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Jharkhand High Court

Case No: Writ Petition (C) No. 6883 of 2006

Gita Enterprises	APPELLANT
Vs	
The Union of India (UOI)	RESPONDENT

Date of Decision: March 15, 2007

Acts Referred:

- Bihar Minor Mineral Concession Rules, 1972 - Rule 40(10)
- Constitution of India, 1950 - Article 14
- Jharkhand Minor Mineral Concession Rules, 2004 - Rule 55

Citation: AIR 2007 Jhar 92 : (2007) 2 CTLJ 415 : (2007) 3 JCR 382

Hon'ble Judges: R.K. Merathia, J

Bench: Single Bench

Advocate: A.K. Sinha, A.K. Yadav, Sheela Prasad, N.K. Pasari and J.S. Pasari, for the Appellant; Mahesh Tiwari, for the Respondent

Final Decision: Dismissed

Judgement

R.K. Merathia, J.
Heard the parties for final disposal.

2. According to the petitioner, the Railways-respondents cannot recover royalty charges from the running or final bill or from the security deposit, and they cannot withhold payment of final bill/release of security deposit for want of Royalty Clearance Certificate inasmuch as petitioner is merely purchasing and supplying stone ballasts. Petitioner has further prayed to declare Clause 5 and Clause 6 of the agreement on the ground that they are unenforceable as opposed to public policy and violative of Article 14 of the Constitution.

3. On 29.3.2005, petitioner entered into an agreement with the respondents for supply of stone ballasts. Clause 5 and 6 of the agreement reads as follows:

5. Royalty charges, at the rate prescribed from time to time, will be recovered from the contractor''s each and every on account bill and final bill of supply for the supplied ballast at the rate notified by the concerned State Govt. (mining authorities) and will be kept under deposit with Railway. The royalty charges so recovered will be refunded back to the contractor after submission of the royalty clearance certificate by the contractor to the Engineer.

6. The Railway reserves the right to remit the royalty amount, recovered from the contractor, to the concerned State Govt. (mining authorities) if the contractor fails to submit the royalty clearance certificate.

Relevant portion of Clause 16 reads as follows:

16. The Tender conditions offered by Gita Enterprises/Asansol are furnished below along with the Rly''s. remarks.

Sr. No.	Tender''s condition	Railway''s remark

2	Regarding royalty. We are purchasing the ballast from the quarry owners, having Mining lease and royalty paid by them. We shall submit the purchase bills in Xerox as a proof of payment of royalty for at the time and before passing of final bill. Hence no deduction should be made from our on account or final bills or from our securities towards royalty.	Accepted. As evidence of proof any of the following documents to be submitted. a. Royalty clearance certificate. b. M & N. Form c. Purchase bill in original, failing which royalty will be deducted as per rates of the State Govt. In any case royalty clearance certificate is required to be submitted before payment of final bill and release of security deposit".

4. The questions involved in this writ petition is whether the railways can withhold the amount of royalty shown in the bills, until the Royally Clearance Certificate is received; and whether Clauses 5 and 6 of the agreement are unenforceable.

5. Rule 40(10) of the Bihar Minor Mineral Concession Rules, 1972 (BMMC Rules for short) reads as follows:

40. Penalty for unauthorized extraction and removal of minor minerals...(10)-To prevent evasion of royalty it is provided that works contractor shall purchase the minerals from lessee/permit holder and authorized dealers only and no Works Department shall receive the bill which the works contractors 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 event the said District Mining Officer/Assistant Mining Officer shall take action as prescribed in these rules against the maker of the said affidavit:

Provided that if the works contractor deposits 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 departments 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 individuals who under an agreement, with the Works Department work for the said Department.

6. Rule 55 and Form "O & P" of the Jharkhand Minor Mineral Concession Rules, 2004 (JMMC Rules for short) are in pari materia with Rule 40(10) and Form "M & N" of BMMC Rules. Apparently, the said Clauses 5, 6 and 16 are in tune with the said rules. The parties fully understood and they acted upon such agreement. It will appear from the petitioner"s letter dated 5.1.2006 (Annexure-A) that it sent the purchase bills to the railway authorities for sending them to the District Mining Office, Pakur (D.M.O. for short), for verification of the payment of royalty and for issuance of Royalty Clearance Certificate. Such request was forwarded by the Railways to the D.M.O. on 24.2.2006, followed by reminder dated 29.12.2006 (Annexure-B and B/1). It will further appear from the letter dated 12.1.2007 (Annexure-A to the supplementary counter affidavit filed on 14.2.2007), issued by the D.M.O., that in spite of the letter dated 21.4.2006, followed by reminder dated 25.7.2006, petitioner did not furnish affidavit and the details in Form "O & P" as per the JMMC Rules, due to which, he was not in a position to verify payment of royalty and issue Royalty Clearance Certificate.

7. The judgment of B.K. Sinha v. State of Bihar 1987 PLJR 920, relied by Mr. Sinha, is of no help to the petitioner. Firstly, Rule 40(10) of BMMC Rules was not under

consideration, and secondly in that case, the authorities of the State Government directed to deduct royalty from the bills of the contractor and re-imburse the same to the State, on the premise that contractor was responsible to pay the royalty being used of the minor mineral.

As per Rule 55 of the JMMC Rules, a contractor is required to purchase the minerals only from lessee/permit holder/authorized dealer and furnish their bills and details, for verification of payment of royalty by them (sellers). Such provision is in addition and supplemental to the provisions for realization of royalty from the lessees. The purpose and object behind such provision is to have check on evasion of royalty at different levels. Such provision is in existence for more than 35 years. A person can always be asked to affirm and furnish the details of the persons, with whom, he has transacted. My view is fully supported by a Division Bench judgment of Patna High Court reported in 1992 (1) PLJR 44 Monghyr Construction Co. v. State of Bihar in which a circular containing the terms similar to Rule 55 of the JMMC Rules was under challenge. It was held inter alia as follows.

15...the provisions of the said Circular will be effective in preventing evasion of payment of royalty and cess in larger interest of public. It is neither levy nor collection of tax. But if the relevant informations are not given by the work contractors to the authority concerned on affidavit, the presumption would be that the minor minerals used by such contractors in execution of the work were extracted illegally. This is a presumption of fact which is rebuttable by giving correct information to the authority concerned.

23...The provisions has been incorporated in the said Circular in the larger interest of the public to prevent evasion and to ensure payment of royalty and cess and so it is regulatory in nature.

27...The obligation placed upon contractors is not too onerous to be complied.

29...In order to check evasion thereof the State must be deemed to be vested with all powers to check that evasion. Calling for any information is only a step in that direction. It should be appreciated where there is conflict between private interest and interest of the society or State, the interest of private individual must give way to the social or public interest. The realization of royalty and cess is a statutory right of the State. For the fulfillment of that purpose it can certainly call upon all citizens to furnish the necessary information. It is, therefore, well within the power of the State to seek relevant information although it may cause some strain-certainly not unbearable strain-to fulfil that object.

8. Petitioner"s reliance on the judgment of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, is wholly misconceived. As already noticed above, the said Clauses 5 and 6 of the agreement are in tune with Rule 55 of JMMC rules. Petitioner entered into the agreement with eyes open. It had a choice to accept or not to accept the said conditions. In fact, acting upon the said conditions it

sent the bills of purchase for obtaining royalty clearance certificate. But thereafter it is not known why it is avoiding furnishing Form "O & P".

9. In my view, the Railways is justified in withholding the amount of royalty until Royalty Clearance Certificate is received from the D.M.O.; and further Clauses 5 and 6 of the agreement are not unreasonable rather they are in terms of the said rule.

However, if the petitioner furnishes Forms "O & P" before the District Mining Officer, Pakur, he will issue Royalty Clearance Certificate on the basis of the verification, within six weeks from the date of furnishing such forms.

10. With these observations and directions, this writ petition is dismissed. However, no costs.