

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2085 of 2011

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M/s. Hari Construction & Associates Pvt. Ltd. (Formerly Known As M/s Hari Construction, a Partnership Firm) a Company incorporated under the provisions of the Companies Act, 1956, having its Registered Office at Keshawe, P.S.- Barauni, Distt.- Begusarai, through one of its Directors, Sanjiv Kumar, S/O Shri Satya Narain Singh, R/O Vill.- Keshawe, P.S.- Barauni, Distt.- Begusarai.

.... Petitioner

Versus

1. The Union of India, East Central Railway through its General Manager, Hajipur (Vaishali)
2. The Chief Administrative Officer (Construction) East Central Railway having his Office at Mahendru Ghat, Patna-800004
3. The Chief Engineer (Construction) East Central Railway, Mahendru Ghat, Patna-800004
4. The Dy. Chief Engineer (Construction-1) East Central Railway, Hazaribagh (Jharkhand)

.... Respondents

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Appearance:

For the Petitioner : Mr. Alok Kumar Agrawal, Advocate
For the Resp. Railways : Mr. Anil Kumar Sinha, Advocate
Mr. Abhimanyu Deo, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 22-09-2015

Heard Mr. Alok Kumar Agrawal, learned counsel for the petitioner and Mr. Anil Kumar Sinha, learned counsel for the Respondent Railways.

2. The present writ petition has been filed for quashing of the order dated 22.09.2010 by which the Respondent Railways have sought to make deduction from the bills of the petitioner on account of royalty for removal of earth for execution of works contract awarded by the Respondents and further for a direction

to the Respondent to refund the amount deducted/realised from the bills of the petitioner along with interest.

3. Pursuant to the award of contract by the Respondent Railways in favour of the petitioner in terms of agreement dated 28.03.2005 for construction/extension of platform, FOB, construction of relay room, battery room, Generator room and Equipment room, making level crossing, as per provisions of IRPWM and other miscellaneous works, the petitioner deposited the earnest money and security deposit for fulfillment of the contract. By a subsequent amendment made in Schedule II of the Bihar Minor Mineral Concession Rules, 1972, royalty on ordinary earth used for various purposes was made leviable @ Rs. 15/- per cubic metre. Such amendment was made with effect from 19.04.2006 based on which deductions from the bills of the petitioner were sought to be made by the Respondent Railways.

4. It is submitted on behalf of the petitioner that its tender quotation was based on the then existing levies by way of rates and taxes, and that any new imposition by amendment of law was required to be borne by the Respondents. Reliance is placed on a decision of this Court in CWJC No. 5892 of 2007 holding that the concerned Department is obliged for deduction of royalty from the bills payable to the petitioner, but at the same

time it would also be under legal obligation to reimburse the petitioner for the same amount and to the same extent simultaneously. Such view was reiterated in CWJC No. 6872 of 2009.

5. Learned counsel for the Respondent Railways on the other hand opposes the writ petition submitting that they have acted in accordance with law and in pursuance of the letter dated 10.10.2006 issued by the District Magistrate-cum-Collector, Samastipur requiring implementation of his earlier letter with regard to payment of royalty in respect of minor minerals used in connection with construction, repair and building construction of the Railways in view of the aforesaid amendment. As regards the aforesaid decision of this Court in CWJC No. 5892 of 2007 relied upon by the petitioner, he submits that the facts of that case were entirely distinguishable from the present one inasmuch as in that case "the State was demanding royalty from the agent of the State for doing the work of the State for the State". Moreover, it was the petitioner who was liable for royalty in terms of the charge under Section 9 of the Mines and Minerals (Regulation and Development) Act, 1956, ('the Act' for short) which question had however been left open in CWJC No. 5892 of 2007. Learned counsel for the Respondents submits that

even in terms of Rule 40 (10) of the Bihar Mines and Minerals Concession Rules, 1972, the liability to pay royalty falls on the petitioner.

6. Having heard the parties and on a careful consideration of the materials on record, this Court is unable to accept the submissions on behalf of the petitioner. The solitary relief sought by the petitioner is for quashing the letter dated 22.09.2010 issued by the Respondent Railways which, as pointed out on behalf of the Railways, has been issued pursuant to the letter of the District Magistrate-cum-Collector, Samastipur dated 10.10.2006. Significantly, the petitioner has chosen not to question the validity or legality of the letter dated 10.10.2006 itself though it was fully aware of the same and even annexed a copy thereof to the writ petition. So much so that the petitioner has not even impleaded the State of Bihar, to which the royalty would ultimately be paid as party Respondent, and has thus a substantial interest in the subject matter of the writ petition, as any order being passed in favour of the petitioner would ultimately enure to its detriment. The question whether or not the petitioner was liable for royalty in view of the amended provisions of law made effective subsequent to the contract, was in any event, not one which the Respondent Railways could

appropriately decide.

7. Considering that the State of Bihar and its authorities were necessary parties therefore, it must be held that the writ petition is not maintainable for non-joinder of necessary parties. The writ petition accordingly stands dismissed.

(Vikash Jain, J)

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