

Narendra Singh Vs. State of Bihar and ors.

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Court : Patna

Decided On : Jul-28-1998

Judge : M.Y. Eqbal, J.

Appeal No. : Cr.W.J.C. No. 70 of 1998

Appellant : Narendra Singh

Respondent : State of Bihar and ors.

Judgement :

M.Y. Eqbal, J.

1. In this writ application, the petitioner has prayed for quashing the First Information Report as contained in Annexure-6 to the writ petition and further for issuance of an appropriate writ and/or direction to the Deputy Commissioner, Santhal Pargana, Dumka, to fix the sale price of sand for the year 1998 under the provisions of Bihar Minor Mineral Concessions Rules, 1972.

2. The petitioner took settlement of sand ghat of Bijaypur and Rasikpur being highest bidder and the District Mining Officer, Dumka by letter dated 31.12.1997 asked the petitioner to execute agreement. It is stated that Bijaypur and Rasikpur Balughat were being settled by auction in 1995 fixing reserve Jama of Rs. 1,40,000/-, but the price of sand was not fixed. In 1996, reserved Jama was enhanced to Rs. 1,73,000/- and the price of sand was fixed to be Rs. 90/- per

hundred cubic feet. The petitioner's case is that in the notice of auction for settlement of Balughats for the period 1.1.1998 to 31.12.1998, reserve Jama of the aforesaid two Balughat was enhanced to Rs. 2,07,000/- without fixing price of the sand. It is stated that one Basant Kumar Jha, approached the Mines Commissioner, Patna, who vide his order dated 25.4.1997 passed in Revision No. 37 of 1997 directed the Deputy Commissioner, Dumka, to fix the price of sand to be sold, but no price was fixed and as reserve Jama was enhanced, so it would be deemed that price of sand was enhanced. The petitioner's case is that since 1996, the price of sand was not fixed although reserve Jama was enhanced from time to time and according to the petitioner even if enhancement is made, the price of the sand cannot be below Rs. 165/- per hundred cubic feet. The petitioner's case is that without fixing price of the sand in the year 1997 and 1998, on the instigation of the enemies of the petitioner first information report was lodged by the District Mining Officer, Dumka alleging therein that the petitioner was collecting Rs. 165/- per hundred cubic feet of sand. The action of the District Mining Officer in lodging the F.I.R. alleged to be an abuse of the process of the Court.

3. A counter affidavit has been filed in this case by the respondent-State, wherein the District Mining Officer, Patna, refuting the allegations made in the writ application stated, inter-alia, that although the selling rate of the sand was previously fixed at Rs. 90/- per hundred cubic feet by the Government on the request of the Deputy Commissioner, Dumka, vide letter No. 1763 dated 26.4.1996, the petitioner has been illegally realising price of sand at the rate of Rs. 165/- per hundred cubic feet from the buyers. It is stated that the previous rate of sand is still prevailing and thus the petitioner has no right to sell the sand at an arbitrary rate of Rs. 165/- per hundred cubic feet. However, it is stated that as per direction of the Mines Commissioner is Revision No. 37 of 1997 filed by one Basant Kumar Jha, necessary steps have been taken and processes of fixation of price of sand is in process. Lastly it is stated that the petitioner in violation of the terms and conditions of the settlement has been selling the sand at a higher price for which a criminal case has been rightly instituted by lodging F.I.R.

4. I have Mr. Ram Chandra Jha, senior counsel appearing for the petitioner and leaned counsel appearing on behalf of the Respondent-State.

5. From perusal of the writ application and the counter affidavit and after hearing the counsel for the parties, two questions emerge for consideration by this Court. Firstly whether the act of the petitioner in selling the sand at the rate of Rs. 165/- per hundred cubic feet or at the rate above Rs. 90/- per hundred cubic feet is justified; (ii) secondly whether it is incumbent upon the respondents to fix the price of sand as claimed by the petitioner.

6. So far as first point is concerned, admittedly the petitioner, pursuant to the advertisement issued by the respondents for the settlement of the aforesaid Balughat, participated in the auction. In the advertisement published in the newspaper, details of the sand ghat, reserve Jama and terms and conditions for the auction was mentioned which is evident from Annexure-2 which is a copy of the advertisement. Paragraph 16 of the terms and conditions provides that the Government has fixed rate of sand at the rate of Rs. 90/- per hundred cubic feet and the settlee has to sell the sand at the said price, failing which the settlement shall be cancelled and the security money shall be forfeited. It is true that the rate as fixed by the Government in the year 1996, but so long as the rate is not re-fixed by the Government, the petitioner was bound to sell the sand at a price of Rs. 90/- per hundred cubic feet. In my opinion, therefore, if the allegation made by the respondents in the F.I.R. is found true and proved then certainly the petitioner may be held guilty for violating the terms and conditions of the settlement. In my opinion, therefore, there is no valid ground for quashing the F.I.R. lodged by the respondent against the petitioner for the alleged selling of sand at the rate of Rs. 165/- per hundred cubic feet.

7. So far as the second point is concerned, as noticed above, the respondents in their counter affidavit have stated that as per direction of the Commissioner of Mines, vide his order dated 25.4.1997, the Deputy Commissioner's process of fixation of price is under consideration. It is unfortunate that the order was passed by the Mines Commissioner on 25.4.1997 and more than one year has passed, but till date, the Government have not revised the rate of sand when the reserve Jama has been increased by the Government and there is no justification to keep the file pending for indefinite period. Relief sought for by the petitioner is, therefore, justified.

8. Having regard to the facts of the case and discussions made above, this writ application is allowed in part and direction is issued to the respondents to take final decision in the matter of fixation of price as directed by the Commissioner of Mines at the earliest, and preferably within one month from the date of receipt of production of a copy of this order. However, I do not find any reason to quash the F.I.R. lodged by the District Mining Officer.

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