(2006) 11 BOM CK 0077

In the Bombay High Court

Case No : Writ Petition No. 2758 of 1992

Ravi Industries and Others — APPELLANT

Vs

Western Coalfields Ltd. and Another — RESPONDENT

Date of Decision : 10-11-2006

Acts Referred:

Citation : (2007) 2 ALLMR 211 : (2007) 1 MhLj 791

Hon'ble Judges : R.V. More, J;D.D. Sinha, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; S.C. Mehadia and Neeta Jog, A.G.P., for the Respondent

Judgement

D.D. Sinha, J.—Heard Mr. Sunil Manohar, Advocate for the petitioners, Mr. S. C. Mehadia, Advocate for respondent No. 1 and Mrs. Neeta Jog, A.G.P. for respondent No. 2.

Mr. Manohar, the learned Counsel for the petitioners, has submitted that the petitioners are Government Contractors and purchase boulders, gitti, murum, stones, stand, etc. from the open market for their construction activity. Respondent No. 1 invited tenders for the construction work. Clauses (ii), (viii) of the General Terms and Conditions reads thus;

(ii)...

Responsibilities of the Contractor/Contractors:

(i)...

(ii)...

(iii)...

(iv)...

(v)...

(vi)...

(vii)...

(viii) All taxes, whether local, Municipal or Central etc. and cess, royalties etc. those are payable or may become payable shall be to the Contractor''s/ Contractors account and shall be deemed to have been included in the tender for the work to be excluded by him/them. The contractor/contractors will have to produce a certificate from the appropriate authorities of the State Government to the effect that all dues about royalty have been paid. Those certificates will have to be produced before the local payment made/security released.

2. Mr. Manohar, the learned Counsel for the petitioners, has contended that the said clause can only be made applicable in cases where the contractor/ contractors themselves are lessees having lease hold mining rights to excavate the minerals from the soil and use the said minerals in carrying out construction activities under the contract entered into with the Government. The said clause cannot be applied to the other contractors like the petitioners, who are not lessees and are required to purchase minerals from the open market for the purpose of construction activities. It is further contended that as per the stipulations in Clause (ii)(viii) even the contractors like the petitioners, who are buying minerals necessary for the construction activity from the open market, are also required to produce Royalty Clearance Certificate, issued by the Collector before the final payment is released. It is further submitted that the petitioners are aggrieved by this requirement of Clause (ii)(viii), which is not only irrational but the same is also inconsistent with the provisions of the law. It is contended that the Collector, under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 as well as the Mineral Concession Rules, 1960, is entitled to ask for payment of royalty in respect of minerals removed or consumed by the lessee from the leased area.

3. Mr. Manohar, the learned Counsel for the petitioners, has further contended that the requirement of submission of Royalty Clearance Certificate by the contractors like the petitioners is invalid in law since the Collector does not have jurisdiction to examine and issue such certificate to the contractors like petitioners, who are buying minor minerals from open market. It is, therefore, contended that the said requirement, being irrational and inconsistent with the procedure prescribed under the Mines and Minerals (Development and Regulation) Act and the Mineral Concession Rules, may be quashed and set aside. In order to substantiate his contention, Mr. Manohar, has relied upon Prestigious Vs. M.P. Rural Road Development, .

4. Mr. Mehadia, learned Counsel for respondent No. 1 has contended that the condition stipulated in Clause (ii) (viii), which requires contractors to submit Royalty Clearance Certificate from the Collector, is inserted in the General Terms and Conditions, on the basis of instructions/circulars issued by the State Government and, therefore, it is for the State Government to give plausible

explanation to this Court for issuing such directions/instructions to respondent No. 1-Western Coalfields Limited.

5. Mrs. Jog, the learned A.G.P., on the other hand, has submitted that the State Government has neither issued any Circular nor passed any Government Resolution in this regard, directing respondent No. 1-Western Coalfields Limited to incorporate such condition in General Terms and Conditions, requiring all the contractors to furnish Royalty Clearance Certificate from the Collector. Mrs. Jog, the learned A.G.P., therefore, contended that so far as the formulation of General Terms and Conditions of the tender document is concerned, it is the domain of respondent No. 1 and, therefore, it will be unjust to blame the State Government in this regard.

6. We have given anxious thought to the various contentions canvassed by the respective counsel and perused the decision of the Madhya Pradesh High Court, as well as condition No. (ii) (viii) of the General Terms and Conditions.

7. In the instant case, it is not in dispute that all the petitioners/contractors, are neither lease holders nor extracting minerals from the mines for utilising the same in the construction activity carried out under the Government contracts. It is, therefore, evident that so far as minerals such as boulders, gitti, murum, stones, sand, etc. are concerned, the petitioners are buying the said materials from the open market for the purpose of their construction activity. It is also not in dispute that the question of payment of royalty under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 as well as the Mineral Concession Rules, 1960 is concerned the said provisions would be attracted only in case of the holder of mining lease, who is extracting, removing or consuming the said minerals from the leased area himself or by his agents, manager, employee, contractor or sub-lessee. In the instant case, since none of the petitioners/contractors is holder of the mining lease and is purchasing the material, necessary for construction activity, from the open market, it will be irrational to ask them to obtain Royalty Clearance Certificate from the Collector for the purpose of release of final payment of the construction work.

8. In the case in hand, the stand taken by respondent No. 1 is that the clause, requiring the contractors to obtain Royalty Clearance Certificate from the Collector, is inserted on the insistence of the State Government. However, Mrs. Jog, the learned A.G.P. has denied that the State Government has issued any directions/instructions either in the form of Circular or Notification, asking the Western Coalfields Limited to insert such terms and conditions, which would require all the contractors to obtain Royalty Clearance Certificate from the Collector before releasing final payment. Even otherwise, it is difficult for us to appreciate as to how the State Government has any jurisdiction to issue such direction/instruction to respondent No. 1, which is a Central Government undertaking. So far as formulation of terms and conditions of tender, essential or otherwise, are concerned it is respondent No. 1 alone is entitled to formulate such terms and conditions of Tender. However, such terms and conditions must

be just, fair, transparent as well as consistent with the requirement of law and must serve the public purpose.

9. The relevant observations in the case of MA Prestigious (supra) in para 11 read as under:

As far as clause 6.2 is concerned, as already indicated hereinabove it only imposes a liability on the contractor providing the for payment of all sales-tax and other dues like royalty. Clause 6.2.1, which contemplates production of no dues certificate from the Collector with regard to payment of royalty is clearly contrary to the statutory provisions because the Collector can issue certificate with regard to payment of royalty only if the royalty is payable by the contractor. If the contractor has purchased the material from a supplier and the supplier has purchased the material from the mine owner, who has extracted the mineral from a place which is known to the contractor, the contractor cannot be expected to run from pillar to post finding out the source of extraction and the mineral consumed by him and then produce the certificate. This condition seems to be impracticable and inconsistent to the statutory provision. Considering this provision in the backdrop of the observations made by the Division Bench in para 13 in the case of M. P. Contractors'' Sangh (supra), I am of the considered view that the aforesaid condition cannot be enforced in the manner as it is being done....

We agree with the view expressed by the learned Single Judge and, therefore, are of the view that the part of the condition stipulated in Clause (ii)(viii), which requires contractors like petitioners to obtain Royalty Clearance Certificate from the Collector, apart from being impracticable is also inconsistent with the statutory provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and Mineral Concession Rules, 1960. It is, no doubt, true that normally the Court should be very slow in interfering with the terms and conditions of the tender formulated by the Authority concerned since it is the Authority alone, who is aware of the nature of requirement of work under tender. However, in the present case, the condition, requiring the petitioners to obtain Royalty Clearance Certificate from the Collector is not only impracticable, irrational, it is also inconsistent with the statutory provisions and does not serve any public purpose. Similarly in view of the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 or the Mineral Concession Rules, 1960, it cannot also be enforced.

10. For the reasons stated hereinabove, the condition stipulated in Clause (ii)(viii), requiring the Contractors to produce Royalty Clearance Certificate from the Collector for the purpose of releasing the final payment is struck down.

Rule is made absolute in the above terms with no orders as to costs.

