

In the Court of Mines Commissioner
Bihar, Patna

Revision Case No – 05/2016
Dist. - Banka

PRESENT :- K.K. Pathak, I.A.S.,
Mines Commissioner

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The Collector, Banka & Others

Vs.

Sri Divakar Chandra Dubey

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ORDER

15.09.2017

This is a matter arising out of a Review Petition filed against the order passed by the then Learned Mines Commissioner on 11.05.2015 passed in Revision Case No. 11/2013. In this instant matter, I find that a lot of Revision applications have been earlier filed on the issue by the Revisionist Sri Divakar Chandra Dubey. From the perusal of the records, it appears that earlier the matter was heard by the then Mines Commissioner in Revision No. 21/2011 and 36/2011.

I have heard the Learned Advocate of the Revisionist who had filed supplementary written arguments also. The Learned Advocate of the Respondent questioned the maintainability of this Review. He has mentioned that

there is no provision for filing a review and the Mines Commissioner cannot review his own decision. He has quoted extensively from various judgments passed by various High Courts including Supreme Court of India.

I also heard the Learned Special PP, who has filed this Review Petition on behalf of the Collector Banka. The Learned Special PP has mentioned in his written arguments that although, generally, a Review Application is not maintainable, in the instant case, the same was filed based on the opinion of the Learned Advocate General and the Law Department. He also quotes a judgement, *Vijay Narayan Sao Vs. the State Information Commission, report in 2009 (4) TLJR page 533* wherein it has been held that if the Competent Authority passes the order contrary to law or relevant facts, the same Authority has power to review the order. The said judgment has been annexed as Annexure F of the Review Application.

Having heard both the parties and having pursued the documents available on records, my own findings on the matter are as under:-

- (a) The cause of action for the entire proceeding is an order passed by the Learned Collector, Banka on 08.05.2010 wherein a complete ban was imposed on lifting of sand upon the Settlee. The

aforesaid ban was lifted by the Learned Collector on 10.08.2010 in the light of the order dated 29.07.2010 passed by the Hon'ble High Court in CWJC No. 8767/2010.

(b) I have also perused the order of the Learned Mines Commissioner passed on 11.05.2015 which is the subject matter of the instant review. The Learned Mines Commissioner has quoted the aforementioned two judgments of the Hon'ble High Court while passing his order dated 11.05.2015.

(c) I have perused the order of the Hon'ble High Court. Vide the said judgment, the Hon'ble High Court had quashed the order passed by the Learned Collector, Banka on 08.05.2010. Vide the said judgement, at Para 12, the Hon'ble High Court also allowed the Revisionist liberty to claim the compensation for such obstruction of the sand lifting for approximately three months. The said judgment of the Hon'ble High Court was passed on 29.07.2010.

(d) However, at Para 11 of the said judgment, the Hon'ble High Court also gave the liberty to the Learned Collector for initiating any proceeding for suspending or cancelling the license of the Settlee.

(e) The Learned Mines Commissioner, in his order dated 11.05.2015, has also quoted another order passed by the Hon'ble High Court in CWJC No. 2564/2012 on 06.08.2012. The said Writ arose as a result of the direction of the Learned Collector, Banka on 15.10.2011 limiting the Revisionist right to extract sand to the extent of thousand cubic feet per day.

(f) I have perused the said judgment of the Hon'ble High Court. The Hon'ble High Court was pleased to set aside the order passed by the Learned Collector, Banka on 15.10.2011.

(g) As a background of the case, the Revisionist essentially wants the refund of Rs. 75.68 lakhs which was paid by the Revisionist in compliance to the direction

of the Mines Inspector, but the said payment was made on protest.

(h) The said demand by the Mines Inspector was raised on 07.02.2013. I note that this demand, therefore, has been raised much after the two judgments passed by the Hon'ble High Court viz. 29.07.2010 and 06.08.2012. That be the case, I hold that the demand raised by the Mines Inspector on 07.02.2013 is not linked to the two judgments passed by the Hon'ble High Court.

(i) I have also perused the detailed Revision Petition filed by the Revisionist in the instant Revision. In the said Revision Application, the Settlee lays the blame on the Learned Collector for the delayed payments for settlement amount in the year 2010 and 2011 (Para 4 of the Revision Application). The case that was built up by the Revisionist was largely centered around the fact that anti social elements did not allow him to undertake sand excavation peacefully. This affected this business. He further mentioned that the Learned Collector's order restricting

sand extraction to thousand cubic feet per day was also another reason.

(j) Nowhere in the said Revision Petition, has the Revisionist claimed his compensation for the ban on sand lifting imposed on him by the Learned Collector on 08.05.2010.

(k) I also note that the demand was raised by the Mines Inspector to pay Rs. 75.68 lakhs in the year 2012 (11.07.2012) and then in 2013 (07.02.2013) as an interest on delayed payment of installments. This was paid by the Revisionist under protest and now he wants it back and hence, this Revision application.

(l) Therefore, this Rs. 75.68 lakhs is not on account of the compensation as a result of the ban of the Learned Collector imposed in the year 2010 otherwise the Revisionist would have sought compensation immediately when the Hon'ble High Court struck down the ban imposed by the Learned Collector on 29.07.2010.

(m) Therefore, it is abundantly clear that this Revision is against the refund of Rs. 75.68 lakhs which the Petitioner paid under protest on account of the delayed payment of his installments. Hence, the observation made by the Learned Mines Commissioner that '*the Petitioner was put to huge loss for no fault of his*', is not the case under consideration in the Revision application.

(n) The case under consideration is whether he is liable to pay an interest of delayed payments or not. Here the Revisionist is not asking any compensation for the loss of his business he suffer for three months in 2010 or of the loss of business, he suffered in 2011 when the Learned Collector restricted his sand mining to thousand CFT per day.

(o) Here the Revisionist is only asking that the interest charged for his delayed payments should be waived and hence the same be refunded.

(p) Therefore, this is fit case for Review wherein the then Learned Mines

Commissioner has considered this case as a compensation matter. *It is not case of compensation but a refund.*

(q) This refund is on account of the interest the Revisionist was made to pay for his delayed payments of scheduled installments.

(r) Now, I must come to the point as to why the Banka Authorities asked an interest on account of delayed payments. As per the report submitted by the Learned Collector dated 17.05.2014, this demand for interest essentially arose from the Audit report issued by the Principal Accountant General Audit Bihar on 24.05.2012.

(s) Thus, it seems that the demand raised by the Mines Inspector was on account of the report of the Accountant General. That be the case, the instant demand was not covered under the aforementioned two judgments passed by the Hon'ble High Court in CWJC No. 8767/2010 and 2564/2012 quoted by the then Learned

Mines Commissioner in his order dated 11.05.2015 which is under review here.

(t) I also see that in another Revision Application No. 36/2011 passed on 03.01.2012, the then Learned Mines Commissioner upheld the Learned Collector's restricting the Revisionist to excavating thousand CFT of sand per day. However, this order was subsequently quashed by the Hon'ble High Court in CWJC No. 2564/2012 dated 06.08.2012.

(u) As regards the compensation for the loss of mining business of 96 days was concerned, the demand for the compensation was already rejected by the then Learned Mines Commissioner, vide order dated 16.02.2012, in Revision Case No. 21/2011. Vide the said order, the Learned Mines Commissioner upheld the order passed by the Learned Collector, Banka on 04.06.2011 rejecting his claim for compensation.

(v) Thus, the Learned Mines Commissioner in his order dated 11.05.2015 has treaded

on an issue which had already been adjudicated by his Learned Predecessor in the Revision Case No. 21/2011.

(w) Thus, the Learned Mines Commissioner order dated 11.05.2015 was based on miscomprehension of facts that this instant Revision is not of compensation but of the penalty for late payment of due instalments.

(x) That be the case, the demand raised by the Mines Inspector is correct, as this is the demand raised for delayed payment of the instalment pointed out by the Accountant General and has nothing to do with the issue of compensation.

Conclusion:-

The Learned Mines Commissioner, in his order dated 11.05.2015 has based his order on the basis of the two judgments passed by the Hon'ble High Court in CWJC No. 8767/2010 and CWJC No. 2564/2012. It has been abundantly established from the aforementioned findings that the instant issue of refund of Rs. 75.68 lakhs is not covered under the aforementioned judgments.

Moreover, the Learned Mines Commissioner has mentioned that '*the compensation/refund claimed by the Petitioner in view of the loss suffered by him is far less than the actual loss suffered by him due to imposition of ban/restriction by the Collector, Banka.*'

It is now clarified that the said matter is not a case of compensation, as the issue of compensation has already been decided by Learned Predecessor on 16.02.2012 in the Revision Application No. 21/2011 rejecting the claim for compensation and upholding the order of the Learned Collector who, too, had rejected the Revisionist's claim for compensation.

Thus the Learned Mines Commissioner order was based on *miscomprehension of facts* and therefore, is fit to be reviewed in terms of the judgment of the Hon'ble High Court dated 06.07.2009 in CWJC No. 7379/2009 (Vijay Narayan Saw Vs. State Information Commission. As such, this Review Petition is maintainable.

From the aforementioned finding, it is also clear that the demand for Rs. 75.68 lakhs raised by the Mines Inspector is on account of the delayed payment of instalment and not as a result of compensation for loss of business that the Revisionist suffered in the year 2010 and 2011. Therefore, the said interest payment is not covered under any of the judgments passed by the Hon'ble High Court as noted

by the then Learned Mines Commissioner, in his order dated 11.05.2015, passed in the instant Revision case.

That be the case, I find that there is no merit in the argument of the Revisionist for a refund of these payments. As such, the Review Application filed by the State is allowed and the demand for refund is rejected.

Review Application is allowed.

Let the copy of the order be served to the Learned Collector, Banka.

Dictated & Corrected

Sd/- (K.K.Pathak) Mines Commissioner Mines and Geology Department, Bihar.	Sd/- (K.K.Pathak) Mines Commissioner Mines and Geology Department, Bihar.
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Memo No.-...2724.../M, Patna, Dated-...15.9.17.....

Copy to :- Collector, Banka/ Mines Inspector, Banka/Diwkar Chandra Dubey, S/o-Late Umesh Chandra Dubey, Vill-Phulwariya, Post-Bajani, District-Bhagalpur/ I.T. Manager, Mines & Geology Dept. Patna for information and necessary action.

Under Secretary to Govt.