
(1976) 07 CAL CK 0028
In the Calcutta High Court
Case No : C.R. 3224 (W) of 1973

Mandal and Majumdar Construction Co. APPELLANT
Vs
State of West Bengal and Others RESPONDENT

Date of Decision : 22-07-1976

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : 80 CWN 991

Hon'ble Judges : A.K. Mukherji, J

Bench : Single Bench

Advocate : Ranadeb Chaudhuri, Bikash Sen and B.K. Rej, for the Appellant;

Final Decision : Allowed

Judgement

A.K. Mookerji, J.—This Rule is directed against a demand dated 23rd of June, 1973 made by the Additional District Magistrate (L.R.), Burdwan by which the petitioner was directed to deposit the royalty amounting to Rs. 83,4521 - as the petitioner had extracted sand and Sandy Soil measuring 41,72,63 c.ft. for the works of approach at Sadarghat Burdwan. The petitioner was further directed to show cause as to why appropriate action would not be taken against them for such unauthorised extraction without obtaining prior permission from the authority in writting. The petitioner is a registered partnership firm. By a contract dated 23rd November, 1972 the petitioner was appointed as a contractor by the Superintending Engineer (Roads and Construction) Circle No. 2, Calcutta for construction of the approach road, Damodar Bridge at Sadarghat, Burdwan. In the said contract the contractor was required to procure earth on its own and to carry it to the site without any obligation of the State Government to that effect. In the search of earth in the neighbourhood, the firm found that in Bangpur and in the adjacent mouzas by the side of Damodar, there was heavy deposit of Damodar silt on agricultural lands preventing the cultivator from cultivating the lands. Such cultivators were trying to remove the silt which was about 5 ft. high on their lands. These cultivators, having come to know that the petitioner was

looking for earth for the purpose of construction of the said approach roads, approached the petitioner to purchase silt from them and to remove the silt from their lands. Thereafter the petitioner purchased the silt at its own cost, removed the same from the lands of the said cultivators and used the same for the construction of the said approach roads to the Sadarghat Bridge. Subsequently, the petitioner was informed by the respondent No. 2 that they would have to pay royalty for collection of sand from the lands of cultivators. Thereupon the petitioner by its letter dated 8th December, 1972 applied to the respondent No. 2 for permission to collect sandy soil from the lands of the cultivators and in that letter it was stated that usual royalty would be paid by the petitioner. Since then the petitioner was advised that sandy soil was not a minor mineral and as such no royalty was payable under the law on sandy soil. The petitioner being aggrieved by the aforesaid illegal demand made by the Additional District Magistrate (L.R.), Burdwan moved this court in an application under Article 226 of the Constitution and obtained the present Rule.

2. Mr. Choudhury, appearing on behalf of the petitioner contended that the silt and sandy Soil are not minor minerals under the Mines and Minerals (Regulation and Development) Act, 1957, and as such the West Bengal Minor Minerals Rules have no application to it. It was submitted as the petitioner had procured silt and earth from the land owners and removed the same from their lands at their own cost after making payment for such silt earth to the cultivators, there was no extraction on the part of the petitioner and in any event the said silt and earth were to be removed by the land owners for the purpose of making their lands suitable for agriculture and as such there was no extraction of mines and minerals. Lastly, Mr. Choudhury contended that there being no relationship of lessor and lessee between the respondent and the petitioner, the respondents under no circumstances could claim royalty against the petitioner under the said Act or Rules made thereunder.

3. Reliance was also placed upon an unreported decision of D. Basu, J. dated the 8th of July, 1964 in C.R. No. 433 (W) of 1963. (since reported in 80 C.W.N. 981)

4. The Minor Minerals have been defined in section 3 (e) of the M. M. R.D. Act which reads 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,...

In the unreported decision, D. Basu, J, observed that silt was not brought within the definition of any declaration of the Central Government as referred to in the second part of the definition. In that case the question was whether the clay used for manufacturing brick came within definition of "minor minerals". The learned Judge observed-"though the definition of minor minerals" is an artificial statutory definition, the words used in the definition cannot reasonably be

imputed meaning which is altogether divorced from the meaning of the words "mineral" and "mining" for the regulation of which the Act has been enacted, as its Title and Preamble says. Though the definition of the word "mineral" in clause (a) of the section is not of specific assistance, a reading of all the clauses in section 3 would make it clear that a mineral is a substance which can be obtained only by a "mining operation" as defined in clause (d). Such operation has to be undertaken "for the purpose of winning any mineral". It is clear that the taking of anything from the surface of a land cannot be said to be a mining operation, which obviously involves the digging of the sub-soil in the case of coal, petroleum and other major minerals. What the definition in clause (e) does, is only to extend the list of such well-known minerals to "building stones", "grave", ordinary sand other than sand used for prescribed purposes. At any rate, unless the earth is removed from the sub-soil by any process, it cannot be called a mining operation, and the removal of silt obtained from river-water by accumulating that water on the surface of the land by artificial devices cannot be held to be "ordinary clay" within the purview of the definition in section 3(e).

5. In the present case the allegations against the petitioner are that they have extracted sand and sandy soil. In the definition of Mines and Minerals ordinary sand has been included but the petitioner in this petition stated that they extracted silt and sandy soil. No affidavit-in-opposition has been filed on behalf of the respondents to controvert the statement of the petitioner. That being so, the removal of silt and sandy earth from the agricultural fields cannot be regarded as a mining operation or extraction within the meaning of the Act. The provisions of sections 4-13 do not apply to the prospecting licences and mining leases in respect of minor Minerals. No material was placed before me to show that any rule has been framed by the State Government for obtaining licence in respect of minor minerals. Moreover, the petitioner purchased the silt from the Cultivators. There was no privity of contract between the petitioner and the respondents. If there has been illegal extraction as alleged by the respondents in that case the persons who have allowed the petitioner to remove the silt from their lands should have been prosecuted. So, considering the facts and circumstances of this case, in my view, the demand made by the respondent No. 2 is wholly illegal and without jurisdiction. Accordingly, the impugned order demanding this royalty is quashed by writ of mandamus. Let a writ of mandamus be issued directing the respondents not to give effect to the impugned demand for royalty upon the petitioner.

In the result, this Rule is made absolute. There will be no order for costs. The petitioner shall be at liberty to ask for refund of the amount which is lying in deposit with the respondent-state.