

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR
WRIT PETITION NO. 3196 OF 2022

(M/s. Jhajharia Nirman Private Limited (now Ltd. Since December, 2013), thr. its Authorized Signatory and Power of Attorney Holder Mr. Pratik s/o Naresh Agrawal Vs. Chief Engineer (Construction), South East Central Railway, Nagpur & Ors.)

*Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders.*

Court's or Judge's order

Shri H.R. Gadhia, Advocate for the petitioner.
Shri N.P. Lambat, Advocate for the respondents.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI-PHALKE, JJ.

DATE : JUNE 20, 2022.

By this Writ Petition, the petitioner prays that the respondents may not insist upon production of the Royalty Clearance Certificate while settling the dues of the petitioner.

It is the case of the petitioner that it was awarded various civil engineering works while laying down railway lines. The petitioner submitted its final bill. It was informed that on account of failure to submit the Royalty Clearance Certificate, the said amount would be deducted and paid to the petitioner only on production of the Royalty Clearance Certificate from the Competent Authority. Being aggrieved, the petitioner has challenged the said action.

Shri H.R. Gadhia, learned Counsel for the petitioner submits that since no extraction of minerals was carried out from Government land, it was not permissible for the respondents to insist for production of the Royalty Clearance Certificate. Inviting attention to the decision in *2007(1) Mh.L.J. 791 (Ravi Industries Vs. Western Coalfields Ltd.)* as well as the subsequent decision in *Writ Petition No. 4503/2011 (Deepak R. Lohiya Vs. South East Central Railway thr. Dy. Chief Engineer (Con) I Nagpur decided on 09/03/2012)*, he submits that insistence on behalf of the respondents to produce the Royalty Clearance Certificate is uncalled for. It is thus submitted that the action of the respondents in doing so is unjustified. In response to the affidavit filed by the respondents, wherein they seek to rely upon Clause 1.38.2 of the contract indicating resolution of any dispute through arbitration, he invites attention to the

judgment of the Hon'ble Supreme Court in *2021 SCC OnLine SC 99 (Unitech Limited and Others VS. Telangana State Industrial Infrastructure Corporation (TSIIC) and Others)* and submits that the Writ Petition under Article 226 of the Constitution of India is maintainable notwithstanding presence of such arbitration clause.

Shri N.P. Lambat, learned Counsel for the respondents invited attention to the judgment in *Writ Petition No. 4541/2013 (Deepak s/o Rameshwardasji Lohiya Vs. South East Central Railway Nagpur, thr. Dy. Chief Engineer (Con) II, Nagpur decided on 07/07/2014)* with other connected Writ Petitions, wherein similar controversy was considered and in view of existence of an arbitration clause, the petitioners therein were permitted to invoke the same in accordance with law. He has also invited attention to Clause 1.33 of the contract, which requires production of the Royalty Clearance Certificate. According to him, in view of clause 1.38.2, the petitioner can take recourse to the arbitration clause.

Having heard the learned Counsel and having perused the relevant documents, it is undisputed that as per Clause 1.33 of the agreement, it is necessary for a Contractor, such as the petitioner, to obtain the Royalty Clearance Certificate. This is for the reason that after passing of the judgments on which the learned Counsel for the petitioner has relied, the respondents have amended the tender documents and have incorporated Clause 1.33, which was absent in the earlier contracts. This has been referred to in the judgment delivered in the case of *Deepak Rameshwardasji Lohiya* (supra). We find that an identical clause is incorporated in the contract in the present case. For this reason, we are of the view that under Clause 1.38.2, the petitioner is free to take recourse to the remedy of arbitration provided therein.

It was urged on behalf of the petitioner that in view of the decision in *Unitech Limited and Others* (supra), this Court should entertain the Writ Petition notwithstanding the presence of the arbitration clause. However, perusal of paragraph 41 of the said judgment indicates that the liability to refund the amount was not in dispute in that case. It was found that the State instrumentality had not just reneged on its contractual obligation but had also hoarded the refund of the principal and interest on the consideration. On these

facts, the Hon'ble Supreme Court held that the High Court was right in intervening under Article 226 of the Constitution of India. The facts of the present case indicate that Clause 1.33 in the contract has been accepted by the petitioner, and if any dispute in that regard arises, the petitioner can take recourse to Clause 1.38.2.

We do not find, in these facts, that the present is a fit case to exercise discretion under Article 226 of the Constitution of India. Hence, by observing that the petitioner is free to avail remedies as per Clause 1.38.2 and by keeping the points raised open, the Writ Petition is dismissed. No costs.

(URMILA JOSHI-PHALKE, J.)

(A. S. CHANDURKAR, J.)

SUMIT