

**IN THE HIGH COURT OF MADHYA PRADESH,
BENCH GWALIOR**

WRIT PETITION NO. 1546/2016

M/s. R.S.A. Builders & Const.

Versus

State of M.P. & others

Present : Hon. Shri R.S.Jha &
Hon. Shri M.K. Mudgal, JJ.

Shri Anuj Gupta, learned counsel for the petitioner.

Shri Arvind Dudawat, learned Additional Advocate
General, for the respondents/State.

O R D E R

(01.03.2016)

Per : R.S.Jha, J :

Heard on the question of admission and interim relief.

2. The petitioner has filed this petition praying for a direction to the authorities to release payment of the bills without insisting upon a 'No Objection Certificate' from the Mining Department or other persons regarding payment of Royalty.

3. It is stated that the controversy involved in the present petition is covered by the decision rendered by this Court in the cases of M/s Narsingh Construction Company vs. State of M.P. & Ors., W.P No.4658/2012 decided on 13.4.2012 and M/s Chandrama Construction

Company vs. M.P. Rajya Krishi Vipran Sangh & Others, W.P No.1361/2009 and M.P. Contractors Sangh, Indore & Ors., v. State of M.P. & Ors., 1987 J LJ 743 : (AIR 1987 MP 74), M.P. Audhyogik Kendra Vikas Nigam v. Abrar Construction Company & Ors., 2005 Arb WLJ 379 (MP), Ketu Construction Ltd. v. State of M.P., 2007 (3) MPHT 433 (DB) : (AIR 2007 (NOC) 2586 (MP)) and Tomar Construction Company v. State of M.P. & Ors., 2008 (2) MPLJ 40 and recently in Writ Appeal No.357/2012 (M/s. Arpit Heights (P) Ltd. v. Indore Development Authority) decided on 18.03.2013.

4. Having heard learned counsel for the petitioner, it is observed that vide notification published in the M.P. Gazette (Extra Ordinary) dated 23.03.2013, three provisos have been added to Rule 68 (1) of the M.P. Minor Mineral Rules, 1996 (for brevity 'Rules of 1996'). The aforesaid amendment of 23.03.2013 in Rule 68 is in the following terms:-

“(1) In the heading for the words “permission for removal of minor minerals for Central and State Governments and their undertakings” the words “permission for removal of minor minerals” shall be substituted.

(2) After sub rule (1), the following provisos shall be inserted, namely:

“Provided that information of in-principle sanction of permit shall be given to the applicant. Applicant shall furnish permission from the District level environment committee, within one month maximum, from the date of receipt of such information:

Provided further that if in-principle sanction is for five hectare or more area, then applicant from the date of receipt of such information, shall submit environment permission obtained under notification dated 14.09.2006 of Ministry of Environment and Forest within period of six months. After completion of all formalities sanctioning authority shall issue sanction order of quarry permit. Sanctioning authority may

permit to enhance the time period, if all formalities are not completed in prescribed time period, on the basis of satisfactory reasons:

Provided also that quarry permit holder/contractor engaged in construction work shall obtain certificate of no mining dues to ensure payment of royalty for the mineral used in construction work, for the mineral excavated from quarry permit area or used by purchasing from open market. Certificate of no mining dues shall be issued by Mining officer/officer in charge mining section, after verification of documents submitted by contractor/quarry permit holder engaged in construction work."

5. A perusal of the third proviso to Rule 68 (1) of Rules of 1996 makes it clear that the statutory provision as amended in the month of March, 2013, now requires every quarry permit holder or contractor to obtain 'no mining dues' certificate from the Mining Officer/Officer in-charge concerned after due verification of documents submitted by the Contractor/quarry permit holder. Such a requirement has now become mandatory after the amendment of 2013 in the Rules and cannot be diluted or waived.

6. From a perusal of the judgments relied upon by the learned counsel for the petitioner, it is apparent that the aforesaid decisions were rendered either prior to the insertion of the amendment in Rule 68 of Rules of 1996 in 2013 or without noticing the amended provisions of Rule 68 of the Rules of 1996. As the statutory provision now mandatorily requires all contractors and quarry permit holders to obtain no mining dues certificate, therefore, the aforesaid decisions of this Court that have been relied upon by the petitioner do not render any assistance to the petitioner. It is also apparent that in view of the amended provision of Rule 68 of Rules of 1996, the aforesaid decisions relied upon by the learned

counsel for the petitioner have lost their binding force with the efflux of time as the said decisions were rendered prior to or without taking into consideration the amended provisions of Rule 68 of Rules of 1996.

7. The view taken by this Court is fortified by judgment rendered by the Division Bench of this Court in the case of *Prabha Exim Pvt. Ltd. Thru. Kshitij Garg v. Public Works Department* reported in *AIR 2015 MP 90*, wherein, the Division Bench after taking into consideration all the aforesaid judgments and the amendment made in the Rule 68 of Rules of 1996 has held as under:-

“9. The State Government, in order to check the pilferage of mineral and evasion of Royalties, amended Rule 68, M.P. Minor Mineral Rules, 1996. By virtue of these amendments, the petitioner/contractor are required to submit Royalty Clearance Certificate before passing their bills. Under Rule 68 of the M.P. Minor Mineral Rules, 1996, it is incumbent that the contractor engaged in construction work shall obtain certificate of no mining dues to ensure payment of royalty for the mineral used in construction work, for the mineral excavated from quarry permit area or used by purchasing from open market. Thus, it is incumbent to the petitioner to obtain certificate and for that they have to maintain the correct accounts showing the quantity and other particulars of all minerals obtained and purchased from the mine owner or from the open market and the same can be examined by the Mining Officer/ Officer in charge of mining.

10. In order to ask for information regarding accounts showing the quantity dispatched and royalty paid, the State Government can ask for such information and in order to regulate that proper accounts is maintained and proper despatch register is maintained for that purpose, this power has been conferred

on the State Government. Thus, we are of the view that the petitioner/contractor is required to obtain no mining certificate under Rule 68 of M.P. Minor Mineral Rules, 1996 and thus, no direction, as prayed in this writ petition can be granted.”

8. In view of the amended provisions of Rule 68 of Rules of 1996 as the statutory provisions require all quarry permit holders and contractors to obtain no mining dues certificate from the concerned authority, the relief as prayed by the petitioner in the petition cannot be granted to him as the petitioner is now required to comply with the provisions of Rule 68 of the Rules of 1996.

9. The petition filed by the petitioner being meritless is hereby dismissed.

10. C.C as per rules.

(R.S. Jha)
Judge

(M.K. Mudgal)
Judge

(ra)