

(2014) 01 CHH CK 0039
In the Chhattisgarh High Court
Case No : Writ Petition (C) No. 3993 of 2011

M/s. Lalit Construction Company	Vs	APPELLANT
State of Chhattisgarh and Another		RESPONDENT

Date of Decision : 02-01-2014

Acts Referred:

Citation : AIR 2014 Chh 36 : (2014) 4 FLT 390

Hon'ble Judges : Yatindra Singh, C.J; Manindra Mohan Shrivastava, J

Bench : Division Bench

Advocate : Sourabh Jain, for the Appellant; Kishore Bhaduri, Additional Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

1. The main point involved in this writ petition relates to validity of clause 2.16.2 of the contract (the impugned clause) between the parties. It arises in this writ petition questioning the validity of the order dated 13.05.2010 by which the representation of M/s. Lalit Construction Company (the Petitioner) was rejected.

THE FACTS

The Public Works Department of the State of Chhattisgarh (the Respondents) advertised for construction of Lilagar Bridge and approach road on Konar-Jaitpur road at KM 2/6. The Petitioner was one of the applicant and was successful in the same.

2. The parties entered into an agreement on 25.01.2008 and thereafter, work order was issued on 08.02.2008. After the construction, the Petitioner submitted its bills for payment, however, the Respondents deducted the royalty charges from the bills.

3. Aggrieved by the aforesaid action, the Petitioner filed a writ petition being WP(C)-121/2010. It was disposed of with a direction to the Respondents to decide the representation of the Petitioner.

4. The representation of the Petitioner was rejected on 13.05.2010. Hence, the present writ petition.

POINTS FOR DETERMINATION

5. We have heard counsel for the parties. The following points arise for determination in the case:

- (i) Whether the impugned clause imposes royalty;
- (ii) Whether the impugned clause is violative of rule 52 of the Chhattisgarh Minor Minerals Rules, 1996 (the Rules).

1st POINT--DOES NOT IMPOSE ROYALTY

6. The representation of the Petitioner was rejected on 13.05.2010 on the basis of the impugned clause. The order is in terms of this clause and in case the impugned clause is valid, then the order rejecting the representation cannot be voided.

7. In case the impugned clause imposes royalty, or is unreasonable, or arbitrary, then it is invalid. However, the question is whether the impugned clause imposes royalty or is it unreasonable, or arbitrary?

8. So far as the validity of the impugned clause is concerned, the counsel for the Petitioner submits that:

(i) Royalty is to be paid by the lessee who wins minerals. The Petitioner is not winning minerals but is a contractor for constructing a bridge. It is not liable to pay the royalty;

(ii) The impugned clause imposes royalty upon the contractor and is illegal.

9. Clause 2.16.2 (see below)¹ is titled as Royalty on Minor Minerals. It does not impose any royalty on the Petitioner, but only requires the Petitioner to submit a certificate that the royalty was paid in respect of minor minerals used by it.

10. In case, the certificate is produced, then, no amount is deducted and in case it is not produced, a presumption is drawn and amount of royalty is deducted. The Petitioner is only required to submit the certificate.

11. The clause is a kind of safeguard to ensure that the material used by the Petitioner has been validly obtained. It is for this reason that the clause indicates the requirement of submitting a certificate that the royalty in respect of material used was paid.

12. In our opinion,

? The impugned clause does not impose any royalty on the Petitioner;

? It is neither discriminatory nor unreasonable.

2nd POINT: NOT VIOLATIVE OF RULE 52

13. Rule 52 (see below)² of the Rules is titled as "Assessment and determination of the royalty". A reading of Rule 52 of the Rules indicates that it provides a procedure how the assessee is to be assessed for the royalty.

14. The word "assessee" is also defined under rule 2(iv) of the Rules (See below)³. It means a person holding quarry lease or quarry permit and includes any other person who holds a quarry of minor minerals granted under the Rules.

15. The Petitioner is not holding a quarry lease or permit. It also does not hold a quarry of minor mineral. It is not an assessee within the meaning of rule 2(iv) of the Rules and as such, rule 52 is not applicable.

16. In case, Rule 52 is not applicable, then, any term in the contract between the parties including the impugned clause cannot be held to be invalid on the ground that it is violative of that rule.

17. In our opinion, the impugned clause namely clause 2.16.2 of the contract is not violative of rule 52 of the Rules. No other provision has been brought to our notice on the basis of which it can be said to be illegal.

18. The Petitioner has entered into the contract with open eyes. He has agreed to the terms and conditions. He cannot turn back on it and say that it cannot produce the certificate as stipulated.

CONCLUSIONS

19. Our conclusions are as follows:

(a) Clause 2.16.2 of the contract does not impose or charge royalty on the minor minerals;

(b) It is also neither unreasonable nor arbitrary;

(c) Rule 52 of the Chhattisgarh Minor Minerals Rules, 1996 is not applicable to the Petitioner. The impugned clause is not violative of rule 52.

In view of our conclusions, It is dismissed.

HEADLINES

Rule 52 of the Chhattisgarh....contractor making construction.

1 Clause 2.16.2 is as follows:

2.16.2 Royalty on Minor Minerals

The contractor shall pay all quarry, Royalty charges etc. If the contractor fails to produce the royalty clearance certificate from concerned department then the Executive Engineer shall deduct the royalty charges from his bills and keep in deposit head, which shall be refunded to the contractor on production of royalty clearance certificate from the concerned department. If he fails to produce the royalty clearance certificate within 30 days of submission of final bill, then royalty

charges which was kept under deposit head by the Executive Engineer shall be deposited to the concerned department and his final bill payment shall be released.

Any change in the royalty rates of minor minerals notified by the state government, after the date of submission of financial offer by the bidder/contractor, then this increase/decrease in the rates shall be reimbursed/deducted on actual basis.

2 Rule 52 of the Rules is as follows:

52. Assessment and determination of royalty.-(1) Assessment and determination of royalty due from an assessee during an assessment year or as required shall be made by the assessing authority after the returns in respect of that year have been filed by the assessee as required under the terms and conditions of the lease deed or the statement of production, despatches or consumption has been submitted by the lease/[Trade quarry] holder:

Provided that the assessing authority may make a provisional assessment for a particular period during the assessment year after the receipt of returns in respect of that period.

(2) For the purpose of assessment of royalty as mentioned in sub-rule (1) the assessee shall submit monthly returns in Form X by the 10th of the following month and annual return in the Form XII within one month from the expiry of the assessment year.

(3) If the assessee fails to submit returns as required under sub-rule (2) or the returns filed appear to be incorrect, the assessing authority may hold such inquiry as it may deem fit and assess royalty of the assessment year:

Provided that the assessing authority shall give reasonable opportunity of being heard to an assessee before taking any action under this sub-rule.

(4) For the purpose of sub-rule (3) the assessing authority may serve a 15 days" notice upon the assessee requiring in writing on a date and at place specified in the notice and to produce any evidence on which the assessee relies in support of the correctness of the returns, statement and records furnished by him and produce or cause to be produced such accounts pertaining to the assessment year as the assessment authority may require.

(5) On the day specified in the notice given in sub-rule (4) or on any other day thereafter which the assessing authority may fix, the assessing authority after hearing and considering the evidence as may be produced by the assessee in this behalf, shall make an order in writing of assessment of royalty payable by the assessee.

(6) Notwithstanding anything contained in these rules or in the agreement of quarry lease/[Trade quarry] if the assessee contravene any of the provisions of sub-rules (2), (4) and (5) or if he has not adopted any method of regular

accounting on the basis of which assessment can be made properly, the assessing authority shall assess the royalty to the best of its judgment and may impose for each of the contravention, penalty up to 20% of annual dead rent.

(7) If an assessee fails to submit monthly returns in Form X under sub-rule (2) for any month within the prescribed time limit and if the assessing authority has reason to believe that the assessee has evaded or avoided payment of royalty, the assessing authority may after giving to assessee a reasonable opportunity of being heard and after making such inquiry as it may consider necessary, assess the royalty for the period to the best of its judgment. The amount so assessed shall be payable forthwith by the assessee.

3 Rule 2(iv) of the Rules is as follows:

"Assessee" means a person holding a quarry lease or quarry permit and includes any other person who holds a quarry of minor minerals granted under these rules save as exempted under rules.