

(2020) 09 MP CK 0145

In the Madhya Pradesh High Court

Case No : Writ Petition No. 11121 Of 2020

M/s Avni Constructions (A Proprietorship Firm) Thr. Prop.
Ajay Kumar Jain

APPELLANT

Vs

State Of M.P. And Others

RESPONDENT

Date of Decision : 15-09-2020

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Citation : (2020) 09 MP CK 0145

Hon'ble Judges : Sheel Nagu, J;Rajeev Kumar Shrivastava, J

Bench : Division Bench

Advocate : Vinod Pathak, Ankur Mody

Final Decision : Disposed Of

Judgement

This petition u/Art. 226/227 of the Constitution filed by proprietorship firm involving in construction work assails Annexure-P/1 dated 30/3/2019 issued by Executive Engineer Public Works Department Division Guna (M.P.)/respondent No. 2 whereby respondents have declined to refund the deducted royalty amount from the final bill for using mineral materials for execution of the civil work undertaken by petitioner for the department of the State of Madhya Pradesh.

In support of the aforesaid challenge to Annexure-P/1, verdict of Full Bench of this Court in Phaludi Construction & Infrastructure Pvt Ltd Vs. State of M.P. & others 2016(2) MPLJ 704 is relied upon.

It is not disputed at the Bar that the said Full Bench decision of this court in Phaludi Construction (s) has since been overruled by the larger bench of 5 judges in the case of M/S Pankaj Kumar Rai Vs. State Of Madhya Pradesh & others [2018(1) MPLJ 402] where following directions were issued :-

"27. Since minor mineral vests in the State and there is absolute prohibition in extraction of mineral other than by a quarry lease or a trade quarry or permit quarry, therefore, contractor who is engaged in construction work is required to

prove that such mineral is royalty paid. For such condition, if the State Government insists on 'No Mining Dues' certificate, the same cannot be said to be illegal as it is to ensure that all minor minerals used in the construction activity are royalty paid material.

29. We find that the condition No. (iii) that 'No Mining Dues' certificate shall be issued on furnishing of copy of work completion certificate is not reasonable. The contractor, who is engaged in construction work, purchases minor mineral required for construction work. Such running bills require periodical payments as well. The periodical bills raised quarterly, are required to be verified so that the contractor is not deprived of his lawful dues, therefore, instead of obtaining 'No Mining Dues' certificate by the contractor after completion of the work, the Mining Officer shall give 'No Mining Dues' certificate at least quarterly on the basis of running bills submitted by the contractor engaged in the construction work.

30. The third proviso to Rule 68(1) of the Rules provides for issuance of 'No Mining Dues' certificate after verification of the documents submitted by the contractor engaged in construction work. Such documents although are not the part of the Rules but they have been supplemented in the affidavit dated 7.10.2017. The affidavit further states that verification of purchase of mineral from other Districts takes some time, therefore, the State has sought minimum two months time to verify and issue 'No Mining Dues' certificate. We find that to ensure transparency and the digital infrastructure available, the State would be well advised to develop a software, which will give online information of extraction of the minerals by the contractors holding trade quarry or quarry lease or quarry permit. Once that data is available, the Mining Officer of the State can verify how a quantity of extracted minor mineral has been disposed of by each of the category of permit holders. It will create a transparent and also efficient mechanism for issuing certificate of 'No Mining Dues'.

31. 31. In view of the above, we find that the judgment in Phaloudi Construction (supra) is not correct enunciation of law and the same is thus, overruled. The contractors who are engaged in construction work are required to obtain 'No Mining Dues' certificate on production of the documents in terms of this order. Such 'No Mining Dues' certificate shall be issued expeditiously in a time frame of two months till such time alternative mechanism is developed for the issuance of online 'No Mining Dues' certificates."

From the above, it is evident that the ground raised by petitioner to challenge impugned order P/1 does not exist owing to Full Bench decision of this court in Phaludi Construction (supra) having been overruled by the larger bench (s).

In view of above, the petition has no merits and is dismissed with liberty to petitioner to make a fresh representation which shall be considered by the competent authority of the respondents in case the petitioner can establish violation of any right emanating from the decision of the larger bench in the

case of M/S Pankaj Kumar Rai (S).

With this direction, the petition stands disposed of.

No cost.