(1992) 04 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No''s. 6237, 6238 and 6506 of 1991

P.B. Enterprises APPELLANT

Vs

State of Bihar and Others RESPONDENT

Date of Decision : 08-04-1992

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : (1992) 2 BLJR 1270

Hon'ble Judges : Satyeshwar Roy, J;S.N. Jha, J

Bench : Division Bench

Judgement

Satyeshwar Roy and S.N. Jha, JJ.—In all these cases the petitioners have contended that they being not the lessees of minor mineral, they were not liable to pay royalty and cess or penalty and public demand raised against them was without jurisdiction. The validity of certificate cases for recovery of the demand has also been challenged.

2. The fact that the petitioners were not lessees of minor mineral has not been disputed by the respondents. It is also not in dispute that the petitioners not being lessees of minor mineral are not liable to pay cess or royalty under the Bihar Minor Mineral Concession Rules, 1972, (the Rules). The stand of the respondents is that under the notification dated 14th April, 1988, a copy of which is Annexure A to the counter-affidavit, the petitioners, who had admittedly used minor mineral for execution of their contract, were required to file affidavit stating the fact that they were not the lessees of any minor mineral and disclosing the names of the persons from whom they had purchased minerals which were used in execution of the contract. Since the petitioners have failed to file affidavit, the respondents had jurisdiction to assess royalty and penalty and recover it as public demand by filing certificate cases under the Bihar Public Demands Recovery Act, 1914 (the Act).

3. The question is : whether by an executive instruction fiscal liability can be imposed on a person.

4. There is no dispute that a lessee of minor mineral is liable to pay royalty. This liability has been imposed by Rule 26 framed u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957. No statute has been brought to our notice creating any liability to pay royalty on a purchaser of minor mineral who is not a lessee.

5. The penalty provided for in Annexure-A can be levied only in the event the affidavit filed by the contractor is found to be false in which case it shall be deemed that he has done illegal mining and appropriate action will be taken against him under the rules besides the action that be taken against him for swearing false affidavit. It has been provided further (hat if such a contractor voluntarily pays the royalty and cess, the mining officer may not take any legal action against him.

6. If there be violation of the provisions of the Rules, the authorities may take appropriate action under the same, and for that no provision was required to be made in Annexure-A. Under Rule 40 (1), if minor mineral is removed without payment of royalty, there shall be presumption of illegal mining. There is no other provision in the Rules under which presumption of illegal raining may be raised. Annexure-A is an executive instruction and cannot be treated as part of the Rules. In Annexure-A, there, is no provision for raising any presumption of illegal mining. Further, Annexure-A does not deal with a case where affidavit has not been filed. It speaks of a situation where affidavit is found to be false.

7. Merely because the petitioners have not filed the affidavits in terms of Annexure-A, no fiscal liability can be imposed on them, as for imposing any fiscal liability including penalty, there must be a statute to that effect. Therefore, the District Mining Officer was not competent to demand any amount as royalty or penalty from the petitioner under Annexure-A. Under the Rules, no cess is recoverable. If at all, it is recoverable under Bengal Cess Act, 1880. Demands have not been raised under any statute which provides that such demand will be a public demand. Certificate cases could not have been initiated.

8. For the reasons aforesaid, all the writ applications are allowed. It is held that the petitioners are not liable to pay cess, royalty or penalty merely because they have not filed affidavit as required under Annexure-A. The certificate cases are quashed. In the facts and circumstances of the case, we shall make no order as to costs.

