

GOVERNMENT OF ODISHA
DEPARTMENT OF WATER RESOURCES

File No. IIM-29/2017-25761 /W.R., Dated. 16/11/19

From

Surendra Kumar, IAS,
Principal Secretary to Govt.
Department of Water Resources

To

Sri Nikunja B Dhal, IAS
Principal Secretary to Government,
R & D M Department

Sub: - Deduction of Royalty and the cost of Minor Minerals by the Public Works Authority from the work bill of the executants who fails to produce transit pass and money receipt in support of payment of royalty.

Ref: - Your letter No.27076 dated 10-9-2019 and No.34571 dated 7-11-2019.

Sir,

With reference to your letters and subject cited above, I am directed to intimate that the Govt. in DoWR is deducting royalty from the contractors bill those who failed to produce the proof of payment of royalty. However, the suggestions/ views of DOWR on recovery of cost of mineral are as under:-

1. Recovery of "Cost of Minor Minerals" has been mentioned in the rule in the event of non-production of Transit Pass. This perhaps has been prescribed to prevent illegal mining, transportation & storage of minerals.
2. The power to make rules by State Govt. flows from Sec 15 & Sec 23C of the Mines & Mineral (Development & Regulation) Act,1957. Section 21 of the Act deals with penalties to be imposed for contravention of the provision of the Act. Sec-21(5) of the Act stipulates. *"Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person, the mineral so raised, or, where such mineral has already been disposed of, the price thereof and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority"*.



3. As far as Public Works is concerned, the Public Works Authority enters into contracts with agencies/Contractors to undertake works for a certain sum. Bills are raised, taking into account the rates quoted by the agency as per the contract. Deduction of statutory dues like taxes & royalties are made. In respect of minor minerals used in the work, the Public Works Authority insists for evidence in support of payment of royalties thereon. If money receipt/Transit Pass is not produced, the royalties are deducted from the work bill at the time of payment.

As per the new provision made in the rules, the agencies which are not able to produce evidence are required to pay the cost of mineral together with royalties. The imposition of such penalty presumes that the agency has raised the mineral without any lawful authority. This assumption may not be appropriate and stand the scrutiny of law for the following reasons.

- (i) The agency is not involved in extraction/mining activity. It is a consumer of Minor Mineral product which is to be used in the work. The quarry lease holder may not have issued Transit Pass in respect of the minerals purchased. Imposition of penalty on a consumer, who has no control on the grant of necessary receipts/Transit Pass, may not be sustainable in the eyes of law. For example if a shopkeeper does not give receipt for a good purchased by consumer, it is not legally possible to penalise the consumer for same.
- (ii) Sec-23C of the Act which empowers State Government to make rules for prevention of illegal mining, transport and storage does not have any provision for recovery of cost of minerals.
- (iii) The principle of natural justice warrants that *reasonable opportunity of being heard* is to be made available to the person on whom such penalty is to be imposed. Further, appellate provision should be prescribed. The extant rules do not provide for the same.
- (iv) Since the terms and conditions of the contract do not have provision for realisation of "Cost of Mineral", it may not be enforceable and may be treated as violation of contract terms.
- (v) Prevention of illegal mining is an primarily an enforcement issue. R & D M Deptt. may take measures for strict enforcement with regards to issue of transit Pass by lease holders in all cases before penal action is made mandatory.



Taking these points into account it is requested that appropriate decision be taken at an early date so that the present impasse of strike by contractors is resolved. It may be noted that this being the peak working season, an early resolution of this issue will be crucial for completion of works during the working season. This is for kind information and necessary action.

Yours faithfully,



16/11/19

Principal Secretary to Government