Manbhar Devi Agarwal V. The State of Rajasthan, 2016

Supreme Court of India, Judgment of 25 November 2016

REPORTABLE

Corrected

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 11259 OF 2016
(Arising out of SLP(C)No. 12882 OF 2009)

MANBHAR DEVI AGARWAL .....PETITIONER(S)

VERSUS

THE STATE OF RAJASTHAN & ORS .....RESPONDENT(S)

J U D G M E N T

ASHOK BHUSHAN, J.

Leave Granted.

2. This appeal has been filed against the judgment of the High Court of Judicature for Rajasthan, Jaipur Bench, Jaipur dated 17.12.2008 in D.B. Civil Special Appeal No. 231 of 2008 by which judgment, the Civil Special Appeal filed by the appellant against judgment and order of Learned Single Judge dated 20.02.2007 was

dismissed. Brief facts necessary to be noted for deciding the appeal are:-

The appellant, a contractor, licensed by Nagar Nigam, Jaipur has been carrying out constructions of buildings, roads, drains, footpaths, etc.. The appellant for carrying out his construction work uses Bazri, stone, grit, moram, etc. which is claimed to be purchased from an open market at Jaipur.

3. State of Rajasthan has issued various Government Orders dated 20.02.1994, 08.11.1996 and 20.11.1996 by which provision of deduction of 2% towards the royalty of minerals from bills of contractors of the construction department was made. The State of Rajasthan modified the scheme by issuing an order dated 13.11.2000 by which the earlier Government Orders providing for deductions of 2% as royalty of minerals from the bill was done away. A new scheme was enforced *vide* order dated 13.11.2000. Under the new scheme, the copy of work order issued by Construction Department to the

contractors containing details of the quantity of the minerals used for construction was required to be produced before the Mining Engineer/ Assistant Mining Engineer, who before the commencement of the mining work were required to issue short term permission letter for use of mineral in the construction.

4. Another Government Order was issued dated 03.10.2001 by which, direction nos. 2 & 4 as contained in the circular dated 13.11.2000 were modified.

5. Further, directions were issued on 25.01.2002. A letter dated 26.03.2002 was issued by the Government to the Chief Executive Engineer, Commissioner, Jaipur Municipal Corporation referring to Government Orders dated 03.10.2001 and 13.11.2000 and requesting the Jaipur Municipal Corporation to ensure compliance of the aforesaid Government Orders. It was further stated that until the No Dues certificate is issued in favour of the contractors by the Department of Mining, payment against final bill of the contractors be not made so that

Department and State may not suffer any kind of revenue loss. The appellant filed the writ petition being Writ Petition No. 3191 of 2002 praying for the following reliefs:-

> *"a. By way of writ, order or direction the order dated 26.03.2002 Annexure-5 passed by the respondent No. 3 may kindly be quashed and set aside.*
>
> *b. by way of writ order or direction, the respondents may be restrained not to collect royalty from the petitioners on purchase of Bazri, grit, stone, moram etc from the open market.*
>
> *c. by way of writ order or direction, the respondents may be restrained to not to levy royalty from the running and final bills of the contractors i.e. petitioners awarded prior to 26.03.2002.*
>
> *d. any other appropriate writ, order or direction to which the petitioner may be entitled to in the circumstances of the case may be issued in his favour.*
>
> *e. cost of the writ petition may be awarded in favour of the petitioner."*

6. The Writ Petition filed by the appellant was disposed of by the learned Single Judge on 20.02.2007. Learned Single Judge disposed of writ petition in terms of an earlier judgment in SBCWP No. 359 of 1998, ***R.S.Shekhawat & Others Vs. State of U.P.*** decided on 28.02.2001.

7. The appellant aggrieved by the decision of learned Single Judge dated 20.02.2007 filed DBCSA No. 231 of 2008. The Division Bench held that there is no illegality in order passed by the learned Single Judge in ***R.S.Shekhawat and others case (Supra),*** hence, the learned Single Judge disposing of the writ petition of the appellant did not commit an error. The appeal was accordingly dismissed. Aggrieved by the decision of the D.B. dated 17.12.2008, the appellant has filed the present appeal.

8. Learned counsel for the appellant in support of the appeal contends that both learned Single Judge and Division Bench of High Court did not decide the issues

raised by the appellant in the writ petition and have disposed of the writ petition in terms of earlier judgment of learned Single Judge, ***R.S.Shekhawat and others*** in which judgment no issues were decided. He submits that Judgment in ***R.S.Shekhawat Case*** indicates that the Court did not enter into the correctness or otherwise of the notification dated 22.09.1994 & 03.07.1994 which were under challenge. The Court noticing the new scheme as issued by Government Order dated 13.11.2000, noted the request of the appellant that matter may be directed to be examined by the Department of Mines on which request the writ petition was disposed of.

9. It is submitted that the above judgment did not decide the issues raised by the appellant which were required to be considered. It is further submitted that the payment of royalty is to be made by lessees or licensees who have been granted right of excavation of minerals i.e. a holder of mining lease or license. The

appellant who has been purchasing the minerals from the open market cannot be saddled with the payment of royalty. The appellant is not carrying out any mining operation so as to be asked to make payment of royalty.

10. Learned counsel for the State disputing the submissions of counsel for the appellant submits that the various Government Orders by the State of Rajasthan have been issued to prevent the illegal mining i.e. use of the minerals without payment of the royalty. It is submitted that the Government Orders provide for a mechanism to check illegal mining and in event minerals used are minerals which are royalty paid minerals, there is no liability and the Government only requires verification of such facts i.e. whether minerals used by the contractors are royalty paid or not. It is submitted that direction for withholding the payment till the verification of above facts are only for the purpose of ensuring that minerals used are not illegally mined minerals without payment of royalty. He submit

that no error was committed by learned Single Judge and the Division Bench in disposing of the writ petition giving liberty to the writ petitioner to approach the competent authorities in the mining department to prove that minerals used by them are all royalty paid.

11. We have considered the submission of learned counsel for the parties and have perused the records.

12. The Parliament has enacted Mines and Minerals (Development and Regulation) Act, 1957, for the development and regulation of mines and minerals. The Union control on regulation of mines and development of minerals has been declared by virtue of Section 2 of 1957 Act. Section 3(e) defines 'Minor Minerals' which is to the following effect:-

> *"3(e). 'Minor Minerals' means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral;"*

13. By Section 15 of the Act, the State Government has been empowered to make rules on Minor minerals.

14. Section 9(2) provides for payment of royalty by the holder of mining lease. Section 9(2) is as follows:-

> *"9(2). The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any (mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee) from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral."*

15. By Act 25 of 94, certain amendments have been incorporated in 1957 Act. One of the sections inserted by Amendment is Section 23C. Section 23C(1) is as follows:-

> *"23C. Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals:-*
>
> *(1). The State Government may, by notification in the Official*

> *Gazette, make rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.*
>
> *(2) .....”*

16. The State of Rajasthan has framed Rajasthan Mines and Minerals Concession Rules, 1986, in exercise of power under Section 15. Rule 3(2)(XX) defines ‘Royalty’ which is to the following effect:-

> *“Royalty means the charge payable to the Government in respect of the ore or mineral excavated, removed or utilized from any land as prescribed in Schedule-I.”*

17. Rule 18 provides for conditions which are to be included in every mining lease. According to Rule 18(1)(b), the holder of a mining lease granted on or after commencement of these rules shall pay royalty in respect of any mineral removed by him from and/or consumed within the leased area at the time being as specified in Schedule I in respect of that mineral.

18. Rule 48 contains various provisions with regard to unauthorized working. Various provisions regarding undertaking of mining operation not in accordance with the mining lease have been contained in Rule 48 which also includes seizure of illegally mined minerals and recovery of royalty and tax chargeable as well as compounding charges.

19. Above statutory provisions clearly indicates that excavation of minor minerals, as per mining lease or permit is subject to payment of royalty and the rent as prescribed in the rules. The liability to make payment of royalty is on the person who excavates the minerals under the lease or license.

20. The provisions also indicate that in event of illegal mining or excavation of minerals without payment of royalty, the rules empower exercise of various powers including seizure of minerals, recovery of royalty, taxes and compounding charges on such minerals.

21. The first submission which has been raised by learned counsel for appellant is that learned Single Judge and Division Bench did not consider the issues raised in the writ petition and disposed of the matter in terms of earlier judgment of ***R.S.Shekhawat case*** in which case no issues were decided. The judgment of ***R.S.Shekhawat*** is brought on record as Annexure P-2.

22. The above judgment indicates that in writ petition, notification dated 22.09.1994 and 03.07.1995 by which 2% deductions were made from running bills submitted by petitioners to the Public Works Department and other State Departments towards royalty of minerals was under challenge. The petitioners of that case were engaged in business of constructing roads, buildings and were using different varieties of minerals purchasing it from the open market. However, when the writ petition came for hearing, the court noticed the subsequent development by which the aforesaid two notifications were substituted by a new scheme dated 13.11.2000.

23. The petitioner of that case, in view of the subsequent development did not press for adjudication regarding the notification dated 22.04.1994 and 03.07.1994 but prayed for the refund of the royalty deducted from their bills. The petitioner suggested that the matter may be examined by the Department of Mines itself. It is useful to note following observation in the judgment:-

> *"...as already stated the counsel for the petitioner as also other counsels appearing in all these writ petitions, no longer consider it necessary to insist for adjudication of the question as to whether the two notifications dated 22.09.1994 and 03.07.1994 are legal or not in view of the fact that a new scheme on 13th November 2000 referred to hereinbefore has been implemented but insofar as deductions already made by the Public Works Department and other Departments on behalf of the Mining Department is concerned, the same requires adjudication by the Department of Mining to ascertain whether the petitioners at any point of time prior to 13th November 2000 had used minerals in their construction operations or not which were not royalty paid and for*

> *this purpose the counsel for the petitioners have themselves suggested that the matter be examined by the Department of Mines in order to come to a just conclusion whether any wrongful deduction had been made in the running bills by the Public Works Department and other Departments or not in regard to the amount of royalty for the minerals used...”*

24. The aforesaid writ petition was thus disposed of giving liberty to the petitioner to approach the Department of Mines with the relevant records for assessment and explaining the position for whether the claim for refund or adjustment is sustainable or not.

25. When the writ petition no. 3191 of 2002 filed by the appellant came for consideration on 20.02.2007, the learned Single Judge after considering the judgment in ***R.S.Shekhawat case,*** disposed of the writ petition with following directions:-

> *“...Having perused the aforesaid judgment and considering the rival arguments of the learned counsel for the parties, I am not persuaded to*

> *take any other view of the matter than the one taken by the Co-ordinate Bench in the aforesaid judgment.*
>
> *The writ petition is accordingly disposed of in terms of the aforesaid directions. The observations made and directions given in the aforesaid judgment shall also apply to the present case."*

26. The Division Bench also affirmed the aforesaid judgment.

27. From the prayers as made in the writ petition, it is clear that principle prayer made by the writ petitioners was challenge to D.O. letter dated 26.03.2002 issued by the Office of Mining Engineer, Mines and Geology, addressed to Commissioner, Jaipur Municipal Corporation, Jaipur.

28. The writ petition in ***R.S.Shekhawat case*** was decided on 28.02.2001 by which date the letter dated 26.03.2002 was not even in existence. Letter dated 26.03.2002 being subsequent in point of time from the judgment of

R.S.Shekhawat case, it was necessary to look into the content of the letter and to take decision thereafter. We thus find substance in the submission for the learned counsel for the appellant that letter dated 26.03.2002 was also necessary to be looked into before deciding the writ petition of the appellant and without referring to the letter dated 26.03.2002, the writ petition of the appellant ought not to have been disposed of.

29. We thus, in view of the above, proceed to examine the contents of D.O. letter dated 26.03.2002 and submissions made by the appellant in support of the appeal.

30. The submission which has been pressed by the counsel of the appellant is that payment of royalty is contemplated from holder of a mining lease or permit. As noted above, the statutory scheme clearly indicates that the royalty is required to be paid by mining lease holder or permit holder for excavation of a minor mineral and no mineral is to be removed or excavated

without payment of the royalty. For mining of all minerals payment of royalty is necessary.

31. It is however also relevant to note that where mineral is excavated/transported/removed without payment of royalty, there are specific provisions for seizure of such minerals, recovery of royalty, tax and compounding charges. The statute thus takes care of payment of royalty for even those minerals which have been illegally mined or excavated. The lease holders or permit holders who excavate the minerals under the lease or license are obliged to make payment of royalty and in event any such mineral is found to be removed by lessee or their agents without payment of royalty, statute contains ample provisions to ensure recovery of royalty and fine etc.

32. As noted above, the earlier Government Orders dated 22.09.1994 & 03.07.1995 provided for 2% deductions from the running bills of the contractors of public works department and other state departments towards the

royalty of minerals which were used by contractors in building of roads etc. The Scheme as provided under the aforesaid Government Orders were subsequently withdrawn and a new scheme was enforced by Government Order dated 13.11.2000 and 03.10.2001. By Government Order 03.10.2001 modifying earlier direction dated 13.11.2000, following was directed:-

> *"After carrying out amendment in the even numbered Circular dated 13.11.2000 related to guidance to recover the royalty against the minerals used in various works by the Contractors of Government Works Department and substituting the Paras 2 and 4 of the above Circular, following directions are issued:-*
>
> *"(2) Before commencement of mining work by the Contractor of Construction Department, Short Term Permission Letter for mineral used in the construction from the Mining Department shall be obtained and shall have to deposit the fee fixed for it and cost of Khanna Book with the Department, but amount of royalty payable on the quantity of the mineral mentioned in the short term License will be deducted from the running bills of the contractor by the concerned Construction*

Department on the basis of the quantity of the mineral used in the construction.

(4) On completion of the construction work, complete details of the mineral such as quantity of the mineral, source of receiving mineral and details of the amount deducted from the bill etc. utilized by the Contractor duly verified by the Executive Engineer of the concerned Construction Department shall be submitted to Mining Engineer/Assistant Mining Engineer within 15 days and further a Certificate of Construction Department will also be produced in which quantity of the mineral used in the construction has been certified."

33. A further Government Order was issued on 25.01.2002 which has been brought on record as Annexure P-4 by which certain other directions were issued for ensuring that the payment of royalty regarding all minerals used is made and the mining engineer was required to keep all details and the contractors were also to obtain short term permission for use of the minerals as per work order.

34. A letter dated 26.03.2002 was issued by the Mining Engineer to the Commissioner Municipal Corporation, Jaipur, whereunder the attention of Commissioner, Jaipur Municipal Corporation, Jaipur was drawn towards circular dated 03.10.2001 of the State Government and circular dated 13.11.2000, and the commissioner was informed that although the information of the circular has been sent earlier to the Jaipur Municipal Corporation, the amount of royalty has not been received. The Commissioner, Jaipur Municipal Corporation was requested to arrange to send royalty on the basis of the quantity of the minerals used in the contract of the construction work given to the contractor by subordinate offices of Jaipur Municipal Corporation before end of the financial year.

35. The letter dated 26.03.2002 impressed upon Commissioner of Jaipur Municipal Corporation to ensure compliance of Government Orders dated 13.11.2000 and 03.10.2001 which has been noted earlier. The appellant

in writ petition has only challenged the letter dated 26.03.2002 but has not challenged the Government Circulars issued earlier which was sought to be complied by the said letter.

36. Learned counsel for the State is right in his submissions that since appellant did not challenge the aforesaid two circulars of the State Government where scheme for realization of the royalty from the contractors for use of the minerals was enforced, the state had no occasion to give all relevant facts pertaining to two earlier circulars by which royalty was sought to be recovered. In the present writ petition only prayer is to quash the letter dated 26.03.2002, which is only a letter to Municipal Commissioner Jaipur to ensure compliance of Circulars dated 13.11.2000 & 03.01.2001. There being no challenge to Circular's 13.11.2000 & 03.01.2001 in the writ petition and the State had no opportunity to defend its above policy it is not appropriate for this Court to embark upon the

adjudication of above Government Scheme. The letter dated 26.03.2002 being only a letter to ensure compliance of Circulars dated 13.01.2000 & 03.01.2001, no fault can be found in the said letter.

37. A Counter Affidavit has already been filed by the Respondent No. 1 & 2, the State of Rajasthan and Mining Engineer in the present appeal. In the counter affidavit, State has come up with the case that the liabilities to pay royalty rest with contractors/lease holders to whom mining lease are bestowed. It is further pleaded that in case the minerals have been procured from the legal source on which royalty have been paid, there is no royalty payable subsequently. In sub-paragraph IV of the counter affidavit, following was stated:-

> *"IV. That the contents of para IV of the questions of law are wrong, ill-advised and are hence denied. It is submitted that the liability to pay royalty rests with the contractors/lease holders to whom the mining leases are bestowed but*

in order to prevent losses on account of rampant illegal mining and subsequent usage of such illegally mined minerals in construction work, the department of mines of the State of Rajasthan issued circulars from time to time calling upon vendors/contractors registered with Public Works Department of the State who carry out construction works to place before it the records of the minerals having been purchased legitimately and that such minerals have not been procured from illegal mining to determine whether royalties on such minerals have been paid. In case, the minerals have been procured by vendors/contractor from illegal mining, the royalties due to the State can be recovered. The said circulars categorically state that, in case minerals have been procured from legal sources on which royalties have been paid, there is no royalties payable subsequently. However, in case such minerals are procured from illegal mining, then the royalties that have been usurped by the vendors/contractors must be paid to the State. There is no infirmity or illegality in such a circular which is intended to legitimately collect the royalties due to the State and which have not been paid."

38. It is further stated in the counter affidavit that in event appellant has procured the minerals from open market, the appellant should have presented the documents to prove that such minerals used in construction work were purchased legitimately and then no royalty shall be paid to the State by the appellant on such mineral in such a case.

39. It is submitted that in spite of department communication 18.02.2008 and 16.02.2009 calling upon the appellant to produce the records of purchasing the minerals from open market, the appellant has failed to produce any such record of such purchase. In paragraph VIII, following has been stated:-

> *"VIII. That the contents of corresponding para no. VIII are wrong and denied. It is submitted that as per the circular issued by the department under Rule 63 of Rajasthan Minor Minerals Concession Rules, 1986, it is mandatory for all contractors enlisted /registered with the Public Works Department cited above to obtain 'Short Terms Permit' for the minerals to be used*

> *in construction works. In case the petitioner purchased the minerals from the open market, then the petitioner should have produced the relevant documents to prove that such minerals used in construction works was purchased legitimately. However, in spite of the communications from the department dated 18.02.2008 and 16.02.2009 in this regard, the petitioner has failed to produce any documents that proves that the minerals have been purchased legitimately from the open market. It is clear that the petitioner does not possess any documents that prove that such minerals have been procured through legitimate means and hence it is clear form the conduct of the petitioner that such minerals are procured illegally and are illegally mined."*

40. The circulars issued by the State Government including the circular dated 13.11.2000 as well as circular dated 03.10.2001 has to be interpreted to mean that circular requires payment of royalty with regard to only those minerals which have been used by the contractor for which no royalty was paid. The circular cannot be interpreted to mean as requiring payment of

royalty for minerals used for which once royalty has already been paid. The state has come up with the above mentioned Government Order only with object to ensure that contractors do not use minerals which are not royalty paid.

41. Rajasthan High Court in ***R. S. Shekhawat's case*** as noted above has permitted the contractor to approach the mining department for refund of the amount which was deducted from the bill in event they successfully prove that minerals used by them were minerals for which royalty was already paid. The aforesaid directions clearly protected the interest of the contractors and we are of the view that the appellant's interests are amply protected with the aforesaid directions issued by Rajasthan High Court.

42. We, however, deem it appropriate to give liberty to the appellant to approach the mining engineer, Respondent No. 2 by a written representation giving details of amount deducted from its bills or amount

withheld along with the details of minerals used by contractors with details of proof to establish that minerals used were minerals for which royalty was paid as per 1986 rules. The Mining Engineer/Assistant Mining Engineer, the Respondent No. 2 may consider the representation and take an appropriate and reasoned decision expeditiously preferably within three months of submission of the representation and, in event it is found that appellant is entitled to refund of any amount, appropriate consequential action may be taken.

43. The Civil Appeal is disposed of with the above directions.

.....J.
(PINAKI CHANDRA GHOSE)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
NOVEMBER 25, 2016.

ITEM NO.1 B COURT NO.10 SECTION XV
(For Judgment)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 11259 OF 2016 @
Petition(s) for Special Leave to Appeal (C) No. 12882/2009

(Arising out of impugned final judgment and order dated 17/12/2008 in DBCSA No. 231/2008 in SBCWP No. 3191/2002 passed by the High Court Of Rajasthan At Jaipur)

MANBHAR DEVI AGARWAL **APPELLANT(s)**

VERSUS

STATE OF RAJASTHAN & ORS. **Respondent(s)**

Date : 25/11/2016 This appeal was called on for pronouncement of judgment today.

For Appellant(s) Mr. Venkateswara Rao Anumolu,Adv.

For Respondent(s) Mr. Milind Kumar,Adv.

Hon'ble Mr. Justice Ashok Bhushan pronounced the judgment of the Bench comprising Hon'ble Mr. Justice Pinaki Chandra Ghose and His Lordship.

Leave granted.

The civil appeal is disposed of with the directions mentioned in the signed reportable judgment.

[Charanjeet Kaur] **[Indu Pokhriyal]**
A.R.-cum-P.S. **Court Master**

[Signed reportable judgment is placed on the file]