STATE OF RAJASTHAN & ANR. A

v.

M/S. DEEP JYOTI COMPANY & ANR.

(Civil Appeal No. 1854 of 2016 etc.)

FEBRUARY 26, 2016 B

[T. S. THAKUR, CJI, A. K. SIKRI AND R. BANUMATHI, JJ.]

Mines and Minerals – Circular dated 06.10.2008 providing for deduction of royalty from Government contractors using minor minerals in Government work – Before starting the work the contractor required to obtain short term permit for the minerals used in the work – Circular challenged – Single Judge of High Court upheld the validity of the Circular – Division Bench of High Court quashed the Circular – On appeal, held: It is duty of the Government to ensure that only royalty paid minerals are used in the work – The purpose which is sought to be achieved viz. non-royalty paid mineral is not used in the execution of the Government work – Thus, the Circular cannot be treated as unreasonable or arbitrary – Circular No.P13(6)Khan/Group-2/80-Part dated 06.10.2008. C D E

Allowing the appeals, the Court

HELD: 1. The minor minerals removed from the quarries, admittedly are the property of the Government and the same cannot be removed and used without payment of royalty. It is therefore the duty of the Government to ensure that only royalty paid minerals are used in the work. The purpose of short-term permit is to ensure that the material and minerals etc. used by the contractor in the construction work are royalty paid. It only means that such material is purchased by the contractor from the market which is legally mined and on which due royalty is paid. In other words, the objective is to see that illegally mined mineral/ material is not purchased by the contractor and used in the construction work which is awarded by the Government. Not only it is a laudable object, such a stipulation is inserted in order to check illegal mining which has assumed serious proportions in F G

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A **the recent past. Otherwise, the respondents do not stand to loose anything inasmuch as the moment evidence is produced to the effect that royalty was paid on the minerals by the leaseholder which was used in the construction, the construction contractor like the respondents would be refunded the royalty so paid by it in terms of circular dated 06.10.2008. In terms of clauses (5) and** B **(7) of the said circular, the contractor has to pay royalty at the rates specified in the circular depending upon the nature of work and on production of bills showing payment of royalty, the contractor can get refund of royalty. There is, thus, no financial burden on the respondents of any nature. The purpose which is** C **sought to be achieved, viz., non-royalty paid mineral (which would naturally be illegally mined mineral) is not used in the execution of the Government work and it cannot be treated as unreasonable or arbitrary. There is a complete justification for providing such a provision. [Paras 10 and 11] [6-G-H; 7-A-D]**

D **2. The clauses stipulating deduction of royalty payable to the mineral department at the rates stipulated in the circular cannot be said to be a levy. The circular only provides the procedure for payment of royalty for the minerals used by the contractors who have been given the works contract by the Government department. The High Court did not keep in view** E **the object of the circular and erred in quashing the impugned circular. [Para 12] [7-H; 8-B]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1854 of2016.

F From the Judgment and Order dated 17.01.2011 in D.B. Civil Special Appeal No. 369 of 2009 passed by the High Court of Judicature for Rajasthan at Jodhpur

WITH

C. A. NO. 1855 OF 2016

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Shiv Mangal Sharma, AAG, Ankit Shah, Adhirey Singh, Punet Parihar, Anjali Choudhari, Ms. Ruchi Kohli, Kunal Narayan, Lalitendu Mohapatra, Milind Kumar, Manish Singhvi, B.D. Thanvi, H.D. Thanvi, Rishi Matoliya, Mukul Kumar, Ms. Aruna Gupta, Ms. Nandini Gupta, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

R. BANUMATHI, J. 1. Leave granted.

2. These appeals assail the order of Division Bench of the High Court of Rajasthan at Jodhpur allowing Special Appeal No.369 of 2009 dated 17.01.2011 filed by the respondent thereby quashing the circular dated 06.10.2008 which provided for deduction of royalty payable to the mining department from the bills of the contractors who have been given the work contract by the government department. Relying upon the order in Special Appeal No.369 of 2009, the High Court dismissed the Special Appeal No.753 of 2012 filed by the State.

3. Necessary facts which led to filing of the appeal arising out of SLP (C) Nos.33894 of 2011 are as follows:-Respondent-Deep Jyoti Company, a partnership firm registered as 'A' class contractor with various departments of Government of Rajasthan was awarded contract for construction of link road. On 06.10.2008, the Mines(Group-2) Department, Government of Rajasthan issued a Circular being No.P13(6)Khan/Group-2/80-Part dated 06.10.2008, concerning collection of royalty from the contractors involved in construction work using mineral masonry stone, grit, boulder, river sand, kankar, murrum, ordinary sand (excluding brick earth) in government department, autonomous bodies, government undertaking. As per circular dated 06.10.2008, before starting the work, the respondents had to obtain a short term permit (STP) from the concerned Mining Engineer by paying a requisite short term permit fees and the cost of rawanna book for the minerals which were being used as raw material for the work. Clause (5) of the circular deals with the deduction of royalty at the rates provided in the circular from the bills of the contractors. Clause (7) of the said circular provided that if the contractor had purchased the royalty paid mineral from a leaseholder then he can get refund of the same by submitting due receipts/rawanna issued by the lessee within a period of thirty days. Clauses (2), (3), (5) and (7) of the said circular dated 06.10.2008, which are relevant read as under:-

"2. Before commencing the work the contractor shall get a permit from the concerned Mining Engineer/Assistant Mining Engineer office by applying in Scheduled Proforma and enclosing an affidavit duly notary certified with requisite short term permit fees and the cost of rawanna book according to the quantity of mineral specified in G-Schedule.

A 3. Contractor shall produce the certified copy of the above permit to the concerned department alongwith the first bill, otherwise construction department should not make payment of the bill and if by any construction department the payment for the first bill or any other bill is made without getting certified copy of short time permit, the said department shall be liable to deposit the cost of the mineral.

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4. .....

5. The concerned construction department shall deduct the royalty depending on the type of construction in the following manner from the bills of the contractor and shall pay through cheque to the concerned C Mining Engineer/Assistant Mining Engineer or get adjusted through auditor general and the details shall be informed within 15 days.

1. Road Construction	1.75%
2. Building Construction	1.00%
D 3. Road Renewal	0.75%
4. Other works in which mineral is used	0. 5%

6. .....

E 7. If any contractor purchases royalty paid mineral from a lease holder and he wants the refund of royalty, then he has to submit an application to the concerned Mining Engineer/Assistant Mining Engineer office alongwith rawanas issued by the lease holder, receipts of RCC/ERCC contractors and copy of bill within 30 days of the completion of the construction work. The refund of those rawannas which is desired shall F be issued on the name of the concerned construction department contractor. No assessment shall be required if refund application is not make."

4. Respondent-Deep Jyoti Company filed Writ Petition No.1309 of 2009 before the High Court, challenging the legality of the said circular G dated 06.10.2008 and prayed for restraining the authorities from implementing the said circular. Learned Single Judge dismissed the writ petition, holding that the condition imposed by the circular dated 06.10.2008 was a reasonable restriction and in public interest. Aggrieved thereof, the respondent preferred appeal before the Division Bench of H the High Court. By the impugned order, Division Bench quashed the

circular dated 06.10.2008 and allowed the appeal holding that the contractor cannot be compelled to obtain short term permit for conducting mining operations and also cannot be asked to pay royalty from the bills payable and then seek for refund of the same. Relying upon *M/s Deep Jyoti Company's* case, the High Court dismissed Special Appeal No.753 of 2012 by order dated 14.01.2013. These appeals challenge the correctness of the impugned orders.

5. Learned counsel for the appellants Mr. Shiv Mangal Sharma, Additional Advocate General submitted that the circular dated 06.10.2008 merely provides the procedure for payment of royalty by the contractors who have been given the works contract by the department of government and that the said condition was imposed by the State Government in public interest. It was contended that the High Court erred in not noticing clause (7) of the circular dated 06.10.2008 which takes care of the situation that the contractor can get refund of the royalty deducted from his bills by the department if the contractor satisfies by producing necessary bills showing that he used royalty paid mineral in execution of the contract.

6. Per contra, learned counsel for the respondent Mr. Manish Singhvi contended that the High Court rightly quashed the circular dated 06.10.2008 as the State cannot compel a work contractor to obtain short term permit and also to pay royalty in advance and then claim refund of the royalty as the same is unreasonable and arbitrary.

7. We have carefully considered the rival contentions and perused the impugned orders and material on record.

8. The circular dated 06.10.2008 came to be issued by the State Government which provides the procedure for payment of royalty by the contractors who have been given the works contract by department of government. According to the appellants, the said circular was issued in order to ensure the payment of royalty and that the royalty paid mineral is used for construction work. As noticed earlier, clause (2) of the circular provides that before starting the work, the contractor was to obtain short term permit and rawanna book and contractor was also required to submit an affidavit to that effect that he had obtained the short term permit for mining the required mineral and rawanna book. Clause (3) of the said circular provides that if the contractor fails to produce copy of the short term permit, the works department will withhold the payment of bills. Clause (3) of the said circular further provided that

A in case, the government department which allots the work to the contractor makes the payment of contract bills without obtaining the copy of short term permit and rawanna book, then the works department shall be liable to deposit the cost of the mineral. Thus in terms of clauses (2) and (3), it is incumbent upon the works contractor to obtain short term permit before starting the work.
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9. Some of the fundamental aspects, while dealing with the validity of the aforesaid circular dated 06.10.2008, need to be kept in mind. The said circular which mandates the contractors to obtain short-term permit fess is meant for those contractors who are registered as 'A' class contractors with various departments of Government of
C Rajasthan. Such registration qualifies them to bid for and obtain Government contracts, which are construction contracts. The circular dated 06.10.2008 imposing the conditions, thus, is required only for the purpose of undertaking that work which is awarded by the Government/ Government Departments etc. Otherwise, there is no such requirement
D or obligation on the part of contractors while doing any other private work. It is trite that for awarding Government work, it can impose and stipulate conditions, eligibility criteria as well as terms and conditions on which the contract would be executed. If any person wants to bid for or undertake the work, such persons has to fulfill those conditions. The only limitation is that conditions so imposed should meet the test of fairness
E and reasonableness and such conditions should not be arbitrary or contrary to any law. The question, therefore, is as to whether imposition of the condition to obtain short-term permit as provided in circular dated 06.10.2008 is reasonable and not arbitrary.

10. In so far as the contention that in terms of the circular there
F is compulsion to obtain short term permit, in our view, as such there is no such compulsion. It is only to ensure that no mineral is excavated and used without payment of royalty. The purpose of short-term permit is to ensure that the material and minerals etc. used by the contractor in the construction work are royalty paid. It only means that such material is
G purchased by the contractor from the market which is legally mined and on which due royalty is paid. In other words, the objective is to see that illegally mined mineral/material is not purchased by the contractor and used in the construction work which is awarded by the Government. Not only it is a laudable object, such a stipulation is inserted in order to check illegal mining which unfortunately has assumed serious proportions
H in the recent past. Otherwise, the respondents herein do not stand to

loose anything inasmuch as the moment evidence is produced to the effect that royalty was paid on the minerals by the leaseholder which was used in the construction, the construction contractor like the respondents would be refunded the royalty so paid by it in terms of circular dated 06.10.2008. In terms of clauses (5) and (7) of the said circular, the contractor has to pay royalty at the rates specified in the circular depending upon the nature of work and on production of bills showing payment of royalty, the contractor can get refund of royalty. There is, thus, no financial burden on the respondents of any nature. The purpose which is sought to be achieved, viz., non-royalty paid mineral (which would naturally be illegally mined mineral) is not used in the execution of the Government work and it cannot be treated as unreasonable or arbitrary. In our view, there is a complete justification for providing such a provision.

11. The minor minerals removed from the quarries, admittedly are the property of the government and the same cannot be removed and used without payment of royalty. It is therefore the duty of the government to ensure that only royalty paid minerals are used in the work and the purpose of issuing such circular was to avoid pilferage/ leakage of revenue because royalty can be very conveniently evaded by the contractors either by not purchasing the material from the mining leaseholders or obtaining it from unauthorized excavators. In case, if the contractor purchases the material from unauthorized person who has not paid royalty, there would be loss to the public exchequer and the circular was issued to check evasion or loss to the public exchequer. Such condition cannot be said to be unreasonable and arbitrary and therefore no prejudice could be said to have been caused to the contractors.

12. Learned counsel for the respondents contended that the royalty can be levied in respect of the mineral removed or consumed from lease areas at the rates prescribed in Mines and Mineral (Development and Regulation) Act 1957 and any such levy can only be by a legislation and not by any circular and the impugned circular dated 06.10.2008 which is in the nature of levy of royalty was rightly quashed by the High Court and the impugned orders warrant no interference. The clauses stipulating deduction of royalty payable to the mineral department at the rates stipulated in the circular cannot be said to be a levy. As noticed earlier, the circular stipulates that the royalty is deducted at the rates prescribed in the circular, on production of bills by the contractor to the mining

A department showing that they had purchased the royalty paid mineral from the leaseholder and thus it only provides the procedure for collection of royalty. The circular only provides the procedure for payment of royalty for the minerals used by the contractors who have been given the works contract by the government department. The High Court did not keep in view the object of the circular and erred in quashing the impugned circular.

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13. The impugned orders of the High Court in Special Appeals No.369 of 2009 and 753 of 2012 are set aside and these appeals are allowed. Consequently the Writ Petitions filed by the respondents herein stand dismissed. The parties are to bear their respective costs.

C Kalpana K. Tripathy Appeals allowed.