

(2018) 05 RAJ CK 0096

In the Rajasthan High Court

Case No : Spl. Appl. Writ No. 882, 884, 885, 887, 889, 890, 867, 868, 880, 881, 883, 859, 860, 861, 862, 863, 864, 865, 866, 870, 871 of 2018

Graphtech Exim Pvt. Ltd. @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 09-05-2018

Acts Referred:

Rajasthan Minor Mineral Concession Rules, 2017 — Section 44 (10), 44 (16)

Citation : (2018) 05 RAJ CK 0096

Hon'ble Judges : GOPAL KRISHAN VYAS, J; RAMCHANDRA SINGH JHALA, J

Bench : Division Bench

Advocate : M.S. Singhvi, Vikas Balia, Hemant Dutt, Ankur Mathur

Final Decision : Dismissed

Judgement

G.K. Vyas, J.

In all these special appeals, the common judgment dated 14.04.2018 passed by the learned Single Judge in SBCWP No.3102/2018-Graphtech Exim

Pvt. Ltd. Vs. State of Rajasthan & Ors. along with other connected appeals, is under challenge.

Â The defects pointed out by the office are hereby over-ruled.

Â As per brief facts of the case leased area was sanctioned in favour of appellants in pursuance of the advertisement. The appellants are the

registered contractors under the Rajasthan Minor Mineral Concession Rules, 2017 (Rules of 2017). The appellants are having contract of excess

royalty collection for the area in question. The bid of the appellants was found to be highest, therefore, the same was finalized in their favour. All the

formalities were completed and thereafter terms and conditions of the contract entered between the appellants and the respondent- State and

authorities of the Mining Department in writing. In the contract, a specific condition was incorporated to the effect that in the event of

cancellation/surrender of leases or licence, sanctioning of new lease or licence, revision of dead rent or licence by the Government or Court or due to

any other reason in the area concerned, shall not have any impact on the yearly contract amount.Â

Â The Honâ??ble Supreme Court in SLP (C) No.34811/2013 vide order dated 16.11.2017 directed to stop/restrain all the 82 mining leases/quarry

holders from carrying out mining of sand and â??Bajriâ?? unless a scientific replenishment study is completed. The aforesaid order was passed by

the Honâ??ble Supreme Court came into force with immediate effect. The respondents issued notice to the appellants and called upon them to

deposit advance monthly installment of excess royalty to be collected over the mineral Bajri from the area in question. In some of other cases, the

contract awarded to companies for excess royalty collection from the area in question, was terminated with a information that Bank Guarantee and

Performance Security would be accordingly forfeited.Â

Â The respondent- State filed reply in the writ petition and took preliminary objection with regard to maintainability of the writ petition on account of

availability of alternative remedy under Rule 63 of the Rules of 1963 and further the appellants/petitioners accepted the agreement with open eyes,

therefore, they are bound by the same even in the eventuality of unforeseen stoppage of mining activities. It was further submitted that the issue in

question whether the appellants/petitioners are under legal obligation to pay the excess royalty inspite of any kind of impediment in the mining is no

more res-integra in view of ratio of the judgment rendered by Division Bench of this Court in the case of State of Rajasthan & Ors. Vs. M/s C.K.M.

& Company (D.B. Civil Special Appeal (W) No.212/2007 decided on 10.05.2017 alongwith connected matters).Â

Â Before the learned Single Judge, in some of the writ petitions no dispute was raised about the aforesaid judgment, therefore, the learned Single

Judge while following the aforesaid judgment of Division Bench of this Court in the case of State Vs. M/s C.K.M. & Co. (supra), dismissed those writ

petitions but in some of the writ petitions different grounds were raised to distinguish their case from the case of M/s C.K.M. & Company (supra),

which reads as under: -

(a) The respondents did not disclose the pendency of the SLP before the

Supreme Court regarding excavation of barji and have executed the agreement for royalty collection by suppressing the said material fact. This clearly amounts to misrepresentation and therefore, on the part of the respondent- State any contract based on such misrepresentation cannot be enforced.

(b) The respondent-State did not disclose in the Notice Inviting Tender (NIT) that it will be a temporary work permit and therefore, Rule 44 (10) of the Rules of 2017 read with Condition No.3 (xvi) of the Contract does not apply to the petitioner-Companies.

(c) Further, the judgment rendered in the case of Nawal Singh Ratnawat (supra) did not apply as it was instituted by the petitioners who were awarded the mining lease, whereas, the petitioners herein are the contractors for collecting royalty on the said mining and the said case of Nawal

Singh Ratnawat (supra) pertains only to the extent of challenge to Rule 37 (A) (xvi) of the Rajasthan Miner Mineral Concession Rules, 1986.

Â In all these appeals, the judgment dated 24.04.2018 is under challenge.

Â The main argument of the learned counsel for the appellants is that an interim stay order granted by Honâ??ble Apex Court in SLP (C)

No.34811/2013 dated 16.11.2017 is operating, whereby the Honâ??ble Apex Court directed to stop/restrain all the 82 mining leases/quarry holders

from carrying out mining of sand and â??Bajriâ?? unless a scientific replenishment study is completed, therefore, there is no question for advance

royalty in pursuance of the existing contract, therefore, the learned Single Judge was required to consider this important aspect of the matter. It is also

argued that the respondent-State did not disclose in the NIT that it will be a temporary work permit and, therefore, Rule 44 (16) of the Rules of 2017

r/w Condition No.3 (xvi) of the contract, will not apply to appellants. It is also argued that judgment in the case of Nawal Singh Ranawat, will not

apply to them as it was instituted by the person/s who were awarded the mining lease whereas the appellants/petitioners are contractor for collecting

the royalty on the said mining, therefore, the learned Single Judge ought to have considered the aforesaid position but failed to consider, therefore, the

judgment impugned deserves to be quashed and set aside and the relief prayed for, deserves to be granted.Â

Â After hearing the learned counsel for the appellants, we have perused the

judgment impugned. There is no quarrel with regard to the fact that the main issue has already been decided by the Division Bench of this Court in the case of State of Rajasthan Vs. M/s C.K.M. & Company and this fact is not disputed by the appellants.Â

Â The learned Single Judge while taking into consideration the entire facts of the case and Rule 44 (16) of the Rules of 2017 held that the appellants/petitioners are bound by the terms and conditions of the contract, therefore, no fault can be found to the issuance of notice in question under the Rules of 2017 for noncompliance of Rule 44 (16) of the Rules or subsequent cancellation of the agreement, as the case may be. In our opinion, judicial discipline is required to be maintained in view of judgment rendered by Honâ??ble Apex Court in the case of Official Liquidator Vs.

Dayanana & Ors. reported in (2008) 10 SCC 1, in which following adjudication was made by the Honâ??ble Apex Court, which reads as under: -

Â â??70. We are distressed to note that despite several pronouncements on the subject, there is substantial increase in the number of cases involving violation of the basics of judicial discipline. The learned Single Judges and Benches of the High Courts refuse to follow and accept the verdict and law laid down by coordinate and even larger Benches by citing minor difference in the facts as the ground for doing so. Therefore, it has become necessary to reiterate that disrespect to constitutional ethos and breach of discipline have grave impact on the credibility of judicial institution and encourages chance litigation. It must be remembered that predictability and certainty is an important hallmark of judicial jurisprudence developed in this country in last six decades and increase in the frequency of conflicting judgments of the superior judiciary will do incalculable harm to the system inasmuch as the courts at the grass root will not be able to decide as to which of the judgment lay down the correct law and which one should be followed. We may add that in our constitutional set up every citizen is under a duty to abide by the Constitution and respect its ideals and institutions.

Those who have been entrusted with the task of administering the system and operating various constituents of the State and who take oath to act in accordance with the Constitution and uphold the same, have to set an example by exhibiting total commitment to the Constitutional ideals. This principle is required to be observed with greater rigour by the members of

judicial fraternity who have been bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole. Discipline is sine qua non for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law.â??

Â Since the main issue involved in these cases has already been decided by the Division Bench of this Court in the case of State of Rajasthan Vs.

M/s C.K.M. & Company (supra), then there was no question for the learned Single Judge so as to take a different view than the view taken by the

Division Bench of this Court in the aforesaid case. In our opinion, no error has been committed by the learned Single Judge so as to dismiss the writ

petition filed by the appellants while following the judgment in case of State of Rajasthan Vs. M/s C.K.M. & Company.Â

Â Consequently, all these special appeals are hereby dismissed.Â