
(2013) 10 MP CK 0154

In the Madhya Pradesh High Court

Case No : Writ Petition No. 12508 of 2013

Director M/s. Daksh Infracon Pvt. Ltd. thru. Dharmendra
Khandelwal

APPELLANT

Vs

Secretary State of M.P. Department of Mines and Minerals
and Others

RESPONDENT

Date of Decision : 10-10-2013

Acts Referred:

Citation : (2013) 10 MP CK 0154

Hon'ble Judges : Shantanu Kemkar, J; P.K. Jaiswal, J

Bench : Division Bench

**Advocate : N.S. Bhati, for the Appellant; Sudhanshu Vyas, Learned Panel
Lawyer for the Respondent/State of Madhya Pradesh, for the Respondent**

Judgement

1. With consent heard finally. The petitioner (a private limited company) claims to be a government contractor. It has been awarded various civil works. According to the petitioner, it has submitted bills for making payments, which have become due; but the payments are not being released by the respondents on the ground that the petitioner has not submitted Royalty Clearance Certificate.

2. According to the petitioner, in view of the law laid down by this Court in various cases, including the cases of M.P. Contractors Sangh, Indore and Others Vs. State of M.P. and Others, , M.P. Audhyogik Kendra Vikas Nigam Vs. Abrar Construction Company and Others, , Ketu Construction Limited Vs. State of M.P. and Others, and Tomar Construction Company Vs. State of Madhya Pradesh and Others, and recently in Writ Appeal No. 357/2012 (M/s. Arpit Heights (P) Ltd. Vs. Indore Development Authority) decided on 18.03.2013 by a Division Bench of this Court reported in Arpit Heights (P) Ltd. (M/s.) Vs. Indore Development Authority, , the insistence of the respondents for production of the Royalty Clearance Certificate is illegal.

3. Having considered the submissions made by the learned counsel for the parties and taking into consideration the various judgments on which reliance

has been place and more particularly, recently the view taken by this Court in the case of M/s. Arpit Heights (P) Ltd. (supra) in which the Division Bench, after taking into consideration all the earlier judgments, has passed the following order, in our considered view, the petition deserves to be allowed:-

11. In view of the aforesaid legal position, in our considered view, the learned Single Judge has committed error in dismissing the writ petition on the basis of the aforesaid clause which runs contrary to the statutory provisions because the Collector can issue certificate with regard to payment of royalty only, if the royalty is payable by the contractor. If the contractor has purchased the material from a supplier and the supplier has purchased the material from the mine owner, who has extracted the mineral from a place which is not known to the contractor, the contractor cannot be expected to run from pillar to post finding out of source of extraction and the mineral consumed by him and then produce the certificate. This condition seems to be impracticable and inconsistent to the statutory provision.

12. Having regard to the aforesaid, we allow this writ appeal by setting aside the order passed by the learned Single Judge and dispose of the writ appeal by issuing the following directions, akin to the directions issued in the case of Tomar Construction Company (supra), which will safeguard and take care of the interest of the petitioner as also of the respondents:-

(1) The State Government/Indore Development Authority/Competent Authority of the respondent shall clear the bills of the petitioner submitted in connection with execution of the contract in question without insisting upon producing no dues certificate from the Collector or any other authority with regard to payment of royalty for the minerals consumed. However, the State Government/Indore Development Authority/Competent Authority of the respondent can insist upon production of bills with regards to purchase of mineral and in case the bill is not available, an affidavit indicating the manner in which and the place or source from where the mineral is purchased. This affidavit can be used by the State Government/Indore Development Authority/Competent Authority of the respondent for verification and for taking further action for clearing the bills.

(2) Amount of royalty, if any, recovered from the bills of the petitioner, shall be refunded to the petitioner on the petitioner filing the bill or the affidavit as indicated herein-above. In case petitioner is unable to produce the bill or the affidavit as indicated herein-above, liberty is granted to the petitioner to represent the matter before the State Government/Indore Development Authority/Competent Authority of the respondent pointing out the inability in producing the bills or the affidavit and it would be for the State Government/Indore Development Authority/Competent Authority of the respondent to consider the representation and take such steps as may be permissible or proper for clearing the bills in the given set of circumstances as may be indicated by the petitioner.

4. In the circumstances, we allow this petition and issue the following directions, which in our considered view, will safeguard and will take care of interest of both the parties:-

(1) The respondents shall clear the bills of the petitioner submitted in connection with execution of the contract in question without insisting upon producing no dues certificate from the Collector or any other authority with regard to payment of royalty for the minerals consumed. However, the respondents can insist upon production of bills with regards to purchase of mineral and in case the bill is not available, an affidavit indicating the manner in which and the place or source from where the mineral is purchased. This affidavit can be used by the respondents for verification and for taking further action for clearing the bills.

(2) Amount of royalty, if any, recovered from the bills of the petitioner, shall be refunded to the petitioner on the petitioner filing the bill or the affidavit as indicated herein-above. In case petitioner is unable to produce the bill or the affidavit as indicated herein-above, liberty is granted to the petitioner to represent the matter before the respondents pointing out the inability in producing the bills or the affidavit and it would be for the respondents to consider the representation and take such steps as may be permissible or proper for clearing the bills in the given set of circumstances as may be indicated by the petitioner.

No orders as to costs.