

(2004) 11 JH CK 0027

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4172 of 2004

Maheshwari Brothers Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:

Bihar Minor Mineral Concession Rules, 1972 — Rule 40, 40(10)
Constitution of India, 1950 — Article 226
Jharkhand Minor Mineral Concession Rules, 2004 — Rule 55

Citation : AIR 2005 Jhar 42 : (2005) 1 BLJR 369 : (2005) 1 JCR 116

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : Kalyan Roy and Ashok Kumar, for the Appellant; M.K. Laik, Sr. SC, for the Respondent

Judgement

M.Y. Eqbal, J.—This writ application is directed against the letter No. 964 (Confidential) dated 27.7.2004 purported to have been issued by respondent No. 2, Deputy Commissioner, East Singhbhum, Jamshedpur on the basis of which respondent No. 4 Treasury Officer, Jamshedpur stopped payment of cheque issued by respondent No. 3 Executive Engineer, Road Construction Division, Jamshedpur for a sum of Rs. 2,62,51,869/- and also for issuance of appropriate direction upon the respondents to pay the aforesaid amount under the aforesaid cheque.

2. Pursuant to the tender notice invited for construction of Four Lane road in Adityapur Kandra Road, "petitioner being lowest bidder was awarded with the aforesaid construction work which commenced with effect from January, 2004. Petitioner said to have completed substantial portion of work and the Road Construction Department on being satisfied with the work executed by the petitioner passed the bill submitted by the petitioner and a cheque of Rs. 2,62,51,869/- was issued on 24.7.2004. Petitioner's case is that it submitted bill for Rs. 2,84,04,6597- and the same was passed by the Department after deducting Sales Tax, Income Tax, Royalty and Security deposit. When the

aforesaid cheque was presented before the Treasury Officer, Jamshedpur for clearance of payment the Treasury Officer refused to make payment on the ground that the Deputy Commissioner vide impugned letter dated 27.7.2004 directed to withhold payment on the ground that clearance certificate with regard to royalty to be submitted first by the petitioner thereafter payment would be done.

3. Mr. Kalyan Roy, learned counsel for the petitioner assailed the impugned order as being illegal and wholly without jurisdiction. Learned counsel submitted that the department has already deducted a sum of Rs. 2,28,198/- and after deducting the aforesaid amount of Sales Tax, Incpme Tax and security deposit as also the royalty, Cheque of Rs. 2,62,51,8697- was issued. Learned counsel submitted that the aforesaid amount was released only after the amount was duly sanctioned by the State of Jharkhand and the petitioner has completed part of the work successfully and with the fullest satisfaction of the department. Learned counsel further submitted that compliance of Section. 40 (10) of the Bihar Minor Mineral Concession Rules, 1972 is snot required because respondents have already deducted substantial amount towards royalty.

4. On the other hand Mr. M.K. Laik, learned Sr. Standing Counsel submitted that compliance of Rule 40 (10) of the said Rules is mandatory and admittedly petitioner has not filed necessary affidavits as required in the aforesaid rules and therefore the Deputy Commissioner rightly directed to withhold payment.

5. It has not been disputed by the respondents has royalty has been deducted from the aforementioned bill which is evident from the counter affidavit filed by the Mining Officer. However, it is stated in the affidavit that the Road Construction Department has issued a cheque in favour of the petitioner without complying with the ruled provided under Rule 40 (10) of the Bihar Minor Mineral Concession Rules, 1972. For better appreciation of the controversy in this case and to answer the issue raised by the parties, it would be proper to consider Rule 40 (10) of the said Rules. The relevant sub-rule (10) of Rule 40 is quoted herein below:

"To prevent evasion of royalty it is provided that works contractor shall purchase the minerals from lessee/ permit holder and authorized dealers only and no Works Department shall receive the bill which the works contractors submit to recover cost etc. of mineral used by them in completion of the works Department under any agreement from the works contractor if the said bill is not accompanied by an affidavit in Form "M" with particulars in From "N" of these rules along with a photo copy of the said affidavit and particulars. It shall be the duty of the officer who receives or on whose behalf the said bill is received to send the copy of the affidavit and particulars to the District Mining Officer/ Assistant Mining Officer within whose jurisdiction the mineral was allegedly purchased, for verification.

If contents of the said affidavit on verification by the concerned District Mining

Officer/Assistant Mining Officer is found to be false either wholly or partly it shall be presumed that the concerned mineral was obtained by illegal mining and in that event the said District Mining Officer/Assistant Mining Officer shall take action as prescribed in these rules against the maker of the said affidavit:

Provided that if the works contractor deposit or pays the royalty in respect of the mineral so consumed/supplied by him as shown in the aforesaid affidavit and particulars the said District Mining Officer/Assistant Mining Officer in his discretion may not take action as prescribed in this rule.

6. From perusal of the aforesaid Rule it is manifest that it empowers the authorities to prevent evasion of royalty provided that work contractor shall purchase minerals from lessees or permit holders and authorized dealers and no works Department shall receive bills from works contractor without any clearance certificate from the concerned mining authorities.

7. Similar provision has been inserted in the newly framed Jharkhand Mining Mineral Concession Rules, 2004. A copy of which has been annexed as Annexure-5 to the another writ petition being WPC No. 5680 of 2004. Rule 55 is a parimateria to Rule 40 of the Bihar Minor Mineral Concession Rules, 1972. The said Rule reads as under:

"karya Vibagon ko laghu khanijo ki aapurty:

(1) Swamiswa ki upwanchana ko rokne ke liye aisi vayawasta ki gayi hai ki karya thekedar khanijo ko kewal pattacharakon, anumati patra dharakon tatha pradhikrit dealers se hi kharidenge tatha karya vibag jo kisi anubandh ke tahat karya vibag ke karya sampadit hone par karya thekedar dwara upyog kiya gaya khanijon ka mulya wasul karne ke liye unke dwara prastut viptra ki pawatt nahin kerega, yadi karya thekedar dwara in vipatron ke sath prapatra "O" mein ek sapath patra tatha prapatra-"P" mein vivrani in niyamon ke antargat sapath patra avam vibrant ke chaya prati ke sath salagn nahin ki jati hat Ush Padadhikari, jiske dwara ya jiski yor se yah viptra prapt kiya jata hai wan janch hetu is sapath patra tatha vibrant ke ek chaya prati ash Zila Khanan Padadhikari ya Sahayak Khanan Padadhikari jiske Chetradhikar mein wah khaniji kathit rup se kharida gaya hai, ko satyapan hetu bhejega.

(2) Zila Khanan Padadhikari ya Sahayak Khanan Padadhikari dwara sapath patra tatha vibrant ke janch lambit rahne tak vibhag swamiswa ki dugni rashi ke barapar ki rashi ko rok kar rakhega jo satyapan prativedan prapt hone ke bad vimukt kijayagi.

(3) Yadi sambandhit Zila Khanan Padadhikari ya Sahayak Khanan Padadhikari ki janch ke bad ukt sapath patra mein ullikhit thatya janchoparant purna rup se ya Aansik rup se asatya paye jate hain jo yah mana jayaga ki sambandhit khanij awaidh khanan dwara prapt kiya gaya hai aur is paristhiti mein sambandhit Zila Khanan Padadhikari ya Sahayak Khanan Padadhikari aise sapathkarta ke virudh nig am 55 ke antargat aavasayak karyawaht kerega.

Parantu yah kt yadt thekedar ish prakar se upbhog/apurty kiye gaye khanijo jaisa ki usne apne sapath patra athwa vibrano mein bataya hai ke swamitwa ki rashi ka dugna bhugtaan kar detajain tab ukt Zila Khanan Padadhikari/Sahayak Khanan Padadhikari swavivekanusaar in niyomein meinjaisa ke vihit hai, koi karyawahi nahtm bhi kar sakta hai.

(4) Up niyam I तथा 2 के अनुपालन नहिन होने की स्थिति में जिस उत्तारदायी व्यक्ति ने उपनियम, 1 तथा 2 का अनुपालन नहिन, किया है उसके विरुद्ध जिला समहर्ता स्वामिसवा की पूरी रशी के बराबर या कोई राशत का दंड लगा सका है"

8. Admittedly, in the instant case, bill was submitted by the petitioner without verification report from the Mining Department. Petitioner in fact has not complied with the mandatory requirement of Rule 40 (10) of the Bihar Mineral Concession Rules corresponding to Rule 55 of the Jharkhand Minor Mineral Concession Rules. In my opinion, therefore, the direction of the Deputy Commissioner not to release the amount unless the petitioner comply the requirements of aforesaid Rules cannot be said to be illegal, arbitrary or malafide.

9. Taking into consideration the entire facts and circumstances of the case, I direct the respondents to release the amount forthwith and preferably within seven days from the date the petitioner submits verification report after complying the requirements of Rule 40 (10) of the aforesaid Rules.

10. With the aforesaid observation and direction, this writ application is disposed of.