
(2007) 03 PAT CK 0041
In the Patna High Court
Case No : CWJC No. 12193 of 2005

Hindustan Steel Works Construction Ltd.	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Companies Act, 1956 — Section 15, 3, 3(e), 617

Citation : (2007) 2 PLJR 849

Hon'ble Judges : Rekha Kumari, J;Aftab Alam, J

Bench : Division Bench

Advocate : Anil Kumar Sinha, Mayanand Jha in 13573, Umesh Pd. Singh, Manish Kumar Singh in 12193, 10271; M/s. P.N. Shahi, Onkar Nath, Binod Pd. Singh, Ritesh Kumar No. 1 and Sanjit Kumar Singh in 13573, 12752, for the Appellant; Ashok Kr. Singh, for the Respondent

Judgement

Aftab Alam, J.—All the four writ petitions raise a common question about "ordinary earth used for filling or leveling purposes in construction of embankment, road, railways, buildings" being a minor mineral subject to levy of royalty etc. by the State Govt. All the writ petitions arise in similar facts. CWJC No. 12193 of 2005 is filed at the instance of Hindustan Steel Constructions Ltd. which is a Govt. of India Undertaking and a company registered u/s 617 of the Companies Act, 1956, engaged in erection and construction work. It was awarded the contract for earth work in south embankment (Patna end) blanketing construction of minor bridges nos. 1, 2, 3 and 4 in connection with construction of rail bridge across the river Ganges for laying down railway line between Patna and Sonapur stations. The petitioner in its turn gave out the work for execution to four sub-contractors under agreements entered into with them. The four sub-contractors of Hindustan Steel Works Construction Ltd. are the petitioners in CWJC No. 10271 of 2006. As noted above they were engaged by the principal contractor for execution of the above described work. The sub-contractors purchase ordinary earth from agriculturist or landholders in and around Patna and transport it for the purpose of making embankment(s). It is

stated by them that the ordinary earth purchased and transported by them is used only for the purpose of creating embankment(s). The petitioners in the other two writ; petitions, CWJC Nos. 12752 of 2006 and 13573 of 2005 were similarly given contracts by the National Highway Authority of India for four laning, strengthening and widening of different portions of NH 31 under North-South and East-West Corridor Project (Phase II). The portion of road covered by the contract of the petitioner in CWJC No. 13573 of 2005 is from south of Kishanganj to Rampur, lying in the State of West Bengal and the portion of road falling under the contract of the petitioner in CWJC No. 12752 of 2006 is from KM 419 to KM 447 of Purnea Gayakota section of the highway in the State of Bihar. For the purpose of four laning, strengthening and widening the road, both the petitioners used/use ordinary earth.

2. All the petitioners received demands/ orders/notices from the authorities claiming royalty for the earth used by them in execution of the works under their respective contracts.

3. On behalf of the petitioners it is contended that the demands/orders/notices were illegal as no royalty was leviable on ordinary earth for a purpose other than commercial or for making Raniganj tiles.

4. In order to appreciate the rival contentions it will be necessary to examine the relevant provisions of the Mines & Minerals (Development & Regulation) Act, 1957. Section 3(e) of the Act defines minor minerals as follows:

"Minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may by notification in the Official Gazette, declare to be a minor mineral."

5. Once a thing falls within the definition of minor mineral in terms of section 3(e) or a notification issued under that section by the Central Govt. it would come within the purview of the State Govt. that is empowered u/s 15 of the Act to make rules in respect of minor minerals. Section 15 of the Act, in so far as relevant for the present is as follows:

15. Power of State Governments to make rules in respect of minor minerals.-(1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith.

(1A) In particular and without prejudice to the generally of the foregoing power, such rules may provide for all or any of the following matters, namely:--

(a) xx xx xx

(b) xx xx xx

(c) xx xx xx

(d) xx xx xx

(e) xx xx xx

(f) xx xx xx

(g) the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable.

6. The State Govt. in exercise of its powers u/s 15 of the Act issued notification, dated 28.9.1994 (published in the Official Gazette on 6.10.1994). The notification was both in Hindi and in English. Entry No. 3 in the notification in Hindi read as follows:

"3. Sadharan Mitti.

"(i) Raniganj Khapra banane main wyawaharit mitti ewam wyaparik karyon par--Rs.15.00/cubic metre

(ii) Anya pariyojno main wyawaharit mitti--Koi swamitya nahin."

The same Entry in the English version read as follows:

Ordinary clay:

(i) Clay used for manufacturing of Raniganj tiles and commercial use--Rs. 15.00/- cubic metre

(ii) Clay used for other purpose:

No royalty"

7. It is indisputable that both the Hindi and the English versions would refer to one and the same thing. It is, therefore, apparent that the Hindi expression "Sadharan Mitti" was used to describe ordinary clay referred to in the English version of the notification and that was included as one of the minor minerals as defined in Section 3(e) of the Act.

8. As a matter of fact much confusion in the matter has arisen from the fact that for both clay and ordinary earth, in Hindi there is a common word "Mitti".

9. In Chambers English-Hindi Dictionary the meaning of Clay is given as Mitti, Chikni Mitti, Mritika and that of earth as Mitti, Mrida, Mritika.

10. "A Comprehensive English-Hindi Dictionary of Governmental and Educational Words & Phrases" by Dr. Raghuvira and Dr. Lokesh Chandra (5th Edition February 1965) gives the meaning of Clay as "Mritika", "Chikni Mitti" and of earth as "Mitti".

11. On the other hand in the Oxford Hindi-English Dictionary the words for "Mitti" are given as earth, soil, clay.

12. "A Standard Dictionary of the Hindi language" by Bhargava gives the words earth, clay, dust etc. for "Mitti". It gives the English equivalent MARL for Hindi Chikni Mitti.

13. "The Hindi-Transliterated Hindi-English Dictionary" gives the English words earth, soil, clay, dirt, dust for the Hindi word "Mitti". For the words Chikni Mitti it gives the English equivalent as Marl, Clay.

14. In the aforesaid circumstances both sides relied upon certain decisions that as would appear presently do not have much relevance for the case in hand. Counsel for the petitioners relied upon a Bench decision of the Calcutta High Court in State of West Bengal and Others vs. Jagdamba Prasad Singh and Others, AIR 1969 Calcutta 281. In this decision it was held that ordinary earth was not ordinary clay and, therefore, it could not be called a minor mineral. It was further observed that the word "clay" was not identical with earth. Some kind of earth might be clay e.g. earth mixed with water or silt might be called clay. It was also said that even if the word "earth" was wide enough to include clay, it cannot be said that ordinary earth was identical with ordinary clay.

15. Mr. Ashok Kumar Singh, Standing Counsel for the Department of Mines submitted that the Calcutta decision in Jagdamba Prasad Singh was overruled by the Supreme Court in Banarsi Dass Chadha and Brothers Vs. Lt. Governor, Delhi Administration and Others, . In M/s Banarsi Das Chadha the Central Govt. in exercise of its powers u/s 3(e) of the Act had declared a number of minerals, including brick earth, to be minor minerals. The inclusion of brick earth as a minor mineral was assailed on the ground that a substance had to be a mineral before it could be notified as a minor mineral. It was contended that brick earth was not a mineral and, therefore, it could not be notified as a minor mineral. The Supreme Court rejected the contention observing that if the expression "minor mineral" as defined in Section 3(e) of the Act included "ordinary clay" and "ordinary sand", there was no reason why earth used for the purpose of making bricks should not be comprehended within the meaning of the word "any other mineral" which may be declared as a minor mineral by the Government. It was in that context that the Supreme Court observed that it did not agree with the view of the Calcutta High Court in Jagdamba Prasad Singh that because nobody spoke of ordinary earth as a mineral, it was not a minor mineral as defined in the Mines & Mineral (Regulation and Development) Act.

16. In Banarsi Das Chadha the Supreme Court was dealing with a case where brick earth was expressly notified as a minor mineral by the Central Govt. and that decision does not lay down that "ordinary clay" as defined in Section 3(e) of the Act would also cover "ordinary earth used for filling or levelling purposes."

17. Mr. Ashok Kumar Singh also relied upon other Supreme Court decisions in (i) Bhagwan Dass Vs. State of U.P. and Others, , (ii) State of Orissa and Others vs. Union of India & Another, AIR 2001 SC 410 and (iii) Union of India (UOI) Vs. Pramod Gupta (D) by L.Rs. and Others, . He also cited a Bench decision of our

own High Court in *Laddu Mal and Others vs. State of Bihar and Others*, AIR 1965 Patna 491. In none of these cases the issue was whether "ordinary earth used for filling and levelling purposes. ... "would be a minor mineral being covered by the expression "ordinary clay" in Section 3(e) of the Act.

18. Had the statutory position remained at the stage of the 1994 notification, it would have been a matter of interpretation whether the expression "ordinary clay" would also include "ordinary earth/Sadharan Mitti used for filling or levelling purposes...." But the later developments make the position quite clear.

19. The Central Government in exercise of the powers conferred by clause (e) of Section 3 of the Act issued notification No. GSR 1995(E), dated 3.2.2000 declaring the "ordinary earth used for filling or levelling purposes in construction of embankment, road, railways, building" to be a minor mineral in addition to the minerals already declared as minor minerals.

20. The notification, dated 3.2.2000 leaves no room for doubt that the expression "ordinary clay" used in Section 3(e) of the Act did not cover "ordinary earth used for filling or levelling purposes..." and the latter came to be included in the list of minor minerals with effect from 3.2.2000, the date of issuance of the notification. It remained now for the State Govt. to make rules for fixing and collection of royalty etc. on "ordinary clay used for filling and levelling purposes..."

21. After the Central Govt. notification, dated 3.2.2000, the State Govt. in exercise of its powers u/s 15 of the Act, issued another notification, dated 23.3.2001 (published in the official gazette of 24.3.2001). This notification too, like the previous one, was both in Hindi and in English. Entry 5 under Schedule II of the notification in Hindi reads as follows:

"Sadharan Mitti, Raniganj Khapra Bananain Main Wyawaharit Mitti Ewam Vyaparik Karyon Par--Rs. 15/- per cubic metre".

the same Entry in the English version of the notification reads as follows:

"Ordinary clay/clay used for manufacturing of Raniganj tiles and commercial use--Rs. 15/- per cubic metre".

Thus, the only difference with the previous notification, dated 28.9.1994 was that clause (ii) of the Entry reading in Hindi as:

"Anya Pariyojno Main Wyawaharit Mitti--Koi Swamitya Nan in"

And in English

"Clay used for other purpose--No royalty".

22. It is, thus, evident that the 2001 notification of the State Govt. made no attempt to bring within the levy of royalty "ordinary earth used for filling and levelling purposes" though it was declared as minor mineral by the Central Govt. a year ago.

23. Finally the State Govt. issued yet another notification, dated 18.4.2006 (published in the official gazette of 19.4.2006). Part 5 of the notification deals with the Bihar Minor Mineral Concession Rules, 1972 and Entry 5 under Schedule II of Part 5 of the notification reads as follows:

"Sadharan Mitti Jis Ka Upyog Raniganj Khapra Vyaparik Karyon Jo Baandh, Sadak, railway, Bhavan Aadi Ke Nirman Main Bhamain Ya Samtal Karne Ke Uddesh Se Kiya Jata Hai--

Rs. 15/- per cubic meter."

24. The sequence of notifications as seen above, leaves no room for doubt that "ordinary earth used for filling and leveling purposes for....." came to be declared as minor mineral with effect from 3.2.2000 and it became subject to levy of royalty by the State Govt. with effect from 19.4.2006. Any demand of royalty from the petitioners from a date prior to 18.4.2006 would, therefore, be illegal and unsustainable. The petitioners would be obliged to pay royalty on "ordinary earth used by them for filling and levelling purposes" in the execution of their respective works after 18.4.2006. The respondents are accordingly restrained from raising demands against the petitioners for the period prior to 18.4.2006. All the writ petitions are accordingly disposed of.

Rekha Kumari, J.

25. I agree.