(2017) 12 OHC CK 0070

In the Orissa High Court

Case No : 12657 of 2017

M/s Shri Durga Condev Private Limited — APPELLANT

Vs

State of Orissa and others — RESPONDENT

Date of Decision : 08-12-2017

Acts Referred:

Citation : (2017) 12 OHC CK 0070

Hon'ble Judges : Vineet Saran, B.R. Sarangi

Bench : DIVISION BENCH

Advocate : B.B. Swain, S.K. Dash, K.K. Gaya, S.P. Dash,?B.P. Pradhan

Judgement

1. The petitioner, a private limited company, has filed this writ application for quashing order dated 03.02.2017 in Annexure-1, whereby the claim of the petitioner has been rejected on the ground that the same is violative of order dated 03.11.2016 passed by this Court in W.P.(C) No. 17924 of 2016.

2. The petitioner was awarded with the work "Widening and Strengthening of Karanjia- Thakurmunda- Satkosia- Anandpur Road (SH-53) from 10/0 to 30/0 KM (Part-A), from 42/00 KM to 64/980 KM (Part-B) in Mayurbhanj District and Bhadrak-Anandpur-Karanjia Road (SH-53) from 43/350 to 57/350 to 57/680 KM (Part-C) in Keonjhar District under State Highways Development Programme on EPC Mode of execution. As the metal stone is a necessary raw material for road construction work, Executive Engineer, Rairangpur (R&B) Division by letter no. 3629 dated 17.07.2014 requested Collector, Mayurbhanj to take up the matter with different statutory authorities for obtaining required permission so as to enable the petitioner to operate the stone quarry, and make available government land for setting up of stone crusher unit and other required plants for the purpose of work in question. Pursuant thereto, a plot in village Sunariposi, being plot no. 569 under khata no. 70 (Sunariposi-1), was identified as source of stone in the vicinity of the road project. Applications were invited for award of stone quarry vide advertisement dated 01.08.2015, in which petitioner emerged as the successful bidder for Sunaripso-1 stone quarry and deposited

earnest money deposit of Rs.50,000/- in the concerned Tahasil office on 26.08.2015. The petitioner, thereafter, submitted mining plan for the said stone quarry, which was approved by the Deputy Director, Geology in the office of the Joint Director of Geology, Keonjhar on 14.10.2015 and returned to the Tahasildar concerned on 16.10.2015. On deposit of Rs.5000/- towards scrutiny fee and Rs.17,925/- towards Odisha Environment Management Fund, the Sub-Collector, Panchpir, Karanjia transmitted the approved mining plan to the State Environment Impact Assessment Authority (SEIAA), Bhubaneswar for clearance in favour of the petitioner. 2.1 On the basis of the report dated 10.12.2015 of the Revenue Inspector, Kendujiani that approximately 10000 cum of stone alleged to have been extracted by the petitioner for the purpose of the work in question, Touzi Misc. Case No. 70 of 2015 was initiated and direction was given to the Additional Tahasildar, as well as Revenue Supervisor, Thakurmunda to conduct joint enquiry and submit a report. Accordingly, they conducted joint enquiry and submitted report on 16.12.2015 that around 15000 cum of stone have already been excavated. The petitioner, being called upon, filed show cause on 31.12.2015 denying extraction of 15000 cum of stone and pointed out that the stone quarry was amenable to extraction of 2622 cum of stone per year and it had only lifted 500-1000 cum of stone to meet the urgent requirement of the road construction. However on 18.03.2015, the petitioner filed a further show cause and requested for technical assessment of the extent of lifting, in pursuance of which the Sub-Collector, Panchpir, Karanjia directed Block Development Officer, Thakurmunda to depute one technical person to measure the actual quantity of stone lifted. Accordingly, one Grama Panchayat Technical Assistant, having been deputed, conducted field assessment and submitted report dated 19.03.2016. But, while conducting such measurement, no notice was given to the petitioner. In any event, on the basis of such enquiry conducted by Grama Panchayat Technical Assistant, the Sub-Collector passed an order on 30.04.2016 that the petitioner is liable to pay royalty and penalty under Rule 65 of the Orissa Minor Mineral Concession Rules, 2004 (for short "OMMC Rules, 2004") for alleged extraction of 10454 cum of stone without lawful authority and directed to deposit a sum of Rs.13,24,492/- by 01.07.2016.

2.2 Aggrieved by order dated 30.04.2016 passed by the Sub-Collector, Panchpir, Karanjia in Touzi Misc. Case No. 70 of 2015, the petitioner preferred an appeal under Section 64(4) of the OMMC Rules, 2004 before the Collector, Mayurbhanj inter alia on the ground that assessment was made on the basis of enquiry conducted by the Grama Panchayat Technical Assistant on 19.03.2016, without giving opportunity of hearing to the petitioner and behind its back, and that Rule 65, under which penalty was levied, does not provide for imposition of such penalty and the relevant provision is Rule 68(1) which stipulates for a penalty of Rs.25,000/-. But the appellate authority, by order dated 13.07.2016, without considering the grievance of the petitioner, dismissed TMC Appeal Case No. 2 of 2016 on the ground that no appeal would be admitted unless the amount assessed, as per orders appealed against, is deposited. Against the said order, petitioner approached this Court by filing W.P.(C) No. 17924 of 2016, which was disposed of on 03.11.2016 with the following orders:

"Having heard learned counsel for the parties and in the facts and circumstances of the case, we dispose of the writ petition with direction that in case the petitioner deposits the amount as required under Rule-62(2) of the OMMC Rules, 2004 within a period of four weeks from today along with certified copy of this order and files an application for recalling of the order dated 13.07.2016, the opposite party no.3 shall thereafter recall the said order and further hear and decide the appeal on merits by passing necessary orders in accordance with law, after affording opportunity of hearing to the petitioner. We make it clear that the delay in depositing the amount under Rule-64(2) of the OMMC Rules, 2004 shall be condoned if the amount is deposited within four weeks from today."

2.3 In compliance of the aforesaid order, the petitioner deposited Rs.10,24,492/- on 27.01.2017 with the Tahasildar, Thakurmunda in the shape of bankers cheque and obtained receipt. Thereafter on 02.02.2017, the petitioner filed an application, along with the receipt dated 27.01.2017 and certified copy of the order dated 03.11.2016 passed by this Court, before the appellate authority for condonation of delay and hearing the TMC Appeal No.2 of 2016 in accordance with law. But the appellate authority, vide order dated 03.02.2017, rejected the application filed by the petitioner and confirmed the order dated 13.07.2016 passed by the Sub-Collector stating inter alia that the petitioner has deposited Rs.10,24,492/- out of Rs.13,24,492/- and he failed to deposit the amount as required under Rule-64(2) of the OMMC Rules, 2004 within a period of four weeks from 03.11.2016, thereby there was noncompliance of the order passed by this Court on 03.11.2016. Aggrieved by order dated 03.02.2017 passed by the appellate authority, the petitioner has approached this Court by filing the present writ petition.

3. Mr. B.B. Swain, learned counsel for the petitioner states that the quantum of demand of Rs.13,24,492/- assessed by the Sub-Collector includes the royalty and penalty. So far as royalty is concerned, which the petitioner is liable to pay, amounts to Rs.10,24,492/-, and Rs.3,00,000/- was imposed as penalty. As such, since the petitioner had deposited royalty amount of Rs.10,24,492/-, the appellate authority should have accepted the same and decided the appeal on merits. But the appellate authority, without considering the same, passed the order impugned on wrong premises by observing that there was violation of order dated 03.11.2016 passed by this Court.

4. Mr. B.P. Pradhan, learned Additional Government Advocate vehemently contended that this Court, by order dated 03.11.2016, specifically directed to deposit the amount as required under Rule 64(2) of OMMC Rules, 2004, within four weeks from 03.11.2016, which speaks with regard to both royalty and penalty. The above being the direction of this Court, the same has to be adhered to in letter and spirit, and the petitioner having failed to do so, no fault can be found with authority in rejecting the application filed by the petitioner. Apart from

the same, the application was not filed by the petitioner before the appellate authority within four weeks from 03.11.2016, as stipulated by this Court. Therefore, it is contended that no illegality or irregularity has been committed by the appellate authority so as to warrant interference by this court in the present proceeding.

5. Having heard learned counsel for the parties and after going through the records, this Court finds that the Sub- Collector, by order dated 30.04.2016 passed in T.M.C. No 70 of 2015, raised a demand of Rs.13,24,492/- against the petitioner on the ground of unauthorized extraction of stone, which includes royalty and penalty. But, while said demand was raised on the basis of the report dated 19.03.2016 furnished by Grama Panchayat Technical Assistant, the petitioner was not given opportunity of hearing. Such a stand, though taken by the petitioner in appeal, was not considered and, on the other hand, he was insisted upon to deposit the demand raised by the Sub- Collector in his order dated 30.04.2016, for which the petitioner approached this Court by filing W.P.(C) No. 17924 of 2016. This Court, by order dated 03.11.2016, while disposing the said writ application, directed that in case the petitioner deposited the amount as required under Rule 64(2) of OMC Rules, 2004 within a period of four weeks from the date of passing of the order and filed an application for recalling the order dated 13.07.2016, the appellate authority would recall the same and hear and decide the appeal on merits by passing necessary orders in accordance with law. Undisputedly, the petitioner has deposited Rs.10,24,492/-, but according to the appellate authority, the balance Rs.3,00,000/-, which was imposed as penalty, has not been paid. When the matter was remanded back by this Court for fresh adjudication, the petitioner having deposited Rs.10,24,492/-, the appellate authority should have decided whether opportunity of hearing was given to the petitioner while raising a demand of Rs.13,24,492/- by the Sub-Collector in TMC No.70 of 2015, but instead of doing so the appellate authority insisted the petitioner to deposit the entire amount.

6. In view of the aforesaid facts, without delving into the merits of the case, this Court deems it proper to remit the matter back to the appellate authority to decide the same afresh in accordance with law on the basis of the pleadings made by the petitioner. Accordingly, the order dated 03.02.2017 passed in TMC Appeal No.2 of 2016 is hereby quashed and the matter is remitted back to the appellate authority to consider the claim of the petitioner by affording opportunity of hearing in accordance with law and dispose of the same as expeditiously as possible, preferably within a period of three months from the date of communication of this order.

7. The writ petition is allowed to the extent indicated above. No order as to cost.

