

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.276 OF 2015

Reliance Infrastructure Limited & Anr. Petitioners

V/s

The State of Maharashtra & Ors. Respondents

Ms. Anjali Chandurkar a/w Mr. D.J. Kakalia a/w Ms. Bhavna Singh a/w Mr. Paresh Pastkar i/b M/s. Mulla & Mulla & Craigie Blunt & Caroe for Petitioners.

Mr. Milind More, Additional Government Pleader for Respondent Nos.1 to 5.

CORAM : A.A. SAYED, J.
DATED : 4 AUGUST 2015

P.C.

1 The above Petition filed under Article 226 of the Constitution of India impugns the order dated 25 November 2014 passed by the Respondent No.2 Additional Commissioner, Konkan Division, rejecting the Second Appeal, thereby confirming the order dated 29 April 2013 passed by the Deputy Collector (Appeals) and the order dated 17 May, 2012 of the Respondent No.4 Sub Divisional Officer, MSD, in relation to the charging of royalty and imposing penalty for alleged unauthorized excavation of minor minerals to the extent of 1000 brass.

2 The first Petitioner is a Company engaged in the business of generation, transmission and distribution of energy and is a transmission

licensee and has been granted a license by the Maharashtra Electricity Regulatory Commission ('MERC' for short) under the provisions of section 14 of the Electricity Act 2003. On 2 May 2012 a notice was served on the first Petitioner's Contractor by the Respondent No.4 Sub Divisional Officer, inter alia, alleging that the provisions of the Rules framed under the Mines and Minerals (Regulation and Development) Act 1948 had been violated as the Petitioner No.1 has not obtained the permission of the Respondent No.4 Sub Divisional Officer for excavating and removal of minor minerals at the time of laying down pipelines at the site at Mauje Thakur Village Road, Jivlapada taluka Borivali and therefore they were liable for penal action under section 48(7) of the Maharashtra Land Revenue Code, 1966 (MLRC). It is the case of the Petitioners that without granting a personal hearing, Respondent No.4 Sub Divisional Officer has passed the order dated 17 May, 2012 levying royalty and penalty under the provisions of the said Rules and section 48(7) of the MLRC. The Petitioners contend that the said Rules are not at all applicable to the first Petitioner. In the said order dated 17 May, 2012, it was inter alia stated that the officer of the first Petitioner had admitted that the extraction was unauthorizedly carried out. According to the Petitioners, there was no such alleged admission. The order further states that 1000 brass were excavated without permission and the Petitioners were liable under Rules 29 and 32 of the said Rules for

payment of Rs.35,96,000/-. The order of the Respondent No.4 Sub Divisional Officer dated 17 May 2012 reads as follows:

“When we visited the site at Mauje Thakur village road, Jivlapada, Tq. Borivali on 02/05/2012 it is found that for the purpose of laying down 220 kv. cable you have carried out unauthorized excavation of 1000 brass minor minerals. On enquiry it is found that the said work is being undertaken by Reliance Infrastructure Ltd., through M/s. Shiva Electric Co. and therefore vide No.1 above a notice was served upon you and it was informed to remain present in this office on 03/05/2012 for hearing. However, none appeared on that day. On 10/05/2012 Shri Sonar, Vice President, Reliance Infrastructure was present on your behalf. He has admitted in his statement that they have given the contract of laying down the cable to M/s. Shiva Electric Co. and the said work is being done with permission of the Municipal Corporation. It is admitted that the unauthorised excavation work of minor minerals has been done without obtaining permission from your office. He had agreed to produce the work order, drawing and other documents with regard to excavation work of minor minerals within two days. However, till today, no any documents are produced, therefore, as per the Government Resolution, since you are responsible to pay royalty amount against the minor minerals, you are liable to penalty. As you have carried out the excavation work of 1000 brass minor minerals without permission, you are liable for punitive action under sub Rules 29 and 32 of the Mumbai Minor Minerals Excavation Rules 1955 and as per Government Resolution Minor Minerals/10/206/pr.kra.57/kh/dated 15/12/2006 and

section 48(7)(8) of the Maharashtra Land Revenue Code, 1966, following royalty amount and penalty amount thereon is being charged:

1.	Quantity – 1000 brass unauthorised excavation of minor minerals.	
2	Minor minerals royalty amount (1000x200)	2,00,000/-
3	Unauthorised minor minerals (1000x1132x3)	33,96,000/-
	Total	35,96,000/-

The said amount of Rs.35,96,000/- (Rs.Thirty five lacs ninety six thousand only) shall be paid immediately in the office of Tahasildar, Borivali and a copy of the original receipt be submitted in this office.”

The aforesaid order of the Respondent No.4 Sub Divisional Officer, has been confirmed by the Respondent No.3 Deputy Collector (Appeals) on 24 April 2013 and by the Respondent No.2 Additional Commissioner, Konkan Division on 24 November 2014 which order is the subject matter of challenge in the present Petition.

3 Having heard the learned Counsel for the Petitioners and the learned Additional Government Pleader and upon going through the material on record including the impugned order, I find that the orders of the Authorities below are cryptic and do not deal with all the submissions and contentions of the first Petitioner including that of inapplicability of the provisions of said Rules. In my view, the Authorities are in the first

instance required to consider the legal aspect whether the said Rules are applicable in the present case and pass a speaking order, which is found wanting in the present case.

4 In the circumstances, the impugned order cannot be sustained and liable to be set aside. Hence, the following order:

- i) The impugned order dated 25 November 2014 of the Respondent No.2 Additional Commissioner, Konkan Division, Mumbai is set aside.
- ii) The Respondent No.4 Sub Divisional Officer, Mumbai Suburban District shall be at liberty to issue a fresh show cause notice in the name of the first Petitioner and decide the issues afresh without being influenced by the impugned orders after affording a personal hearing to the first Petitioner.
- iii) The Sub Divisional Officer shall pass a speaking order inter alia dealing with all the contentions of the Petitioners in their Reply to the proposed show cause notice.
- iv) All contentions are kept open.

5 The Writ Petition is disposed of in aforesaid terms.

(A.A. SAYED, J.)

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