

(2019) 08 PAT CK 0115

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 17199 Of 2016

Md. Masiha

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 17-08-2019

Acts Referred:

Citation : (2019) 4 PLJR 641

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Madhu Prasun, Prashant Pratap, Naresh Dikshit

Final Decision : Allowed

Judgement

1. This writ application has been filed for issuance of writ/writs, order/orders, direction/directions commanding the Respondents to exempt the

Petitioner from paying settlement amount for mining for the period of 4 months 20 days i.e. from 10.02.2016 to 30.06.2016 for which period the

Petitioner was unable/restrained to do the mining work without any fault of his own and only due to restriction on mining work throughout the State of

Bihar by the Govt. of Bihar in compliance of order of the Honâ??ble Green Tribunal, Eastern Zone Bench, Finance Centre, Kolkata, passed in the

matter of Aman Kumar Singh Vs. The State of Bihar.

2. It has been submitted on behalf of the Petitioner that he participated in the tender for settlement of entire Balughat from 01.01.2015 to 31.12.2019 in

the district of Madhubani, which was settled with him. Accordingly, the Petitioner was issued work order against the aforesaid settlement vide Letter

No.54-M dated 10.03.2015 of the Collector, Madhubani, and Mining Officer, Madhubani, on the settlement amount of Rs.78,70,000/- for the year

2015. It was mentioned in the work order that settlement amount for the second and every consecutive year will be 120% of the last year. Xerox copy

of the Letter No. 54-M dated 10.03.2015 of the Collector, Madhubani, and Mining Officer, Madhubani, is annexed as Annexure-2 to the writ

application.

3. The Petitioner applied for preparation of the Mining Plan before the Indus Mining & Environmental Consultant, Patna, and the same was prepared

and submitted for approval to the Director of Mines & Geology. In this respect, Indus Mining & Environmental Consultant, Patna, issued certificate in

favour of the Petitioner on 26.06.2015. Thereafter, the Assistant Mining Officer, Madhubani, as per order of the Collector, Madhubani, has handed

over the territorial rights over the Balughats in the district of Madhubani for the year 2016 to the Petitioner vide letter dated 31.12.2015. The Petitioner

submitted five copies of his Mining Plan before the Director, Directorate of Mines & Geology, Govt. of Bihar, Patna, on 28.08.2015. The Mining Plan

was sanctioned on 28.01.2016. Environmental clearance can only be obtained after approval of the Mining Plan and the department had delayed in

approval of the Mining Plan.

4. The Chief Secretary, Govt. of Bihar, Patna, vide his Memo No.56 dated 11.02.2016 had prohibited all the mining activities in the State in compliance

of order of the Honâ??ble Green Tribunal, Eastern Zone Bench, Finance Centre, Kolkata passed in the matter of Aman Kumar Singh Vs. The State

of Bihar. Xerox copy of Memo No.56 dated 11.02.2016 is enclosed as Annexure-7 to the writ application.

5. The Petitioner thereafter started persuading for getting environmental clearance. The Petitioner and the Assistant Mining Officer, Madhubani, vide

their respective letters dated 28.03.2016 addressed to the Divisional Forest Officer, Darbhanga, prayed for issuance of environmental clearance.

District Level Expert Appraisal Committee (DEAC) was constituted in the district only on 22.06.2016 for issuance of environmental clearance vide

Letter No.305/M dated 22.06.2016 of the Collector. Xerox copy of aforesaid letter No.305/M dated 22.06.2016 is enclosed as Annexure-9 to the writ

application.

6. Thereafter, the Petitioner submitted his application along with required documents and fees before the DEAC for issuance of environmental

clearance on 28.06.2016. The Petitioner got environmental clearance vide order dated 30.06.2016 of the Collector, Madhubani, as contained in Memo

No.316/M dated 30.06.2016. Xerox copy of Memo No.316/M dated 30.06.2016 is enclosed as Annexure-11.

7. Finally, the Petitioner could get permission to carry out his mining work vide letter dated 30.06.2016 of the Mining Officer, Madhubani, in the

midnight of 30.06.2016 - 01.07.2016. Xerox copy of letter dated 30.06.2016 is enclosed as Annexure-12.

8. There was no laches on part of the Petitioner. The Petitioner could not carry on mining work for the aforesaid period due to total prohibition on

mining by the State Government throughout the State.

9. The Petitioner has prayed for commanding the Respondents to exempt the Petitioner from paying settlement amount for mining for the period of 4

months 20 days i.e. from 10.02.2016 to 30.06.2016 for which period the Petitioner was unable/restrained to do the mining work without any fault of his

own and only due to restriction on mining work throughout the State of Bihar by the Govt. of Bihar in compliance of order of the Honâ??ble Green

Tribunal, Eastern Zone Bench, Finance Centre, Kolkata passed in the matter of Aman Kumar Singh Vs. The State of Bihar.

10. Counter Affidavit has been filed on behalf of Mines Department.

11. Submission of the Mines Department in the Counter Affidavit is that order of Honâ??ble National Green Tribunal, Eastern Zone Bench, Finance

Centre, Kolkata, passed in the matter of Aman Kumar Singh Vs. State of Bihar is binding upon all concerned. Respondents have no other option, but

to comply the direction of Honâ??ble Green Tribunal.

12. In this manner, from the Counter Affidavit of the State, it appears that they have admitted that for the period from 10.02.2016 to 30.06.2016 the

Petitioner was unable/restrained to do the mining work due to restriction on mining work throughout the State by the Govt. of Bihar in compliance of

order of the Honâ??ble Green Tribunal, Eastern Zone Bench, Finance Centre, Kolkata passed in the matter of Aman Kumar Singh Vs. The State of

Bihar (Annexure- 7).

13. It has been submitted by the Petitioner in the writ application that Mining Plan was sanctioned on 28.01.2016. The environmental clearance can be

obtained only after approval of Mining Plan. The Petitioner after getting Mining

Plan sanctioned started persuading Respondents for getting environmental clearance by sending letters dated 28.03.2016 addressed to the Divisional Forest Officer, Darbhanga. The DEAC was constituted in the district of Madhubani for issuance of environmental clearance vide letter No.305/M dated 22.06.2016 by the Collector, Madhubani. The Petitioner submitted his application along with required document and fee before the DEAC on 28.06.2016. The Petitioner got environmental clearance on 30.06.2016 by the Collector, Madhubani, vide Memo No.316/M dated 30.06.2016 (Annexure-11). Thereafter, the Petitioner could get permission to carry out his mining work in midnight of 30.06.2016 to 01.07.2016 (Annexure-12).

14. In this manner, this Court finds that there was no laches on the part of the Petitioner in not carrying out the mining work during aforesaid period. In fact, mining work for the aforesaid period could not be performed due to total ban on the mining work in the State of Bihar in compliance of order of the Hon'ble Green Tribunal, Eastern Zone Bench, Finance Centre, Kolkata passed in the matter of Aman Kumar Singh Vs. The State of Bihar as contained in Annexure-7.

15. Therefore, this Court finds that Petitioner is entitled for exemption from paying settlement amount for mining for the period of four months twenty days i.e. from 10.02.2016 to 30.06.2016 for which period the Petitioner was unable/restrained to do the mining work without any fault of his own and only due to restriction on mining work throughout the State of Bihar by the Govt. of Bihar in compliance of order of the Hon'ble Green Tribunal, Eastern Zone Bench, Finance Centre, Kolkata passed in the matter of Aman Kumar Singh Vs. The State of Bihar.

16. In view of such, the Respondents are directed to grant exemption to Petitioner from paying settlement amount for mining for the period of four months twenty days i.e. from 10.02.2016 to 30.06.2016 within a period of one month from the date of receipt of copy of this judgment.

17. This writ application is, accordingly, allowed.