

(2013) 12 MP CK 0127
In the Madhya Pradesh High Court
Case No : Writ Petition No. 21793 of 2012

M/s. Surinder Singh Kalra

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 16-12-2013

Acts Referred:

Citation : (2013) 12 MP CK 0127

Hon'ble Judges : Rajendra Menon, J;A.K. Sharma, J

Bench : Division Bench

Advocate : Manikant Sharma, for the Appellant; Govind Patel, Counsel, for the Respondent

Final Decision : Disposed Off

Judgement

1. As the question of law and facts involved in all the three petitions are common, they are being decided by this common order. For the sake of convenience, documents and material available in the record of Writ Petition No. 21793/2012 is being referred to in this order. Petitioner claims to be a Partnership Firm carrying out certain construction activity and is a Registered Contractor with the Railway Administration. It is said that three contracts were granted to the petitioner by the Railway Administration. In Writ Petition No. 21793/2012, petitioner is said to have been granted the construction work of Bridge No. 13, including approach earth work in Shikara - Sukhrimangla section, pertaining to Gondia - Jabalpur Gauge Conversion.

2. Similarly, in Writ Petition No. 21795/2012, the work pertained to construction of Bridge No. 1 in CH 315 M, in Bargi Gwarighat Section and Minor Bridge No. 29 at CH 10977 in Sukri - Bargi Section.

3. In Writ Petition No. 21782/2012, the work was with regard to construction of Major Bridge Nos. 5 & 14, in Nainpur - Pindrai Section, and in the Gondia - Jabalpur Gauge Conversion Project.

4. According to the petitioner, for the purpose of carrying out the construction

activity and for execution of the work, petitioner was required to use minor minerals like Ballast (gitti), sand and murram. According to the petitioner, these minor minerals were obtained by him from various lease-holders of Mines and Minerals or Contractors, who had procured the minerals after payment of royalty.

5. Grievance of the petitioner in all the three petitions are that after the work is completed and when the payment as per the final bill is to be settled, the Railway Administration is insisting upon payment of royalty for the minor minerals consumed in execution of the work. It is stated that petitioner cannot be held liable for payment of royalty as the minor minerals procured by the petitioner from the Mining Contractor is already after payment of the royalty, and payment of royalty or production of NOC for payment of royalty cannot now be a ground for withholding final payment to the petitioner or deducting the amount of royalty from the bills of the petitioner. Seeking a direction to the Railway Administration not to deduct royalty or to insist upon payment of royalty for settlement of the bills, petitioner has filed this writ petition.

6. Even though notices have been issued, the Railway Administration has not filed any reply. Shri Govind Patel, learned counsel appearing for the respondents, makes an oral submission to the effect that for the present, according to petitioner's own showing as is indicated in paragraph 5.5 of the writ petition, the Railway Administration is yet to take a final decision and as a final decision is not taken, he comes out with a case that the petitions are pre-mature.

7. However, Shri Manikant Sharma, learned counsel for the petitioner, refuted the aforesaid and said that the deductions have already been made and, therefore, the action is illegal.

8. Having heard the rival contentions, I am of the considered view that the question involved in these writ petitions already stand concluded by series of judgments rendered by this Court in various cases.

9. The question of insisting upon the payment of royalty and the question of deducting royalty from the bills on similar contract has already been considered and decided by this court in various judgments. The question of demanding royalty from a contractor with regard to mineral consumed in execution of the contract has been considered in the case of W.P. No. 1361/09 (M/s. Chandrama Construction Company v. M.P. Rajya Krishi Vipnan Sangh & others), W.P. No. 2535/2003 (M/s. Ravi Construction Company v. State of M.P. and others) and W.P. No. 5266/2006 (M/s. K.P. Singh Bhadoria v. M.P. Rural Road Development Authority Bhopal). Recently also a Division Bench of this court in W.P. No. 16091/2010 (M/s. Vinod Kumar Jain v. M.P. Rural Road Development Authority, Bhopal and others) considered the said question and after taking note of the controversy, the following directions have been issued:

As controversy involved in this case is squarely covered by the order in M/s. Chandrama Construction Company (supra) and we do not find any reason to differ with the reasonings and directions issued by the learned Single Judge, we

dispose of this petition with following directions:

(1) The petitioner shall either furnish the bills of purchase of minerals from authorized dealer or an affidavit disclosing the source from where petitioner purchased minerals, which were used in the construction work.

(2) The respondents' authorities if are satisfied with the bills produced by the petitioner may process the bills, but in case of any doubt, respondents authorities may insist the petitioner to file an affidavit in support of its contention in respect of purchase of minerals from the open market by the bills.

(3) In case the petitioner is unable to produce the bills for the purchase of the minerals or the royalty receipt in this regard, respondents' authorities shall insist the petitioner to file an affidavit pointing out specifically the manner in which minerals were purchased, disclosing particulars of the person from whom the minerals were purchased. On filing of the affidavit, the authorities shall be within their right to verify the aforesaid facts. They can also verify the facts from the record of the Mining Department of the concerned district.

(4) On completion of the aforesaid process, the respondents shall clear the bills of the petitioner submitted in connection with the execution of the works contract and the amount of royalty, if any recovered from the bills, shall be released in favour of the petitioner.

(5) In case, the authorities are not satisfied with the contention of petitioner or on verification, facts are not found correct then they shall pass a reasoned order in rejecting the contention of petitioner.

(6) If the petitioner fails to produce the bills/affidavit as indicated hereinabove, the petitioner may represent his case to the concerned authority showing his inability to produce the bills or affidavit and it shall be for the State Government or authority to consider the representation and pass a suitable order in that regard within two months from the date of receipt of the representation.

10. Keeping in view the aforesaid directions already issued by a Coordinate Division Bench of this Court under similar circumstances, we see no reason to take a different view.

11. In view of the above, all these three petitions are also allowed and disposed of in identical terms, as is reproduced hereinabove. Respondents/Railway Administration is directed to take action for settling the claim of the petitioner in accordance to the directions already issued by this Court in various other cases as has been reproduced hereinabove, and decide the claims within a period of three month from the date of receipt of certified copy of this order.

12. If any amount is found to be refunded to the petitioner, the same be done within the aforesaid period. With the aforesaid, the three petitions stand disposed of.