(2013) 02 PAT CK 0008

In the Patna High Court

Case No : CWJC No. 343 of 2013

M/s. BSS Projects Private Limited APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 12-02-2013

Acts Referred:

Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 — Rule 7, 7(1)

Citation : (2013) 2 PLJR 832

Hon'ble Judges : J.N. Singh, J

Bench : Single Bench

Advocate : Y.V. Giri and Ashish Giri, for the Appellant; V.M.K. Sinha, for the Respondent

Judgement

J.N. Singh, J.—Petitioner, which is a Private Limited Company registered under the Indian Companies Act, had initially filed this writ application for quashing of the order, as contained in letter no. 942 dated 3.10.2012 (Annexure-4), issued by the Assistant Director, District Mining Office, Gaya, by which the licence dated 16.8.2010 issued to the petitioner, in terms of Section 7 of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rule, 2013 (hereinafter referred to as the Rules''), was cancelled. A direction was also sought for to restore the said licence of the petitioner for stone mineral crushing in the district of Gaya and allow it to commence its business. Petitioner had earlier moved this Court challenging the said cancellation order through CWJC No. 19390 of 2012. The said writ application was however disposed of by order dated 15.10.2012 (Annexure-5) allowing the petitioner to avail the remedy of revision in terms of Rule 12 of the said Rules before the Mines Commissioner, who was directed to consider the revision within a reasonable time, not exceeding 60 days from the date of its filing, and till its disposal the respondents were restrained from taking coercive steps against the petitioner. It appears that in the meanwhile petitioner had already filed an application under Rule 12. Hence, after the said order was passed by this Court, the same was brought to the notice of the Mines

Commissioner through a supplementary affidavit (Annexure-6 series). Petitioner did not receive any order of the Mines Commissioner in the revision within 60 days. Hence, he filed the present writ application. However, when the matter was taken up on 11.1.2013, learned counsel for the Mines Commissioner produced a copy of his an undated order finally disposing of the revision of the petitioner, said to have been communicated to it on 2.1.2013. Accordingly, learned counsel for the petitioner took adjournment and filed I.A. No. 311 of 2013, bringing on record a copy of the said order, received by the learned counsel for the petitioner, as Annexure-8, with a prayer to permit the petitioner to challenge the said order also in this writ application. The said I.A. was allowed by this Court by order dated 14.1.2013 and time was allowed to learned counsel for the Mines Commissioner to seek instructions and file counter affidavit. Finally, matter was heard on 22.1.2013, on which date, besides a counter affidavit filed on the previous date, learned counsel for the Mines Commissioner also produced the original file of the Department dealing with issue and cancellation of licence of the petitioner, which was taken on record by this Court for perusal.

2. The facts of the case, in brief, which are admitted, is that, in terms of Section 7 of the Rules, petitioner was awarded licence, bearing no. 178 of 2010 dated 16.8.2010, for the purposes of setting up a stone crusher plant and storage and sale of stone chips (Annexure-1) on certain land (as described) in the district of Gaya. The settlement was for 7 years for a total settlement amount of Rs. 2,33,33,000/-, which had to be paid in the 7 equal yearly installments, to be paid before every 31st of December of the year. Thereafter the stockist licence was to be renewed for the rest of 13 years on payment of Rs. 5,000/- per year. After grant of licence, petitioner deposited 1st installment of Rs. 33,33,300/- sometime in August 2010. Thereafter, it deposited the 2nd installment of the same amount sometime in the month of August-September 2011. However, it received a registered letter dated 7.9.2012 (Annexure-3) under the signature of the Assistant Director, through which it was intimated that as it had not deposited the 3rd installment of the licence fee, its licence may be cancelled and legal action may be taken against it. Therefore, it was directed that it must immediately deposit the 3rd installment together with interest on the same amounting to Rs. 6,66,600/-. It is pleaded, and not denied, that this notice was received by the petitioner on 1.10.2012. Even before petitioner could submit a reply of this notice, it received the impugned order, contained in the letter of the Assistant Director dated 3.10.2012 (Annexure-4), by which it was communicated that, on account of irregularity in the licence, Collector had cancelled it on 30.9.2012. Therefore, petitioner was directed to stop the crusher, failing which legal action was to be taken against it. As stated above, this order was challenged by the petitioner before this Court in CWJC No. 19390 of 2012 which was disposed of by order dated 15.10.2012 in the manner noticed above, vide Annexure-5. Petitioner, having not received any order of the Mines Commissioner, filed this writ application and, after receipt of the order, filed I.A. for liberty to challenge the same also, which was allowed as stated above. It is

stated, and not denied, that, during the pendency of revision before the Mines Commissioner, petitioner was allowed to deposit 3rd installment of the licence fee, which it deposited through Bank draft dated 19.12.2012, which was duly acknowledged in the office of the Assistant Director, vide Annexure-7 series. This was also then brought to the notice of the Mines Commissioner in the revision.

3. Learned senior counsel for the petitioner submitted that the licence for crushing stone and sale of the stone chips for 7 years was granted to the petitioner on 16.8.2010. As per the terms of the licence the total fee has to be paid in 7 equal annual installments to be deposited latest by 31st of December of the year. As the licence had been granted on 16.8.2010, petitioner deposited 1st installment in August, 2010, i.e. immediately thereafter, which, obviously, was good for one year commencing 16.8.2010 i.e. up to 15.8.2011. Hence, the 2nd installment petitioner had to deposit in 2011 before 31st of December which it actually deposited sometime in August-September, 2011. This, obviously, covered the period up to 15th of August, 2012. In 2012 petitioner was required to deposit the 3rd installment before 31st of December. However, without waiting for petitioner to deposit it by that date, a notice was issued to it in September itself and, without waiting for its service, and opportunity to the petitioner to file any reply, his licence was cancelled by the Collector on 30.9.2012. He submitted that Rule 7(1)(j) of the Rules, a copy whereof is annexed as Annexure-2 with the writ application, lays down that, in case of default in payment of installment till the prescribed date, a simple interest @ 24% was to be charged for six months on the due installment and thereafter only any action for cancellation of licence could be taken. Apparently, in clear violation of the Rules, the respondents, without waiting for petitioner to deposit the installment till the prescribed date, cancelled the licence of the petitioner. He submitted that as per the said clause (j) of the said Rule 7(1), the respondents were legally obliged to wait for six months from the prescribed date, computing 24% simple interest on the due installment and, if that was not paid, then only they could take any action for cancellation of the licence. He further submitted that clearly the respondents have acted in hot haste, in arbitrary manner and in clear violation of the Principles of Natural Justice. He submitted, and is not denied by the respondents, that the notice, as contained in Annexure-3, was received by the petitioner on 1st of October, 2012. Hence, without waiting for receipt of service report of the notice and allowing reasonable opportunity to the petitioner to file any reply, the Collector passed a non-speaking order for cancellation of licence on 30.9.2012 probably on the file, which was communicated by the Assistant Director through his impugned letter dated 3.10.2012. He further submitted that it was the Assistant Director who was authorized as competent officer in terms of Rule 2 (iii) of the Rules and who had issued the licence in terms of Rules 7 and had also issued notice. Hence, it was the Assistant Director only who could pass orders for cancellation of the licence and not the Collector. In support of this submission, he placed reliance on a judgment of the Apex Court in the case of Rasid Javed and Others Vs. State of U.P. and Another etc. etc., . He further submitted that since

the impugned order of cancellation of licence was inherently bad, the revisional order of the Mines Commissioner could not cure the defects and could not validate the same. In support of this submission, he placed reliance on a Full Bench judgment of this Court in the case of Ramnandan Prasad and 2 Others Vs. The State Of Bihar and 6 Others, and a judgment of the Apex Court in the case of ORYX Fisheries Private Limited Vs. Union of India (UOI) and Others, . He submitted that, apparently, the notice, as contained in Annexure-3, was issued to the petitioner on a different ground, whereas the impugned order of cancellation, as contained in Annexure-4, was passed on a ground other than mentioned in the notice. The revisional authority, thereafter, for rejecting the review of the petitioner, has taken into account some new facts and materials, for which neither the petitioner was given notice nor any opportunity of hearing was given to it nor was the same made the basis for cancellation of licence. Hence he concluded that, the original order of cancellation of licence, as contained in Annexure-4, as well as the order of the Mines Commissioner in revision, as contained in Annexure-8, are arbitrary, in violation of Principles of Natural Justice, in violation of provisions of the Rules and, therefore, fit to be set aside.

4. Mr. V.M.K. Sinha, learned AAG-XIII appeared for the respondents. He filed a counter affidavit and also produced the original file of the Department in connection with the case of the petitioner. In the counter affidavit, it is stated that, after issue of licence, and deposit of first installment amount, petitioner was required to be deposit second installment for the coming year by 31st of December of the running year, meaning thereby, that the same had to be deposited in advance. Thus the 1st installment, which the petitioner deposited in August, 2010, was for the year 2010 only, and for the calendar year 2011, petitioner was required to deposit the installment by 31st of December, 2010, which it actually deposited in the month of September, 2011, i.e., 9 months late. It is stated that, for the year 2012, the petitioner was required to deposit the 3rd installment by 31st of December, 2011, which it did not deposit till September 2012 and, therefore, notice was issued to it. It is admitted that the 3rd installment has been deposited by the petitioner in December, 2012 during the pendency of its revision application. It is asserted that there was a violation of provisions of Rule 7 of the Rules as well as of the terms and conditions of the licence by the petitioner. Hence, steps were taken for cancellation of its licence. It has been further asserted in the counter affidavit that, while inspecting the records of the case, it transpired that an on-site inspection was held by the Mines Inspector on 29.6.2010 and he had found illegal storage of stone chips and boulders on the spot by the petitioner prior to issue of the licence. The same was reported and stocks were seized. However, when the Deputy Director inspected the site on 19.6.2012, on the telephonic directions of the Principal Secretary of the Department, he found that the seized boulders and stone chips were missing, which showed that petitioner had disposed of the same without any transportation challan issued by the Department. A show cause notice was accordingly issued to the petitioner on 20.6.2012. The report of the Deputy

Director dated 19.6.2012 and the said show cause notice dated 20.6.2012 have been annexed with the counter affidavit as Annexures-R/1 and R/2. Hence, it is concluded in the counter affidavit that apparently the petitioner had not only violated the Rule 7(1)(j) of the Rules and terms and conditions of the ''linkage'', but at the same time had also misappropriated huge quantity of boulders and stone chips. Learned Additional Advocate General also submitted that in terms of Rule 7 of the Rules, the Collector has the power to cancel the licence. For this purpose, he referred to clause (d), (3) and (f) of the Rule 7(1).

5. Having heard learned counsel for the parties and having perused the file produced by learned Additional Advocate General, this Court finds that the respondents were in somewhat hurry to grant licence to the petitioner. The file shows that laying down of road under the Pradhan Mantri Gramin Sadak Yojna had been taken up by the State Government in a big way in the beginning of 2010. Documents available on the file show that, for supply of stone chips in bulk for the scheme, proposal was mooted for granting licence for setting up a heavy stone crusher plant. Thus, petitioner came into picture which was granted licence, vide Annexure-1. terms and conditions, under which licence was granted, is on the next page of the court brief and on the back page of the office copy of licence contained in the file of the Department. These terms and conditions are apparently in terms of Rule 7 of the Rules. What is striking in the licence, and the terms and conditions governing it, is that there is no mention anywhere in the same as to from which date the settlement period of 7 years period was to start. If this is not mentioned in the licence and the terms and conditions, obviously the clock has to be treated as started ticking from the date of issue of licence. Though this Court finds that it is specifically mentioned in the licence that the settlement amount of Rs. 2,33,33.000/- for 7 years had to be paid in 7 equal installments, payable before 31st of December of each year, but there is no mention in the licence that the same had to be paid in advance, i.e. installment for the next calendar year, or of the next year of settlement, had to be paid before 31st of December of previous year. Apparently, while issuing licence to the petitioner, the respondents did not take care of making stipulations in these respects in the licence.

6. From the stand of the respondents in the counter affidavit filed in support of the impugned order, it appears that they are reading a condition in the licence, in between the lines, stipulating for deposit of each installment in advance before 31st of December of the previous year for the next year of the settlement. It also appears that they are interpreting that the settlement was for calendar year and not commencing from the date of issue of licence. Both the stand of the respondents are not supported by the terms and conditions of the licence neither any specific provision in the Rules has been shown to the Court to establish that, in absence of any specific stipulation, the licence has to be operative in reference to calendar years and all installments had to be deposited in advance. Copy of the Rules has been annexed with the writ application as Annexure-2. The 2nd proviso of sub-rule (1) of Rule 7 lays down the manner in which the stockist

licence for stone mineral used for crushing has to be granted. Clauses (a), (b) and (c) of Rule 7(1) provide for determination of number of licences to be issued by the State Government and notified in the official gazette. This Court finds that clause (d) specifically provides that the stone stockist licence has to be granted strictly on the basis of public auction/tender to the highest bidder/tenderer as notified by the State Government and the State Government has to fix the minimum reserve deposit for stone stockist licence on the recommendation of the Collector. Clause (g) therein provides for application to be submitted in prescribed format with required papers. It is laid that, on the approval of the Government, Collector shall issue the licence. At this stage, it is useful to reproduce clauses (i) and (j) of the proviso which lays down the maximum period of licence, manner of deposit of installment and action to be taken in default of payment thereof:--

(i) the period of stone stockist licence for the use of crusher shall not be more than 20 years with following conditions:--

(i) The auction bid/tender amount shall be deposited in yearly basis in equal installments within seven years. Each equal installment shall be deposited before 31st of December.

(ii) After payment of installment of auction bid/tender amount or agreed amount up to seven years, renewal of stone stockist licence for the use of crusher shall be made on the deposit of Rs. 5,000/- every year up to thirteen years.

(iii) The State Government shall issue a guideline from time to time in this regard.

(j) Default in payment of any installment till prescribed date, a 24 percent simple interest shall be charged up to six months and after that action for cancellation of licence shall be taken.

7. As pointed out above, this Court has not found in the terms and conditions appended therein that the licence was to run on calendar year basis or the installment had to be deposited in advance. The terms and conditions accompanied with the licence is in terms of the above reproduced clauses (i) and (j) of the said proviso. These clauses also do not make it clear that the licence, issued in whichever month of the year, had to run on calendar year basis or that the installment had to be deposited in advance, before 31st of December of the previous calendar year, for the next calendar year. Hence, in absence of any such stipulation, either in the licence or in the Rules, the submissions of learned senior counsel for the petitioner finds force that the year of licence commenced from the date of its issue i.e. 16.8.2010 and the petitioner deposited the first installment in that month itself which was valid for one year thereafter i.e. up to August 2011. In the circumstances, the deposit of 2nd installment by the petitioner in September, 2011 has to be treated as valid for one year therefrom i.e. up to August, 2012. Apparently therefore, notice issued to the petitioner in September, 2012, was issued in hot haste and without taking into account the

legal position. The notice Annexure-3 was issued to the petitioner only on the ground that there was a default by him in deposit of 3rd installment. As discussed above, 2nd installment was good for one year period up to 15th of August, 2012, at least. Hence, this Court fails to appreciate as to what was the hurry with the respondents to issue the notice, within one month of expiry of the period, holding the petitioner defaulter in deposit of 3rd installment, when Rules and the licence clearly provided that 24% simple interest was chargeable up to six months on the amount of installment in case of delay. It has not been denied that this notice was received by the petitioner on 1st of October, 2012. From perusal of the file of the Department it is apparent that there is no proof of service of any notice issued to the petitioner, issued either on 20.6.2012 (Annexure-R/2) or on 7.9.2012 (Annexure-3), which petitioner received only on 1.10.2012. In such circumstances, the order of the Collector dated 30.9.2012, directing for cancellation of the licence of the petitioner, which was communicated to the petitioner, by the Assistant Director through the impugned letter dated 3.12.2012, has to be held as in complete violation of Principles of Natural Justice. This is in addition to the fact that the file shows that the Assistant Director put up a note on 26.9.2012 proposing cancellation of the licence of the petitioner, without waiting for any receipt of proof of service of notice on the petitioner, which was endorsed by the Assistant Collector to the Collector, who simply put his initial on it on 30.9.2012. This shows that there was no application of mind by the Collector and there was no reasonable opportunity allowed to the petitioner to file its representation/show cause. From the note-sheets of the file, this Court also finds that there is no note in support of the notice issued to the petitioner through letter dated 7.9.2012, as contained in Annexure-3. Thus, the issue of the notice, as contained in Annexure-3, does not find support from any deliberation on the record. The said inspection report of the Deputy Director, Mines dated 19.6.2012 and the notice dated 20.6.2012 have been placed on the records of the case along with the counter affidavit. These two documents are in the original file of the Department immediately after office copy of the licence issued to the petitioner and a photocopy of the demand draft and challan dated 7.8.2010. The impugned Annexure-4 mentions that the Collector had cancelled the licence on the ground of irregularity in the licence. Now this communication is totally vague and does not show that either the licence was cancelled on the ground that the petitioner had not paid 3rd installment in time or that it had not replied to the notice dated 20.6.2012. Hence, apparently, this order was totally unconnected either with the said notice dated 7.9.2012, as contained in Annexure-3, or with the earlier notice dated 20.6.2012, as contained in Annexure-R/2 with the counter affidavit. Coming to the earlier notice dated 20.6.2012, this Court finds that the various grounds were made by the respondents for proposing initiation of action against the petitioner. The note-sheets in the file do not show that this notice was issued after due deliberation and under the orders or with the approval of the Collector and it appears that the Assistant Director of the District Mines Office, Gaya on his own issued this letter. Petitioner has specifically denied to have received this notice.

In the circumstances, the respondents were required to establish from the records that this notice was served on the petitioner. However, there is nothing on the records of this case or in the file of the Department to show that this notice was ever served on the petitioner. The Mines Commissioner, while rejecting the revision of the petitioner, has based his conclusion both on non-deposit of 3rd installment by the petitioner as well as on a part of contents of this notice dated 20.6.2012. Since this Court has found that the very initiation of the action by the respondents was bad, obviously the reliance placed by the Mines Commissioner on these documents for rejecting the revision of the petitioner was totally vitiated.

8. Concluding, this Court finds that on the one hand the licence was issued to the petitioner by the respondents in hot haste and without following the procedure laid down in the Rules and, on the other, the same has been cancelled also by the respondents, again in hot haste without complying with the provisions of the Rules, without complying with the. requirements of the Principles of Natural Justice, without application of mind and arbitrarily.

9. In the circumstances, in view of the findings and observations, as above, in respect of challenge by the petitioner to the impugned order of cancellation of licence, as contained in Annexure-4, and to the order of the Mines Commissioner rejecting the revision of the petitioner, as contained in Annexure-8, this writ application is allowed. Both the orders are accordingly quashed. The respondents are directed to treat the licence of the petitioner as operative and consequently allow the petitioner to commence its business under the terms and conditions of the licence immediately. However, this shall be without prejudiced to the rights and powers of the respondents to take any fresh action in the matter in accordance with law and in compliance with the Principles of Natural Justice. Let the original file of the Department be returned to learned counsel for the respondents.