B.P.DAS, J & B.K.NAYAK, J.

W.P.(C). No.6366 OF 2006 (Decided on 30 03. 2010.)

M/S. JALARAM TRANSPORT & ANR . …. …… Petitioners

-V-

MAHANADI COALFIELDS LTD. & ORS. …….Opposite parties

CONSTITUTION OF INDIA, 1950 – ART.226.

For Petitioners – Shri Ashok Mohanty, Sr.Advocate
M/s. H.M.Dhal, B.B.Swain, J.Dash, A.S.Das.
For Opp.Parties – M/s. N.Ch.Sahoo, A.Mohapatra.

B. P. DAS, J. The petitioners in this writ application challenge the letter dated 6.3.2006 (Annexure-7) issued by the Sr. Accounts Officer (Bill), Mahanadi Coalfields Limited, with regard to deduction on account of Transportation from the bills of the petitioners.

2. The brief facts leading to the writ application are as follows:-

Petitioner No.1 is a Proprietorship firm, which is represented through O.P.2, the power of attorney holder of the firm. O.P.1, i.e. Mahanadi Coalfields Limited ('MCL' in short) floated a tender for transportation of crushed coal from Samaleswari OCP CHP/Crushed Coal stock to Siding Nos. 1, II and III and Siding IV &V for a period of 255 days for a total quantity of 30.60 lakh tonnes @ 12000 tonnes per day. Accordingly, the petitioners submitted their tender and after negotiation, the Letter Of Intent (LOI) dated 22.08.1998 was issued to the petitioners by opposite party No.2 and ultimately the final work order was issued to the petitioners on 2.2.1999 to execute the transportation work in different sidings. The contract was taken for an amount of Rs.17.75 per ton in siding nos. 1 and II, the lead M/S.
distance of which was 4-5 km. Similarly the rate was Rs.21.50 per ton for sidings Nos. III, the lead distance of which is 6-7 kms and Rs.22.50 per ton for siding Nos. IV and V having lead distance 7-8 kms. Accordingly, the agreement was entered into between the parties to execute the transport work. There is no dispute about the fact that the petitioners have fulfilled their contractual obligation within the time stipulated and entire bill amount for the contract was paid after closure of the contract. Thereafter the letter dated 06.03.2006 under Annexure-7 was issued informing the petitioners that as per the directive of the Competent Authority, an amount of Rs.15,61,743.34 was deducted from the running account bill of the other contract work executed by the petitioners.

It is worthwhile to mention here that the running bill from which the amount was sought to be recovered is the work in respect of another contract entered into in the year 2005 and the petitioners are continuing the said contract with the opposite parties. Ultimately under Annexure-7 deduction was made. The said deduction is under challenge in the present writ application.

3. Mr. Mohanty, learned senior counsel for the petitioners submits that once the contract was closed and the petitioners had also got back their earnest money deposit as per the conditions of the contract and since there was no default on the part of the petitioners in performing the work as per the terms and conditions of the contract, the

opposite parties has no authority to deduct any amount from another subsisting contract, which has no connection with the previous contract, which has been closed.4.

4. Counter affidavit has been filed by the MCL indicating therein that it is true that the petitioners had been given contract for transportation combinedly to siding nos. I and II indicating the quantity to be handled, rate, lead distance and amount of work value and the same had been agreed to between the parties. But after closure of the contract work in the year 2005, due to certain audit objections and irregularities found, the same were inquired into by the internal vigilance department as well as C.B.I. and by virtue of the report of the committee formed by the MCL, they measured the distance and found that the lead distance for siding no. 1 would be 3-4 kms and siding no.II would be 5-6 km, for which the petitioners were liable to refund the excess amount which had been paid to them.

5. According to Mr. Sahoo for the MCL, they have acted in terms of clause-16 of the general terms and conditions of the agreement, relevant portion of which is quoted herein under:-

> "The Company reserves the right to recover/enforce recovery of any over payment detected as a result of post-payment audit or technical examination or any other means notwithstanding the fact that the amount of disputed claims, if any, of the contractor exceeds the amount of such over payment. The amount of such over payments may be recovered from the subsequent bills under the contract, failing that from contractor's claim under any other contract with the company or from the contractor's security deposit or the contractors shall pay the amount of over payment on demand."

Apart from that, according to Mr. Sahoo, such deduction amount was treated as an over payment made to the petitioners and rightly recovered by deducting from the subsequent bills payable to the petitioners in a subsequent contract.

6. Having regard to the rival contentions advanced by learned counsel for both the parties, let us see whether the amount recovered from the subsequent bill of the contract entered into in the year 2005 is due to the over payment made by MCL to the petitioners inregard to the previous contract which had been closed. Meaning of "over payment," in our considered opinion, would be the amount paid in excess of the contractual rate that is payable to the petitioners by the opposite parties. Here is a case, where the amount was paid to the petitioners according to the rate agreed to by both the parties. So, it cannot be said to be an over payment made to the petitioners.

7. Now, learned counsel for the petitioners submits that during the investigation, even though it is found that the lead distance for siding no. 1 would be 3-4 kms and siding no. II would be 5-6 km, the petitioners cannot be said to have any fault, but it may be due to the act of some of the officers of the MCL, who had given the contract for transportation to siding nos.1 and II showing the lead distance to be 4-5 kms and bringing loss to the opposite parties. To the said submission, Mr. Sahoo submits that such officers have been punished after being found guilty.

8. Be that as it may, if an officer incorporated a clause in the agreement and subsequently it was found that the same should not have been done, the contractor who has done the work and got his payment should not suffer. Here in this case, the amount which had been sought to be recovered from the petitioners from the previous contract, however recovered from the subsisting contract by segregating the rate agreed to in the agreement for siding nos. I and II in the previous contract.

9. All these hypothetical situations cannot prevail, as a combined rate is provided for siding nos. I and II. So the opposite parties cannot recover the amount as the same is not the over payment, but paid in terms of the contract and as such the provisions of

clause-16 of the general terms and conditions of the agreement will not apply and at no stretch of imagination, the same cannot be treated as an over payment made to the petitioners.

10. In view of the above, we quash the impugned letter dated 6.3.2006 issued by the Sr. Accounts Officer (Bill), MCL under Annexure-7 and direct that the amount so recovered by the opposite parties from the subsisting contract of the petitioners shall be refunded to the petitioners, as early as possible.

The writ application is accordingly allowed.

Writ petition allowed.