

In the Court of Mines Commissioner
Bihar, Patna

Revision Case No – 03/2017
District – Kishanganj

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

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Sri Mohammad Israel

Vs.

The Collector, Kishanganj

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ORDER

26.09.2017

This is a Revision application filed by the Revisionist against the order issued by the Mining Inspector-cum-Competent Authority Purnea and Kishanganj vide Letter No. 80 dated 21.03.2017. Vide the said order, the penalty of Rs. 4.12 lakhs was imposed on the Revisionist on account of discrepancies in the challan book.

The Statement of Facts, on behalf of the Learned Collector, is available on record.

I have gone through the Revision application submitted by the Revisionist. The Learned Advocate of the Revisionist was heard in great detail.

The Learned Advocate of the Revisionist mentioned that the impugned order was passed on the direction of the Learned Collector but the copy of the order Learned Collector has not been supplied to him. He further mentioned that the challans, based on which the impugned order was passed by the Competent Authority, were supplied by one Sri Mohammad Akbar Ali. Moreover, these are the photo copies of the challan and the not the original, hence they are suspicious.

Continuing his arguments further, the Learned Advocate mentioned that order of the Learned Collector was passed on 31.08.2016 wherein the penalty of Rs. 7.65 lakhs was imposed, which was duly paid by the Revisionist.

The Learned Advocate also draws the attention of the Court to the Learned Collector's order dated 23.03.2017 wherein, as per him, the Learned Collector has not found any irregularity against the Revisionist after 01.09.2016.

The Learned Advocate finally concludes that the impugned order was passed ex-parte and hence the principle of natural justice has been violated.

Having heard the Learned Advocate of the Revisionist and having perused all the papers available on records including the Statement of Fact submitted on behalf

of the Learned Collector, my own findings on the matter are as under :-

- (a) The impugned order, although passed by the Mining Officer should have been technically appealed before the Deputy Director of Mines under Rule 47 of Bihar Minor Mineral Concession Rules, 1972. However, since the impugned order has been issued by the Learned Collector, the Revisionist has preferred this Revision under Rule 45 of Bihar Minor Mineral Concession Rules, 1972.
- (b) The main thrust of the argument of the Revisionist is that he was already once imposed the penalty by the Learned Collector of Rs. 7.65 lakhs, vide the order of the Learned Collector dated 31.08.2016. Therefore, how come another penalty order is imposed on challans which belonged to a period before 31.08.2016.
- (c) At Para 26 of the Revision application, he mentioned that he has not violated any condition after the order by the Learned Collector dated 31.08.2016.

- (d) Therefore, as per the Revisionist, it is the case of double jeopardy. Once, the Competent Authority has issued the work permit on 05.09.2016, the Competent Authority cannot impose a penalty as there is no fresh cause of action.
- (e) I have perused the order of the Learned Collector dated 23.03.2017. The Collector notes that the Revisionist has already committed breach of certain conditions and for which a process is on to impose a penalty of Rs. 4.12 lakhs. The Learned Collector also notes that a notice has already been issued and steps are afoot to recover the said penalty.
- (f) Therefore, I do not agree with the averment made by the Revisionist that the Learned Collector, in his order dated 23.03.2017, did not find any violation of the terms and conditions. Rather, the Learned Collector had very categorically mentioned that some of the old challans were not produced before the Learned Collector by the Mining Officer concerned. Therefore, the Learned Collector was pleased to advise the

Competent Authority of the Mining Department that all the challans must be consolidated and then a comprehensive action be initiated against the defaulter (the Revisionist).

- (g) That be the case, I do not see any merit in the contention of the Revisionist that the impugned penalty order has already been taken care of in the previous penalty that he paid vide the order of the Learned Collector dated 31.08.2016.
- (h) The mere fact that the Revisionist has been imposed a penalty by a previous order of Rs. 7.65 lakhs, does not mean that no further penalty can be imposed by him, even for challans which were discovered, of belonging to a date before 31.08.2016.
- (i) Moreover, I note with concern that the Revisionist has been a habitual offender in so far as using blank challans is concerned.
- (j) The observation of the Learned Collector, at Para 5 of his Report No. 84 dated 23.03.2017, is worrisome in the sense

that the Collector notes that the Revisionist have been in the habit of transporting illegal sand through the boats but still showing vehicular challan for the purpose. I find that this is a serious offence by the Revisionist and the Learned Collector should have proceeded to cancel the settlement of the Revisionist rather than merely imposing a penalty.

Conclusion:-

From the aforementioned finding, it is clear that the impugned order, vide which the penalty of Rs. 4.12 lakhs was levied against the Revisionist, is in order and was passed after due inquiry and consideration by the Learned Collector. I also find that Learned Collector, while passing the order dated 31.08.2016 had also heard the Revisionist and his Learned Advocate.

Moreover, in his subsequent order dated 23.03.2017, the Learned Collector was already aware that the impugned order has been passed against the Revisionist, from which the Learned Collector did not exonerate him from the penalty. Meaning thereby, the Revisionist was supposed to pay this penalty of Rs. 4.12 lakhs also, which he has not done so far.

Having said that, I find no reason to interfere with the impugned order.

Revision Dismissed.

Let the copy of the order be served to the Learned Collector, Kishanganj. The Learned Collector may proceed ahead in recovering the penalty of Rs. 4.12 lakhs from the Revisionist.

Dictated & Corrected

**Sd/-
(K.K. Pathak)
Mines Commissioner
Mines and Geology Department,
Bihar**

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(K.K. Pathak)
Mines Commissioner
Mines and Geology Department,
Bihar**

Memo No.-.....2913...../M, Patna, Dated-.....03.10.17...
Copy to :- Collector Kishanganj/ Mines Inspector,
Kishanganj/Md. Israil, S/o-Late Haji Wasimuddin,
Vill-Tupamari, Post-Belwa, District-Kishanganj/
I.T. Manager, Mines & Geology Dept. Patna for
information and necessary action.


Under Secretary to Govt.