

## Virendra Giri and Sanjeev Kumar Agrawal Vs State of U.P.

**Court:** Allahabad High Court

**Date of Decision:** Nov. 16, 2007

**Acts Referred:** Mines and Minerals (Development and Regulation) Act, 1957 " Section 9

**Citation:** (2008) 1 AWC 678 : (2008) 104 RD 77

**Hon'ble Judges:** V.M. Sahai, J; R.N. Misra, J

**Bench:** Division Bench

**Final Decision:** Disposed Of

### Judgement

V.M. Sahai and R.N. Misra, JJ.

By way of this writ petition the petitioners have prayed for a writ, order or direction in the nature of

certiorari quashing the impugned orders dated 31.8.2007 and 4.10.2007 passed by respondent no, which is filed as Annexure-2 to the writ

petition, by which the respondents have demanded royalty from the petitioner son the supply of Stones and similar relief in the nature of mandamus

directing the respondents not to with-hold payment of the petitioners in pursuance of the said letters.

2. We have heard Sri I.P. Singh, learned Counsel for the petitioners and Smt. Sarita Singh, learned Standing Counsel appearing for respondents.

3. From the contents of the writ petition, it appears that the petitioners are registered Contractor in District Budaun. The Executive" Engineer

Flood Division), Irrigation Department invited tenders for supply of the stone holders for the construction of ""Chandanpur Husainpur Tatbandh"".

The tender of the petitioners were accepted and in pursuance of the order they supplied stone holders to the Irrigation Department. They

purchased stone holders through agents and paid the price. This fact is not disputed that the petitioners being registered contractor was given work

order by the respondent No. 3 and they supplied the materials. By the impugned orders/letters 31.8.2007 and 4.10.2007, the Project Manager

U.P. Projects Corporations Limited. Bareilly has demanded the royalty at the rate of Rs. 30 per cubic meter on the supply of the stone holders

from the petitioners. The petitioners has urged that they have purchased the store bonders from the mining lessee through their agents and have

paid the price and had got the receipts. They are not liable to pay royalty because the royalty is to be paid by the license holder of the mines.

4. A very substantial question of law has been raised by the petitioner in this writ petition regarding liability to pay royalty on the stones taken out

from the mines. Section 9 of Mines and Mineral (Regulation and Development) Act 1957 lays down provisions for payment of royalty. For ready

reference, Section 9 is quoted below:

Section 9: Royalties in respect of mining lease-(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding

anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of (any mineral removed by or

consumed by him or by his agent, manager, employee, contractor or sub-lease) from the leased area after such commencement, at the rate for the

time being specified in the Second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after commencement of this Act shall pay royalty in respect of (any mineral removed by or

consumed by him or by his agent, manager, employee, contractor or sub-lessee) from the leased area the rate for the time being specified in the

second schedule in respect of that mineral.

(2A). The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulations and Development)

Amendment act, 1972 shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that

such consumption by the workman does not exceed one third of a tonne per month).

(3) The Central Government may, by notification in Official Gazette amend the Second Schedule so as to enhance or reduce the rate at which

royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of (three

years).

Rule 21 of U.P. Minor Minerals (Concessions) Rules, 1963 also lays down provision for royalty which is quoted below:

21. Royalty-(1) The holder of a mining lease granted on or after the commencement of these rules shall pay royalty in respect of any mineral

removed by him from the leased area at the rates for the time being specified in the First schedule to these rules.

(2) The State Government may, by notification, in the Gazette amend the First Schedule so as to include therein or exclude therefrom or enhance

or reduce the rate of royalty In respect of any mineral with effect from such date as may be specified in the notification:

Provided that the State Government shall not enhance the rate of royalty in respect of any mineral for more than once during any period of three

years and shall not fix the royalty at the rate of more than 20 per cent of the pit's mouth values.

(3) Where the royalty is to be charged on the pit's mouth value of the mineral the State Government may assess such value at the time of the grant

of the lease and the rate of royalty will be mentioned in the lease deed. It shall be open to the State Government to re-assess not more than once in

a year the pit's mouth value, if it considers that an enhancement is necessary.

5. As is evident from the contents of writ petition and the affidavit filed in support thereto that the petitioners are not a lease holders of mine but

they have purchased the stone holders through agents namely M/S Anandi Lal Mittal, Tatpur Agra. There is no provision in the aforesaid Act and

Rules regarding payment of royalty by the purchaser of stones from the lease holder of mines. This is for the lease holder to pay royalty to the

Government. Nowhere, it has come that any lease was granted in favour of the petitioners. The purchaser of products of mines is not obliged to

pay royalty. The respondent No. 3 is duty bound to scrutinize the receipt and Rawannas, if submitted by the petitioners and to release his payment.

If there was any lacuna in the bills, the petitioners should have been asked to remove it.

6. In view of above legal position, we are of the view that the demand by respondent No. 3 from the petitioners to pay royalty on the supply of

the stone holders is not in accordance with law.

7. Accordingly, the writ petition is finally disposed of with the direction to the respondent No. 3 to consider the case of the petitioners after getting

bills and Rawannas and make their payment without delay. If there is any lacuna in the bills or Rawannas the petitioners may be asked to remove it.

The petitioners shall file details of bills and Rawannas before the respondent No. 3 within fifteen days from today and respondent No. 3 will decide

his payment within a further period of six weeks by passing a detailed and reasoned order.