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Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021

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The 2nd July 2021

Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021.

No. 04/V.MU.-20-17/21-1652/M--In exercise of the powers conferred under section 15 read with section 23 C and Section 26 of Mines & Minerals (Development & Regulation) Act, 1957 the Governor of Bihar is hereby pleased to make the following Rules regarding the Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Rules, 2019.

1. **Short title, extent and commencement :-** (1) These Rules shall be called Bihar Minerals (Concession, Prevention of Illegal Mining, Transportation & Storage) Amendment Rules, 2021.
(2) It shall extend to the whole state of Bihar.
(3) It shall come into force from the date of its publication in the Official Gazette.
2. **The following new sub rule 17 (6) (vi) shall be added after Rule 17(6) (v):-**
17(6)(vi). Transfer of Mining Plan:- In case of premature termination or surrender of any mineral concession the approved mine plan shall be deemed to be transferred to any legal person to whom such mineral concession is subsequently settled.
3. **The following new Rule 18 (4) shall be added after Rule 18 (3) of the Rules :-**
18 (4) Transfer of Environmental Clearance. :-Where a settlement of mineral concession is cancelled by the Government in accordance with law or in any legal proceeding or is surrendered by the mineral concession holder, the environmental clearance granted in respect of such mineral concession/lease/sand ghat/sand block/quarry may be transferred to any entity subject to the same or extended validity period.
For this the Assistant Director (H.Q.)/ Director Mines /Joint Secretary or any other officer authorized by the government shall issue no objection certificate in the capacity of transferor.
4. **In sub Rule 29 F, the word 'may' in the first line shall be substituted by the word 'shall'.**
5. **A new sub Rule 30(5) shall be inserted as follows :-**
30(5) - Whoever contravenes the provision of sub rule 30 (1), (2) & (4) and refuses to make payment shall be punished by the competent Court with imprisonment for a term which may extend upto two years.
6. **The sub rule (3) of Rule 39, would be amended to read as follows :-**
" 39(3): Whosoever fails to obtain a license in Form K , or issue a challan in Form G, or maintain the register in form 'H', or is found to violate the rules, would be liable for punishment under rule 56".
7. **Rule 56 shall be substituted by the following:-**
56. Illegal mining, transportation and storage of minerals :-
(1) No person shall extract or remove or undertake any mining operation in any area without holding any mineral concession, permit or any other permission granted or permitted under these rules, or shall transport or store or cause to be transported or stored any mineral without a valid challan or license.
(2) Whoever contravenes the above sub rule shall be punished with an imprisonment for a term, which may extend to two years or with a fine which may extend to five lakh rupees, or with both:

Provided that the mining officer of the district or the Assistant, Deputy, Additional Director or Director Mines, or any other officer authorized by the Government, may either before or after the institution of the prosecution, compound

the offence committed in contravention of the above rule, on payment of cost of mineral and compound fee as mentioned below:-

Sl. No	Vehicle/Equipment	Compound fee (in Rs.) Per unit
1	Tractor trolley	25000/-
2.	Matador/Half truck 407,608	50000/-
3.	Full body truck/ Dumper (hydraulic 6 wheeler vehicle)	100000/-
4.	10 or more than 10 wheeler vehicle	200000/-
5.	Crane, Excavator, Loader, Power hammer, Compressor, Drilling machine etc.	400000/-

Note:- Cost of the mineral shall be taken as twenty five times of royalty in lieu of rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority, etc..

Provided that the amount of compound fee in cases other than specified as above shall not be less than rupees twenty five thousand and shall be in addition to the cost of mineral.

(3) Whenever any person, without a lawful authority, raises any mineral from any land other than under any mineral concession or any other permission and for that purpose bring on the land any tool, equipment, vehicle or other thing, such tool, equipment, vehicle etc. along with mineral, if any, shall be seized by the mining officer or a police officer of the district or any other officer authorized by the Collector, who shall give a receipt to the person from whose possession the property or mineral is seized:

Provided that every officer seizing any property or mineral under this rule, shall handover the property or mineral so seized to the nearest police station or police chauki.

Provided further that, the seized vehicle, equipment or mineral shall be released after deposition of cost of mineral along with the compound fee as specified in sub-rule (2).

Provided also that, where mineral so raised has already been dispatched or consumed, the authorities mentioned in sub-rule (3) shall recover cost of mineral along with the compound fee as specified in sub-rule (2).

Provided also that where vehicle, equipment or mineral so seized is not released, the officer seizing the property or mineral shall make a report of such seizure within twenty four hours to the Collector.

(4) All property seized under this rule shall be liable to be confiscated by an order of the Collector if the amount equal to twenty five times of royalty in lieu of cost of mineral, rent, royalty, compensation for environmental degradation and tax chargeable on the land occupied without lawful authority etc., along with compound fee is not paid by the offender within a period of one month from the date of commission of such offence or when the recoveries are not affected by that time:

Provided that on payment of these dues within the said period of one month, all properties seized shall be ordered to be released and shall be handed over to the offender or the owner of the property.

- (5) Where the person committing an offence under these rules is a company registered under Companies Act, every person who at the time when the offence was committed, was in charge and was responsible to the company for conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be prosecuted and punished accordingly:
- (6) The mines, revenue, police and transport department shall make coordinated efforts to vigil illegal mining or transportation of the mineral.
- (7) Procedure for confiscation and auction of property seized under this rule. –**
- (i) Subject to sub-rule (2), where the Collector upon production before him of property seized or upon receipt of report about seizure, as the case may be, is satisfied that an offence has been committed in respect thereof, he may by order in writing and for reasons to be recorded confiscate the mineral so seized together with all tools, arms, boats, vehicles, ropes, chains or any other article used in committing such offence. A copy of order on confiscation shall be forwarded without undue delay to the Mines Commissioner.
- (ii) No order confiscating any property shall be made under sub-rule 7 (i) unless the Collector—
- (a) issues a notice in writing to the person from whom the property is seized, and to any other person who may appear to the Collector to have some interest in such property;
- (b) affords an opportunity to the persons referred to above, of making a representation within such reasonable time as may be specified in the notice against the proposed confiscation, and
- (c) gives to the officer effecting the seizure and the person or persons to whom notice has been issued under clause (b), a hearing on date to be fixed for such purposes.
- (iii) No order of confiscation under sub-rule (1) of any tools, arms, boats, vehicles, ropes, chains or any other article (other than the mineral seized shall be made if any person referred to in clause (b) of sub-rule 7(ii) proves to the satisfaction of the Collector that any such tools, arms, boats, ropes, chains or other articles were used without his knowledge or convenience or as the case may be, without the knowledge or convenience of his servant or agent and that all reasonable and necessary precautions had been taken against use of the objects aforesaid for commission of the offence.”
- (iv) All tools, arms, boats, vehicles, ropes, chains or other articles confiscated would be auctioned as per government rules.
- (v) Order of confiscation not to interfere with other punishment. - The order of any confiscation under Rule shall not prevent imposition of any other punishment to which the person affected thereby is liable under these rules or any other law.

8. A new rule 56(A) shall be inserted.

56(A) - Appeal against the order of confiscation.—Any person aggrieved by an order of confiscation may within thirty days of the order, or if the fact of such order has not been communicated to him within thirty days of date of knowledge of such order, prefer an appeal in writing, accompanied by such fee payable in such form as may be prescribed, along with the certified copy of order of confiscation to the Mines Commissioner (hereinafter referred to as Appellate Authority). Explanation—(1) The time required for obtaining certified copy of order of confiscation shall be excluded while computing period of thirty days referred to in this sub-rule.

(2) The Appellate Authority referred to in rule 56A, may, where no appeal has been preferred before him, “suo motu” within thirty days of date of receipt of copy of order of

confiscation by him, and shall on presentation of memorandum of appeal issue a notice for hearing of appeal or, as the case may be, of "suo motu" action to the officer effecting seizure and to any person (including appellant, if any) who in the opinion of the Appellate Authority, is likely to be adversely affected by the order of confiscation, and may send for the record of the case:

Provided that no formal notice of appeal need be issued to such amongst the appellant, officer effecting seizure and any other person likely to be adversely affected as aforesaid, as may waive the notice or as may be informed in any other manner of date of hearing of appeal by the Appellate Authority.

(3) The Appellate Authority shall send intimation in writing of lodging of appeal or about "suo motu" action, to the Collector.

(4) The Appellate Authority may pass such order of "Interim" nature for custody preservation or disposal (if necessary) of the subject matter of confiscation, as may appear to be just or proper in the circumstances of the case.

(5) The Appellate Authority having regard to the nature of the case or the complexities, involved, shall permit parties to the appeal to be represented by their respective legal practitioner.

(6) on the date fixed for hearing of the appeal or "suo motu" action, or on such date to which the hearing may be adjourned, the Appellate Authority shall peruse the record and hear the parties to the appeal if present in person, or through any agent duly authorized in writing or through a legal practitioner, and shall thereafter proceed to pass an order of confirmation, reversal or modification order of confiscation: Provided that before passing any final order the Appellate Authority may if it is considered necessary for proper decision of appeal or for proper disposal of "suo motu" action make further inquiry itself or cause it to be made by the Collector, and may also allow parties to file affidavits for asserting or refuting any fact that may raise for consideration and may allow proof of facts by affidavits.

(7) The Appellate Authority may also pass such orders of consequential nature, as it may deem necessary.

(8) Copy of final order on an order of consequential nature, shall be sent to the Collector for compliance or for passing any appropriate order in conformity with the order of Appellate Authority.

9. The Following new Rule 83(5) shall be added after rule 83(4) of the Rules :-

Rule 83(5):- Order by Collector to pay compensation

- (i) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) the Collector, while passing an order under these rules may, if he is satisfied that any person or his property has suffered damaged due to action of the settlee/licensee, order to pay, by way of compensation, a suitable amount to such person:
- (ii) In case of non-payment by the settlee/licensee, the said compensation amount within the specified time, the Collector may recover the said compensation as "Public Demand" under the Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914).

- (iii) Any person aggrieved by an order under sub-Rule (i) may, within thirty days from the date of the order, prefer an appeal to the Mines Commissioner.

Provided that no appeal can be filed against any order filed under this Rule unless 40% of the amount determined or such amount as the appellant admits to be due from him, whichever is greater is deposited by the Appellant in the Mines Commissioner's Court.

**By the Order of the Governor of Bihar,
Sushil Kumar,
Under Secretary to the Government.**

**अधीक्षक, सचिवालय मुद्रणालय,
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