(2011) 01 RAJ CK 0070

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1309 of 2009

Deep Jyoti Company APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 63

Citation : AIR 2011 Raj 67 : (2011) 5 RCR(Civil) 237 : (2011) 2 RLW 1116

Hon'ble Judges : Prakash Tatia, J;Dinesh Maheshwari, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Prakash Tatia, J.—Heard the learned Counsel for the parties.

2. The writ Petitioner-Appellant who is government empanelled contractor had challenged the circular dated 6.10.2008 (Annex. 1) issued by the State Government wherein a procedure has been provided for payment of royalty by the contractors who have been given the work contract by department of Government. As per Clause (2) of the said circular, it has been provided that before starting the work, the contractor shall obtain short-term permit and ravanna book from the Mining Department; he is also required to submit an affidavit to the effect that he had obtained the short-term permit and ravanna book. As per Clause (3), the contractor is required to submit a copy of the short-term permit along with the first running bill to the Department wherefrom he got the work contract, failing which, the amount of his bill will not be paid. It has also been provided that if any payment of the bill is made without obtaining copy of the short-term permit, the Department concerned will be liable to deposit the cost of mineral. It is also provided that the royalty shall be deducted from the bills of the contractor and the same will be deposited with the Mining Department within 15 days. However, there is also a clause in the above circular which provides that the contractor, if purchases, the royalty paid minerals and then if he wants to take refund of the royalty amount deducted from his bills then, he is

required to submit proof of payment of royalty by the person from whom he has purchased the royalty paid goods within 30 days from the date of completion of work and upon which, the refund can be ordered.

3. The writ Petitioner contended that he is a contractor and is not engaged in any mining operations and he is not liable to obtain any short-term permit under the Rules; the Rajasthan Minor Mineral Concession Rules, 1986. It is also submitted that the royalty can be demanded only from the person who is engaged in the mining operations, therefore, merely because of the order as passed by the State Government, the Circular dated 6.10.2008 (Annex. 1), no liability for payment of the royalty can be created against the Petitioner and consequentially, no royalty can be demanded and recovered from the bills of the Petitioner by the Respondent Department merely because of said order.

4. Reply has been filed by the Respondents where it has been stated that the circular dated 6.10.2008 has been issued in order to ensure the payment of royalty and that the royalty is collected on the mineral which is used for construction work. It is also submitted in the reply that as per Clause 7 of the said circular, if the contractor had purchased the royalty paid mineral, then he can get refund/adjustment of the same by submitting the due receipt/bills/ ravannas which he can obtained from licensee/lessee within a period of 30 days and, therefore, there is no question of double payment of royalty. It is also submitted by the Respondents that in view of the circular dated 6.10.2008, the Petitioner is required to obtained short-term permit.

5. The learned Counsel Mr. Vijay Bishnoi appearing for the Respondent No. 2 Rajasthan State Agricultural Marketing Board, Sriganganagar-submitted that in view of the Government Circular dated 6.10.2008, they demanded furnishing of the short term permit and ravannas and, therefore, they are also entitled to recover the amount of royalty from the running bills of the contractor and if the contractor satisfies the Department that he used the royalty paid minerals in execution of the contract then his case will be treated to be falling under Clause 7 of the said circular dated 6.10.2008 and he can get the refund of such royalty amount deducted from the his bills by the Department.

6. We have considered the submissions of the learned Counsel for the parties, perused the circular dated 6,8.2008 as well as the reasons given by the learned Single Judge in the impugned judgment dated 4.3.2009 and we have also considered the judgment delivered by the Single Judge of this Court in the case of Vijai Construction Co., Bikaner Vs. State of Rajasthan and Others,

7. It is clear from the reading of Rule 63 of the Rajasthan Minor Mineral Concession Rules, 1986 that the short-term permit can only be granted to the person who is desirous to excavate and take away the mineral and it has no application for the persons who are not involved in mining operations/excavation of the minerals. A person is required to obtain short-term permit by making payment of the requisite fees if he wants to excavate the mineral and take away

the mineral. The person who obtains the short term permit is also required to make payment of advance royalty if he excavate the mineral and takes away the mineral from the mining area. The Circular dated 6.10.2008 blanketly provides that the contractor will have to take short term permit irrespective of the fact that whether he is engaged in excavation of mineral or not? Clause 2 of the said circular provided that before, short of the work, the contractor will have to take short term permit and ravannas for the minerals which are being used in execution of the work and Clause 3 provides that in case, the copy of the short-term permit is not produced then, the Department will withheld the payment of the bill submitted by the contractor. Under this Clause even it has been provided that in case, the Government Department will make the payment of contractor''s bill without obtaining copy of short term permit and ravanna then, the Department shall be liable to pay not the royalty but the cost of minerals. Clause 5 of the said circular says, irrespective of the fact whether the person is engaged in mining operations or not, that the Department is required to deduct the amount of royalty for the minerals at the rate as prescribed under Clause 5 and is required to deposit the same within 15 days with the Mining Department. Meaning thereby that the work contractor is compelled to obtain the short-term permit and liable to pay the royalty irrespective of the fact that whether he is engaged in mining work or not? The royalty liability which is fastened by statutory provisions upon the licensee/lessee cannot be made liability of a person who is not liable to such liability under Rules of 1986.

8. The plea of the respondents that the contractor can claim refund of the royalty which is deducted from his running bills is concerned, it is absolutely misplaced plea. In our view, a person who is not engaged in mining operations cannot be saddled with payment of royalty or cannot be compelled to take short term permit by payment of requisite fees and also cannot be asked to pay royalty as provided under sub-clause 5 of the impugned order. The learned Government Counsel also could not draw our attention to the provisions in the Rules by which a person who is not engaged in the mining operations can be asked to obtain short term permit and that too by payment of requisite prescribed fees as provided under Sub-rule 4 of Rule 63 of the Rules of 1986.

9. In view of the above, the conditions as impugned by the State Government in the Circular dated 6.10.2008 appears to be absolutely illegal and virtually asking the petitioner to obtain a short-term permit for conducting mining operations who is not intending to indulge in the mining operations and the conditions are penal in character inasmuch as the petitioner who is a contractor is required to obtain short term permit after paying the prescribed fees under Sub-rule (4) of Rules of 1986 and is also required to pay royalty on the mineral which is not excavated by him. Once there is no liability to obtain the short term permit, one cannot be asked to pay the royalty and then to claim refund of the same. The clause 7 of the circular dated 6.10.2008 cannot save the impugned circular in any manner. Therefore, the Clauses (2), (3), (5) and (6) are absolutely illegal and the conditions imposed in the impugned circular are contrary to law,

therefore, the entire circular dated 6.10.2008 which may not be workable in absence of these condition is hereby quashed but the State Government is free to pass appropriate orders for rest of the provisions made in the circular which are not having any relation with obtaining of the short-term permit by the contractor and payment of royalty as provided under clause 5 by such contractors.

10. Accordingly, this appeal is allowed. The impugned order dated 4.3.2009 passed by the learned Single Judge in CWP No. 1309/2009 is set aside, and consequently, the writ petition of the petitioner is allowed. If the petitioner has paid the royalty under Clause 5 of the impugned Circular/Order, he shall be entitled to refund of the amount paid and said amount be refunded to the petitioner within a month if it has not been paid by now.

