Matador/Half truck 407,608</i>	<i>50,000/-</i>
<i>3.</i>	<i>Full body truck/ Dumper (hydraulic 6 wheeler vehicle)</i>	<i>1,00,000/-</i>
<i>4.</i>	<i>10 or more than 10 wheeler vehicle</i>	<i>2,00,000/-</i>
<i>5.</i>	<i>Crane, Excavator, Loader, Power hammer, Compressor, Drilling Machine etc.</i>	<i>4,00,000/-</i>



Note.-Cost of the mineral shall be taken as twenty five times of royalty in lieu of rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority, etc.:

Provided that the amount of compound fee in cases other than specified as above shall not be less than rupees twenty five thousand and shall be in addition to the cost of mineral.

(3) Whenever any person, without a lawful authority, raises any mineral from any land other than under any mineral concession or any other permission and for that purpose bring on the land any tool, equipment, vehicle or other thing, such tool equipment, vehicle etc. along with mineral, if any, shall be seized by the mining officer or a police officer of the district or any other officer authorized by the Collector, who shall give a receipt to the person from whose possession the property or mineral is seized:

Provided that every officer seizing any property or mineral under this rule, shall handover the property or mineral so seized to the nearest police station or police chauki:

Provided further that, the seized vehicle, equipment or mineral shall be released after deposition of cost of mineral along with the compound fee as specified in sub-rule (2):

Provided also that, where mineral so raised has already been dispatched or consumed,



the authorities mentioned in sub-rule (3) shall recover cost of mineral along with the compound fee as specified in sub-rule (2):

Provided also that where vehicle, equipment or mineral so seized is not released, the officer seizing the property or mineral shall make a report of such seizure within twenty four hours to the Collector.

(4) All property seized under this rule shall be liable to be confiscated by an order of the Collector if the amount equal to twenty five times of royalty in lieu of cost of mineral, rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority etc., along with compound fee is not paid by the offender within a period of one month from the date of commission of such offence or when the recoveries are not affected by that time:

Provided that on payment of these dues within the said period of one month, all properties seized shall be ordered to be released and shall be handed over to the offender or the owner of the property.

(5) Where the person committing an offence under these rules is a company registered under Companies Act, every person who at the time when the offence was committed, was in charge and was responsible to the company for conduct of the business of the company, shall be deemed to be guilty of the offence and shall be



liable to be prosecuted and punished accordingly:

(6) The mines, revenue, police and transport department shall make coordinated efforts to vigil illegal mining or transportation of the mineral.

(7) Procedure for confiscation and auction of property seized under this rule.-(i)
Subject to sub-rule (2), where the Collector upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that an offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate the mineral so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without undue delay to the Mines Commissioner.

(ii) No order confiscating any property shall be made under sub-rule 7(i) unless the Collector-

(a) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the Collector to have some interest in such property;

(b) affords an opportunity to the persons referred to above, of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and

(c) gives to the officer effecting the



seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.

(iii) No order of confiscation under sub-rule (1) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the mineral seized shall be made if any person referred to in clause (b) of sub-rule 7(ii) proves to the satisfaction of the Collector that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of the offence,"

(iv) All tools, arms, boats, vehicles, ropes, chains or other articles confiscated would be auctioned as per government rules.

(v) Order of confiscation not to interfere with other punishment-The order of any confiscation under Rule shall not prevent imposition of any other punishment to which the person affected thereby is liable under these rules or any other law.]”

14. The case of the learned Spl. P.P. Mines is that even if the orders were passed without putting the petitioner on notice, he has the remedy to move before the Commissioner,



Mines in appeal, who shall take up all the points raised by the petitioner and pass a reasoned order.

15. Learned Senior Counsel objects to the said submission put forward by the learned Spl. P.P. Mines. It is his contention that once the Court is convinced that the rules of natural justice have not been followed, in view of the recent judgment in **State Bank of India and Ors. (supra)**, the orders has/have to go.

16. This Court is convinced with the submissions put forward by the learned Senior Counsel. When the facts are admitted that before the orders in question (letter no. 5621 dated 17.11.2022 issued by the Joint Secretary of the Mines and Geology Department, Bihar, Patna as also letter no. 1418 dated 28.11.2022 issued by the Collector, Sheikhpura) have been passed without granting any opportunity to the petitioner and when admittedly, the principles of natural justice has admittedly not been followed, the orders need to be interfered with particularly in the lights of the Hon'ble Apex Court judgment in **State Bank of India & Ors. (supra)**.

17. Accordingly ordered.

18. The letter no. 5621 dated 17.11.2022 issued by the Joint Secretary of the Mines and Geology Department, Bihar,



Patna as also the letter no. 1418 dated 28.11.2022 issued by the Collector, Sheikhpura (Annexures 15 and 16 respectively to the writ petition) stands quashed.

19. The respondent authorities will be at liberty to initiate fresh process in accordance with law.

20. The writ petition stands disposed of with the aforesaid observations.

(Rajiv Roy, J)

Neha/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	07.08.2023
Transmission Date	

