

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10689 of 2016

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1. M/s Yogendra Rai, village Banshi Batraha, PS- Phulwaria Dist.-Gopalganj through its Proprietor Yogendra Rai son of Sri Ram Chabila Rai resident of Village Banshi Batraha, PS- Phulwaria Dist- Gopalganj

.... Petitioner/s

Versus

1. The Union of India through the General Manager. East Central Railway, Hajipur, PS- Hajipur, Dist.-Vaishali
2. East Central Railway through the Chief Administrative Officer, East Central Railway, Mahendru Ghat, Patna
3. The Chief Administrative Officer, East Central Railway, Mahendru Ghat, Patna
4. The Chief Engineer, East Central Railway, Mahendru Ghat, Patna
5. The Deputy Chief Engineer (Construction), East Central Railway, Samastipur
7. The State of Bihar through the Principal Secretary, Mines and Geology Department, Government of Bihar, Patna
8. The Principal Secretary, Mines and Geology Department, Government of Bihar, Patna.
9. The District Mining Officer, Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vaidehi Raman Prasad Singh, Advocate

For Respondent nos.7 to 9 : Mr. Rajendra Prasad, Spl.P.P

For the Railway : Mr. D. K. Sinha, Sr. Advocate

Mr. Kumar Manish, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 30-06-2017

Heard the parties.

This matter relates to liability to pay royalty either by Railway Administration or the contractor. This is the issue involved in the present case.

As per petitioner, liability will go to the head of the Railway Administration whereas the Railway denied the liability and submitted that in the contract itself the contractor has quoted



the rate taking into consideration the payment of royalty with respect to the portion excavated and used for the Government.

This case has chequered history as present petitioner has approached this Court vide C.W.J.C. No. 807 of 2010 and the Court has refused to grant relief to the petitioner and finally given his finding in the following manner:

“...Taking into consideration the decision rendered by the Division Bench as regard to above and the factual position, the Court is not satisfied that the petitioner has a case to shift the burden of payment of royalty upon the railways for the contract carried out by him more so since the agreement was entered on 31.05.2006.”

Against that order petitioner approached Division Bench vide L.P.A. No. 1066 of 2010 and after some argument the said appeal was withdrawn whereafter again petitioner has approached this Court vide C.W.J.C. No. 5426 of 2013 and this Court has refused to entertain the application having recorded that petitioner has earlier moved before this Court and no liberty was granted to the petitioner to again approach this Court. It will be relevant to quote relevant portion of the aforesaid order:

“In my view, this Court by the order dated 28.4.2010 had dismissed the writ petition of the petitioner which order has never been set aside by



this Court rather the petitioner had withdrawn his appeal as also writ petition so as to pursue his remedy under the contract before the concerned authorities. No liberty was granted to the petitioner to again approach this Court by filing a writ petition. Even the remedy sought by the petitioner was purely under the contract which does not entitle him to file another writ petition so long as the order in the earlier writ petition has not been set aside, which is not possible today since the petitioner chose to withdraw the same at the stage of appeal instead of pursuing his remedy against the said order”.

The said order was challenged before this Court vide L.P.A. No.570 of 2013 on limited ground that any order will be passed following the principle of natural justice. On the short question the matter was opened. It will be relevant to quote the relevant portion of the aforesaid order:

“But, if on a representation filed, the authorities applied their mind afresh and arrived at a fresh determination by order dated 3.10.2012 and communicated it to the appellant, undoubtedly a limited right accrued to the appellant for being heard before the benefit could be withdrawn. We are of the considered opinion that the railways cannot challenge its own order dated 3.10.2012 before us. Prior to its withdrawal on 24.1.2013 the railways ought to have



heard the appellant.

On this short ground alone we are unable to affirm the order under appeal, dated 13.3.2013. We may not be understood to have expressed any opinion on merits but set aside the orders only for non compliance of principle of natural justice without prejudice to the rights of the respondent railway for proceeding afresh in the matter in accordance with law.”

The petitioner has raised grievance, that even after the Division Bench judgment he has not given any hearing on the issue of liability of royalty. The Railway Administration has filed a counter affidavit from where it appears that the Deputy Chief Engineer (Construction), East Central Railway, Samastipur has called upon the petitioner to participate and place his case vide letter dated 20.3.2017 and 30.3.2017.

Learned counsel for the petitioner submits that notices have been issued only during pendency of the writ petition and petitioner is ready to participate in the proceeding.

Be that as it may, petitioner is directed to present himself and participate in the proceeding and the Deputy Chief Engineer (Construction), East Central Railway, Samastipur is directed to examine the case of the petitioner and pass appropriate order in



accordance with law. This Court directs the petitioner to appear before the Deputy Chief Engineer (Construction), East Central Railway, Samastipur on 17th July, 2017. If petitioner appears on that date the concerned authority will pass the order within a period of four weeks from the date of appearance of the petitioner. This Court is not giving any opinion on the merit of the case.

With the aforesaid observation and direction this writ petition is disposed of.

(Shivaji Pandey, J)

Vinay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.7.2017
Transmission Date	NA

