

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No.30414 OF 2022

Prafulla Kumar Mohanty

.....

Petitioner

Mr. S. Dwibedi, Advocate

Vs.

State of Odisha & Ors.

.....

Opposite Parties

Mr. P.K. Muduli, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MR. JUSTICE B.P. SATAPATHY

ORDER

17.11.2022

Order No.

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This matter is taken up through hybrid mode.

2. Heard Mr. S. Dwibedi, learned counsel appearing for the petitioner and Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-opposite parties.

3. The petitioner has filed this writ petition seeking to quash the order dated 21.03.2022 under Annexure-10, by which the Superintending Engineer, Mahanadi North Division-1, Jagatpur, Cuttack, has rejected the claim of the petitioner for refund of additional royalty amount being deducted from his running bills.

4. Mr. S. Dwibedi, learned counsel appearing for the petitioner contended that as per the provisions contained in Section 64-A of Sale of Goods Act, 1930, and also in view of judgment dated 18.03.2015 passed by this Court in *M/s. Rohit Kumar Das Construction Pvt. Ltd. v. State of Odisha* (W.P.(C) No.11830 of 2013) under Annexure-2, which has been confirmed, vide order dated 31.07.2015 passed by the apex Court in Special Leave to Appeal (C) No.20951 of 2015, the petitioner is entitled to get the royalty, as claimed in the writ petition. It is further contended that

claiming for refund of royalty, the petitioner had approached this Court by filing W.P.(C) No.6212 of 2019, which was disposed of vide order dated 25.03.2019 and in compliance of the said order, the Superintending Engineer, Mahanadi North Division No.1, Jagatpur has rejected the claim of the petitioner for refund of additional royalty amount being deducted from his running bills.

5. Mr. P.K. Muduli, learned Additional Government Advocate appearing for the State-opposite parties contended that the petitioner has not come to this Court with clean hands. Rather, he has suppressed material facts, for which he is not entitled to get any relief. It is also contended that pursuant to direction of this Court in W.P.(C) No.6212 of 2019, the petitioner was to file a comprehensive representation attaching running bills along with certified copy of the order annexing therewith the judgment of this Court passed in W.P.(C) No.11830 of 2013 and the decision in *Akul Charan Das* before the authority, but he has not filed the same. Therefore, in absence of any materials, the authority has rejected the claim of the petitioner for refund of additional royalty amount. Thereby, the order so passed by the Superintending Engineer, Mahanadi North Division No.1, Jagatpur is well justified, which does not warrant interference of this Court.

6. Considering the contentions raised by learned counsel appearing for the parties and after going through the records, it appears that the petitioner claims for refund of additional royalty, being deducted from his running bills, as per Section 64-A of Sale of Goods Act, 1930. But, Section 64-A of Sale of Goods Act, 1930 is not applicable to the case of the petitioner, in view of the fact that the Odisha Minor Minerals Concession Rules, 2004 itself prescribes for charge of royalty and refund of excess royalty amount. In any case, for refund of royalty, the petitioner had

approached this Court by filing W.P.(C) No.6212 of 2019, which has been disposed of vide order dated 25.03.2019 with following order:

*“6. In that view of the matter, we direct that in the event the petitioner, with regard to the grievance made in this petition, files a comprehensive representation attaching running account bills along with certified copy of this order annexing therewith the judgment of this Court dated 18.03.2015 passed in W.P.(C) No.11830 of 2013 and batch of cases and the decision in **Akuli Charan Das** (supra) within four weeks hence, the same shall be considered and decided 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. 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 him within three 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”.*

The aforementioned paragraph clearly indicates that the petitioner was to file a comprehensive representation before the authority attaching running account bills along with certified copy of this order annexing therewith the judgment of this Court dated 18.03.2015 passed in W.P.(C) No.11830 of 2013 and batch and the decision in **Akuli Charan Das** (supra) within four weeks hence, the same was to be considered and decided 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. In compliance thereof, the petitioner filed an application on 22.04.2019 under Annexure-6 before the authority, but he has not filed comprehensive representation attaching the running bills and the copy of the order dated 18.03.2015 passed in W.P.(C) No.11830 of 2013 and batch and the decision in **Akuli Charan Das**. The enclosures attached to the application are as follows:

“Enclosures:-

(3) Order No-02 dated 25.03.2019 of Hon'ble High Court of Orissa passed in respect of W.P.(C) No-6212 of 2019.

(4) Beneficiary Details”.

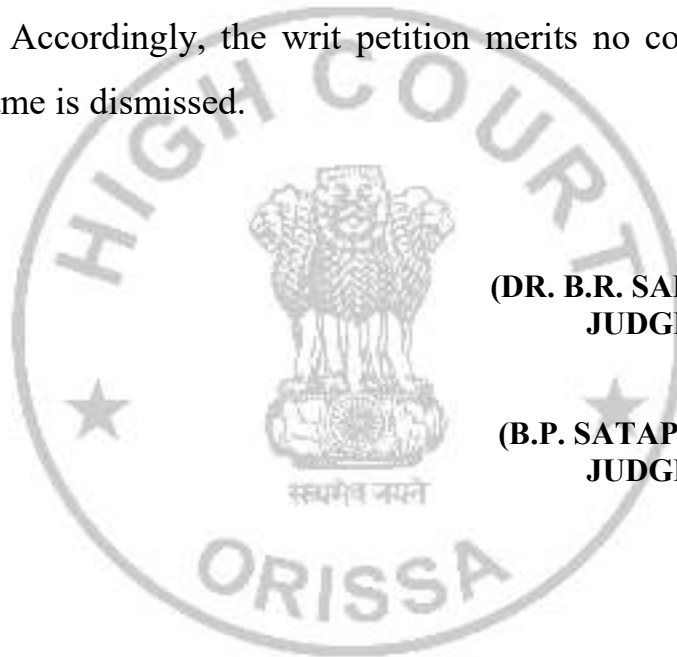
Thereby, the order dated 25.03.2019 passed by this Court in

W.P.(C) No.6212 of 2019 has not been complied with by the petitioner in letter and spirit. This fact has been suppressed by the learned counsel for the petitioner while addressing before this Court on the legality and propriety of Annexure-10, the order passed by the Superintending Engineer, Mahanadi North Division-1, Jagatpur. More so, the Superintending Engineer, Mahanadi North Division-1, Jagatpur has also passed the order in due discharge of his duty.

7. In that view of the matter, since the petitioner has not approached this Court with clean hands and has suppressed material facts, he is not entitled to get any relief, as claimed in the writ petition.

8. Accordingly, the writ petition merits no consideration and the same is dismissed.

Alok



(DR. B.R. SARANGI)
JUDGE

(B.P. SATAPATHY)
JUDGE