

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No. 17481 of 2017

Debasish Khandual

.....

Petitioner

Mr. A.K. Dash, Advocate

Vs.

Union of India & Ors.

.....

Opposite parties

Mr. T.K. Patnaik, ASC

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

31.03.2022

Order No.

3

This matter is taken up through hybrid mode.

2. Heard Mr. A.K. Dash, learned counsel for the petitioner and Mr. T.K. Patnaik, learned Additional Standing Counsel for the State.

3. The petitioner has filed this writ petition challenging the notice dated 17.12.2016 vide Annexure-1 issued by the General Manager (S&M), Mahanadi Coalfields Ltd., Jagriti Vihar, Sambalpur directing him to deposit the differential amount of District Mineral Foundation Contribution against coal lifted during the period in question.

4. This Court vide order dated 9th March, 2018 while issuing notice to the opposite parties had passed the following order:-

“Connect with W.P.(C) No. 3727 of 2017.

2. The submission of learned counsel for the petitioner is that the petitioner does not hold any mining lease or prospecting lease and is merely a trader.

3. The petitioner is aggrieved by imposition of District Mineral Foundation Fund and the National Mineral Exploration Trust Fund which is applicable

only in the case of a Mining Lease Holder or Prospecting Mining Lease Holder. It is submitted that the provision for imposition of such contribution was provided under Sections 9-B and 9-C of the Minor Mineral (Development and Regulation) Act, 1957, which provisions have come into force with effect from 12.01.2015 and notified on 20th October, 2015, and the District Mineral Foundations (DMF) constituted on 06.02.2016. As such, no recovery can be made from the petitioner for a period prior to the notification dated 06.02.2016, even if the petitioner is found liable for payment of any amount.

4. Shri B. Dash, learned Central Government Advocate has put in appearance on behalf of opposite party No.1 and learned Government Advocate appears for the opp. party no.2. Let extra copies of the writ petition be served on them.

5.Steps to serve opposite party No.3 be taken within three days by Speed Post with A.D.. Office shall send notice fixing an early returnable date.

6.All the opposite parties may file their counter affidavits by the next date.

7.List this matter on the date fixed in the notice.

8.Having regard to the facts and circumstances of the case and keeping in view the submission of the learned counsel for the petitioner, we are of the opinion that the petitioner has made out a prima facie case for grant of interim protection. Accordingly, it is directed that the recovery pursuant to the Supplementary Tax Invoice as per notice dated 17.12.2016 (Annexure-1 series) issued by opposite party no.3 shall remain stayed till the next date.”

5. Now the issue is concluded by the Hon’ble Supreme Court in the case of Federation of Indian Mineral Industries and others-v-Union of India and another, reported in (2017) 16 SCC 186, wherein the Hon’ble Supreme Court at paragraph-52.5 had observed as follows:-

“Contributions to the DMF are required to be made by the holder of a mining lease or a prospecting licence-cum-mining lease in the case of

coal, lignite and sand for stowing with effect from 20.10.2015 when the rates were prescribed by the Central Government or with effect from the date on which the DMF was established by the State Government by a notification, whichever is later.”

6. In that view of the matter, since the issue is concluded, the DMF is required to be collected only from the date on which it came into force. It is stated at the Bar that DMF has been constituted in the State of Odisha on 6th February, 2016. In that view of the matter, the collection prior to that is contrary to the decision of the Hon’ble Supreme Court and is required to be either refunded or to be adjusted against future transaction.

7. The DMF collected prior to 6th February, 2016 will be either refunded or adjusted as requested by learned counsel for the Petitioner to the authority.

8. We have not decided the dispute with regard to liability for payment of DMF either by the Petitioner or by Mahanadi Coalfield. It will be open for the Petitioner to agitate that issue before the competent Court. In that view of the matter, no further recovery will be made pertaining to the period prior to 6th February, 2016.

9. This writ petition stands allowed in the above terms.

Issue urgent certified copy as per rules.

.....
(**DR. B.R. SARANGI**)
JUDGE

.....
(**SAVITRI RATHO**)
JUDGE

