

(2009) 03 GUJ CK 0033

In the Gujarat High Court

Case No : Special Civil Application No's. 2684 to 2692 of 2009 and 2748 to 2753 of 2009

Chohtan Construction Co. a Partnership Firm

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 30-03-2009

Acts Referred:

Citation : (2009) 03 GUJ CK 0033

Hon'ble Judges : M.S. Shah, J; Harsha Devani, J

Bench : Division Bench

Advocate : JB Pardiwala, for the Appellant; Nikunt Raval, Asstt. Govt. Pleader for Respondents 1 - 4 and Harin P. Raval for Respondent 5, for the Respondent

Judgement

Mohit S. Shah, J.—Rule. Mr. Nikunt Raval, learned Assistant Government Pleader for respondent Nos. 1 to 4 and Mr. Harin Raval, learned Assistant Solicitor General for respondent No. 5 waive service of rule.

2. These groups of petitions are filed by three contractors, who were given different contracts by the Executive Engineers, Border Fencing Division I & V, Central Public Works Department, Bhuj-Kutch for carrying out the work of Embankment, Road, Culvert and Fencing on Link Road from Dharamshala to Bidiabet in Gujarat Sector. The petitioners have challenged the recovery of amounts payable to the State Government for the minerals extracted by the contractors for the said works from out of the amounts payable by the Executive Engineers to the petitioners.

3. Clause 18 of the contract provided that royalty at the prevalent rates wherever payable, shall have to be paid by the contractor on the boulders, metal, shingle, sand and bajri etc. or any other materials collected by the contractor for the work directly to the revenue authority of the District/State Government concerned. Clause 37(iii) of the contract provided that, if pursuant to or under any law, notification or order, any royalty becomes payable by the Government of India and does not become payable by the contractor to the State Government,

in respect of any material used by the contractor in the works, then it shall be lawful to the Government of India and it will have the right to recover the amount paid in the circumstances as aforesaid from dues of the contractor.

4. The Collector, Kutch and the Geologist, at Bhuj in Kutch district have raised demands for royalty for the materials used in the works in question. The petitioners have filed civil suits before the Civil Court, at Bhuj challenging such demands in the form of notices issued from time to time. The Civil Court has not granted any interim injunction during pendency of suits.

5. In these petitions, the petitioners have challenged the proposed action of respondent No. 3 - Executive Engineers, Border Fencing Division I & V, Central Public Works Department, Bhuj-Kutch, to pay such amounts to the Collector, Bhuj from out of the amounts payable by the Central Public Works Department to the petitioners under the above contracts.

6. Having heard Mr. J.B.Pardiwala, learned advocate for the petitioners, Mr. Harin P. Raval, learned Assistant Solicitor General for the Executive Engineers, Border Fencing Division I & V, Central Public Works Department, Bhuj-Kutch and Mr. Nikunt Raval, learned Assistant Government Pleader for the State of Gujarat and the Geologist, Kutch-Bhuj, we are of the view that the interests of justice will be served if these petitions are disposed of in the following terms:

The Executive Engineers, Border Fencing Division I & V, Central Public Works Department, Bhuj-Kutch shall pay the Collector, Kutch-Bhuj the amounts of royalty payable in respect of the materials used in connection with the works in question entrusted by the Border Fencing Divisions I and V to the petitioners from out of the amounts payable by the Central Public Works Department to the petitioners. However, such payments shall be limited to the amounts of royalty payable and not any amount of interest or penalty.

The petitioners shall give bank guarantees of a nationalized bank in favour of the Collector, Kutch-Bhuj for the amounts of interest payable on the aforesaid amounts of royalty for the period upto 31st March 2009. The bank guarantees shall be for the amounts of interest payable upto 31st March 2009 and shall abide by the outcome of the civil suits filed by the petitioners for challenging the levy of royalty and interest / penalty levied by the authorities of the State Government.

If, after paying the amounts of royalty as per the direction No. (i) above any amounts remain payable by the Executive Engineers, Border Fencing Division I & V, Central Public Works Department, Bhuj-Kutch to the petitioners, such amounts shall be paid over to the petitioners immediately.

Mr. T.J.Patel, Geologist in the Geology & Mining Branch under the Collector, Kutch-Bhuj, who is present before this Court, shall give the particulars of the amounts of royalties payable by the petitioners, as per direction No. (i) above, to the Executive Engineers, Border Fencing Division I & V, Central Public Works

Department, Bhuj-Kutch, at the earliest so as to enable the said Executive Engineers to comply with the above directions as early as possible.

The same officer shall give the petitioners the particulars of the amounts of interest payable by the petitioners for the period upto 31st March 2009 within one week from today so as to enable the petitioners to furnish bank guarantees to the Collector, Kutch-Bhuj within one month from today.

Subject to the condition that the petitioners shall comply with the above direction to furnish bank guarantees within one month from today, the respondents are restrained from recovering any amount towards interest or penalty.

7. It is clarified that these directions are issued without prejudice to the rights and contentions of the parties in the suits pending before the Civil Court and that, this Court may not be treated to have expressed any opinion on merits of the controversy involved in the suits.

8. Rule is accordingly made absolute to the above extent. The petitions are accordingly disposed of in terms of the above directions.