
(2003) 07 JH CK 0097
In the Jharkhand High Court
Case No : WPC No. 4175 of 2002

Doctor Mondal

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 10-07-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 3 JCR 411

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Kalyan Roy and A.K. Singh, for the Appellant; M.J. Rahman, for the Respondent

Final Decision : Partly Allowed

Judgement

M.Y. Eqbal, J.—Heard the parties.

2. This writ application is directed against the order dated 20.2.2002/ 15.3.2002 passed by respondent No. 2. Deputy Commissioner, Dumka directing the petitioner to deposit the penalty for illegal extraction of stone after the cancellation of the lease from the lease hold area and issued demand notice of Rs. 5,28,765/-.

3. The admitted facts which emerge from the affidavits filed by the parties are that petitioner was granted mining lease in respect of 1.25 acres of land bearing Dag No. 223 in Mouza Chirapather P.S. Shikaripara in the district of Dumka for a period of five years. In 2000 by letter dated 21.7.2000 demand of Rs. 38,213.15 was issued against the petitioner and on default of payment the lease was terminated for the rest period from 23.8.2000. It is also admitted fact that after termination of lease petitioner deposited the aforesaid amount on different dated i.e. Rs. 10,000/- on 29.8.2000, Rs. 15,000/- on 7.9.2000 and Rs. 13,500/- on 20.10.2000. Against the order of cancellation of lease petitioner filed revision before Mines Commissioner being Revision Case No. 85 of 2001. The Mines

Commissioner by order-dated 8.11.2001 directed the District Mining Officer, Dumka to furnish demand to the petitioner for the balance amount and if that amount is paid then the application for restoration of lease shall be considered. In compliance of the said order petitioner deposited Rs. 20,000/- on 9.1.2002 and moved the Deputy Commissioner for restoration of mining lease. In course of hearing it was submitted by the Mining Officer that petitioner extracted mines and did illegal mining after cancellation of the lease and therefore he is liable to pay damages and penalty, on the basis of submission of the District Mining Officer, the Deputy Commissioner passed order directing the petitioner to deposit the amount in respect of the quantity of mines extracted from the mining area after the termination of the lease.

4. In furtherance of the order of the Deputy Commissioner, the respondents got the extracted portion of mines measured and thereafter impugned demand notice was issued directing the petitioner to pay the said amount alongwith penalty. It has been categorically stated by the petitioner in the writ petition that petitioner for the first time came to know that the Mines Inspector took the measurement of the lease hold area on 4.5.2002 and according to the measurement stone was assessed and value was calculated at Rs. 5,63,740/-.

5. Respondents in their counter affidavit have not disputed the aforesaid fact rather it is contended that before measurement of the extracted minerals no notice was required. Even assuming that before measurement notice was not required to be served to the petitioner, in any event before issuing demand and the penalty it was obligatory on the part of the respondents to call upon the petitioner to show cause as to why the impugned demand along with penalty be not recovered from them on the ground of extraction of minerals during the period from date when mining lease was cancelled. In my opinion therefore, the impugned demand suffers from serious violation of principles of natural justice and the same cannot be sustained in law. It is obligatory on the part of the respondents to give opportunity to the petitioner to show cause as to why the impugned demand may not be recovered from him.

6. For the aforesaid reasons, this writ application is allowed in part and the impugned demand is quashed. The matter is remitted back to the Deputy Commissioner, Dumka before petitioner will file his show cause within three weeks as to why the amount shown in the impugned demand be not recovered on the ground of extraction of minerals from the area so measured. The Deputy Commissioner after giving show cause notice and opportunity of hearing to the petitioner pass appropriate reasoned order in accordance with law.