

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3337 of 2021

Broad Son Commodities Private Limited, a Company incorporated Under the Provisions of the Companies Act, 1956 having its registered Office at Dr. Himanshu Complex, Block Road, Koilwar Chouk, P.S. Koilwar, District Bhojpur (Ara), through its Director, Ashok Kumar aged about 65 Years (Male), Son of Ram Chandra Saw, resident of Village/ Mohalla-Pareo, P.S. Bihta, District Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner-Cum-Principal Secretary, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna 800001.
2. The Principal Secretary Cum Commissioner Mines, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna-800001.
3. The Special Secretary Cum Director, Mines and Geology Department Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
4. The Assistant Director, Department of Mines and Geology, Government of Bihar, Vikas Bhawan, Bailey Road, Patna.
5. The District magistrate-Cum-Collector, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Suraj Samdarshi, Adv

For the Respondent/s : Mr. Sunil Kumar Mandal, SC-3

Mr. Ravi Ranjan Kumar Singh AC to SC-3

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 14-12-2021

Following question arises for consideration before this

Court:-

Does the conduct of the petitioner disentitle him from making the claim that the action of the State in granting extension of mining lease on an amount slightly higher than the prevalent rate amounts to unconscionable, illegal, arbitrariness



or unreasonable act?

2. Petitioner has prayed for the following reliefs:-

“(i) For issuance of a writ, order or direction in the nature of *mandamus* commanding the Respondents to levy and charge royalty for the extended period of settlement of the sand ghats in the District of Patna, according to the terms and conditions of the sand policy 2013, the tender document for settlement for the period 2015-19 and the settlement agreement.

(ii) Consequent to grant of relief no. (i) to issue a further writ, order or direction in the nature of *mandamus* commanding the Respondents to refund the excess royalty paid by the petitioner for the extended period i.e. from 01.01.2020 till 31.10.2020 and from 01.11.2020 till 31.12.2020.

(iii) This Hon’ble Court may adjudicate and hold that extensions granted to the petitioner from 01.01.2020 till 31.10.2020 and from 01.11.2020 till 31.12.2020, were extensions of the existing settlement for the years 2015-2019 upon the same terms and conditions and therefore the Respondents could not have varied the terms and conditions thereof, more particularly insofar as calculation of payable royalty for such extended period is concerned.

(iv) This Hon’ble Court may further adjudicate and hold that for the extended period i.e. from 01.01.2020 till 31.10.2020 and 01.11.2020 till 31.12.2020, the petitioner was liable to pay royalty at the rate of 120% of the royalty payable for the year 2019.

(v) This Hon’ble court may further adjudicate and hold that action of the Respondents in charging royalty for the extended period, at the rate of 150% of the royalty payable for the year 2019, is incorrect and illegal as the same amounts to modifying/altering of the terms and conditions of the existing settlement agreement, which is not permissible in the case of an extension.

(vi) This Hon’ble Court may further adjudicate and hold that import of memo no. 4948 dated 27.12.2019 and memo no. 4949 dated 27.12.2019 was merely to extend, enlarge and prolong the existing lease/settlement and therefore the respondents could not have modified the terms and conditions thereof, particularly insofar as calculation of royalty for such extended period is concerned.

(vii) This Hon’ble Court may adjudicate and hold that the action of the respondents in this matter is completely



unjustified and unwarranted.”

3. It is not in dispute that vide a written agreement dated 16.09.2015, rights for mining the sand in accordance with the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the Rules) stood accorded to the petitioner. The grant, which is commonly termed as settlement, was for a period of five years commencing from the calendar year 2015 up to 2019. The settlement amount for these five calendar years, as stipulated in the agreement, reads as under:-

Settlement amount of calendar year, 2015 is Rs.41,15,41,390/- (Fourty One Crores Fifteen Lacs Fourty One Thousand Three Hundred Ninety Only)

Settlement amount of calendar year, 2016 will be 120% of calendar year 2015 settlement amount i.e. 49,38,49,668/-.

Settlement amount of calendar year, 2017 will be 120% of calendar year 2016 settlement amount i.e. 59,26,19,602/-.

Settlement amount of calendar year, 2018 will be 120% of calendar year 2017 settlement amount i.e. 71,11,43,522/-.

Settlement amount of calendar year, 2019 will be 120% of calendar year 2018 settlement amount i.e. 85,33,72,226/-.

4. This agreement did not contain any condition entitling the petitioner for either extension or renewal. It is also



not in dispute that the grant, by virtue of Rule 34 of the Rules can be renewed on the application being filed by the lessee. But even this was not done.

5. It is also not in dispute that the matter with regard to the issue of mining of sand in the area in issue, though in an unrelated matter, was pending consideration, before Hon'ble the Apex Court. In this backdrop, the State could not take any steps for auctioning the sand Ghats or grant any fresh mining lease. Our attention is also invited to the fact that such action was prompted also on account of the pendency of the matter before the National Green Tribunal. Resultantly, the State, took a policy decision whereby the existing lessees were allowed to continue, by way of an extension, with the mining operation of the minor mineral, i.e., the sand, on certain terms and conditions. The notification and communication in this regard as contained in Annexures 8 and 9, which read as under:-

“बिहार सरकार
खान एवं भूतत्व विभाग।
अधिसूचना

पटना, दिनांक.....

02/एम0एम0-(बा0)-59/19-...../एम0 बिहार खनिज (समानुदान, अवैध खनन, परिवहन एवं भंडारण निवारण) नियमावली, 2019 के नियम 77 (2) के तहत दिनांक - 31.12.2019 को समाप्त हो रही बालू बंदोबस्तधारियों की बंदोबस्ती अवधि को दिनांक - 31.10.2020 अथवा नये बालू बंदोबस्तधारियों को पर्यावरणीय स्वीकृति उपरांत कार्यादेश निर्गत करने की तिथि जो पहले हो, तक अवधि-विस्तार पंचाग वर्ष 2019 को बंदोबस्ती राशि पर 50 प्रतिशत वृद्धि के साथ स्वीकृति दी जाती है।

2. प्रस्ताव में मंत्रिपरिषद की स्वीकृति प्राप्त है।

बिहार राज्यपाल के आदेश से



ह0/-
(अरुण प्रकाश)
सरकार के विशेष सचिव

ज्ञापांक - 02/ एम0एम0-(बा0)-59/19/एम0, पटना,
दिनांक.....

प्रतिलिपि :- अवर सचिव, (ई-गजट कोषांग), वित्त विभाग, बिहार, पटना को सी0डी0
सहित प्रेषित करते हुए अनुरोध है कि इसकी 100 (एक सौ) प्रतियाँ मुद्रित
कर खान एवं भूतत्व विभाग, बिहार, पटना को उपलब्ध करायी जाय।

ह0/-
सरकार के विशेष सचिव

ज्ञापांक - 02/ एम0एम0-(बा0)-59/19/एम0, पटना, दिनांक.....
प्रतिलिपि :- सभी विभागों के अपर मुख्य सचिव/प्रधान सचिव/सचिव/विभागाध्य
क्ष/प्रमण्ड्रीय आयुक्त/ जिला पदाधिकारी को सूचनार्थ एवं आवश्यक
कार्रवाई हेतु प्रेषित।

ह0/-
सरकार के विशेष सचिव

ज्ञापांक - 02/ एम0एम0-(बा0)-59/19/एम0, पटना, दिनांक.....
प्रतिलिपि :- सदस्य सचिव, राज्य पर्यावरण समाघात निर्धारण प्राधिकरण, बिहार, पटना को
सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह0/-
सरकार के विशेष सचिव

ज्ञापांक - 02/ एम0एम0-(बा0)-59/19 - 4948/एम0, पटना, दिनांक. 27/12/19
प्रतिलिपि :- सभी उप निदेशक/सहायक निदेशक/खनिज विकास पदाधिकारी/खान
निरीक्षक को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

ह0/-
सरकार के विशेष सचिव”

“बिहार सरकार
खान एवं भूतत्व विभाग।

सं0सं0 - 02/एम0एम0-(बा0)-32/1...../एम0, पटना, दिनांक...
प्रेषक,

अरुण प्रकाश भा0प्रा0से0
विशेष सचिव-सह निदेशक।

सेवा में,
सभी समाहर्ता।

विषय :- पंचांग वर्ष 2015-19 के लिए संचालित बालू घाटों की बंदोबस्ती के अवधि
विस्तार के संबंध में।

प्रसंग- विभागीय अधिसूचना सं0 - 4948/एम0, दिनांक - 27.12.2019

महाशय ,

उपर्युक्त विषयक संबंध में आप अवगत है कि विभागीय अधिसूचना संख्या -
4948/एम0, दिनांक - 27.12.2019 द्वारा बिहार खनिज (समानुदान, अवैध खनन, परिवहन
एवं भंडारण निवारण) नियमावली, 2019 के नियम - 77 (2) के तहत दिनांक 31.12.2019
को समाप्त हो रही बालू बंदोबस्तधारियों की बंदोबस्ती अवधि को दिनांक 31.10.2020
अथवा नये बालू बंदोबस्तधारियों को पर्यावरण स्वीकृति उपरांत कार्यादेश निर्गत करने की



तिथि जो पहले हो, तक अवधि-विस्तार पंचांग वर्ष 2019 के बंदोबस्ती राशि पर 50 प्रतिशत वृद्धि के साथ स्वीकृति दी गई है। तदालोक में पंचांग वर्ष 2019 की बंदोबस्ती राशि में 50 प्रतिशत की वृद्धि करते हुए माह अक्टूबर 2020 तक 10 माह की समानुपातिक राशि को 4 समान किस्तों में बन्दोबस्तधारियों से निम्नवत् प्राप्त किया जाना है :-

;पद्ध प्रथम किस्त - 31.12.2019 तक अथवा (कार्यादेश निर्गत के पूर्व)

;पद्ध द्वितीय किस्त - 31.01.2020 के पूर्व

;पद्ध तृतीय किस्त - 29.02.2020 के पूर्व

;पद्ध चतुर्थ किस्त- 20.03.2020 के पूर्व

2. बंदोबस्ती अवधि के विस्तार के क्रम में यह आवश्यक है कि विस्तारित अवधि के लिए बंदोबस्तधारी से निर्धारित प्रपत्र में एकरारनामा भी करा लिया जाए। साथ ही बंदोबस्तधारी से देय किस्त के साथ अन्य मदों में नियमानुसार DMF, GST, INCOME TAX इत्यादि हेतु भुगतेय राशि भी प्राप्त कर लिया जाए।

विश्वासभाजन

ह0/-

(अरुण प्रकाश)

विशेष सचिव-सह-निदेशक

पत्रांक :- 4949 / एम0, पटना, दिनांक :- 27.12.19

प्रतिलिपि :- सभी उपनिदेशक/सभी सहायक निदेशक/सभी खनिज विकास पदाधिकारी/सभी खान निरीक्षक को सूचनार्थ एवं आवश्यक कार्रवाई हेतु प्रेषित।

Sd/-अस्पष्ट

विशेष सचिव-सह-निदेशक”

6. The grant was extended with an enhanced amount of 150% instead of 120%.

7. It is also not in dispute that pursuant thereto, petitioner continued with the mining operation on the aforesaid terms and conditions and never ever objected to the same.

8. It is argued that the decision of the State Government (Annexure- 8) is in the nature of an extension and not renewal of a fresh lease and, as such, extension cannot be at variance with the terms of the original grant.



9. In support, learned counsel for the petitioner places reliance on paragraph 14 of a decision of the Hon'ble Apex Court in **Provash Chandra Dalui v. Bisawanath Banerjee, 1989 Supp (1) SCC 487** which reads as under:-

“14. It is pertinent to note that the word used is “extension” and not “renewal”. To extend means to enlarge, expand, lengthen, prolong to carry out further than its original limit. Extension, according to Black's Law Dictionary, means enlargement of the main body addition of something smaller than that to which it is attached; to lengthen or prolong. Thus extension ordinarily implies the continued existence of something to be extended. The distinction between “extension” and “renewal” is chiefly that in the case of renewal, a new lease is required, while in the case of extension the same lease continues in force during additional period by the performance of the stipulate act. In other words, the word “extension” when used in its proper and usual sense in connection with a lease means a prolongation of the lease. Construction of this stipulation in the lease in the above manner will also be consistent when the lease is taken as a whole....”

10. Learned counsel for the petitioner further relies on a decision of the Hon'ble Apex Court in **State of Gujarat & Ors. v. Nirmalaben S. Mehta and Ors., (2016) 9 SCC 240**, which reiterates the view taken in **Provash Chandra Dalui** (supra).

11. It is further argued that this is a case of unjust enrichment and of the State being in a dominating position as compared to the petitioner.

12. The instant petition was filed only on 30th January,



2021, much after the petitioner accepted the terms and conditions, extending the grant (settlement). Petitioner's right of extension flows only from the decision taken by the State, Annexure-8, reproduced supra. Neither from the agreement nor from the Rules. It was open for him to have either accepted or rejected the terms of extension. He could have conveniently handed over the site back to the State, had the terms not been acceptable to him. Conveniently, he continued with the mining operation and after reaping benefits in terms of the Cabinet decision, as an afterthought, has now filed the present petition and the act being nothing short of dishonesty.

13. In our considered view, petitioner is bound by the terms and conditions of the decision of the State Government (Annexure 8). He has not only impliedly accepted the change in terms but has also taken considerable action in furtherance thereof. Section 8 of the Indian Contract Act, 1872 reads as under:-

“8. Acceptance by performing conditions, or receiving consideration.—Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.”

14. In **Bharat Petroleum Corpn. Ltd. v. Great**



Eastern Shipping Co. Ltd., (2008) 1 SCC 503, Hon'ble the

Apex Court held as under:-

“19. It is, no doubt, true that the general rule is that an offer is not accepted by mere silence on the part of the offeree, yet it does not mean that an acceptance always has to be given in so many words. Under certain circumstances, offeree's silence, coupled with his conduct, which takes the form of a positive act, may constitute an acceptance—an agreement sub silentio. Therefore, the terms of a contract between the parties can be proved not only by their words but also by their conduct.”

15. In the case of **M.P. Mittal Vs. State of Haryana & Ors. (1984) 4 SCC 371**, the Hon'ble Supreme Court held as follows:-

"The appeal arises out of a writ petition, and it is well settled that when a petitioner invokes the jurisdiction of the High Court under Article 226 of the Constitution, it is open to the High Court to consider whether, in the exercise of its undoubted discretionary jurisdiction, it should decline relief to such petitioner if the grant of relief would defeat the interests of justice. The Court always has power to refuse relief where the petitioner seeks to invoke its writ jurisdiction in order to secure a dishonest advantage or perpetuate an unjust gain. This is a case where the High Court was fully justified in refusing relief."

16. We notice from Annexure 8 (reproduced supra) that the decision taken by the Government emanates from Rule 77 (2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019 which is



reproduced below:-

“77. Power of Government to relax the operation of any provision of these Rules. – xxxxx

(2) Notwithstanding anything contained in these rules, the State Government, in such case as it deems proper in public interest, may grant a mining lease/mining settlement and may also authorize the grant of a quarrying permit or movement permit to any person on terms and conditions other than those prescribed in these rules for reasons to be recorded in writing:

Provided that the State Government may grant a mining lease/settlement/in any area under its jurisdiction to any Government Department or State owned Corporation on terms and conditions other than those prescribed in these Rules.”

17. Rule 77 (2) clearly empowers the State Government to grant a mining lease or settlement on terms and conditions other than those prescribed in the Rules and, therefore, a grant which is outside the stipulated condition, as in the present case, is permitted so long as the reasons for doing so are recorded in writing.

18. In the instant case, only on account of the pendency of proceedings before the Hon’ble Apex Court as also the National Green Tribunal, the State could not take any decision for putting the settlement to auction under the Rules. It is under these peculiar circumstances that the State, left with no option, came out with a policy of granting continuance of the mining operations, subject to payment of certain amount. Under the



original lease, the lessee was entitled to pay an enhanced amount of rupees 120% of the previous calendar year, whereas under the policy in question, he is required to pay 150%. The enhancement by 30%, in our considered view, cannot be said to be grossly disproportionate or on the higher side.

19. The petitioner has relied on a decision of the Hon'ble Apex Court in **Central Inland Water Transport Corporation Limited v. Brojo Nath Ganguly & Ors., (1986) 3 SCC 156** to make a case for the decision of the State Government as being against public policy. We find it prudent to reproduce below relevant portion, clarifying what such a finding would entail.

“76. Under which head would an unconscionable bargain fall? If it falls under the head of undue influence, it would be voidable but if it falls under the head of being opposed to public policy, it would be void. No case of the type before us appears to have fallen for decision under the law of contracts before any court in India nor has any case on all fours of a court in any other country been pointed out to us. The word “unconscionable” is defined in the Shorter Oxford English Dictionary, 3rd Edn., Vol. II, p. 2288, when used with reference to actions etc. as “showing no regard for conscience; irreconcilable with what is right or reasonable”. An unconscionable bargain would, therefore, be one which is irreconcilable with what is right or reasonable.

77. Although certain types of contracts were illegal or void, as the case may be, at common law, for instance, those contrary to public policy or to commit a legal wrong such as a crime or a tort, the general rule was of



freedom of contract. This rule was given full play in the nineteenth century on the ground that the parties were the best judges of their own interests, and if they freely and voluntarily entered into a contract, the only function of the court was to enforce it. It was considered immaterial that one party was economically in a stronger bargaining position than the other; and if such a party introduced qualifications and exceptions to his liability in clauses which are today known as “exemption clauses” and the other party accepted them, then full effect would be given to what the parties agreed. Equity, however, interfered in many cases of harsh or unconscionable bargains, such as, in the law relating to penalties, forfeitures and mortgages. It also interfered to set aside harsh or unconscionable contracts for salvage services rendered to a vessel in distress, or unconscionable contracts with expectant heirs in which a person, usually a money lender, gave ready cash to the heir in return for the property which he expects to inherit and thus to get such property at a gross undervalue. It also interfered with harsh or unconscionable contracts entered into with poor and ignorant persons who had not received independent advice (See Chitty on Contracts, 25th Edn., Vol. I, paras 4 and 516).

“93. The normal rule of Common Law has been that a party who seeks to enforce an agreement which is opposed to public policy will be non-suited. The case of *A. Schroeder Music Publishing Co. Ltd. v. Macaulay* [(1974) 1 WLR 1308] however, establishes that where a contract is vitiated as being contrary to public policy, the party adversely affected by it can sue to have it declared void. The case may be different where the purpose of the contract is illegal or immoral. In *Kedar Nath Motani v. Prahlad Rai* [AIR 1960 SC 213 : (1960) 1 SCR 861] reversing the High Court and restoring the decree passed by the trial court declaring the appellants' title to the lands in suit and directing the respondents who were the appellants' benamidars to restore possession, this Court, after



discussing the English and Indian law on the subject, said: (at p. 873)

“The correct position in law, in our opinion, is that what one has to see is whether the illegality goes so much to the root of the matter that the plaintiff cannot bring his action without relying upon the illegal transaction into which he had entered. If the illegality be trivial or venial, as stated by Williston and the plaintiff is not required to rest his case upon that illegality, then public policy demands that the defendant should not be allowed to take advantage of the position. A strict view, of course, must be taken of the plaintiff's conduct, and he should not be allowed to circumvent the illegality by resorting to some subterfuge or by misstating the facts. If, however, the matter is clear and the illegality is not required to be pleaded or proved as part of the cause of action and the plaintiff recanted before the illegal purpose was achieved, then, unless it be of such a gross nature as to outrage the conscience of the court, the plea of the defendant should not prevail.”

The types of contracts to which the principle formulated by us above applies are not contracts which are tainted with illegality but are contracts which contain terms which are so unfair and unreasonable that they shock the conscience of the court. They are opposed to public policy and require to be adjudged void.”

(Emphasis supplied)

20. Hence, in these attending circumstances, there cannot be any issue of unjust enrichment by the State or the State being in a superior dominating position as is so argued before us. There is nothing on record to support the contention of the learned counsel for the petitioner.



21. It also cannot be said that the decision of the State Government (Annexure 8) is against public interest for it would enhance the retail price of the sand. This contention only merits rejection, more so, in view of absence of any grievance vented out by the retailer. Also it being a policy decision taken by the State which cannot be said to be arbitrary, capricious, illegal or unreasonable.

22. The petitioner's case, in the considered view of this Court, does not meet the threshold set out in the **Brojo Nath Ganguly** (supra), is within the confines of the power of the State Government as per the Rule 77(2) of the 2019 Rules and does not violate public policy in any manner.

23. No other point argued.

24. Hence, we do not find any reason to interfere with the decision of the State Government dated 27.12.2019 (Annexure-8) and the communication dated 27.12.2019(Annexure-9), *inter alia*, the conduct of the petitioner in terms of the delay in approaching this Court precludes him from doing so after having taken full advantage of the very mining lease of which, the price he seeks to challenge.

25. The question raised is answered accordingly.



26. The present petition stands dismissed.

27. Interlocutory application, if any, shall stand dismissed.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/sanjay-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	16.12.2021
Transmission Date	NA

