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Court : Jharkhand

Decided On : Jan-03-2002

Reported in : 2002(50)BLJR1115

Judge : M.Y. Eqbal, J.

Acts : Bihar Minor Mineral Concession Rules, 1972 - Rule 40

Appeal No. : CWJC No. 3364 of 2000 (R)

Appellant : Awash

Respondent : State of Bihar and ors.

Advocate for Def. : R. Kumar, JC to Addl. AG

Advocate for Pet/Ap. : Anil Kumar Sinha, Sr. Adv. and Anil Kumar, Adv.

Disposition : Application allowed

Judgement :
ORDER

M.Y. Eqbal, J.

1. By the Court.--In this writ application the petitioner has prayed for quashing the order communicated vide letter No. 973 dated 16.8.2000 issued by respondent No. 4. the Assistant Mining Officer, Jamshedpur whereby he has directed the

petitioner to deposit royalty and penalty in respect of the materials purchased from different sources for construction of buildings and apartments.

2. The petitioner's case is that he is engaged in promoting and developing the residential and commercial housing complex in the town of Jamshedpur. It is stated that at no point of time the petitioner was engaged in any works contract with the Department of either the State Government or the Central Government or any other undertaking for any construction work. The Minor Minerals like sand and grabels used by the petitioner-firm for construction of the buildings are pur-chased from different sellers in the locality. Those sellers/suppliers are either the lessee, sub-lessee, agent, manager or permit-holders. The petitioner is neither a permit-holders. The petitioner is neither a permit-holder nor a lessee in respect of Minor Minerals. The petitioner used to purchase these articles from open market. It is, therefore, stated that the petitioner is not works contractor as defined in Rule 40, Sub-rule (10) of the Bihar Minor Mineral Concession Rule, 1972.

3. The respondents case in the counter affidavit is that the petitioner-firm is engaged in construction of building/Apartments and sale the same to the purchasers.

The Petitioners used bricks, sand, stones, morrum, soil and stone-chips in bulk quantity for construction of building. It is stated that the Secretary, Mines and Geology. Department, vide latter dated 17.12.97.decided that in the construction of apartment, minor minerals are used without paying of the royalty and the Government is to lose a huge amount of royalty, so the transport challan is demanded from the builders only with a view to get it be assured as to whether the royalty has been paid for the minor minerals used in construction of building and the contractors may not be allowed to escape from their liability to pay royalty on the materials used by them to the State. The respondents further stated that the petitioner while making construction of building illegally transported the minor minerals and consumed the same for which the State is put in loss and that is why the Department demanded the transport challan only to verify as to whether the materials used in construction, royalty has been paid or not. Lastly it is stated that the State Government has full competence to prescribe a suitable rule or procedure to give effect to the purpose for which such provisions are made.

4. Mr. A.K. Sinha, learned senior counsel appearing for the petitioner assailed the impugned demand of royalty as being illegal and wholly without jurisdiction. Learned counsel submitted that the petitioner is neither a lessee nor a licensee and he simply uses the minor minerals by purchasing it from different persons. Learned counsel further submitted that the petitioner is neither a works contractor nor executing a works contract of the State Government or the Central Government or any other local authorities. The petitioner is, therefore, not required to furnish From 'M' and From 'N' as the provision of Rule 40 of the Minor Mineral Concession Rules, 1972 does riot at all apply in respect of the work done by the petitioner.

5. On the other hand, learned JC to Additional Advocate General submitted that admittedly the petitioner has been purchasing minor minerals from different sources and the respondents in order to give full effect to the purpose for which the provisions under the Rules have been made, have been demanding challans and other documents in order to satisfy that royalty in respect of the said minerals have been paid to the Government. Learned Counsel submitted that the Builders and Developers have to show the transporting challans or the materials used in the construction of buildings to assure thatroyalty has been paid to the State for the materials used in the construction of building. Learned counsel put reliance on a Division Bench decision of the Patna High Court in the case of Madhusudan Choudhary v. State of Bihar, 1996 (1) PLJR 723.

6. Having regard to the pleadings of the parties and the rival contentions made by the learned counsel the only question that falls for consideration is as to whether a contractor like the petitioner other than works contractor are liable to submit Form 'M' and Form 'N' in compliance of the requirement of Rule 40(1) of the Bihar Minor Mineral Concession Rules, 1972 (in short 'Rules').

7. Before answering the question it would be useful to refer some of the provisions of the Act and the Rules. Section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957 (in short 'the Act') confers powers to the State Government to make rules for regulating the grant of lease in respect of minor

minerals and for purposes connected therewith. Sub-section (3) of Section 15 provides that the holder of mining lease or any other mineral concession granted under any rule made under Sub-section (1) shall pay royalty in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed in the rules framed by the State Government in respect of minor minerals.

8. The Bihar Minor Mineral Concession Rules. 1972 has been framed to regulate and frame rules for grant of lease in respect of minor minerals. The relevant rule for the instant case is Rule 40 of the said Rules. Sub-rule (1) provides that any person found extracting or removing minor minerals or whosoever is found to be extracting or removing minor minerals otherwise than in accordance with the Rules shall be a party to the illegal removal of minor minerals and shall be liable to punishment under the said Rules. Sub-rules 8 and 9 of Rule 40 reads as under :--

'8. Whoever removes minor mineral without valid lease/permit or on whose behalf such removal is made otherwise than in accordance with these rules he be an agent, manager, contractor, or a sublessee, shall be presumed to be a party to the illegal removal of the minor mineral and shall be liable to pay (the price thereofand the Govt. may also recover from such person rent, royalty or taxes, as the case may be, for the period during which the land was occupied by such person without any lawful authority) without prejudice to other action being taken against him under these Rules or any other law for the time being in force.'

9. Notwithstanding anything contained in Rule 40(8) hereinbefore, whosoever, under the terms of an agreement other than an agreement under these rules at any time has received or receives cost of minor mineral/material including royalty under the terms of the said agreement shall deposit that royalty which is included in such cost of mineral/material in the manner prescribed in Rule 43 hereinafter, within seven days from the date of receipt of such cost of mineral/material.

Any royalty received as such by such person before the commencement of this rule shall be deposited by him within fifteen days from the date of commencement of this rule;

Provided that if a sum equal to the royalty included in the cost of mineral/ material so received has already been paid or deposited prior to receipt of cost of the mineral/material including royalty by him he shall not be required to deposit the royalty said above;

Provided further that any royalty payable under this rule, if not paid when due be recovered with interest @ 15 per cent per annum as an arrear sum of public demand.'

9. From bare perusal of the aforesaid provisions it is clear that the State Government shall be entitled to recover royalty and other taxes from any person who is found removing minor mineral without valid lease or permit or on his behalf such removal is made otherwise than in accordance with the Rules. Sub-rule 9 also makes provisions for recovery of royalty and cost of the minerals.

10. Sub-rule 10 of Rule 40 which is most relevant for the instant case reads as under :--

'10. To prevent evasion of royalty it is provided that works contractor shall purchase the minerals from lessee/permit holder and authorised dealers only and noworks department shall receive the bill which the works contractor submit to recover cost etc. of mineral used by them in completion of the works of the Works Department under any agreement from the works contractor if the said bill is not accompanied by an affidavit in Form 'M' with particulars in Form 'N' of these rules along with a photo copy of the said affidavit and particulars. It shall be the duty of the officer who receives or on whose behalf the said bill is received to send the copy of the affidavit and particulars to the District Mining Officer/Assistant Mining Officer within whose Jurisdiction the mineral was allegedly purchased for verification.

If contents of the said affidavit on verification by the concerned District Mining Officer/Assistant Mining Officer is found to be false either wholly or partly it shall be presumed that the concerned mineral was obtained by illegal mining and in that (sic) Assistant Mining Officer shall take action as prescribed in these rules against the maker of the said affidavit:

Provided that if the works contractor deposit or pays the royalty in respect of the mineral so consumed/supplied by him as shown in the aforesaid affidavit and particulars the said District Mining Officer/Assistant Mining Officer in his discretion may not take action as prescribed in this rule. Explanation.--For the purposes of this rule--(i) 'Works Department' means department of the Central or State Government including Company, Corporation, Undertaking, Autonomous body of the Government engaging works contractors for any kind of construction on its behalf.

(ii) 'Works Contractor' means an individual, a firm, a company, an association or body of individual who under an agreement, with the Works Department work for the said Department.

11. As noticed above Rule 40 of the Rules shows that whosoever is found to be extracting or removing minor minerals of on his behalf such extraction or removal is being made otherwise than in accordance with these Rules shall be presumed to be a party to the illegal extraction and removal of minerals Sub-rule 10 makes a specificprovision in respect of purchase of minerals by the Works Contractor for the execution of works of a Government Department with a view to prevent evasion of royalty. According to this rule a Works Contractor shall purchase the minerals from the lessee or permit holder and authorised dealers only on receipt of the bills showing payment of royalty. It further provides that the works Department shall not receive bills from the Works Contractor if the said bill is not accompanied by an affidavit in Form 'M' with particulars in Form 'N' along with other particulars. Explanation to the said Rule, however, makes it dear that the works contractor shall mean an individual, a firm, a company or a body of individuals who entered into an agreement with the Works Department in respect of execution of certain work. The term 'Works Department' has also been classified which means the departments of the Central Government or the State Government including Company, Corporation, Undertaking of the Government engaging works contractor for any kind of construction.

12. The respondents in their counter affidavit have not alleged that the petitioner is a Works Contractor and he has been carrying on construction work in the Works

Department. The respondents have also not alleged that minor minerals used in execution of contract works has been removed or extracted by the petitioner in violation of the Rules or the petitioner is holding a mining lease or any other mineral concessions granted under the Rules.

13. Sub-rule 10 of Rule 40 of the Minor Mineral Concession Rules, 1972 has been considered by a Division Bench of the Patna High Court in M/s. Madhusudan Chaudhary's case (supra) wherein their lordship have observed as under:--

'To make it more specific that the procedures as prescribed under Sub-rules (8) and (10) are well within the competence of the State Government, it will also be useful to notice Sub-section (5) of Section 21 of the Central Act to show that whenever any person raises minerals without any lawful authority from any land, the State Government may recover from such person, mineral so raised or may also recover rent, royalty or tax, as the case may be. This is not the case of the State that in normal course also contractors are liableto pay royalty. But as per Sub-rule (10) of Rule 40 such contractors are required to satisfy the authorities that with respect to the minerals used by them in execution of contract work royalty was paid. Therefore, to prevent evasion of royalty the Government has to adopt regulatory procedure to command the contractors to purchase minerals only from the lease or permit holder. But, on verification, if it is found that such minerals were not purchased from the lessee or any other person authorised under section 15 of the Act, it would be presumed that minerals were illegally extracted, removed or transported. Therefore, undisputedly, Sub-rules (8) or (10) of Rule 40 have been framed with a view to regulate mining leases and to check unauthorised evasion of royalty and illegal mining.'

14. An explanation appended to Section or Clause gets incorporated into it and becomes an integral part of it and has no independent existence apart from the section. If the language of the explanation shows a purpose and the construction consistent with that purpose can be reasonably placed upon it, that construction will be preferred as against any other construction which does not fit in with the description or the avowed purpose. In this connection reference may be made to the decisions of the Supreme Court in the cases of State of Bombay v. United

Motors, AIR 1953 SC 252 and Bengal Immunity Company Ltd, v. State of Bihar, AIR 1955 SC 661.

15. As noticed above, the explanation given in Sub-rule (10) of Rule 40 very clearly speaks that for the purpose of conditions imposed in this rule, 'Works Contractor' means an individual, a firm or a company doing work with the works department under an agreement. The explanation further explains that 'works department' means department of the Government or local authorities of the Government. It is, therefore, clear that Sub-rule (10) of Rule 40 does not apply to such contractors who have been doing construction work of persons other than Central or State Government departments or Corporation, Undertaking or any other bodies of the Government. Therefore, the demand by the respondents vide the impugned memo No. 973 dated 16.8.2000 from the petitioner for payment of royalty in respect of the minorminerals used by the petitioner in the construction of building and apartment is illegal and unjustified in law.

16. Although the respondents by the impugned letter directed the petitioner to deposit royalty in respect of the minerals used by the petitioner in the construction work but in the counter affidavit filed by the respondents it is stated that they have demanded transport challans only from the builders like the petitioner with a view to get it assured that royalty for such mineral has been paid. In this connection it must be held that the authorities of the respondents are entitled to verify the challans and the contractors are required to satisfy the authorities that with respect to the minerals used by them in execution of construction work, royalty has been paid by supplier or seller wherefrom the minerals were purchased by the contractor. On verification of challans, if it is found that such minerals were not purchased from the lessee or any other person authorised under the Act, it would be presumed that the minerals were illegally extracted, removed or transported in violation of the rules and consequently the authorities would be entitled to proceed in accordance with law.

17. Having regard to the facts and circumstances of the case and the law discussed hereinabove, this writ application is allowed and the impugned demand of royalty from the petitioner by the impugned letter is quashed. However, the

petitioner shall satisfy the authorities, by production of challans and other documents, that they have used or they shall use the minor minerals after purchasing the same from the persons authorised under law and royalty in respect of such minerals has been paid to the Government.