
(2012) 01 MP CK 0072
In the Madhya Pradesh High Court
Case No : Writ Petition No. 21872/11

Mahendra Pasi

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 04-01-2012

Acts Referred:

Citation : (2012) 01 MP CK 0072

Hon'ble Judges : Vimla Jain, J;K.K. Lahoti, J

Bench : Division Bench

Judgement

1. Petitioner has sought following reliefs:

(i) That the Hon"ble Court may kindly be pleased to issue a writ in the nature of mandamus be directed to pay the bills regularly without the condition of procurement of NOC and deduction of royalty from mining department.

(ii) That this Hon"ble Court may be pleased to issue a writ in the nature of mandamus the respondents be directed to refund all the amount illegal deducted and detained under the head of royalty of minerals consumed.

(iii) That, the Hon"ble Court may kindly be pleased to issue a writ in the nature of mandamus the respondents be directed to implement the judgment already passed by this Hon"ble Court.

(iv) Any other writ, order or direction thought expedient and just may please be issued by the Hon"ble Court.

(v) That, the costs of the petition may also be please granted.

2. Facts of the case are that petitioner has performed works contract under the respondent No.3. While petitioner submitted his bills to respondent No.3, respondent No.3 insisted for the production of the royalty receipts by the petitioner for the performance of the work contract. It is submitted that the controversy involved in this case is squarely covered by the decision of a Division

Bench of this Court in Shyam Babu Sonkar Vs. State of M.P. & others W.P. No. 20298/11 decided on 10.12.2011 and similar directions may be issued in this case.

3. Shri Anshuman Singh, learned counsel appearing for respondent No.3 has no objection, if this petition is finally disposed of in terms of directions issued by this Court in Shyam Babu Sonkar (supra).

4. In Shyam Babu Sonkar (supra), a Division Bench of this Court decided the matter. For ready reference, the entire order is quoted which reads as under:-

Petitioner has prayed for the following reliefs:-

(i) That the Hon"ble Court may kindly be pleased to issue a writ in the nature of mandamus be directed to pay the bills regularly without the condition of procurement of NOC and deduction of royalty from mining department.

(ii) That this Hon"ble Court may be pleased to issue a writ in the nature of mandamus the respondents be directed to refund all the amount illegal deducted and detained under the head of royalty of minerals consumed.

(vi) That, the Hon"ble Court may kindly be pleased to issue a writ in the nature of mandamus the respondents be directed to implement the judgment already passed by this Hon"ble Court.

(vii) Any other writ, order or direction thought expedient and just may please be issued by the Hon"ble Court.

(viii) That, the costs of the petition may also be please granted.

5. Learned counsel for petitioner submitted that the controversy involved in this case is squarely covered by an order of this Court in W.P. No. 1361/09 M/s Chandrama Construction Company Vs. M.P. Rajya Krishi Vipran Sangh & others in which the learned Single Judge of this Court considering the controversy held thus:-

The petitioner by way of present petition challenges the action of respondents who are deducting the royalty from bill of the petitioner despite the fact that he is not the owner of the Mine and is only a contractor, who purchases the material from the open market.

It is contended that the said action of the respondents is contrary to the law as laid down in W.P.No. 2535/2003 (M/s Ravi Construction Company V. State of M.P. and others) wherein it was held that contractor engaged in construction work cannot be insisted to produce "No Objection Certificate" issued from the Office of the Collector (Mining), if they are not holder of mining lease and are purchasing material from open market.

Learned counsel appearing for respondents does not dispute that the issue in respect of furnishing the "No Objection Mahendra Pasi State of M.P. & others 4.1.2012 Certificate" from Office of the Collector(Mining) by the contractor

engaged in construction work have been settled at rest in number of judgments delivered by this Court. Accordingly it is submitted that the petition may be disposed of by the observation made in W.P. No. 6266/2006 (M/s K.P. Singh Bhadoria V. M.P. Rural Road Development Authority Bhopal).

Having considered the submissions put forth by respective counsels and keeping in view the judgments rendered by this court in earlier given cases W.P. No. 2535/2003 (M/s Ravi Construction Company V. State of M.P. and others), W.P. No. 6266/2006 (M/s K.P. Singh Bhadoria V. M.P. Rural Road Development Authority Bhopal) and W.P. 7954/2008 (M/ s Sunil Kumar Jain V. State of M.P. & 4 others) the present petition is disposed of with the following directions:-

(i) The State Government 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 can insist upon production of bills with regard 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 for verification and for taking further action for clearing the bills.

(ii) 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 hereinabove. In case petitioner is unable to produce the bill or the affidavit as indicated hereinabove, liberty is granted to the petitioner to represent the matter before the State Government pointing out the inability in producing the bills or the affidavit and it would be for the State Government 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 petitioners.

In result the petition is allowed to the extent above. However no costs.

6. It is submitted that in view of the aforesaid order, this matter may be disposed of finally.

7. As controversy involved in this case is squarely covered by the order in M/s Chandrama Construction Company (supra) and we do not find any reason to differ with the reasonings and directions issued Mahendra Pasi State of M.P. & others by the learned Single Judge, we dispose of this petition with following directions:

(1) The petitioner shall either furnish the bills of purchase of minerals from authorised dealer or an affidavit disclosing the source from where petitioner purchased minerals, which were used in the construction work.

(2) The respondents authorities if are satisfied with the bills produced by the petitioner may process the bills, but in case of any doubt, respondents authorities may insist the petitioner to file an affidavit in support of its contention

in respect of purchase of minerals from the open market by the bills.

(3) In case the petitioner is unable to produce the bills for the purchase of the minerals or the royalty receipt in this regard, respondents authorities shall insist the petitioner to file an affidavit pointing out specifically the manner in which minerals were purchased, disclosing particulars of the person from whom the minerals were purchased. On filing of the affidavit, the authorities shall be within their right to verify the aforesaid facts. They can also verify the facts from the record of the Mining Department of the concerned district.

(4) On completion of the aforesaid process, the respondents shall clear the bills of the petitioner submitted in connection with the execution of the works contract and the amount of royalty, if any recovered from the bills, shall be released in favour of the petitioner.

(5) In case, the authorities are not satisfied with the contention of petitioner or on verification, facts are not found correct then they shall pass a reasoned order in rejecting the contention of petitioner.

(6) If the petitioner fails to produce the bills/affidavit as indicated hereinabove, the petitioner may represent his case to the concerned authority showing his inability to produce the bills or affidavit and it shall be for the State Government or authority to consider the representation and pass a suitable order in that regard within two months from the date of receipt of the representation.

8. As controversy involved in this case is identical, this petition is also disposed of in terms of directions issued in *Shyam Babu Sonkar (supra)*. The directions issued in *Shyam Babu Sonkar (supra)* shall be applicable in the present case, as far as they are applicable in the present case.

9. No order as to costs. C.C. as per rules.