

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2254 of 2018**

1. M/s BSCPL Infrastructure Limited, Through Its Power Of Attorney Holder Shri M. Nageshwara Rao, Age About 45 Years, S/o Shri M. Jayarammaiah, Registered Office At M. No. 8-2, 502/1/ A, Jivi Towers, Road No. 7, Banjara Hills, Hyderabad (Telangana), At Present R/o Camp-Village Ghodari Tahsil And District Mahasamund, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Its Secretary, Mineral Resources Department New Mantralaya, New Raipur, Village Rakhi, District Raipur, Chhattisgarh.
2. Director, Director Of Geology And Mining, Indrawati Bhavan, Naya Raipur, Village Rakhi, District Raipur, Chhattisgarh.
3. The Collector, (Mining Section), Mahasamund, District Mahasamund, Chhattisgarh.

---- Respondent**WPC No. 2260 of 2018**

1. M/s BSCPL Infrastructure Limited, Through Its Power Of Attorney Holder Shri M. Nageshwara Rao, Age About 45 Years, S/o Shri M. Jayarammaiah, Registered Office At M. No. 8-2, 502/1/A, Jivi Towers, Road No. 7, Banjara Hills, Hyderabad (Telangana), At Present R/o Camp-Village Ghodari Tahsil And District Mahasamund, Chhattisgarh.

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3. The Collector, (Mining Section), Mahasamund, District Mahasamund, Chhattisgarh

---- Respondent

For Petitioner	Shri B. Gopa Kumar, Advocate
For Respondent/State	Shri Shashank Thakur, Govt. Advocate

Order On Board

By

Prashant Kumar Mishra, J.

05/09/2018

1. Since both the petitions involve common question of law and facts they are being considered and decided by this common order.
2. These petitions are directed against the order passed by the Collector, Mahasamund and thereafter, the orders passed by the Appellate and the Revisional Authority i.e. Director, Geology & Mining, Chhattisgarh and the State Government, respectively.
3. Facts of the case lies in very narrow compass. The petitioner was engaged as an agent to carry out the construction of National Highway Four Lane Road from Arang to Saraipali on B.O.T. System (Built, Operate & Transfer). In execution of the said work, the petitioner committed illegal mining by removing soil/murum from private land. When show cause notice was issued to the petitioner, the petitioner filed its reply and admitted the guilt.
4. On the basis of the petitioner's admission of guilt, the subject order has been passed by the concerned Collector. The said order was later on affirmed by the Director, Geology & Mining, Chhattisgarh and the State Government.
5. It is argued that proceedings for imposing penalty can be initiated under sub-rule (5) of Rule 53 of the Chhattisgarh Minor Mineral Rules, 1996 (for short 'the Rules, 1996') after initiation and

compounding of offence and not before that, therefore, the impugned order is without jurisdiction.

6. A perusal of the provisions contained in sub-rule (1) & (5) of Rule 53 of the Rules, 1996 would clearly discern that whenever any person is found extracting or transporting minerals or on whose behalf such extraction or transportation is being made otherwise than in accordance with those rules, shall be presumed to be a party to the illegal extraction of minerals and every such person shall be punishable with simple imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees or with both. Under sub-rule (5) of Rule 53 the Collector/Additional Collector/Joint Director/Deputy Director/Mining Officer or Officer authorized by Zila Panchayat may either before or after the institution of the prosecution, compound the offence so committed under sub-rule (1) on payment of such fine which may extend to double the market value of mineral so extracted but in no case it will be less than rupees one thousand or ten times of royalty of minerals so extracted whichever is higher.

7. When the petitioner was served with show cause notice, the petitioner admitted the entire contents of the said notice and also admitted its guilt. The petitioner also agreed to pay the royalty or the minimum penalty which was thereafter ordered by the Collector. In the show cause notice the quantity of soil/ *murum* illegally extracted by the petitioner was mentioned which was not disputed in the reply filed by the petitioner. The amount of penalty has been assessed on the basis of quantity of soil/*murum* illegally extracted by the petitioner, therefore, it cannot be said that the fine amount has been imposed

without ascertaining quantity of soil/*murum* or the royalty payable thereon.

8. The petitioner having admitted the guilt and having also agreed to pay the penalty, in a way the offence has been compounded which is clear from the language used in its reply to the show cause notice, therefore, it is not a case where the prerequisites of sub-rule (5) of Rule 53 has not been adhered. Had it been a case where the petitioner would not have accepted the royalty and prayed for an order on merits by denying the factum of illegal extraction of minerals, the argument might have been attractive, but in the facts and circumstances of the case at hand, there is no violation of the prerequisites of Rule 53 (5) of the Rules, 1996 in view of clear admission by the petitioner, therefore, no case for interference in these petitions is made out.
9. In the result, both the writ petitions, *sans* merit, are liable to be and are hereby dismissed.

Sd/-
Judge
Prashant Kumar Mishra

Gowri