

(2016) 10 RAJ CK 0056

In the Rajasthan High Court

Case No : Civil Writ Petition No. 10550 of 2016.

M/s Shiv Construction Company Mornawra, tehsil Bawadi district Jodhpur through its partner Shiv Karan S/o Shri Kanchan Singh Jakhar aged 45 years R/o Mornawra Labera Bawori, Jodhpur (Raj) - Petitioner @HASH State of Rajasthan through Principal Secretary t

Date of Decision : 19-10-2016

Acts Referred:

Constitution of India, 1950 — Article 14, Article 19(1)(g)
Contract Act, 1872 — Section 56
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 37-A

Citation : (2016) 4 RLW 2951

Hon'ble Judges : Govind Mathur and Kailash Chandra Sharma, JJ.

Bench : Division Bench

Advocate : Mr. B.M. Bohra, Mr. Vikas Balia and Mr. DPS Charan, Advocates, for the Petitioner; Mr. Dinesh Mehta, Mr. Sharad Kothari and Dr. P.S. Bhati, Additional Advocate General with Mr. S.S. Rathore, Advocates, for the Respondent/State

Final Decision : Dismissed

Judgement

Mr. Govind Mathur, J. - These petitions for writ are before us to examine constitutional validity of Rule 37-A (xvi) of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as "the Rules of 1986"). As per learned counsels, the provision aforesaid is in contravention of Articles 14, 19(1) (g) of the Constitution of India and Section 56 of the Indian Contract Act, 1872.

2. The factual matrix necessary to be noticed for adjudication of these petitions for writ is that a royalty collection contract was granted to the petitioners for a period of two years. The terms and conditions of the contract entered in between the State Government and the petitioners were reduced in writing. A specific condition 3(xvi) was incorporated in the contract to the effect that in the event of cancellation/surrender of leases or sanction of new leases/revision of dead rent of existing leases, in the area concerned, shall not have any impact on yearly contract amount.

3. During currency of the contract the National Green Tribunal, New Delhi under

an order dated 4.5.2016 directed that those quarry holders, who have not applied for environmental clearance upto 31.3.2016, shall stop mining operations and shall not undertake the same until having the clearance as required. The restriction aforesaid was also applicable for the quarry holders who though applied for having environmental clearance upto 31.3.2016 but was not accorded. The mining department of the Government of Rajasthan stopped Bajri mining operations in terms of the directions given by the National Green Tribunal on 4.5.2016. As a consequence to closure of mining operations in most of the parts of State of Rajasthan, it was not possible for the royalty collection contractors including the petitioners to collect any royalty.

4. The grievance of the petitioners is that though the mining operations were closed and the petitioners were not in position to collect any royalty, the respondents, by different demand notices are demanding royalty. As per the petitioners, they cannot be made liable to make the payment of royalty or the permit fee for the period mining operations came to be stopped under the orders of the National Green Tribunal, as they were restrained from collecting any royalty. To have the relief claimed, condition 3(xvi) of the contract, which is in consonance to Rule 37-A(xvi) of the Rules of 1986, is coming in their way. The Rule aforesaid reads as under:-

"Rule 37-A. Conditions of royalty collection contract and/or excess royalty collection contract.- The following conditions shall be included in every royalty collection contract and/or excess royalty collection contract and if they are not so included shall be deemed to have been included therein, namely:-

(i) to (xv)

.....

.....

(xvi) Cancellation/surrender of leases/quarry licences or sanctioning of new leases/quarry licences or revision of dead rent of existing leases or temporary/permanent closure of leases/quarry licences by Government/Court or due to any other reason in the area concerned shall not have any impact on yearly contract amount."

5. A reply to the writ petition has been filed on behalf of the respondents with a preliminary objection that a Division Bench of this Court at Jaipur, in DB Civil Writ Petition No. 19947/2013, Nawal Singh Ratnawat v. State of Rajasthan and ors., decided on 11.3.2014, has already affirmed constitutional validity of Rule 37-A (xvi) of the Rules of 1986, therefore, that is not open for examination afresh.

6. While meeting with the preliminary objection, learned counsels appearing on behalf of the petitioners submit that in the case of Nawal Singh Ratnawat (supra) the Division Bench has not taken into consideration several relevant aspects of the matter and, therefore, the judgment aforesaid deserves to be referred for reconsideration by larger bench. It is stated that the right to collect royalty or

permit fee on behalf of the State Government was withheld during the period in dispute, therefore, the demand raised is absolutely illegal as the performance of the contract was impossible. While relying upon provisions of Section 56 of the Indian Contract Act, 1872, it is stated that Rule 37-A(xvi) of the Rules of 1986 fastens a liability of contract which cannot be legally performed. It is asserted that this question, though was raised before the Division Bench in the case of Nawal Singh Ratnawat (supra), but that was not considered and decided, as such, for adjudication of this aspect of matter, the issue deserves to be referred for reconsideration by larger bench. It is also asserted that the provision of Rule 37-A(xvi) of the Rules of 1986 deserves to be declared in violation of Article 14 of the Constitution of India being putting a liability, which as a matter of fact was restricted in view of the order passed by National Green Tribunal and further being highly arbitrary.

7. Certain other arguments are also raised to question constitutional validity of the provision in question, but from perusal of the order passed by this Court in the case of Nawal Singh Ratnawat (supra), we are satisfied that all these issues have been taken into consideration in the case aforesaid.

8. The submission made by learned counsels that the issue agitated have not been considered, in our opinion, is not well founded. May there be no discussion in so many words as desired by the petitioners, but the Court examined all aspects and arrived at a definite conclusion. We do not find any reason to disagree with the findings so arrived. As such, we are of considered opinion that the issue sought to be agitated by the petitioners in this batch of writ petitions is no more res-integra in view of the judgment given by this Court in the case of Nawal Singh Ratnawat (supra).

9. In terms of the judgment given by Division Bench of this Court in DB Civil Writ Petition No. 19947/2013, Nawal Singh Ratnawat v. State of Rajasthan and ors., decided on 11.3.2014, these petitions for writ are dismissed.

10. No order to costs.