

(2008) 05 JH CK 0034
In the Jharkhand High Court

Pre Stressed Udyog (India) Private Limited	APPELLANT
Vs	
The State of Jharkhand and Another	RESPONDENT

Date of Decision : 12-05-2008

Acts Referred:

Citation : AIR 2009 Jhar 32 : (2008) 3 JCR 606

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narendra Nath Tiwari, J.—In this writ petition the petitioner has prayed for quashing the demand notice dated 22.11.03 (Annexure-8). It has been stated that the petitioner is a Railway contractor and is engaged in manufacturing Railway sleepers for the use of Railway line. He carries on such business under the supervision of the Railway. For manufacturing the Railway sleepers, the petitioner purchases the stone chips, sand, shelly and boulders from the various sources. The petitioner procures the said components from the persons who hold valid leases and deal in mines and minerals. After manufacturing the sleepers, the petitioner sells the same to Railway and gets the price and pays all the required duties and taxes. The grievance of the petitioner is that the District Mining Officer, Dhanbad suddenly started pressing the petitioner to obtain the license in Form "L" alleging that the petitioner carries on business in mines and minerals beyond the leasehold area and for that purpose he has to obtain the license from the competent officer. It has been stated that the petitioner does not carry on business in mines and minerals. He is engaged in manufacturing Railway sleepers which is not defined in the law as the business in mines and minerals and as such he does not come within the ambit of Rule 49 of the Jharkhand Minor Mineral Concession Rules, 2004 and for such purpose any license in Form "L" is not required. On the allegation that the petitioner has been using the mines and minerals for the said purpose, he has been held liable to pay the price of the mines and minerals as well as the royalty under Rule 40(8) of the Bihar Minor

Mineral Concession Rules, 1972. On the said ground the impugned demand notice dated 22.11.03 has been issued asking the petitioner to pay Rs. 29,85,190.59 towards royalty on the stone chips, sand, shelly and boulders. It has been contended on behalf of the petitioner that since he does not carry on business and he is not engaged in unauthorized extraction or removal of the mines and minerals, he is not required for getting the license in Form "L" or he is not liable for payment of royalty and price. The impugned order asking the petitioner to obtain the license in Form "L" and demanding the said amount is wholly arbitrary, unjust and illegal.

2. Counter affidavit has been filed on behalf of the State-respondents justifying the said order of the concerned authority. It has been stated, inter alia, that the petitioner has been using the stone chips which are the minor minerals in manufacturing the Railway sleepers and in that view, the business of the petitioner can be termed as the business of mines and minerals. Since the petitioner purchases the minerals from the lessee, he has to produce all the required documents, but the petitioner failed to produce any such document of purchase of mines and minerals from any lessee. In that view, the petitioner has been held guilty of extracting the mines and minerals illegally and has been held liable for payment of price and royalty for the consumption of mines and minerals.

3. I have heard learned Counsel for the parties and perused the facts and materials on record. On going through the definition of mines and minerals, I find that the Railway sleepers do not come within the said definition. Admittedly, the petitioner is carrying on the business of manufacturing the Railway sleepers. For that purpose, the petitioner is said to have obtained the license under the relevant provision of law, required for such business. Rule 49 of the Bihar Minor Minerals Concession Rules, 1972 provides that every person, who carries on the business of mines and minerals in any leasehold area, shall obtain license from the competent officer in Form "L". Since the petitioner is carrying on the business of manufacturing sleepers and not carrying on any business of mines and minerals beyond any leasehold area, he is not required to obtain the license in Form "L". The impugned order directing the petitioner to obtain the said license is, thus, wholly without any legal justification, arbitrary and vitiated. So far as the demand of royalty by the Impugned order is concerned, the same also does not seem to be justified in absence of any finding that the petitioner has been extracting or removing the mines and minerals himself. Since the petitioner has claimed that he purchases the stone chips, sand etc from the valid lease holders and he is in possession of all the valid transit Challans, the respondents cannot conclude illegal extraction or removal of the stone chips, and etc in absence of any enquiry, under the prescribed procedure of law and without giving any opportunity of representation and hearing to the petitioner. On perusal of the impugned order dated 22.11.03, I do not find any such enquiry under the prescribed procedure or representation of the petitioner before taking the said decision of making demand of the huge amount of more than Rs. 29 Lacs. The

said amount has been worked out and calculated only a conjectures and surmises on the basis of the Challans produced by the petitioner regarding the purchases of the stone chips, sand, shelly and boulders used in manufacturing railway sleepers. Before coming to the said finding, the petitioner was not given any notice or opportunity of hearing. The impugned decision fixing the liability on the petitioner is violative of the principle of natural justice and is a nullity in law.

4. For the reasons aforesaid, this writ petition is allowed. The Impugned order dated 22.11.03 contained in Annexure-8 is, hereby, quashed.