(2019) 03 PAT CK 0035

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 19509 Of 2016

S. Stone Works APPELLANT

Vs

State Of Bihar And Ors RESPONDENT

Date of Decision : 28-03-2019

Acts Referred:

Bihar Minerals (Prevention Of Illegal Mining, Transportation And Storage) Rules, 2003 — Rule 7, 7(1)(j), 7(1)(k)

Citation : (2019) 03 PAT CK 0035

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : K.N. Choubey, Anil Kumar Sinha, Obaidullah, Naresh Dikshit

Final Decision : Allowed

Judgement

Sanjay Priya, J

1. Heard Mr. K.N. Choubey, learned Senior counsel for the petitioner, Mr. Obaidullah A.C. to S.C. and Mr. Naresh Dikshit, Spl. P.P. Mines.

2. The writ petition has been filed for quashing Memo No. 527(Mines) dated 8.9.2011 (Annexure-2) issued by the Collector, Jehanabad (Respondent No. 3), whereby and whereunder he has cancelled the licence of the petitioner bearing No. 11/03 in respect of storage of stones for uses in Crusher Machines. Petitioner has also prayed for issuance of appropriate writ in the nature of mandamus commanding and directing the Respondent Authorities to revalidate the licence bearing No. 11/03 for remainder of the period for which it was granted to the petitioner.

3. Counsel for the petitioner submits that petitioner was granted licence for storage of stone for uses in Crusher Machines by licence No. 11/03 issued by letter No. 1978 dated 8.12.2003 under Rules 2003 of Bihar Mines (Illegal Mines, Transportation and Storage Niwaran) after providing land by the petitioner of Plot No. 710 an area of 35 decimals situated in Mauza Musshi, P.S. Makhdumpur,

Distt. Jehanabad, The auction money was fixed for Rs.3,60,500/- and mode of payment of auction was fixed by the Authorities in 7 installments. Thereafter, payment of Rs.5,000/- for each year of renewal of licence till further 13 years and whole licence was allowed to the petitioner for period of 20 years for doing business.

4. The licence of the petitioner has been cancelled by Annexure-2 mainly on the basis of inspection report of the Inspecting team leveling allegation that petitioner was found violating the terms of Rule 7(1)(j) and (k) of Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003, during course of inspection. The lease of the petitioner was cancelled by Annexure-2 on the aforesaid ground after not being satisfied with his show cause alleging that he has not deposited Rs.32,000/- dues with him. It is also mentioned in the aforesaid order as contained in Annexure-2 that petitioner has violated the terms of clause-IV of the licence.

5. The petitioner has preferred Revision vide Revision Case No. 03 of 2016 against the aforesaid order and Revisional Authority vide Annexure-1 has affirmed the order of the Collector contained in Annexure-2 solely on the ground that petitioner was found committing violation of Rules 7 (1)(j) and 7(1)(k) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003.

6. Petitioner has assailed the impugned order mainly on the ground that he has made payment of installment along with interest after receiving show cause notice, but, in spite of that, by order dated 8.9.2011 as contained in Annexure1 and 2, his licence has been cancelled.

7. Counsel for the petitioner submits that there is no any mandatory provision under Rules 7(1)(k) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003, that for violation of any of condition, the licence of the petitioner can be compulsorily cancelled.

8. Counsel for the Mines department has appeared and submitted that there is specific mention in Rule 7(1) (j) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003, that in case of default in payment of any installment till prescribed period, 24 percent simple interest shall be charged up to 6 months and thereafter action for cancellation of licence shall be taken. He further referred to 4th Proviso of Rule 7 of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003 which provides that the existing stockiest licence held for stone mineral used for crusher shall remain operational till the validity of their licence period, on the condition of the licensee abiding by all the relevant rules/provisions of law. He has submitted that authority concerned is empowered to cancel the licence of the petitioner for violation of aforesaid Provision of law. There is no illegality in order passed by Revisional authority (Annexure-1) as well as the District Collector, Jehanabad (Annexure-2).

9. Counsel for the petitioner has pointed out Annexure-7 and submits that

petitioner has submitted all the documents before the Collector, Jehanabad, on 23.7.2011 prior to passing of the impugned order (Anmnexure-2) dated 8.9.2011. He further submits that at the time of inspection, nobody was present on the premises. Therefore, the documents could not be produced at that time. No due notice was given to the petitioner with regard to the aforesaid inspection.

10. The Revisional Authority has in the order as contained in Annexure-1 mainly relied on the report of the Inspecting Team and the defects which have been found by the Inspecting Team at the premises of the petitioner at the time of inspection. The Revisional Authority in the impugned order as contained in Annexure-1 has mentioned about all the defects pointed out by the Inspecting Team.

11. It is mentioned in the Revisional order that the amount of installment of Rs.26,500/- along with interest of Rs.1,18,000/- and remaining amount of dues of Rs.31,802/- have been deposited by the petitioner on 8.9.2011.

12. This Hon'ble Court has in the judgment passed in LPA No. 1503 of 2012 dated 21.08.2015 has observed "that the whole purpose of the cancellation provision, under such contingency, was to enforce payment of the civil dues along with the interest. The learned Single Judge was of the view that the licensing authority itself had the discretion to extend time to enable the licensee to pay the amount with interest as stipulated. The provisions did not put any cut off date or time in this regard.

Thus, the learned Single Judge was of the view that the order of cancellation of licence, under such circumstances, was unjust. The LPA Court was also of the view that once the amounts were fully liquidated then even the appellate authority should have taken a pragmatic view of the matter and allowed the appeal instead of becoming hyper technical in the matter".

13. This Court from the submission made on behalf of the petitioner as well as averments mentioned in the Revisional order as contained in Annexure-1 finds that dues amount along with interest have already been paid by the petitioner on 8.9.2011.

14. The Respondent has filed counter affidavit stating in paragraph-4 that licence has been cancelled because the defects were found by the Inspecting Team and amount of installment and interest was also due. The Stock register was also not available.

15. The Collector, Jehanabad, has asked show cause from the petitioner by letter No. 359 dated 29.6.2011. The Collector after looking into the show cause filed by the petitioner has cancelled the licence of the petitioner by order dated 23.7.2011 (Annexure-2) finding the reply not satisfactory. It is further mentioned in the order that defects which were pointed out by Inspecting Team was not removed by the licensee (petitioner), even on getting knowledge. The petitioner never produced any document with regard to removal of aforesaid defects to the

Inspecting Team. The petitioner for the first time made request with the appellate authority by annexure-7 making prayer that he has not disobeyed any of the provisions of the Rules as pointed out by the Inspecting Team. Counsel for the respondents has further submitted in the counter affidavit that licence of the petitioner has been cancelled because he did not remove the defects as pointed out by the Inspecting Team and the aforesaid order was upheld by the Revisional Court.

16. Reply to the counter affidavit has been filed by the petitioner. The petitioner has mentioned in detail in paragraph-6 of reply to the counter affidavit that petitioner has produced the stock register to the Enquiry Officer for verification and paid monthly return regularly till rejection of his licence. The petitioner has deposited Rs.1,18,000/- as interest through different Demand Drafts and also deposited Rs.26,500/- towards installment dues on 17.8.2011 (Annexure-8), and after depositing the aforesaid amount, the dues of only Rs.31,802/- up to September, 2011 remained with petitioner. The petitioner deposited aforesaid amount of Rs.31,802/- also by Demand Draft No. 82364 dated 8.9.2011.

17. Learned counsel for the respondents has vehemently argued that there is clear-cut violation of Rule 7(1)(k) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003. Therefore, Collector has no option but to cancel the licence of the petitioner. He has relied on the provision of aforesaid Rules as stated above.

18. This Court after going through the aforesaid Proviso as well as Section 7(1)(k) and 7(1)(j) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003, finds that there is no mandatory power to the Collector in the aforesaid Rule to cancel the licence of the petitioner, if any person violates the condition as stated in the Rules or in the agreement. Such violation which has been disclosed in Rule 7(1) (k) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003, that every stone stockiest licence holder for the use of crusher shall maintain a register in form 'G' of this rule and the same should always be available for perusal of the authorities, are necessary requirement. But the rule does not confer mandatory condition that for violation of such rule the licence of petitioner shall liable to be cancelled. This Court is of the view that in the event the register was not produced the same was mere irregularity and authority was required to give appropriate opportunity to petitioner to explain the reason for not complying with the conditions of aforesaid rules.

19. It is apparent that inspection was done in absence of the petitioner. The Inspecting Team pointed out various defects in the inspection report at the time of inspection. The petitioner after coming to know about the defects, produced all relevant documents as pointed out by the Inspecting Team before the Collector on 5.7.2011 by his letter as contained in Annexure-7. From perusal of order of Collector as contained in Annexure-2, it appears that those documents were not looked into by the Collector. The Collector merely on the basis of report of the

Inspecting Team, has cancelled the licence of the petitioner. It is mentioned in the order of Collector and report of Inspecting Team that petitioner has not paid installment dues as per the Rules. But from the Revisional order as contained in Annexure-1 it appears that the amount was deposited on 8.9.2011. As such, the petitioner has filed his show cause with regard to defects pointed out by the Inspecting Team and also deposited the entire dues amount along with interest. But the Revisional court on the basis of report of the Inspecting Team came to the finding that petitioner has violated the provision of Rule 7(1)(j) and (k) of Bihar Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2003, and upheld the order of the Collector as contained in Annexure-2 to the writ petition.

20. Therefore, the order as contained in Annexure-1 and 2 are not in accordance with law and the same are hereby set aside.

21. This writ petition is accordingly allowed.

22. The Collector or competent authority, will be entitled to take appropriate action in accordance with law in the event the petitioner commits any default in future in making payment of the dues amount as mentioned in the agreement.