IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.927 of 2019
In
Civil Writ Jurisdiction Case No.20638 of 2012

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SPML Infra Limited (Formerly known as Subhash Projects and Marketing Limited), having its registered office at F-27/2, Okhla Industrial Area, Phase-II, New Delhi-110020 and its Regional Office at 22, Camac Street, Block-A, 3rd Floor, Kolkata-700016

... ... Appellant/s

Versus

1. The State of Bihar through the Principal Secretary, Mines and Minerals Department, Govt. of Bihar, Patna
2. District Magistrate-cum-Collector Jamui, Bihar
3. Mining Development Officer Jamui, Bihar

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Harsh Singh, Advocate
For the Respondent/s	:	Mr. Gyan Prakash Ojha (GA-7) Mr. Uday Shankar Pandey, AC to GA -7
For the Mines	:	Mr. Naresh Dixit, Advocate Mr. Sumit Shekhar Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 13-04-2022

Heard Mr. Harsh Singh, learned Advocate for the appellant and Mr. Sumit Shekhar Pandey for the respondent/mines department.

A demand notice from the respondent/department asking the appellant to pay up Rs. 83.41 lakhs as also the revisional order sustaining the same are under challenge.

The learned single Judge has sustained the demand notice.

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Hence, the appeal.

The appellant, a company incorporated under the Companies Act and dealing as construction and infrastructure developer was awarded a contract by the Central Public Works Department for construction of State Highway in the State of Bihar under the RSVY Scheme in the district of Jamui. The appellant was required to construct and widen the roads from Jamui to Jhajha to Chakai till the borders of the State of Jharkhand.

The appellant had set up a crusher-machine for facilitating the aforesaid work after obtaining necessary permission from the District Magistrate, Jamui as well as from the Circle Officer, Chakai. A No Objection Certificate had also been obtained from the Bihar State Pollution Control Board.

There was some typographical error in the letter of consent by the Bihar State Pollution Control Board permitting the appellant to establish the aforesaid crusher-machine with respect to its output. The appellant had not made any wrong statement with regard to the output which was 80 MT per hour, which erroneously had been typed as 80 MT per day. Much later, it was found by the Mines Department that the license fee which was paid by the appellant for establishing such crusher-machine was wrongly calculated because of the wrong projection of the output and

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therefore, by the impugned demand notice, the appellant was asked to pay an amount of Rs. 83.41 lakhs as the fee payable for running a crusher-machine of a higher output namely of 80 MT per hour.

It is the contention of the appellant that under the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003, a license is only required to be obtained for carrying business of major minerals beyond the leasehold area.

An amendment had been brought in the aforesaid rules in the year 2014 by adding a proviso to Rule 7 of the 2003 Rules, prohibiting any person from erecting, installing or operating a stone-crusher outside the leasehold area or stock stone minerals in any form outside the leasehold area for the purpose of being used by the stone-crusher.

The year of operation of the appellant was between the years 2007-09 and therefore, the appellant was not obligated to pay any license fee for having erected a crusher which was not prohibited then. Be that as it may, without inquiring any further, on being asked to pay an amount of Rs. 3.25 lakhs as license fee, the same was paid by the appellant. The appellant had also paid the renewal charges of Rs. 5000/- per year. With the completion of the project in time, such crusher-machine was removed.

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It has therefore been urged on behalf of the appellant that the learned single Judge did not take into account that the aforesaid amendment in Rule 7 of 2003 Rules would have been applicable only from 2014 on-wards. The imposition of the penalty and the license fee for such period, taking the plea of the crusher-machine of the appellant being of higher output, amounts to implementing an *ex-post facto* law which is not permissible in the eyes of law.

Apart from this, it has also been urged by the appellant that there is no schedule of fee prescribed which would be dependent on the output or the capacity of the crusher. In that case, even in the first instance, the assessment of the license fee was highly arbitrary but since the appellant had already paid the same, he does not make any issue with respect to that in the present appeal.

However, the appellant has urged that the demand notice and the imposition of the penalty as also the fee is absolutely unwarranted and therefore cannot be enforced.

The learned counsel for the appellant reiterates that there was no false representation on behalf of the appellant and till date there is no schedule of fee prescribed which is chargeable on the output of the crusher-machine.

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The learned counsel for the Mines Department was asked to explain the aforesaid poser which has not been done. The counter affidavit which has been filed on behalf of respondent nos. 1 and 3 merely reiterates Rule 7 clause (d) of the Bihar Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2003 which does not at all answer the poser.

This aspect of the matter was not considered by the learned single Judge and therefore, we, in our opinion, do not consider it sustainable in the eyes of law.

The order passed by the learned single Judge is, therefore, set aside.

Consequently the demand notice asking the appellant to pay the amount so referred to in such notice and the revisional order sustaining such demand are quashed.

The appeal stands allowed and disposed off accordingly.

(Ashutosh Kumar, J)

(Anjani Kumar Sharan, J)

krishna/-

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