

**NON-REPORTABLE**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**I.A. Nos. 154740-154741 of 2021, 153531-153532 of 2021, 165173 of 2021, 160138 of 2021, 160139 of 2021, 160142 of 2021 and 163177 of 2021**

**IN**

**CIVIL APPEAL NOS.3661-3662 OF 2020**

**THE STATE OF BIHAR AND OTHERS                      ...APPELLANT(S)**

**VERSUS**

**PAWAN KUMAR AND OTHERS                              ...RESPONDENT(S)**

**ORDER**

**1.** All these I.As arise out of the directions issued by this Court vide order dated 10<sup>th</sup> November 2021 in Civil Appeal Nos. 3661-3662 of 2020.

**2.** The State of Bihar had approached this Court challenging the order dated 14<sup>th</sup> October 2020, passed by the National Green Tribunal, Principal Bench, New Delhi

(hereinafter referred to as “the Tribunal”) in O.A. No. 40/2020/EZ with O.A. No. 57/2020/EZ, thereby issuing various directions. This Court after taking into consideration various aspects, including the necessity to curb illegal mining activities and the necessity to permit legal mining in the interregnum till the other directions issued by this Court are complied with, had issued the following directions dated 10<sup>th</sup> November 2021:

**“14.** We therefore find it appropriate to substitute the directions issued by the Tribunal vide judgment and order dated 14<sup>th</sup> October 2020, with the following directions:-

(i) The exercise of preparation of DSR for the purpose of mining in the State of Bihar in all the districts shall be undertaken afresh. The draft DSRs shall be prepared by the sub-divisional committees consisting of the Sub-Divisional Magistrate, Officers from Irrigation Department, State Pollution Control Board or Committee, Forest Department, Geological or mining officer. The same shall be prepared by undertaking site visits and also by using modern technology. The said draft DSRs shall be prepared within a period of 6 weeks from the date of this order. After the draft DSRs

are prepared, the District Magistrate of the concerned District shall forward the same for examination and evaluation by the SEAC. The same shall be examined by the SEAC within a period of 6 weeks and its report shall be forwarded to the SEIAA within the aforesaid period of 6 weeks from the receipt of it. The SEIAA will thereafter consider the grant of approval to such DSRs within a period of 6 weeks from the receipt thereon;

(ii) Needless to state that while preparing DSRs and the appraisal thereof by SEAC and SEIAA, it should be ensured that a strict adherence to the procedure and parameters laid down in the policy of January 2020 should be followed;

(iii) Until further orders, we permit the State Government to carry on mining activities through Bihar State Mining Corporation for which it may employ the services of the contractors. However, while doing so, the State Government shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.”

The matter was directed to be listed after 20 weeks.

**I.A. Nos. 154740-154741 of 2021**

**3.** The present I.As have been filed being aggrieved by the cancellation of Letter of Intent (hereinafter referred to as the “LoI”) dated 21<sup>st</sup> January 2020, issued in favour of the applicant. The applicant also apprehended that in view of the order dated 10<sup>th</sup> November 2021 passed by this Court with respect to Banka District, the State Government may also issue short Notice Inviting Tender (hereinafter referred to as the “NIT”) with respect to Kishanganj District. After the present I.As were filed, NIT has also been issued in respect of sand ghats in Kishanganj District on 2<sup>nd</sup> December 2021.

**4.** Shri Mukul Rohatgi, learned Senior Counsel appearing on behalf of the applicant submitted that the applicant was a successful bidder in the auction held for the Kishanganj District and as such, the action of the respondent in cancelling the LoI and issuing fresh NIT for Kishanganj District is not sustainable in law. It is submitted that the offer of the applicant was for a much higher amount as compared to the offer received by the respondent-Bihar State Mining Corporation (hereinafter referred to as the “Corporation”) for Kishanganj District. He therefore

submitted that it is in the interest of justice that the applicant may be permitted to carry out the mining activities in the Kishanganj District.

**I.A. Nos. 153531-153532 of 2021**

5. In the present I.As, the applicant claimed that it was a successful bidder for auction of sand ghats in respect of Banka District for the period from 2015 to 2019. It is the case of the applicant that it had been granted extension after the year 2019 from time to time and the last of such extensions was granted till 31<sup>st</sup> March 2022. The applicant apprehended that in pursuance to the order dated 10<sup>th</sup> November 2021 passed by this Court, NIT would also be issued in respect of Banka District. During the pendency of these I.As, NIT in respect of sand ghats in Banka District has been issued by the Corporation on 2<sup>nd</sup> December 2021.

6. We have heard Shri Narender Hooda, learned Senior Counsel appearing on behalf of the applicant in the said application.

7. Shri Hooda submitted that since the applicant was the highest bidder in the auction conducted for the period from

2015 to 2019 and since thereafter, the applicant had been granted extensions, he is entitled to carry out the mining activities at least till 31<sup>st</sup> March 2022. He further submitted that the amount which the respondent-Corporation would receive for the sand ghats in pursuance to the NIT dated 2<sup>nd</sup> December 2021, is much less than the one the applicant has offered and therefore, it is in the interest of justice that the applicant be permitted to continue with the mining activities at least till 31<sup>st</sup> March 2022.

**I.A. No. 165173 of 2021**

**8.** The grievance of the present applicant is somewhat similar to the grievance of the applicant in I.A. Nos. 154740-154741 of 2021. Here again, it is the contention of the applicant that it was a successful bidder in respect of the sand ghats in the Jamui District in the bids conducted in the year 2019. It is therefore submitted that the impugned NIT dated 15<sup>th</sup> November 2021 issued by the Corporation prejudicially affects the interest of the applicant.

**9.** We have heard Shri Prashant Bhushan, learned counsel in support of the said application. Shri Bhushan submitted

that the applicant was a successful bidder in the bids conducted in the year 2019 and he is entitled to be appointed as a contractor or in the alternative at least he be granted a right to match the highest bidder along with the right of first refusal.

**I.A. Nos. 160138, 160139 and 160142 of 2021**

**10.** The grievance of the present applicant is similar to the grievance of the applicant in I.A. Nos. 153531-153532 of 2021. It is the case of the applicant that it was a successful bidder for the period from 2015 to 2019 at Nawada District. Thereafter, the applicant was granted extensions from time to time and the last of such extensions was granted till 31<sup>st</sup> March 2022.

**11.** Shri C.A. Sundaram, learned Senior Counsel appearing on behalf of the applicant submitted that as such, the applicant would be entitled to carry out the mining activities till 31<sup>st</sup> March 2022.

**I.A. No. 163177 of 2021.**

**12.** In the present application, it has been submitted on behalf of the applicant that the mining activities which are being carried out by the Corporation are without the grant of Environmental Clearance. It is submitted that the very purpose for which the order was passed by the Tribunal and modified by this Court, was to ensure that the environment is not damaged on account of rampant mining activities without the grant of Environmental Clearance by the Competent Authority. It is therefore submitted that the NITs dated 15<sup>th</sup> November 2021 and 2<sup>nd</sup> December 2021 are silent about the environmental aspects and therefore, the action of the respondent-Corporation in issuing NITs amounts to contempt of this Court.

**13.** Shri Atmaram Nadkarni, learned Senior Counsel appearing on behalf of the appellant-State of Bihar submitted that the NITs in question were issued for a limited period in view of the order passed by this Court dated 10<sup>th</sup> November 2021. He submitted that the rest of the directions as are issued by this Court with regard to preparation of draft District Survey Report (hereinafter referred to as “DSR”) and



consideration of the same by State Expert Appraisal Committee (hereinafter referred to as “SEAC”) and State Environment Impact Assessment Authority (hereinafter referred to as “SEIAA”) are under process. He further submitted that in view of the permission granted by this Court vide order dated 10<sup>th</sup> November 2021, the Corporation is employing the services of the contractor for the limited period. He submitted that after the directions issued by this Court are complied with, a fresh process for allotment of sand ghats in accordance with law would be initiated subject to the orders of this Court. He further submitted that while permitting the mining activities through the services of the contractor, the Corporation is ensuring that no damage is caused to environment by such activities.

**14.** We had issued the directions vide order dated 10<sup>th</sup> November 2021 in the peculiar facts and circumstances of the matter. We had noticed that unless the detailed DSRs are prepared by the Sub-Divisional Committees by undertaking site visits and using the modern technology and unless the same are examined by SEAC and SEIAA, it will

not be appropriate to carry out the mining activities. However, we had also noticed that if there is a ban on mining activities, apart from it leading to illegal sand mining, criminalization and clashes between the sand mafias, it would also cause huge loss to the public exchequer. We had noticed that sand is also required for construction of public infrastructural projects as well as public and private construction activities.

**15.** Taking into consideration these aspects of the matter, we had issued directions so that the Sub-Divisional Committees, the SEAC and SEIAA act within the stipulated time periods. We had granted 6 weeks' time at each level and had directed the matter to be kept after 20 weeks. However noticing, that during the said period, it was necessary to permit the mining activities so as to prevent illegal mining and also to prevent loss to the public exchequer, we had permitted the Corporation to carry out the mining activities, and further to employ the services of the contractor. However, while doing so, we had directed the State Government to ensure that all environmental concerns are

taken care of and no damage is caused to the environment. It could thus be seen that this was only a stop gap arrangement.

**16.** A perusal of the NITs in question, issued by the Corporation would reveal that the Corporation has specifically referred to the order dated 10<sup>th</sup> November 2021, passed by this Court and has also specified that the operation period of sand ghats will only be up to 31<sup>st</sup> March 2022, and subject to further orders passed by this Court in the present proceedings.

**17.** Insofar as the applicants in I.A. Nos. 153531-153532 of 2021 and I.A. Nos.160138, 160139 and 160142 of 2021, who claim to have a vested right in view of the extensions granted in their favour are concerned, we see no merit in these applications. Though they were successful in the bidding process held in the year 2015, which was extended up to 2019 and thereafter, they were only continuing under the extensions granted.

**18.** Insofar as the other applicants in I.A. Nos.154740-154741 of 2021 and I.A. No.165173 of 2021 are concerned,

though they were successful bidders in the tender process conducted in the year 2019, in view of the order passed by the Tribunal dated 14<sup>th</sup> October 2020, which was modified by this Court vide order dated 10<sup>th</sup> November 2021, they also cannot claim a vested right to do the mining activities.

**19.** Taking into consideration the peculiar facts and circumstances in which we had passed the order, we find that entertaining any of such applications would result in further complications. In any case after our directions issued on 10<sup>th</sup> November 2021 are complied with, we will take a final look of the matter in the last week of March, 2022. The NITs issued by the Corporation for mining, cover the period only up to 31<sup>st</sup> March 2022. We are therefore not inclined to entertain the aforesaid four I.As.

**20.** Insofar as the I.A. No. 163177 of 2021, filed by the applicant alleging contempt of this Court's order dated 10<sup>th</sup> November 2021 is concerned, we have already directed the State of Bihar to ensure that while carrying out the mining activities, it shall ensure that all environmental concerns are taken care of and no damage is caused to the environment.

We remind the State Government of the said directions and direct it to ensure that the said directions are complied with scrupulously.

**21.** In that view of the matter, I.A. Nos. 154740-154741 of 2021, 153531-153532 of 2021, 160138 of 2021, 160139 of 2021, 160142 of 2021 and 165173 of 2021 are rejected.

**22.** I.A. No. 163177 of 2021 is disposed of in terms of paragraph (20) of this order.

.....**J.**  
**[L. NAGESWARA RAO]**

.....**J.**  
**[B.R. GAVAI]**

**NEW DELHI;**  
**JANUARY 18, 2022.**