
(2009) 09 KAR CK 0032

In the Karnataka High Court

Case No : Writ Petition No's. 27858, 278078 and 28082 of 2009

J.P. Chethan

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 17-09-2009

Acts Referred:

Citation : (2009) 09 KAR CK 0032

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : Nagaraja N. Naidu Patil, for the Appellant; Basavaraj Karreddy, G.A., for the Respondent

Judgement

P.D. Dinakaran, C.J.—The petitioner in these petitions is a registered civil contractor carrying on civil works of the Government Department and Local Bodies. It is contended that for the purpose of execution of civil works, the petitioner are required to purchase building materials from the private sources. It is further contended that the petitioner does not own any quarries and that they are not liable to pay any royalty to the respondents. However, the respondents are deducting royalty from the bills of the petitioner without authority of law. Hence, these petitions praying not to deduct the royalty from the bills of the petitioner in respect of the materials procured by him from private sources for execution of the civil contract works.

2. In similar matters, this Court in G.V. Kumar and Ors. v. State of Karnataka and Ors. in Writ Petitions No. 31264-31266 of 1994 disposed of on 31st October, 1994 has laid down the principles relating to the payment of royalty by the contractors. The same are extracted hereunder:

(a) Where providing the material (subjected to royalty) is the responsibility of the contractor and the Department provides the contractor with specified borrow areas, for extraction of the required construction material, the contractor will be liable to pay royalty charges for the material (minor mineral) extracted from such

areas, irrespective of whether the contract is a item rate contract or a lump sum contract. Hence deduction of royalty charges in such cases will be legal. For this purpose non-execution of mining lease is not relevant, as the liability to pay royalty arises on account of the contractor extracting material from a Government land, for use in the work.

(b) Where under the contract the responsibility to supply the material (minor minerals) is that of the Department/employer and the contractor is required to provide only the labour and service for execution of any work involving use of such material, and the unit rate does not include the cost of material, there is no liability on the contractor to pay any royalty. This will be the position even if the contractor is required to transport the material from outside the work site, so long as the unit rate is only for labour or service and does not include the cost of material.

(c) Where the contractor uses material purchased in open market, that is material purchased from private sources like quarry lease holders or private quarry owners, there is no liability on the contractor to pay any royalty charges.

(d) In cases covered by paras (b) and (c) the Department cannot recover or deduct any royalty from the bills of the contractor and if so deducted, the Department will be bound to refund any amount so deducted or collected to the contractor.

(e) Subject to the above, collection of royalty by the Department or refund thereof by the Department will be governed by the terms of contract.

(f) Nothing stated above shall be construed as a direction for refund in regard to any particular contract. The Department or authority concerned shall decide in each case, whether royalty is to be deducted or if any royalty is already deducted, whether it should be refunded, keeping in view the above principles and terms of the contract.

3. The said decision has been upheld by the Division Bench of this Court in the case of Office of the Director of Department of Mines and Geology v. M. Mohammed Hajee in Writ Appeal No. 830 of 2006 disposed of on 25th September, 2006.

4. Following the judgment of this Court rendered in Writ Appeal No. 830 of 2006 disposed of on 25th September, 2006 these petitions are disposed of in similar terms. No order as to costs.