

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13341 of 2012

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1. M/s Dhananjay Construction Pvt. Ltd., East Gandhi Maidan, Town, P.S. & District - Jehanabad, through its Managing Director, Vijay Narayan Singh

2. Vijay Narayan Singh, son of Sri Nand Deo Singh, Managing Director, M/s Dhananjay Construction Pvt. Ltd; East Gandhi Maidan, Town, P.S & District Jehanabad.

.... Petitioners

Versus

1. The Union of India through the General Manager, East Central Railway, G.M. Building, Hajipur, Bihar

2. General Manager (Law), East Central Railway, 5th Floor, Biscomaun Building, West of Gandhi Maidan, Patna - 1

3. The Chief Engineer (Con) I, East Central Railway, Hajipur, Vaishali, Bihar

4. The Deputy Chief Engineer/Con/II, East Central Railway, Samastipur, Bihar

5. The Deputy Chief Engineer/Con/ East Central Railway, Hajipur Vaishali, Bihar

6. Dy. General Manager (Law) East Central Railway, Biscomaun Tower, Patna

.... Respondents

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Appearance:

For the Petitioners : Mr. Abhimanyu Sharma, Advocate
Mr. Prakritita Sharma, Advocate

For the Respondents : Mr. Bindhyachal Singh, Advocate
Mr. Manish Prakash, Advocate

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

Date: 27.10.2016

Heard learned counsel for the petitioners and learned
counsel for the respondents.

2. The present writ petition has been filed for the
following reliefs -

“(i) To quash the letter no GM/Law/Opinion/Pt-1 dated 05.12.2008 (Annexure-3) issued by Dy. General Manager/Law, East Central Railway, Patna, whereby and whereunder a vague decision to the effect that deduction of royalty on earth work done after 18.04.2006 is permissible even after the work was allotted before 18.04.2006 without taking into consideration the binding nature of the terms of contract.

(ii) To direct and command the respondents to produce the Vr. No. 19/33A/49/07/2009 dated 15.07.2009 deducting Rs. 9,90,901/- as royalty on earth work (a copy of which has not been given to the petitioner) and quash the same.

(iii) To command and direct the respondents to make payment of the earnest deposit and security to the petitioner in terms of the order of this Hon'ble Court passed in CWJC No. 12565 of 2007 on 09.09.2008 with interest at the rate of 12% from the date of judgment till the date of payment without deducting any royalty.

(iv) To direct and command the respondents to order refund of the royalty wrongly deducted and make payment with interest.

(v) To grant any other relief or reliefs to which the petitioner is entitled for."

3. The petitioner no. 1, a registered class-I contractor, participated in tender notice no. 2/2005-2006(open) of CE/CON/I HJP Sl. No. 3 for construction and strengthening of minor bridges and widening of embankments from Dauram Madhepura (KM 77/0 to KM 40/0) in connection with gauge conversion work of Saharsa-Purnea section which was awarded to it and for which an agreement was executed on 29.12.2005, clause 23.5 whereof provided as under -

"23.4 RATES TO INCLUDE ALL TAXES: The rates quoted shall be inclusive of all taxes levied by Central or State Govt. or by any Municipal/Local or any other body. However, change of rate of Statutory Taxes of the State/Central Government and levy of any new type of such Statutory Tax shall be on Railway Account."

4. The petitioner started the work according to the agreement and completed the earth work to the extent of 70%, as



informed by its letter dated 24.03.2006, but only part payment for the same was made. In view of the agreement subsequently being rescinded, the petitioner approached this Court in CWJC No. 12565 of 2007 which was disposed of by the judgment dated 09.09.2008 with the finding that the cancellation of the petitioner contract was not justified but no positive order in that regard could be passed as the work had been re-tendered, and hence, the earnest money which had been ordered to be forfeited was directed to be refunded to the petitioner. The petitioner accordingly applied for refund of the earnest money but it appears that by order dated 15.07.2009, the respondents directed deduction of Rs. 9,90,901/- by way of royalty charges on the earth work in view of the newly introduced provisions for such levy by amendment in the Bihar Minor and Mineral Concessions Rules, 1972 and for payment of only the balance amount to the petitioner. A statement is made at the Bar on behalf of the petitioner that the amount of security deposit has since been released to the petitioner and the deduction in question has been made from the final bill of the petitioner.

5. Learned counsel for the petitioner submits that the order dated 15.07.2009 directing deduction of Rs. 9,90,901/- is wholly arbitrary inasmuch as the new levy on ordinary earth was introduced on 18.04.2006 and would not be applicable in respect of the agreement prior thereto as in the case of the petitioner. It is submitted that the

issue is no longer *res integra* in view of the decision of the Division Bench of this Court in *M/s Arjun Das Naraindas Construction Co. vs. The Union of India and Others, 2011(1) PLJR 1047*.

6. In the counter affidavit filed on behalf of the respondents it has been stated that the contract agreement dated 29.12.2005 had been terminated and thereafter a subsidiary agreement was executed 03.07.2009. It is therefore submitted that new levy of royalty on ordinary earth had become applicable prior to the subsidiary agreement and hence the respondents have acted in accordance with law in making the deduction of Rs. 9,75,000/- from the final bill of the petitioner through royalty.

7. Having heard the parties and on a careful consideration of the materials on record, this Court finds merit in the submission of learned counsel for the petitioner. The stand of the petitioner that 70% of the earth work had already been completed as informed in its letter dated 24.03.2016, which was well before the cut off date 18.04.2006 when the new Rule levying royalty became applicable, is not in dispute. The statement of the respondents that the original agreement had been terminated and hence the levy became applicable in respect of the subsidiary agreement, does not find support from such later agreement (Annexure-G) which itself is stated to be in the nature of a supplementary agreement in relation to the original. Moreover, this Court in CWJC No. 12565 of 2007 had observed that the cancellation of

the petitioner’s contract was not justified, as already noticed above.

8. In the above view of the matter therefore, this Court is of the view that the benefit of the decision in *M/s Arjun Das Naraindas Construction Company’s case (supra)* is also available in the case of the petitioner and the deduction of Rs. 9,90,901/- ought not to have been made from the final bill of the petitioner. The amount so deducted is directed to be refunded to the petitioner within a period six weeks from the date of receipt/production of a copy of this judgment.

9. The writ petition stands allowed.

(Vikash Jain, J)

B.T/Chandran

AFR/NAFR	AFR
CAV DATE	N.A.
Uploading Date	28.10.2016
Transmission Date	N.A.