courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 12/09/2026

(1986) 06 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 553 of 1983

M.P. Contractors Sangh, Indore and Others APPELLANT

Vs

State of M.P. and Others RESPONDENT

Date of Decision : 23-06-1986

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9

Citation : AIR 1987 MP 74 : (1987) JLJ 743

Hon'ble Judges : P.D. Mulye, J;K.K. Verma, J

Bench : Division Bench

Advocate : R.S. Garg, for the Appellant; Surjit Singh, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.D. Mulye, J.—The petitioner No. 1 is a registered Society of building contractors, registered unter the Societies Registration Act The members are the LD/LD/G22/86/JHS Contractors who are carrying on the business as private and Government contractors. The petitioner No. 2 is the President of the said Society. The petitioner No. 3, a member of the Society, is also a building contractor.

2. The petitioners, who are also Government contractors, are required to purchase boulder, boulder gitty, christ (sic) stone, muram, sand, bricks, etc. for the construction work which they purchase from different sources like petty contractors, suppliers of these articles, who in their turn purchase from other contractors or licensees of the quarries.

3. According to the petitioners when they purchase these articles from the persons mentioned above, they only get a receipt for purchase of the articles and they do not get any royalty receipts as the petitioners do not purchase these minor minerals directly from the licensees of the quarries wherefrom these articles are excavated by the contractors in whose favour the auction is knocked down by the Government as these quarries belong to the Stale Government,

which has fixed the rate of royalty which has to be paid before the goods are taken out by the purchasers from the quarries and that the persons who purchase these articles from the quarries, in turn sell them to different persons. In this way these goods before coming to the market pass through several hands with the result that obviously, the subsequent purchasers do not have and cannot have the royalty paid receipts relating to these articles.

4. Further according to the petitioners, such royalty paid receipts are ordinarily issued in the name of the truck driver, or truck owner or the person who goes and directly purchases the same from the quarry itself and that if the building contractor directly purchases the same from the quarry then naturally the royalty paid receipts would be issued in the name of the said contractor who would be in a position to produce the royalty receipt as and when required. But. according to the petitioners in practice the building contractors who supply the material to the Government for its building work do not necessarily or always purchase the same directly from the quarries; but mostly they purchase from different suppliers.

5. Further according to the petitioners the State Government, vide Annexure R2 dated 22-11-74 addressed a communication to all the Collectors, that before the hills are paid to the building contractors for the supply of minor minerals, the concerned Department should send information to the concerned Collector regarding the minor minerals supplied by the said building contractors for the Government building works. On receipt of the said infromation the Collectors shall see as to whether any royalty is due from these contractors and if there is any balance due, the Collector shall proceed to recover the same in accordance with the Rules and request the concerned Department or Corporation to make the final payment to the said contractors. According to the said communication the Collectors were called upon to collect the necessary information within a period of fifteen days from the date of the receipt of those bills from the concerned Department and in case the concerned Department does not receive any communication within twenty one days thereof from the concerned collector, the contractor shall be paid his bills. Further according to the petitioners, they have no grievance as such against the said communication Annexure R2 as the learned counsel for the petitioner submitted that the Government has taken this laudable step to see that goods are not taken out or removed stealthily from the quarries without payment of royalty, which obviously results in loss of revenue to the State Government.

6. In this petition filed under Articles 226 and 227 of the Constitution of India, the grievance of the petitioners has been that this Government communication or memo Annexure R2 has been distorted and misinterpreted by the Collector in exceeding the scope thereof as per Annexure A dated 8-3-1983 issued by the Collector, Indore and addressed to the Executive Engineer M.P. Housing Board, Indore. which has obviously caused a lot of harassment to the contractors who supply these minor minerals to the Government as the said Annexure A has been issued on the basis of Annexure RI dated 20-11-80 which was addressed by the

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mp-contractors-sangh-indore-and-…

Additional Collector to all the concerned Departments and on that basis the Executive Engineer, vide Annexure B dated 25-3-83 has informed the Government contractors that along with the running bills the contractors will have to furnish the royalty clearance certificate and thereafter only the payment under the bills would be made and in case they fail to produce the royalty clearance certificate the same royalty shall be recovered from these contractors at the rate fixed by the Collector. The petitioners have, therefore, prayed to quash Annexure Rl dated 20-11-80. Annexure A dated 8-3-83 and Annexure B dated 25-3-83. the same being illegal and without jurisdiction.

7. In short, the grievance of the petitioners has been that unless there is a contract between the State Government and the contractor or between autonomous body and the contractor to produce the royalty clearance certificate and/or royalty receipt, the State government and/or the collector has no power to issue a direction for deduction of royalty because they cannot go beyond the terms and conditions of the agreement/contract for work. According to the petitioners, unless the contractor himself has directly purchased these minor minerals from the quarry, it is not possible for him to produce the royalty receipt paid by the purchaser of the articles from the quarry, as the contractors do not always purchase such minor minerals directly from the quarry itself but purchase the same through suppliers or businessmen who deal in the trade. Thus this sort of restriction put up on the contractors by the State Government tantamounts to interference in the free trade and business which is a fundamental right of the petitioners.

8. It is also the contention of the petitioners that royalty is imposed on excavations or extraction of articles from the quarries and not on sales or purchases of the articles on which the royalty is imposed as there is no such provision in the Mines and Minerals Act or in the Mineral Concession Rules. It is also their contention that it is not possible for such building contractors to produce the royalty receipt especially when they are supplied to them by petty contractors. Besides, according to the petitioners, sometimes minor minerals are also purchased from outside the State and such royalty receipts are also not in the name of the contractor. Therefore, they cannot produce the royalty receipts, it is also the grievance of the petitioners that the order issued by the Collector is per se discriminatory between the Government/ autonomous body contractors and the private contractors as the private contractors are not required under these directions to produce royalty receipts.

9. The respondents in their returns have submitted that in case the petitioners have purchased minor minerals from such a person who does not hold quarry lease or trade quarries or from such persons who are only suppliers, details of such purchase can be furnished to respondents Nos. 2 and 3 so that it could be verified whether the supplier has purchased it from authorised contractor or not and in this way illegal trade or unauthorised supply of minor minerals can be checked which directly helps in eradicating sources of revenue (royalty) leakage;

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mp-contractors-sangh-indore-and-…

that Annexure A dated 8-3-1983 was issued in compliance with the instructions issued by the State Government from time to time to stop the leakage of royalty in pursuance of Annex. R2. The respondents in their returns have not disputed the fact that in case the minor minerals supplied by the contractor to the Government are directly purchased from the quarries, they should have no difficulty in producing the royalty paid receipt and if in such a case they have not paid royalty for these goods then only in that case the royalty could be recovered from the said contractor and thereafter only his bill could be finally paid.

10. Further according to the respondents it is the duly of the respondents to check leakage of revenue royalty and to control and regulate the movement of minor minerals, the State Government can issue through mineral resources Department such circulars to stop leakage of royalty. It is also their contention that it is the moral duty of the contractor to produce such information to respondent No. 2 so that there is no loss of revenue to the exchequer. It is also the contention of the respondents that though it may not be possible for the contractors who have purchased the minor minerals from persons other than the lease holder/trade quarry holder or through the supplier to produce royalty receipts, but the petitioners can produce such receipts or bills from the supplier from whom they have purchased the minor minerals so that it can be counter-checked and necessary action could be taken to check the evasion of royalty, which does not tantamount to interference in free trade. In short, the stand taken by the respondents has been that in order to have an effective check, the Collectors can make such inter se administrative arrangements to enable them in catching the real thief who may have removed the minor minerals from the quarries without payment of royalty.

11. The learned counsel for the petitioners did not dispute this fact that the minor minerals are the property of the Government and that no person should be allowed to remove or take away the minor minerals from the quarries without payment of royalty, which may he fixed -in accordance with law or the rules. However, the learned counsel submitted that building contractors who enter into a contract with the Government for supply of such minor mineral materials cannot be compelled to produce the royally receipt and in absence thereof their payment cannot be stopped because there is no such term in the contract nor there is any rule framed by the Government that in case where a building contractors have to supply minor minerals to the State Government or corporations for their construction work, they have to produce royalty certificate for the minor minerals supplied by them to the Government or such authorities and in absence thereof no payment of their bills shall be made to them. He, therefore, submitted that as has also not been disputed by the respondents, in cases where the buying contractors do not purchase the mindr minerals directly from the quarry holder but purchase them through petty contractors or suppliers it is not possible or practical for them to produce such royalty receipts, though he did not dispute that such contractors who directly purchase minor minerals from the quarry holders will certainly have no objection to produce the royalty receipts

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mp-contractors-sangh-indore-and-…

nor they will have any grievance on that count. But he submitted that the tenor of Annexure RI has not been properly appreciated by respondents Nos. 2 and 3 and on the contrary the contractors have been forced to produce the evidence, which as pointed out above is very difficult to prove. He, therefore, submitted that according to Annexure RI when the contractor submits the bills, it is for the concerned Departments to forward the same to the concerned Collector who within 15 days therefrom has to make the necessary enquiry and in case no objection is received the contractor has to be paid his bills after 21 days. He, therefore, submitted that the burden clearly lay on the Collector in case he doubts that the minor minerals supplied by the contractor have been removed from the quarry without payment of royalty.

12. On the other hand the learned Government Advocate submitted that the Government has not been able to keep adequate staff at the quarry to check evasion of royalty, but only one Chowkidar is kept who at times may not be available there and thus people get an opportunity to remove the minor minerals therefrom without payment of royalty. He, therefore, submitted that the Collector is justified in adopting the procedure followed by him in Annexure R2 or Annexures A or B on the administrative side. He, therefore, submitted that the procedure adopted by respondents Nos. 2 and 3 being quite proper and justified, the petition deserves to be dismissed.

13. Admittedly the minor minerals removed from the quarries is the property of the Government. It is also not in dispute that such minor minerals excavated from the quarries cannot be removed therefrom without payment of royalty. The quarries also undisputcdly belong to the Government Therefore, it is the duly of the Government to protect its property and see that no theft of minor minerals is committed nor such minor minerals are removed therefrom without payment of royally. It is the duty of the Stale Government to keep adequate staff at every quarry so that an effective control and check could be put up and the leakage could be avoided. We are surprised at the argument advanced by the learned Government Advocate that because only one Chowkidar is posted at the quarry to check the removal of the minor minerals from the quarries and that because at times he is not available on the spot that such thefts are being committed. Therefore, it is clear that the State Government is aware of the fact how and in what circumstances minor minerals are being removed without payment of royalty. As a matter of fact the concerned Department in order to have an effective check should keep adequate staff and in fact call upon the quarry holder to pay royalty after the minor minerals are excavated and before they are removed from that place. But, in our opinion, this cannot be a valid argument that because the Government is not able to put up an effective check or control, for which they are alone responsible, the building contractors should produce the royalty paid receipts before their bills are cleared for payment at least in those cases where the minor minerals are supplied by such contractors through petty contractors or other merchants. It is for the Government to engage more staff and see that no such thefts are committed, though it also cannot be and was not

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mp-contractors-sangh-indore-and-…

disputed that it is the duty of every citizen to help the Government in its laudable efforts. But, in our opinion, merely because the Government is not in a position to check such thefts, a doubt cannot be cast on the building contractors nor they could be blamed for that. If the Government wants to adopt such a measure so far as such building contractors are concerned, then the State Government ought to make such a provision in the contract entered into with such building contractors or they should make rules to that effect under the provisions of the said Act so that a building contractor who is given such Government contract will be duty bound to obtain the royalty paid receipt and submit the same or in such a case they will have to purchase such minor minerals from the quarry holders themselves directly. It is, therefore, difficult to agree with the submission made by the learned Government Advocate that vide Annexure R2 or Annexures A and B. the respondents have taken administrative stops to implement Annexure Rl.

14. In the result this petition succeeds and is allowed with costs. The Annexure R2 and Annexures A and B are quashed and set aside. Counsel''s fee Rs. 350/-. The amount of security deposit, on verification be returned to the petitioners.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/mp-contractors-sangh-indore-and-…