

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 1882 of 2021

Bhagirath Saw Petitioner

Versus

1. The State of Jharkhand through its Chief Secretary, Government of Jharkhand, Ranchi
2. The Secretary, Rural Development Department (Rural Works Affairs), Jharkhand, Ranchi
3. The Chief Engineer, Rural Development Department (Rural Works Affairs), Jharkhand, Ranchi
4. The Executive Engineer, Rural Development Department (Rural Works Affairs), Works Division, Koderma, District- Koderma

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH SHANKAR

For the Petitioner : Mr. A.K. Sahani, Advocate

For the State : Mr. Anish Kumar Mishra, A.C. to G.A.-I

Order No. 04

Dated: 23.12.2021

The present writ petition has been filed for issuance of direction upon the respondents to refund a sum of Rs.8,00,000/- (rupees eight lakhs) deducted from the final bill of the petitioner under the head of "royalty towards earth work" which, according to him, is beyond the terms of the agreement.

2. A counter affidavit has been filed on behalf of the respondents referring to clause 3.3 of Section-III Part-2 of the special conditions for F2 contract which provides as under:

"If the Royalty clearance certificate for mines/minerals used in the work is not produced with the bill, Royalty will be deducted from the concerned running bill, as per instruction of the Department of Mines. Production of royalty clearance certificate along with the final bill is a must, failing which final bill will neither be passed nor paid, and for such non-payment or delay in payment, the whole and sole responsibility will be of contractor alone."

3. It has also been stated in the counter affidavit that the issue raised by the petitioner in the present writ petition has attained finality in terms with the judgment dated 28.06.2016 passed by learned Division Bench of this Court in L.P.A. No. 705 of 2015 (The State of Jharkhand & Ors. Vs. M/s. MRKR-Pallavi-Upkar JV through its authorized signatory M.Vasudeva Reddy & Ors.) and other analogous cases wherein it has been held that the contractors are liable to make payment of royalty as per Entry No. -19 of the notification dated 27.12.2010 issued by the State of Jharkhand in exercise of power conferred under Section 15 of the Mines and Minerals (Development and

Regulation) Act, 1957. It has also been held in the said judgment that the State authorities are at liberty to recover the amount of royalty with respect to "ordinary earth used for filling or levelling purposes in construction of embankments, roads, railways, buildings" under Entry No.-19 of the notification dated 27.12.2010.

4. Learned counsel for the petitioner submits that it thus appears from the aforesaid stand taken by the respondents in the counter affidavit that an amount of Rs.8,00,000/- has been deducted from the final bill of the petitioner under the head of royalty as per Entry No.-19 of the notification dated 27.12.2010 issued by the state government. Though the issue of deduction of royalty to be charged for use of ordinary earth has been settled by the learned Division Bench of this court in L.P.A. No. 705 of 2015 and other analogous cases, yet the respondents have not given the details/breakup of deduction of Rs.8,00,000/- made from the final bill of the petitioner with respect to work done in pursuance of agreement no. 05 F2 of 2018-19.

5. The aforesaid submission of the learned counsel for the petitioner appears to be justified as the respondents, even in the counter affidavit have not given the details/breakup of deduction of royalty towards ordinary earth made by them while making payment of final bill to the petitioner.

6. Hence, the present writ petition is disposed of directing the Executive Engineer, Rural Development Department (Rural Works Affairs), Works Division, Koderma (the respondent no. 4) to give details/breakup of aforesaid deduction made from the final bill of the petitioner within four weeks from the date of receipt/production of a copy of this order.

(Rajesh Shankar, J.)

Ritesh/