

(1987) 05 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 69 of 1987

M/s. B.K. Sinha and R.K. Sinha

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 06-05-1987

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21

Citation : (1987) PLJR 920

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : G.C. Bharuka, Navaniti Prasad Singh, R.K. Agrawal and S.D. Sanjay
In both the cases, for the Appellant; K.N. Gupta, Satyendra Krishna Prasad, J.P. Shukla, G.P.I with Dilip Kumar Tiwari J. C. to G.P.I (In C. W. J. C. 69 of 1987) M/s. J.N.P. Sinha and G.A. with Alakh Niranjana, J. C. to G. A. (in C. W. J. C. 1369/87), for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—In both the writ petitions the same question of law is involved and with the consent of the Learned Counsels appearing on behalf of both the parties, these two writ petitions have been heard together and are being disposed of by this common judgment. In C. W. J. C. No. 69 of 1987 the petitioner has asked for issuance of a writ of or in the nature of mandamus directing the respondents to refund the amount of royalty deducted from the petitioner as evidenced by Arrexure-2 series.

2. In C. W. J. C. 1369/87 the petitioner has prayed for issuance of a writ of or in the nature of mandamus directing the respondents to abide by the decision of this Court in the case of Dayanand Prasad Sinha & Co. v. The State of Bihar and others disposed of on 31.8.84 and further for at appropriate writ directing the respondents not to deduct any royalty and cess on the consumption of minor minerals for execution of the contract by the petitioner.

3. In the first case it is alleged that the petitioner has been working as a

contractor in the Indian Oil Corporation Ltd. The authorities of the State of Bihar In purported exercise of their powers conferred upon them under rule 26 of the Bihar Minor Mineral Concession Rules, 1972 directed that royalty and cess payable to the State of Bihar be deducted from the bills of the petitioner for reimbursement to the State. The order in respect of royalty and cess payable to the State of Bihar was allegedly passed on the ground that the petitioner is responsible to pay the same as such minor mineral is used by it.

4. In C. W. J. C. No. 69 of 1987 a counter affidavit has been filed by M/s. Indian Oil Corporation Ltd. where it has been averred that they deducted the amount in terms of the order of State of Bihar in spite of the order passed by this Court in C. W. J. C. No. 4198 of 1984. It has further been stated by the said respondent that they have deposited the entire amount so realised, in the account of the State of Bihar.

5. The point in issue as has been raised by Mr. G.C. Bharuka appearing for the petitioner that admittedly no mining lease has been executed by the State of Bihar in favour of the petitioner in terms of the provision of the Mines and Minerals (Regulation and Development) Act, 1957 the rules framed thereunder, namely, the Bihar Minor Minerals Concession Rules, 1972 the petitioner would not be made liable to pay any royalty and cess in favour of the State of Bihar. In this connection he has referred to a decision in the case of Tata Engineering & Locomotive Co. Ltd. v. The District Mining Office and Cess Collector (Mining) and another (1981 B. B. C. J. 149 : 1981 PLJR 86). In that decision it has been held that royalty and cess is payable only by a lessee in the event a mining lease is executed in favour of the lessee by the State under the said rules. It has also been held that the amount of royalty and cess under rule 26 of the said rules refers to only those persons who are bound by the lease or persons acting on their behalf and not those who might have utilised the material extracted by the lessee or persons acting under him there being no material in this case that petitioners are such persons as acting on behalf of the lessors. My attention has been drawn to the aforementioned decision of this Court in C. W. J. C. No. 4198 of 1984 wherein this Court by order dated 31.8.84 also held the same view and granted appropriate relief to the petitioner.

6. The learned Government Advocate appearing on behalf of the State has submitted that in view of the decision of this Court the persons removing sand from the river and/or minor minerals from other places belonging to the State of Bihar shall be made liable to pay the royalty as they have been extracting minor minerals without making any payment to the State of Bihar. In the event it is found that some persons are extracting the minor minerals in violation of the provision of the mines and Minerals (Regulation and Development) Act 1957 the adequate remedy has been provided in the said Act itself. Even in the Bihar Minor Minerals Concession Rules penal provision has been made to that effect besides the provision of section 21 of the Mines and Minerals (Regulation and Development) Act, 1957. However, even a person, who removes minerals

without any authority, cannot be directed to pay royalty or cess under the provision of aforementioned Act and the rules framed thereunder inasmuch as seen hereunder royalty is payable only to a grantor or lessor on the basis of working of the property leased. In the instant case admittedly there being no ground for realisation of royalty or cess under the Act by the State of Bihar, the petitioner cannot be made to pay any royalty or cess on minor minerals. In this view of the matter these writ applications are allowed.

7. It appears that the State of Bihar has been violating the order of this Court as seen hereinbefore. In C. W. J. C. 1369/87 a prayer has been made that the State should be directed to follow the decision passed by this Court in the aforementioned C. W. J. C. 4198/84 and as referred to herein before.

8. In my opinion, in view of the settled principles of law, as has been decided by this Court on a number of occasions, it is high time that the State should appraise the correct legal position to the Officers particularly the Officers of the District Mining Offices of all the districts. It is also high time that the State of Bihar should issue a general order or circular drawing the attention of the concerned officers not to give any direction to any person to deduct royalty or cess from the bills of the contractors on account of royalty and cess payable on minor minerals.

9. So far as the case of the petitioner in C. W. J. C. 69/87 is concerned the Learned Counsel for the respondent No. 2 assures me that the amount lying with them will be paid immediately to the petitioner. However, he submits that so far as the amount of royalty or cess is concerned which has been deposited with the State of Bihar by the said respondent and as such a direction should be made by this Court on the State of Bihar to pay the said amount deducted from the bills of the petitioner to the petitioner. The respondent No. 2 is directed to inform the petitioner as to what amount has been deposited by it with the State of Bihar with an intimation thereof to the State of Bihar also and the State of Bihar will pay the said amount to the petitioner within one month from the date of receipt of such intimation from respondent No. 2: In the other case i.e. C. W. J. C. 1369 of 1987 respondent nos. 2 and 3 would pay the amount deducted by them from the bills of the petitioner within one month from the date of receipt of this order. A copy of this order may be handed over to the Junior Counsel of the learned Government Pleader No. 1 as also the Junior Counsel of learned. Government Advocate so that they may communicate the same for necessary action. There will be however no order as to costs.