

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.865 of 2024

In
Civil Writ Jurisdiction Case No.11678 of 2023

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1. The State of Bihar through the Chief Secretary, Government of Bihar, Old Secretariat Building, Patna.
 2. The Additional Chief Secretary-cum- Commissioner Mines, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
 3. The District Magistrate, Sheikhpura.
 4. The Mineral Development Officer, Sheikhpura.

... .. Appellant/s

Versus

M/s. Balaji Enterprises a Proprietorship Firm having its Registered Office at Babu Bazar, Ara, Bhojpur through its Signing Authority Sri. Chandan Kumar, aged about 35 years, Gender- Male, Son of Sri Ashok Kumar, resident of Village and Post- Pareo, P.S.- Bihita, District- Patna- 802160.

... .. Respondent/s

Appearance :

For the Appellant/s	:	Mr. S.D. Sanjay, Advocate General Mr. Prakash Chandra Agrawal, GA-5 Ms. Surbhi Agrawal, JC to GA-5
For the Respondent/s	:	Mr. Suraj Samdarshi, Advocate Mr. Avinash Shekhar, Advocate Ms. Simran Kumari, Advocate Ms. Abhilasha Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
and
HONOURABLE MR. JUSTICE RANA VIKRAM SINGH
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI)

Date : 01-10-2026

1. An application for stay in connection with the instant appeal and application dated 02.09.2026 filed by the respondent/ writ-petitioner with a prayer to direct the appellants not to proceed with the auction and settlement of Stone Block No.27 situated at Mauza-Hazratpur Mandro Chandi, Area-5



hectares at District-Shaikhpora, mentioned at Serial No.11 in the notice inviting tender dated 13.08.2026 were fixed for hearing on 25.09.2026.

2. At the time of hearing of the applications above-named, we were of the view that the instant appeal can be disposed of on the basis of the submission made by the learned Counsels for the parties.

3. Therefore, we proposed to take up the hearing of the appeal in presence of the learned Counsel for the appellants and the respondent.

4. The instant appeal under Clause-10 of the Letters Patent Act is directed against the judgment dated 02.05.2026 passed by the learned Single Judge in C.W.J.C. No. 11678 of 2023.

5. By the impugned judgment, the writ petition was allowed. The appellants herein were directed to finalize the D.S.R. (District Survey Report) of mining lease with the respondent; extend the time of lease and issue work order followed by final settlement of contract of lease with the respondent within a period of six weeks from the date of passing of the order.

6. In order to ascertain the issue, the following facts



are required to be recorded which are as follows:-

“In connection with grant of mining lease on settlement of nine stone blocks, a notice inviting tender was published by the District Magistrate, Shaikhpura. The petitioner participated in the auction and being the highest bidder, a letters of intent was issued on 21.09.2017 in favour of the writ-petitioner. The stone block was settled in favour of the petitioner for five years from the date of execution of the lease deed. Further the petitioner was required to make payment of 10% of deed amount as security deposit, submission of Form-B within 120 days from the date of issuance of LOI, mining plan, environment clearance and other payments as per the LOI. However, environmental clearance could not be granted due to non-submission of D.S.R. (District Survey Report). On 23.01.2023, the District Magistrate approved emolument of letter of intent granted in favour of the petitioner for stone block No.27 and also directed forfeiture of the earnest money on the ground that there was delay of five years and three months on the part of the petitioner to



execute the lease deed. The said order passed by the District Magistrate, Shaikhpura dated 23.01.2023 was challenged in appeal by the petitioner before the Commissioner of Mines, Bihar and vide order dated 14.07.2023 passed in Appeal No.01 of 2022, the Commissioner of Mines dismissed the said appeal filed by the petitioner affirming the order passed by the District Magistrate, Shaikhpura. Hence, the writ petition.”

7. We have already stated in a nutshell the order passed by the writ-Court.

8. Mr. Samdarshi, learned Advocate for the respondent/writ petitioner submits that the writ-court in Paragraph No.30 of its judgment recorded the observation of the Hon’ble Supreme Court of India in ***State of Bihar and Ors. Vs. Pawan Kumar and Ors. etc. (Civil Appeal No.3661-3662 of 2020) decided on 10.11.2021***. Paragraph No.11 of the said judgment records the guidelines of possible sand mining sources and preparation of D.S.R. in the following words:-

“11. Chapter 4 of the 2020 Guidelines deals with identification of possible sand mining sources and preparation of DSR. It will be relevant to refer to Clauses 4.1.1(a), (o) and (p) of the 2020



Guidelines:

“4.1. Identification of possible sand mining sources and preparation of District Survey Report (DSR)

4.1.1. Preparation of District Survey Report.

(a) District Survey Report for sand mining shall be prepared before the auction/e-auction/grant of the mining lease/Letter of Intent (“LoI”) by Mining Department or department dealing the mining activity in respective states.

(o) Potential site for mining having its impact on the forest, protected area, habitation, bridges, etc. shall be avoided. For this, a Sub-Divisional Committee may be formed which after the site visit shall decide its suitability for mining. The list of mining lease after the recommendation of the Committee needs to be defined in the following format given in as Annexure II. The Sub-Divisional Committee after the site visit shall make a recommendation on the site for its suitability of mining and also records the reason for selecting the mining lease in the Patta land. The details regarding cluster and contiguous cluster needs to be provided as in Annexure III. The details of the transportation need to be provided as in Annexure IV.

(p) Public consultation—The comments of the various stakeholders may be sought on the list of mining lease to be auctioned. The State Government shall give an advertisement in the local and national



newspaper for seeking comments of the general public on the list of mining lease included in the DSR. The DSR should be placed in the public domain for at least one month from the date of publication of the advertisement for obtaining comments of the general public. The comments so received shall be placed before the Sub-Divisional Committee for active consideration. The final list of sand mining areas [leases to be granted on riverbed & patta land/khatedari land, de-siltation location (ponds/lakes/dams), M-Sand Plants (alternate source of sand)] after the public hearing needs to be defined in the final DSR in the format as per Annexure V. The details regarding cluster and contiguous cluster needs to be provided in Annexure VI. The details of the transportation need to be provided in Annexure VII.”

9. It is submitted by the learned Advocate on behalf of the respondent/writ-petitioner that on the basis of D.S.R. (District Survey Report), auction is to be made, letter of intent will be issued. The successful bidder will submit mining plan which shall be approved by the Competent Authority. Thereafter, the successful bidder is required to file application before SEIAA for environmental clearance and only then the lease deed is to be executed under Rule-28 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation &



Storage) Rules, 2019.

10. Mr. Samdarshi after elaborating briefly different stages till the execution of lease deed in connection with this matter draws our attention to Page No.148 of the list of letter of intent holder in the district of Shaikhpura alongwith its validity.

11. It is pointed out by the learned Advocate on behalf of the respondent/writ petitioner that location of the mining lease with reference to latitude and longitude was not stated in respect of the petitioner's block by the District Mining Office, Shaikhpura. Therefore, the respondent/writ-petitioner did not get environmental clearance within the stipulated period of time. The writ-petitioner was not in fault for non-execution of the deed of lease within the stipulated period of time. However, without admitting the inaction on the part of the State Authority, the Collector cancelled the letter of intent, which was approved by the Commissioner.

12. The learned Advocate on behalf of the respondent/writ-petitioner next draws our attention to paragraph Nos.5, 7 & 11 of the order passed in appeal by the Commissioner of Mines on 14.07.2023. The above-mentioned paragraphs are quoted below:-

“5. अपीलकर्ता के विद्वान अधिवक्ता का कहना है कि



उनके द्वारा SEIAA, बिहार के समक्ष पर्यावरणीय स्वीकृति आवेदन समर्पित किया जा चुका है एवं स्वीकृत प्राप्त करने के लिए सभी संभव और आवश्यक कदम उठाए गए हैं। यिा द्वारा यह आपत्ति की गयी है कि शेखपुरा जिला के जिला सर्वेक्षण प्रतिवेदन में Geo-Coordinate और उत्पादन विवरण का उल्लेख नहीं है तथा PFR, EIA और खनन योजना में वर्णित उत्पादन विवरण के बीच विसंगतियाँ हैं। अपीलकर्ता द्वारा सदस्य सचिव, सिया को शीघ्र पर्यावरणीय स्वीकृति निर्गन करने के लिए पुनः आवेदन दिनांक 21.11.2022 को दिया गया। SEIAA, बिहार ने दिनांक 25.11.2022 के माध्यम से अपीलकर्ता को निदेश दिया कि पत्रांक-193, दिनांक- 07.09.20 का अनूपादन नहीं किया गया है और संशोधित जिला सर्वेक्षण प्रतिवेदन एवं खनन योजना प्रस्तुत नहीं किया गया है। इसलिए, जब तक उन्हें संशोधित जिला सर्वेक्षण प्रतिवेदन प्राप्त नहीं होता है, तब तक पर्यावरणीय स्वीकृति प्राप्त करना और पट्टा निष्पादन कराना संभव नहीं हो सकेगा।

7. वर्तमान अपील में पक्षों की ओर से दी गई दलीलों पर विचार करने से पहले, कुछ प्रासंगिक तिथियों, जो अभिलेख पर परिलक्षित हो रहा है, का संदर्भ निम्न प्रकार है:-

18.03.17: समाहर्ता, शेखपुरा द्वारा पत्थर भूखण्ड की नीलामी।

21.09.2017: सैद्धांतिक स्वीकृत्वादेश निर्गत।

13.09.2018: खनन पट्टा के 500 मीटर की परिधि के संबंध में एवं अंचलाधिकारी का प्रतिवेदन उपलब्ध कराने हेतु उच्चतम, शेखपुरा को आवेदन समर्पित किया गया।

25.01.2020: खनिज विकास पदाधिकारी, शेखपुरा द्वारा अंचलाधिकारी, अरियारी से प्राप्त प्रतिवेदन उच्चतम डाकवक्ता को उपलब्ध कराया गया।



28.01.2020: उच्चतम डाकवक्ता द्वारा राज्य पर्यावरण समाघात निर्धारण प्राधिकार (SEIAA) को आवेदन समर्पित किया गया।

28.02.2020: सदस्य सचिव, SEIAA को अपीलकर्ता द्वारा आवेदन समर्पित किया गया, जिसमें बेसलाइन डाटा अनुश्रवण मार्च 2020 से प्रारंभ करने की अनुमति की माँग की गयी।

07.03.2020: खनिज विकास पदाधिकारी, शेखपुरा को 500 मीटर की परिधि से संबंधित कलस्टर प्रमाण पत्र उपलब्ध कराने का अनुरोध किया गया।

16.03.2020: खनिज विकास पदाधिकारी, शेखपुरा द्वारा सूचना अपीलकर्ता को उपलब्ध करायी गयी।

29.01.2021: अपीलकर्ता द्वारा बिहार राज्य प्रदूषण नियंत्रण पर्षद को लोक सुनवाई के लिए आवेदन समर्पित किया गया।

17.12.2021: लोक सुनवाई सम्पन्न की गई।

30.06.2022: उच्चतम डाकवक्ता द्वारा खनिज विकास पदाधिकारी, शेखपुरा को जिला सर्वेक्षण प्रतिवेदन के संबंध में आवेदन दिया गया।

11.10.2022: अपीलकर्ता ने निदेशक, खान एवं भूतत्व विभाग को जिला सर्वेक्षण एवं खनन योजना के संबंध में आवेदन समर्पित किया गया।

21.11.2022: सदस्य सचिव, -SEIAA बिहार से शीघ्र पर्यावरणीय स्वीकृति निर्गत करने हेतु आवेदन समर्पित किया गया।

25.11.2022: SEIAA बिहार द्वारा जिला सर्वेक्षण प्रतिवेदन एवं खनन योजनाके संबंध में पृच्छा की गयी।

23.01.2023: समाहर्ता, शेखपुरा द्वारा दिनांक— 23.01.3023 का आदेश पारित किया गया।

7. बिहार लघु खनिज समानुदान नियमावली, 1972 के नियम 52 के पहत समाहर्ता, शेखपुरा द्वारा पत्थर भुखण्ड संख्या 27



की बंदोबस्ती के लिए नीलामी कराई गई थी। बिहार लघु खनिज समानुदान नियमावली, 1972 के नियम 25(1) के अनुसा समाहर्ता द्वारा खनन पट्टा स्वीकृत करने के आदेश के 120 दिनों के भीतर औपचारिक पट्टा प्रपत्र डि में निष्पादित किये जाने का प्रावधान है। उक्त नियम के परंतुक में प्रावधान है कि खनन योजना अनुमोदन और पर्यावरणीय स्वीकृत प्राप्त करने के बाद ही पट्टा निष्पादन किया जा सकता है। उपरोक्त प्रावधानों को बिहार खनिज (समानुदान, अवैध खनन, परिवहन एवं भंडारण निवारण) नियमावली, 2019 के नियम 28 द्वारा प्रतिस्थापित किया गया है, जहां पट्टा सविता निष्पादन के लिए 180 दिन निर्धारित किया गया है। बिहार खनिज (समानुदान, अवैध खनन, परिवहन एवं भंडारण निवारण) नियमावली, 2019 के तहत भी खनन योजना और पर्यावरण स्वीकृति प्राप्त करना अनिवार्य है।

11. माननीय उच्चतम न्यायालय द्वारा सिविल अपील संख्या-3661-3662/2020 में दिनांक- 10.11.2021 को पारित आदेश के आलोक में जिला सर्वेक्षण प्रतिवेदन अनुमण्डल स्तरीय समिति द्वारा तैयार किया जाना है, जिसकी समीक्षा राज्य विशेषज्ञ आंकलन समिति (SEAC) द्वारा किये जाने के उपरांत अनुमोदन की कार्रवाई राज्य पर्यावरण समाघात निर्धारण प्राधिकार (SEIAA) द्वारा की जानी है। अपीलकर्ता द्वारा वांछित जिला सर्वेक्षण प्रतिवेदन पुनः तैयार करने में उक्त प्रक्रिया का पालन करना होगा, जिसमें करीब छः से 12 माह का समय लग सकता है अर्थात् अपीलकर्ता को और समय दिया भी जाता है, तो वह वास्तविक खनन कार्य लगभग एक वर्ष बाद ही प्रारंभ कर सकेंगे।”



13. Learned Advocate for the respondent/writ-petitioner next draws our attention to Rule-28 of Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, which deals with execution of lease. Rule-28 runs thus:-

"28. Execution of lease.-(1) Where a mineral concession is granted under the rules the formal lease deed shall be executed by the Collector in Form "B" within 180 days of the order sanctioning the lease and if the person to whom such mineral concession has been granted fails to submit the required documents for execution within the aforesaid period the order sanctioning the lease shall be deemed to have been revoked, and in that event the application fee and the security deposit shall be forfeited.

Provided that no lease shall be executed unless the person to whom such lease has been granted submits the mining plan and environment clearances as required under these rules.

Provided further that where the Collector is satisfied that the person to whom such lease has been granted is not responsible for the delay in execution of the formal lease, he may permit the execution of the formal lease even after the expiry of the aforesaid period of 180 days.

(2) The date of the commencement of the period for which a mineral concession is granted



shall be the date on which the mining lease deed is executed under sub-rule (1) and the lessee shall be liable to pay rent/royalty from the date of the execution of the mining lease.

(3) The lease deed has to be duly registered by paying proper stamp duty and registration fees.

(4) No claim for extension of lease period shall be entertained for any delay."

14. Referring to the above provisions, it is contended by Mr. Samdarshi that duty of supplying D.S.R. with Geo-coordinates for issuance of environmental clearance lies upon the State-Respondents. If the D.S.R. and environment clearance were supplied by the Mining Authority and in spite of receipt of such documents, there was delay on the part of the respondent/writ-petitioner to execute the deed of lease within 180 days of the order sanctioning the list than the respondent might have been held to be responsible.

15. Mr. Samdarshi also refers to the second proviso of the aforesaid Rules of 2019 which gives power to the Collector to permit the execution of formal lease even after the expiry of the said period of 180 days, where the Collector is satisfied that the person to whom such lease has been granted is not responsible for delay in execution of formal lease.

16. The learned Advocate for the respondent/writ-



petitioner refers to a very recent decision in the case of *The Director of Mines and Geology Vs. M/s. BMM Ispat Ltd. & Anr.*, reported in **2026 INSC 627**. In the aforesaid decision an order of Karnataka High Court in Writ Petition No.6979 of 2017, whereby the Court allowed the respondent's petition directed against an order passed by the appellant herein, rejecting the respondent's representation made against the charge of higher royalty than what was stipulated in the tender agreement, which in itself was a consequence of an earlier round of litigation, was challenged. The Hon'ble Supreme Court in Paragraph Nos.12 & 13 held as hereunder:-

"12. This Court in its order fixing the rate of royalty at 10% use the word 'applicable', which denotes, in our understanding, applicability at the relevant time, of removing the tendered goods which already stood extracted, and does not intend to freeze the rate of royalty. We are supported in our conclusion by the understanding of a 9-Judge Bench in Mineral Area Development Authority (supra) wherein the payment of royalty is linked with dispatch. D.Y. Chandrachud, CJI writing for majority held as under:

"92... The expression "dispatch" has been defined to mean the removal of minerals or mineral products from the leased area and to include the consumption of minerals and mineral



products within such area. [MMDR Act, Section 3(aa).] It is worth noting that royalty is payable under Section 9 on the removal or consumption of minerals by the lessee in the leased area. Thus, essentially royalty is payable on the dispatch of minerals from the leased area."

(emphasis supplied)

13. In that view of the matter, the payment is to be made on the date of the movement of the minerals. If the date of the movement is after the enhancement in royalty, a contract entered into prior to the statutory change cannot be limiting its impact. In other words, the appellant was correct in deducting the additional 5% royalty from the security deposit of the respondent. It would have been entirely open to the respondents to remove the iron ore from the site at one go or at any date prior to the amendment, which they chose not to do. It is they who either adopted the piecemeal approach in moving the mineral or moved the entire quantity after the date of the amendment. As such, they cannot escape payment of enhanced royalty."

17. Mr. Samdarshi also refers to a three Judges Bench decision of the Hon'ble Supreme Court in ***Goa State Cooperative Bank Ltd. Vs. Krishna Nath A. (Dead) through Legal Representatives & Ors.***, reported in (2019) 20 SCC 38.



Paragraph No.23 of the said judgment states as follows:-

"23. The principle of restitution enjoins a duty upon the courts to do complete justice to the party at the time of final decision, and to do away with the effect of interim order in the fact situation of the case. In ***South Eastern Coalfields Ltd. Vs. State of M.P., (2003) 8 SCC 648***, it was observed that no party can take advantage of litigation, it has to disgorge the advantage gained due to delay, in case it is lost."

18. The learned Advocate General, on the other hand, refers to certain dates which are relevant for the purpose of this case from the record. In respect of the mining lease in question, auction was conducted by the District Magistrate, Shaikhpura on 18.03.2017. Letter of intent was issued on 21.09.2017. On 10.08.2018, the petitioner requested the respondent, Mineral Development Officer that for environmental clearance the petitioner seeks information which were to be provided by the Circle Officer, Ariari. On 13.09.2018 Mining Plan was submitted by the appellant. Subsequently, during the year 2018 and 2019, the writ-petitioner submitted representation to the Mineral Development Officer for providing information through the Circle Officer for submitting the said before SEIAA. On 28.01.2019, the petitioner submitted pre-feasibility report and



Proposed Terms of Reference before the SEIAA. Since March, 2020 to July, 2020 normal work of all Departments was suspended due to COVID Pandemic. On 07.09.2020 the SEIAA recommended to issue the terms of reference on the basis of recommendation of SEAC and SEIAA pointed out the discrepancies, such as approval of mining plan by the Department of Mines and Geology, D.S.R. lacking latitude and longitude etc. However, considering the COVID Pandemic, the SEIAA resolved to issue the term of reference subject to submission of certain documents and complying with the necessary directions dated 07.09.2020. On 29.01.2021, the petitioner deposited demand draft for conducting public hearing before the Bihar State Pollution Control Board. On 16.03.2021, the Mineral Development Officer communicated the Bihar State Pollution Control Board that on 24.04.2021 is the date fixed for public hearing. However, public hearing was conducted on 17.12.2021. On 30.06.2022, the petitioner again requested the Mineral Development Officer to provide approved D.S.R. with Geo-coordinates, without which SEIAA was not considering grant of environment clearance. Subsequently, a series of explanations was submitted before the District Magistrate and the Competent Authority in the Mining Department explaining



the petitioner's stands as to why the delay in issuing the sanction order was not attributable to the petitioner. However, on 23.01.2023 the Collector, Shaikhpura cancelled the sanction letter and forfeited the security deposit.

19. Referring to the above list of dates, it is submitted by Mr. S.D. Sanjay, the learned Advocate General that as per Rule-28(1) of 2019 Rules, the formal lease deed shall be executed by the Collector in Form 'B' within 180 days of the order sanctioning the lease and if the person to whom such mineral concession has been granted fails to submit the required documents for execution within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked, and in that event the application fee and the security deposit shall be forfeited.

20. If a person in favour of whom the sanction order is issued fails to produce necessary documents within 180 days for execution of the lease deed, the lease will automatically be revoked.

21. In the instant case, the letter of intent was issued on 21.09.2017, from the list of dates it appears that the petitioner for the first time took step on 10.08.2018 requesting the Mineral Development Officer to produce certain



information/ documents for obtaining environmental clearance. Thus, the petitioner for the first time took step to discharge his liability after the expiry of 180 days.

22. The learned Advocate General next draws our attention to paragraph No.33 of the impugned judgment, where the learned Single Judge observed as follows:-

“33. One cannot lose sight of the fact that despite there being delay and laches on part of the petitioner, the respondents too erred in not issuing the geo coordinates of the concerned Stone Block in the DSR, which also added to the duration of delay in obtaining environmental clearance.”

23. A bare perusal of the above quoted observation clearly suggests that there was delay and laches on the part of the writ-petitioner. Therefore, when the learned Single Judge found that the respondent/writ-petitioner was guilty by delay and laches, it was not proper for the learned Single Judge to extend equitable relief under Article 226 of the Constitution of India.

24. It is submitted by the learned Advocate General on behalf of the appellants that the equity cannot override the statutory principle.

25. The learned Advocate General next refers to



paragraph Nos.52, 53 & 54 of the impugned judgment. In paragraph No.52, the learned Single Judge directed the Competent Authority-cum-District Magistrate to finalize D.S.R. and thereafter, extend the time and issue work order followed by final settlement of contract of lease within a period of six weeks from the date of passing of this order. In paragraph No.53, the learned Single Judge observed that already more than six years have lapsed and no third party right is created, therefore, the Competent Authority-cum-District Magistrate and the Additional Chief Secretary considering that proposal has been submitted by the Proponent of Project before the SEIAA and considering the said proposal in detail as would appear from the letter dated 09.07.2020 for considering the 'Term of Reference' herein-above, petitioner having satisfied, the Competent Authority is required to take decision for issuing modified D.S.R. giving the Geo-coordinate expeditiously without further delay. In paragraph No.54, the SEIAA was directed not to cause any delay in taking decision to issue Environmental Clearance Certificate forthwith.

26. It is contended by the learned Advocate General that SEIAA was not even a party to the writ petition then how could the learned Single Judge pass a direction upon a State



Authority who is not a party to the writ petition.

27. Under the above stated premises, it is submitted by the learned Advocate General that till date the writ-petitioner failed to produce requisite documents for execution of the lease deed.

28. Rule-25 of Bihar Minor Mineral Concession Rules, 1972 clearly stipulates that the mining lease shall be executed by the Collector in Form 'D' within 120 days of the order sanctioning the lease and if the person to whom such lease has been granted fails to submit the required documents for execution within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked and in that event the application fee and the security deposit shall be forfeited. Thus, revocation of the lease deed is automatic. After the expiry of 120 days from the date of sanction, no formal order is also necessary. Section 25(1) is a deeming provision.

29. Having heard the learned Advocate for the respondent/writ-petitioner and the learned Advocate General on behalf of the appellants, the moot question that is required to be adjudicated is the scope of judicial review of the action of the State in matters relating to contract/tender under writ-jurisdiction.



30. It is needless to say that tender operates in the realm of the law of contract. Floating a tender by any organization is an invitation to offer. When the offer is accepted as per the terms of tender. The offers are examined and the person or company or firm who offers the highest bid is accepted. After acceptance under various rules created under the statute like Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019, Bihar Minor Mineral Concession Rules, 1972 as well as under different Rules on various matters.

31. The parties are directed to execute various documents and only on satisfactory execution of documents, a contract is entered into. A lease for quarrying sand or extracting stones for a particular period of time is basically a contract of lease.

32. The issue relating to the scope of judicial review of State action in matters relating to contract/tender under writ jurisdiction was elaborately dealt with in a three Judges Bench decision of the Hon'ble Supreme Court in ***Subodh Kumar Singh Rathore Vs. Chief Executive Officer & Ors.***, reported ***(2024) 15 SCC 461***. The Hon'ble Supreme Court was pleased to consider its earlier view and the present changes in judicial



review.

33. Over the years, the scope of judicial review and the extent to which a Court can interfere in disputes arising out of contracts or tenders has seen a significant development, marked by a nuanced understanding of the critical role of administrative discretion. The judicial quest in administrative matters has always been to find a right balance between: (i) allowing leeway to the States in deciding the exercise of their administrative discretion in matters pertaining to policy; and (ii) the need to ensure fairness and propriety in such administrative actions.

34. Earlier, the position of law was that any dispute arising out of a contract entered into with the State or its instrumentalities could not be adjudicated by the Court under its writ jurisdiction, as in all such cases, it could be said that the “real grievance” was essentially only one being that of breach of a contract for which the appropriate remedy would be an ordinary suit and not a writ petition.

35. Thus, for a period of time the courts recognised that there was a clear brightline distinction between when a State or its instrumentalities could be said to be acting in its executive capacity and when it could be said to be acting in its



private capacity, with the existence of a “contractual relation” *inter se* the parties being the determinative factor. Wherever, there was a contract, the State's relations and all its actions were said to be within the field of a contract i.e. within the realm of private law, and the courts would resile from interfering with the same under their writ jurisdiction or embarking upon a judicial review of such actions.

36. Such reluctance on the part of the courts stemmed from its understanding that the State or any of its instrumentalities must have the flexibility or the discretion to take decisions that are in the best interest of the public and efficient governance. The Government being the decision-maker of the State is said to be the best judge of when a contract or an agreement is in its interest and by its extension in the interest of the public, and as such the courts should not interfere in the State's discretion to award or terminate contracts. Another reason why contractual disputes were precluded from being espoused under the writ jurisdiction of the courts was due to the summary nature of such proceedings, which do not allow for an exhaustive review unlike civil suits.

37. This simplistic approach of the courts in deeming every act and action of the State which was complained of as



nothing more than a “contractual dispute” or a case of “breach of contract” often led to the State abusing its position and acting unfairly under the misconceived notion, that all its actions such as award of contracts or tenders were nothing but a “largesse” — a generosity bestowed upon its citizens, which it can at its own whims choose to deny, alter, modify, or take away without any consequences. This often led to a conflation of power with duty, and resulted in every arbitrary exercise of power by the State under the guise of a “contractual dispute” to remain unchecked and undisputable before the courts and out of the reach of judicial review, undermining the rights of the citizen to have their interests safeguarded and protected.

38. Over a period of time the courts recognised the crucial role of judicial oversight in preventing the abuse of power and maintaining public confidence in the administrative process. Courts developed various doctrines and principles to guide their review, such as the principles of natural justice, reasonableness and proportionality. These principles ensured that the administrative actions are not arbitrary, discriminatory or capricious. By enforcing such standards, the courts also ensured that the rule of law was maintained and the individual rights were protected.



39. The interplay between judicial review and administrative discretion has been a dynamic process. As new challenges and complexities kept on arising before the courts as regards the State's actions and governance, it continued to refine its approach. This ongoing dialogue between the courts and the executive branch contributed to the development of a more accountable and transparent administrative framework, paving the way for the exercise of judicial review even in the realm of contractual disputes to achieve a fine balance between efficiency and fairness in policy decisions on the one hand and the rights of individuals and overall public interest on the other.

40. In *Mahabir Auto Stores v. Indian Oil Corpn.* [*Mahabir Auto Stores v. Indian Oil Corpn.*, reported in (1990) 3 SCC 752 : (1990) 69 Comp Cas 746], this Court expressed doubts over the correctness of the earlier position of law, that actions of the State in the private contractual field cannot be questioned in writ jurisdiction. This Court further held that even if the *inter se* relation of parties with the State is governed purely by a contract, the method, motive and decision of the State would be subject to judicial review on the grounds of relevance and reasonableness, fair play, natural justice, equality and non-discrimination. This view was reiterated in subsequent



decisions.

41. The decision of the Hon'ble Supreme Court in A.B.L. International Ltd. Vs. Export Credit Guarantee Corpn. of India Ltd., reported in (2004) 3 SCC 553 is significant and was the turning point in the scope of judicial review in contractual matters. In this landmark ruling, the Court decisively laid down and approved that a relief against the State or its instrumentalities in matters related to contractual obligation can be sought under the writ jurisdiction.

42. It is needless to state that in matters concerning specific modalities of the such as required work, execution methods, material quality, time frame, contract the supervision standards, and other aspects impacting the tender's purpose court usually refrains from interference. State authorities, like private individuals, have a consensual element in contract formation. The stipulations or terms in the underlying contract purpose are part of the consensual aspect, which need not be entertained by the courts in writ jurisdiction and the parties may be relegated to ordinary private law remedy. Judicial review does not extend to fixing contract stipulations but ensures that the public authorities act within their authority to prevent arbitrariness.



43. Thus, the demarcation between a private law element and public law element in the context of contractual disputes if any, may be assessed by ascertaining whether the dispute or the controversy pertains to the consensual aspect of the contract or tender in question or not. Judicial review is permissible to prevent arbitrariness of public authorities and to ensure that they do not exceed or abuse their powers in contractual transactions and requires overseeing the administrative power of public authorities to award or cancel contracts or any of its stipulations. **(emphasis supplied)**
(Paragraph Nos.33 to 43 are reproduced from head notes in *Subodh Kumar Singh Rathore* (supra)).

44. Factual aspects of the instant appeal are not in dispute that the letter of intent was issued on 21.09.2017. The statutory rule provides that from the date of issuance of letter of intent, the lease is required to be executed within 120 days under 2019 Rules or within 180 days under 1972 Rules, as the case may be. Admittedly the respondent/writ-petitioner took step to obtain environmental clearance on 10.08.2018, i.e. after a lapse of about 11 months. There is no explanation as to the delay committed by the writ-petitioner to obtain environmental clearance. Subsequent to 10.08.2018, the State Government also



delayed supplying necessary document and according to the writ-petitioner environmental clearance was not issued by the concerned department because the respondents failed to produce geo-coordinate mentioning latitude and longitude of the stone block. In the meantime about nine years have elapsed.

45. Under such backdrop if we consider the factual circumstances of the case this appears to us that both the parties are responsible for contributory negligence in the matter of timely execution of the lease deed for quarrying stone from Block No.27.

46. We are in agreement with the learned Advocate General that due to non-execution of the deed of lease and failure on the part of the writ-petitioner from extracting stone from the stone mines, the appellant has lost revenue and financial gain.

47. It is, however, contended by Mr. Samdarshi that as per the terms of agreement, the writ-petitioner was obliged to pay the price of stone prevailing on the date of actual extraction of stones. Therefore, the State Government will not loose any revenue, royalty or any other financial benefit.

48. However, it is obvious that the rate of revenue has ofcourse been enhanced within 9-10 years. The royalty depends



upon determination of revenue and charges of royalty over a particular block. Therefore, the royalty that was fixed in the year 2017 must not be the same as on this date.

49. The learned Single Judge failed to consider this aspect of contributory negligence and consequent loss incurred by the State Government for non-execution of lease deed.

50. Since the State Government failed to comply with the part of their promise by providing necessary documents for environmental clearance within the stipulated period of time, the State Government/appellants were negligent in the same manner as that of the writ-petitioner who initiated the process of having D.S.R. and environmental clearance after about one year of issuance of letter of intent. On due recognition of appellants' negligence, we set aside the portion of the order passed by the Collector and affirmed by the Appellate Tribunal of forfeiture of the initial bid amount paid by the respondent/writ-petitioner to the tune of Rs.2,90,00,000/- (Rupees Two Crore Ninety Lakhs only).

51. At the same time, we impose interest over the said amount at the rate of 12% per annum from the date of depositing the amount till the date of payment. Such amount shall be paid by the appellant before initiation of new tender



process in respect of Block No.27. It is also made clear that the writ-petitioner shall be given an opportunity to participate in the new tender process and its past conduct cannot be considered by the State Authority to reject his claim. If the writ-petitioner becomes L-1, he will be entitled to get the order of intent.

52. In the instant case as well as in many other cases of similar type we have noticed that execution of lease deed is being delayed because of the failure on the part of the State Government in its various departments to produce necessary documents immediately after the letter of intent. Therefore, we propose to formulate the following guidelines so that mining lease may not be revoked for want of necessary documents like environmental clearance etc. before execution of lease deed:-

(i) henceforth, District Survey Report (DSR) in respect of the tender shall be produced alongwith the notice of tender in respect of mining blocks;

(ii) the D.S.R. must contain geo-coordinate mentioning latitude and longitude and all other information of each block separately;

(iii) within 15 days from the date of auction, the letter of intent shall be published;



(iv) within 15 days from the date of receipt of the letter of intent, the successful bidder shall deposit the mining plan;

(v) mining plan shall be approved within 15 days from the date of submission of the plan;

(vi) within 7 days thereafter the successful bidder shall make requisite application before SEIAA for environmental clearance, on receipt of environmental clearance from the Central Government, the deed of lease shall be executed within the statutory period of time as contemplated in the Rules.

(vii) failure to provide the information by executing appropriate documents shall be considered as non-performance of promise by the concerned department of the State Government and the State Government shall be under obligation to pay damages for non-performance of their part of performance."

53. Since we have come to a decision that the deed of lease was revoked by the State Government, as a result of contributory negligence by both the parties, we have no other



alternative but to set aside the order passed by the learned Single Judge.

54. For the reasons stated above, the instant appeal is allowed.

55. The District Magistrate, Shaikhpura is directed to comply with the order regarding payment of initial deposit with interest within the stipulated period of time to the writ-petitioner.

56. Let a copy of this order be sent to the Chief Secretary, Government of Bihar, Patna for information and issuance of appropriate direction to maintain the guidelines described herein-above, in the matter of execution of the deed of lease in connection with mines and minerals.

(Bibek Chaudhuri, J)

Rana Vikram Singh, J: I Agree.

(Rana Vikram Singh, J)

mdrashid/-

AFR/NAFR	NAFR
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