Item No.19
31.03.2023
Court. No. 19
GB

WPA 7363 of 2023

M/s. Janardan Construction & Anr.
Vs
The State of West Bengal & Ors.

Mr. Partha Pratim Roy,
Mr. Sarbananda Sanyal
... for the Petitioners.
Mr. Rajarshi Basu,
Mr. Shehmay Tareq Mina
...for the State.

Affidavit-of-service filed in Court today, be kept with the record.

The petitioner was entrusted some work for construction and maintenance of a rural road/embankment under the Pradhan Mantri Gram Sadak Yojana. Such work was allotted to the petitioner sometime in 2017. According to the petitioner, the West Bengal State Rural Development Agency (WBSRDA) had published its schedule of rates on December 15, 2015. The work allotted to the petitioner in 2017 was to be guided by the said schedule of rates. Reliance has been placed on Clause 3.4 of the said schedule which, inter alia, states that royalty charges and cess for earth at the rate of 23.3 per cum work, would be deducted under the West Bengal Mines and Mineral Acts.

A writ petition was filed by the petitioner earlier before this Court, inter alia, challenging substantial deduction from the final bill towards cess and royalty charges by the agency. A coordinate Bench directed the Additional Chief Executive Officer, West Bengal Rural Development

Agency to dispose of the appeal filed by the petitioner challenging such deduction. Pursuant to the direction of this Court, the order impugned has been passed by the Additional Secretary to the Government of West Bengal, P & RD Department and ACEO, WBSRDA. The authority concluded as follows:-

> "The matter of deduction of Royalty against the payment of earth collected from borrow pit for construction of the roads was done as per Schedule of Rates, WBSRDA as applicable from time to time. In this case, Royalty was deducted @ Rs.23.30 per cubic meter in accordance with the sanctioned estimate of the works. Subsequently this rate of Royalty was revised to @ Rs.34.30 per cubic meter vide Notification No.678-CI/O/MIN/GEN-RLT/02/2015 dated 27th October, 2016 and Subsequent order of Finance Controller, WBSRDA dated 24.01.2019. Hence this rate of royalty was deducted from the R.A and final bills of the works."

The petitioner has challenged such order on the following grounds:-

a) The authority did not consider the specific contention of the petitioner that if royalty charges and cess for earth was deducted at the rate of 34.30 per cum work, the component of the earth that the petitioner could excavate for the work should have been increased to 188.00.

b) If the component remains static i.e., as per the amount provided under the schedule of rates of 2015 at 157.75, enhanced royalty and cess could not have been deducted as per the rates in 2019.

c) The order of the Finance Controller which was relied upon by the authority while disposing of the appeal was neither provided to the petitioner nor did the impugned decision reflect the terms and conditions of the said order.

d) Unless the petitioner was informed about any purported change in rates or terms and conditions of extraction of earth, royalty charges, etc, a decision contrary to the original schedule of rates of 2015 without providing opportunity to the petitioner to deal with the same, would amount to violation of the principles of natural justice.

The Court finds that the petitioner has been able to show substantial reasons as to why the order impugned should be interfered with.

The issue is, when the petitioner was allotted the work in 2017, the schedule of rates of 2015 was applicable and the royalty charges and cess for earth deductable was at the rate of 23.3 per cum work and the component was 157.75. The work of the petitioner admittedly continued when the subsequent schedule of rates of 2019 came into operation. The authorities applied the said rate without increasing the component to 188.00. Thus, while the petitioner was allowed to extract earth up to 157.75 that is at the quantum of 2015, deduction of royalty and cess at the new rate, that is, 34.30 per cum work was irregular and prejudicial to the interest of the contractors.

In the order impugned, the Court does not find that the above aspect had been discussed by the authority. Neither has the order of the Finance Controller been discussed which would enable the court to ascertain that the authority had the rightly deducted royalty and cess at the rate of 34.30 per cum work without increasing the component from 157.75 to 188.00.

Under such circumstances, the order impugned is set aside as the same is not reasoned and does not deal with the essential issue which the petitioner has agitated before the Court.

Mr. Basu, learned advocate for the State respondents submits that as the State respondents did not get any opportunity to file any affidavit and the allegation of the petitioner cannot be accepted as completely correct. This Court is of the view that the question which has been raised before the Court has to be answered by the authority. The Court has not gone into the merits of the factual aspect. However, judicial review is permissible when the order of any authority which visits a party with civil consequences, is either unreasoned or silent on the points raised before it or suffers from non-application of mind.

For the above reason, the Court deems it fit to remand the matter to the authority, that is, the Additional Secretary to the Government of West Bengal, P & RD Department and ACEO, WBSRDA to revisit the issue and decide the point which has been stated and clarified by the Court. While doing so, adequate opportunity of hearing should be given to the petitioner. A reasoned order shall be passed and communicated.

The entire exercise shall be completed within a period of eight weeks from date of communication of this order.

Accordingly, the writ petition is disposed of.

However, there will be no order as to costs.

All the parties are directed to act on the basis of the server copy of this order.

(Shampa Sarkar, J.)