IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.18970 of 2012

Sarada Infratech (Pvt.) Ltd. . .... ***Petitioner***

Mr. Sanjib K. Dash, Adv.

-versus-

State of Orissa and Ors. .... ***Opp. Parties***

Mr. A.K. Mishra, AGA

CORAM:
DR. JUSTICE B.R. SARANGI
MR. JUSTICE S.K. PANIGRAHI

ORDER
10.01.2022

Order No.

03. **1**. This matter is taken up through Video Conferencing mode.

2. The petitioner, which was engaged with the contract work to execute the construction and maintenance of rural roads in package No.OR-12-75/VIII(Addl.) in the district of Jagatsinghpur under Pradhan Mantri Gram Sadak Yojana (PMGSY) Scheme, has filed this writ petition seeking direction to the opposite party nos.2 and 3 for reimbursement of enhanced royalty amount which has been deducted from its bill in respect of the aforesaid work.

3. The factual matrix of the case, in hand, is that the petitioner company is executing the construction and maintenance of rural roads in package No.OR-12-75/VIII (Addl.) under Pradhan Mantri Gram Sadak Yojana for the year 2008-2009 in the district of Jagatsinghpur and accordingly, agreement dated 01.10.2009 was executed. During course of execution, opposite party no.3 had been making periodic payments with respect to 22 nos. of intermittent pending bills on the running account in favour of the petitioner. The work executed by the petitioner involves use of several minor minerals like sand, earth, morum, boulder, metal, chips, bajri etc. for which royalty is leviable under schedule-II of Orissa Minor Mineral Concession Rules, 2004. The stipulations contained in the general conditions of contract obligates opposite party no.3 to deduct royalty from the payment made to the petitioner in the form of 'IPC' as per the scheduled rate upon the exact quantity of minor minerals utilized in execution of the project. After entering into agreement, the petitioner-company went on executing the work and accordingly opposite party no.3 prepared the running account bill. From the said bill, the petitioner noticed that opposite party no.3 deducted royalty on minor mineral at a much higher rate than what has been prescribed under OMMC Rules, which was brought to the notice of opposite party no.3 by the petitioner and also objected such deduction of royalty at enhanced rate. But opposite party no.3, while justifying the deduction, stated that there was revision of rate of royalty and, therefore, as per the aforesaid clause, the petitioner-company is required to pay royalty at the revised rate.

4. Mr. S.K. Dash, learned counsel appearing for the petitioner contended that such deduction of royalty at higher rate is contrary to the provisions of law though the Second Proviso to Rule-28(2) of the OMMC Rules, 2004 empowers deduction of such royalty. It is contended that the claim of the petitioner is covered by the judgment of this Court in the case of ***Akuli Charan Das v. State of Orissa***, AIR 2007 Ori. 97.

5. Mr. A.K. Mishra, learned Additional Government Advocate appearing for the State-opposite parties contended that deduction of royalty has been done in accordance with law and, as such, the petitioner-company is not entitled to get such benefit. Therefore, the claim of the petitioner cannot sustain in the eye of law.

6. In course of hearing, learned counsel for the petitioner contended that since the question for payment of royalty has already been considered by this Court in ***Akuli Charan Das*** mentioned supra, the claim of the petitioner may be considered in the light of the said judgment.

7. In view of the above, the writ petition is disposed of in terms of the judgment passed in ***Akuli Charan Das*** (supra), and accordingly we direct that in the event the petitioner, with regard to the grievance made in this petition, files a comprehensive representation before appropriate authority attaching running account bills along with copy of this order annexing therewith the judgment of this Court in the case of ***Akuli Charan Das*** (supra) within four weeks hence, the same shall be considered and decided by the authority concerned by a reasoned and speaking order as expeditiously as possible preferably within a period of four months from the date of filing of such representation.

8. It is further directed that in case the petitioner is found to be entitled for refund of any amount, the same shall be refunded to the petitioner within six weeks from the date of passing of the order or adjust the refundable amount against any ongoing/completed projects that they may be undertaking if the petitioner may opt for.

9. As the restrictions due to resurgence of Covid-19 are continuing, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the Advocate concerned with his/her seal, in the manner prescribed vide Court's Notice No.4587 dated 25th March, 2020 and Court's Office Order dated 7th January, 2022.

(Dr. B.R. Sarangi)
Judge

(S.K. Panigrahi)
Judge

BJ