03.12.2024
Sl. No. 27.
D/L.
Mithun
Ct.No.39.

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 1995 of 2023
[specially assigned]

Madan Jana
Vs.
The State of West Bengal & Ors.

Mr. Indranil Nandi,
Mr. Deba Prasad Samanta,
Mr. Sayak Konar
..for the petitioner
Mr. Soumitra Bandyopadhyay,
Mr. Srikanta Paul
...for the State respondents

This writ petition has been filed by the writ petitioner under Article 226 of the Constitution of India challenging the demand notice issued under Memo No.1057/3/B.F/BL&LRO/Moy/2022 dated 28th December, 2022 by the Block Land and Land Reforms Officer, Moyna, Purba Medinipur, respondent no.4.

The petitioner's case in nutshell is that the petitioner is the owner of a brick field and manufacturer under the brand name *'Mayur Brick Field'* situated at Bakcha, Purba Medinipur, P.S. Moyna. The petitioner contends that during the period of lockdown, there was complete stoppage of production of the brick field from 3rd week of March, 2020 till December, 2020. A limited production started from the month of January, 2021 which was again discontinued with the onset of the second wave of pandemic from April, 2021 till August, 2021. The Block Land and Land Reforms Officer, Moyna on 28th December, 2022 raised a demand on 28th December, 2022 towards royalty for a sum of Rs.3,52,193/- for the Financial Year 2019-2020, a sum of Rs.1,91,222/- for the Financial Year 2020-2021 and a sum of Rs.2,86,018/- for the Financial Year 2021-2022. The royalty raised by the State authorities is not in consonance with the excavation and production of the bricks. Being aggrieved and dissatisfied with the impugned demand notice, the petitioner has filed the present writ petition.

The State-respondents filed reports contending that the petitioner did not make any prior written intimation about the difficulties faced by him. All the other brick field owners have duly paid their respective dues. After convening the meeting with the Executives of Brick Field Owners' Association, such demand was raised. The State authorities have followed the mechanism to arrive at the amounts/figures mentioned in the demand notice. The petitioner was represented in the meeting by the Association. Hence, the writ petition challenging the demand notice should be dismissed in *limine.*

Mr. Indranil Nandi, learned Advocate appearing for the petitioner submits that during the period of lockdown, since the petitioner could not run the brick field, there was no such excavation of the land. Subsequent to such period, the excavation by the petitioner and production of bricks was also effected by the second wave. Referring to Clause 35 of the West Bengal Minor Mineral Concession Rules, 2016, he submits that the royalty and cess to be paid by the holder of a mining lease is to be calculated on the basis of mineral or minerals extracted or removed or consumed by him or his agent, manager, employee or contractor at the rate as notified by the State Government. In support of his contention, he relies on the decision of Hon'ble Supreme Court passed in ***State of Orissa and Others versus Steel Authority of India Ltd.*** reported in ***(1998) 6 SCC 476*** and decision of Hon'ble High Court at Gujarat passed in ***Saurashtra Cement & Chemical Industries Ltd. versus Union of India and Ors.*** He also indicates that no notice was ever served upon the petitioner of the meetings held by the State authorities for calculation of royalty and cess to be paid by the brick field owners. He prays that the demand notice issued by the State authorities be quashed and the representation submitted by the petitioner be directed to be considered by the Block Land and Land Reforms Officer, Moyna, Purba Medinipur, respondent no.4.

On the contrary, Mr. Srikanta Paul, learned Advocate appearing for the State respondents, at the outset, submits that after General Notices been issued, which is a usual procedure, meeting was convened with the owners and the Associations of the brick field. On due consultation with the owners and the respective Associations, the royalty and cess has been calculated and determined. He further indicates that the period of Covid Pandemic has been duly taken care of by the State authority and for such period, the royalty and cess has been slashed down by 50%. The petitioner, after such meeting till the raising of the demand has not raised any objection with regard to the royalty and cess calculated by the State authority. The report of the Block Land and Land Reforms Officer, Moyna dated 19th November, 2024 clearly discloses the mechanism undertaken to calculate the royalty and cess and such mechanism is being followed without any objection from any corner whatsoever. Therefore, the challenge to the demand notice by the petitioner is short of merit and the writ petition is liable to be dismissed in *limine*.

Having heard the learned Advocate for the respective parties the only issue which has fallen for consideration is whether the royalty and cess raised through demand notice dated 28th December, 2022 by the Block Land and Land Reforms Officer, Moyna, Purba Medinipur, respondent no.4 is legal, valid and sustainable in law or not.

In order to find an answer to the above query, it would be apposite to reproduce Clause 35 of the West Bengal Minor Mineral Concession Rules, 2016.

> ***"35. Payment of royalty and rent etc**.- (1)(a) The holder of a mining lease or any other mineral concession granted on or after the commencement of these rules, shall pay royalty in respect of mineral or minerals extracted or removed or consumed by him or his agent, manager, employee or contractor at the rate as notified from time to time by the State Government in Commerce and Industries Department.*
> *Provided that the State Government in Commerce and Industries Department shall not enhance the rate of royalty more than once during any period of three years.*
> *(b) The lessee shall pay for every year a yearly dead rent.*
> *Provided that the lessee shall be liable to pay either the dead rent or the royalty in respect of each mineral, whichever is higher.*
> *Provided further that the dead rent shall not be enhanced more than once during any period of three years;*
> *(c) The lessee shall also pay surface rent for the surface area used by him for the purpose of the mining operation at the rates fixed by the State Government from time to time.*
> *The lessee shall also pay to the State Government water rate at the rate specified for the said purpose from time to time.*
> *(2) Notwithstanding anything contained in the lease instrument or any other law in force at the time of commencement of these rules, the provisions of clause (a) and (b) of sub-rule (1) shall apply to the holder of a mining lease granted before such commencement."*

On cursory reading of the above provisions, it manifest that the holder of a mining lease or any other mineral concession granted on or after the commencement of the rules, shall pay royalty in respect of mineral or minerals extracted or removed or consumed by him or his agent, manager, employee or contractor at the rate as notified from time to time by the State Government in Commerce and Industries Department.

Further the Hon'ble Supreme Court in *Steel Authority of India Limited (supra)* observed as follows:-

> *"11. It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the process that the mineral was said to undergo before the same was*

removed from the leased area. Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted. We are unable to agree with the distinction made by the High Court and the conclusion that the royalty can be levied only on the quantity of mineral obtained after processing."

The Hon'ble Gujarat High Court in *Saurashtra Cement & Chemical Industries Ltd (supra)* also observed that royalty is a payment for mineral which is removed or consumed by the holder of a mining lease.

Thus, bearing in mind the aforesaid provisions and the observations made in above decisions, there cannot be any quarrel that the royalty has to be calculated on the basis of the land excavated.

Upon perusal of the reports filed by the State, the amount of excavation made by the petitioner during the Financial Year 2019-20, 2020-21 and 2021-22 has not been indicated. Upon going through the demand notice dated 28th December, 2022, it is also seen that the quantum of excavation has not been mentioned therein.

In light of the above discussion, the writ petition being WPA 1995 of 2023 is allowed. The demand notice under Memo No.1057/3/B.F/BL & LRO/Moy/2022, dated 28th December, 2022 of the Block Land and Land Reforms Officer, Moyna, Purba Medinipur, respondent no.4 is set aside.

The Block Land and Land Reforms Officer, respondent no.4 is directed to consider the representation of the petitioner dated 10th January, 2023 and dispose of the same by a reasoned order within a period of two months from date of communication of the order after giving an opportunity of hearing to the petitioner.

The reasoned order shall be communicated to the petitioner.

The petitioner is directed to communicate this order along with the copy of the representation dated 10th January, 2023 to the Block Land and Land Reforms Officer, Moyna, Purba Medinipur. After considering such representation, the respondent no.4, Block Land and Land Reforms Officer, Moyna, Purba Medinipur shall be at liberty to raise demand of royalty and cess in accordance with law.

All connected applications, if any, stand disposed of.

There will be, however, no order as to costs.

Interim order, if any, stands vacated.

All concerned parties shall act in terms of the copy of the order duly downloaded from the official website of this Court.

Urgent photostat copy of this order, if applied for, be given to the parties upon compliance of necessary legal formalities.

(Bivas Pattanayak, J.)