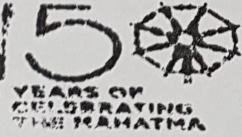


R. C. MISHRA
NOTARY, CUTTACK TOWN
Regd. No-21/85



66708



IN THE HIGH COURT OF ORISSA, CUTTACK

(Original jurisdiction case)

W.P. (C) No- 6211 of 2019

Code No- 269900

In the matter of:-

An application under Article- 226 & 227 of the constitution of India

And

In the matter of:-

An application challenging the illegal collection of Royalty at enhanced rate from the R/A bills in respect to Contract Agreement No-48 NCB/RIDF/P1 of 2016-17, for the work " Raising & Strengthening of Capital Embankment 34(B) A on Brahmani Right From RD 62.150 Km to 68.330 Km under NABARD Assistance RIDF-XX" with a prayer to refund the same to the petitioner.

And

Prafulla Kumar Mohanty, aged about 55 years, Super Class Contractor, S/O- Gurucharan Mohanty, At- Santi Vihar, Kanika Road, Po- Tulasipur, Dist- Cuttack.

..... Petitioner.

In the matter of:-

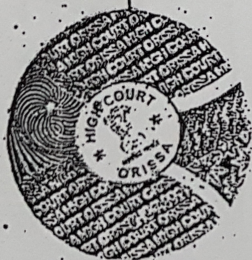
- Vrs
1. State of Odisha, represented through Principal Secretary to Govt. Department of Water Resources , At- Rajiv Bhawan, Bhubaneswar, Dist- Khurda.
 2. The Executive Engineer, Kendrapara Irrigation Division, , At/Po/Dist-Kendrapara. Opp. Parties.

Presented in Court

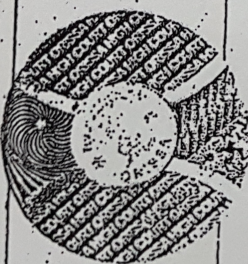
18/3/19 B.O.



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>With reference to the aforesaid judgment cited hereinabove and the present situation that arises for our consideration, we direct as follows:</p> <ol style="list-style-type: none"> 1. We declare that the enhancements made by the State to the rate specified in Schedule II on 01.09.2010 and 01.09.2013 are <u>declared unlawful</u>. 2. The petitioners shall approach their employers, who are to compute the extent to which royalty has been deducted from their respective bills and also to certify whether the enhanced royalties deducted from the petitioners bills, have been reimbursed and/or added to the contract price or not. In the event the employer gives the necessary certificate indicating that the enhanced royalty deducted has not been reimbursed. Such certificate shall be issued to the petitioners within a period of three months from today. 3. On receipt of such certificates, the same may be produced before the respective Tahasildars and the Tahasildars shall in turn treat the certificates as applications for refund of royalty. However, we make it clear that the petitioners who have ongoing projects with the State, may, instead of seeking refund of any excess royalty paid, may opt for allowing adjustment of the refundable amount against any ongoing projects that they may be undertaking. 	



Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
		<p>In the light of the discussions made hereinabove, the only issue that remains for consideration in the present case is <u>what relief can be granted to the petitioners.</u></p> <p>Learned counsel for the petitioners claim that the petitioners are contractors under the State, who have carried out or carrying out various contracts under the State and the State agencies (employers) are effecting deduction of royalty at the <u>enhanced rates</u> and further claim that they have not been reimbursed the enhanced royalty though deducted from their respective bills.</p> <p><i>Ynd</i> Learned Advocate General submits that the <u>quashing of the subsequent enhancements made in the rates on 01.09.2010 and 01.09.2013 ought not to result in any unjust enrichment to the petitioners.</u></p> <p>We are in agreement with the above submissions made. This Court had an opportunity to deal with a similar issue in the case of <u>Akuli Charan Das etc. etc. vs. State of Orissa and others</u> reported in A.I.R.2007 Orissa 197 and considering the claim of contractors for reimbursement of enhanced royalty, this Court had concluded and issued the directions to the following effect:</p> <ol style="list-style-type: none"> “(1) It is hereby declared that the petitioners are justified in their claim for reimbursement on the basis of the revised rate stipulated in 2004 Rules. (2) The petitioners may revise their bills to incorporate such enhanced claim on account of revised royalty. (3) The State is to effect reimbursement/ payment towards royalty subject to the petitioners furnishing evidence of payment of such royalty.” 	



[O.A. C.-98]

Sl. No. of Order	Date of Order	ORDER WITH SIGNATURE	Office note as to action (if any), taken on Order
02.	25.03.2019	<p>Heard learned counsel for the petitioner and learned Additional Government Advocate appearing for the State-opposite parties.</p> <p>2. The grievance of the petitioner is that the petitioner has paid certain additional royalty, which was enhanced with effect from 15.12.2016. It is contended that enhancement of royalty with retrospective effect has already been set aside by judgment and order dated 18.03.2015 passed in <u>W.P.(C) No.11830 of 2013</u> and batch of cases. Learned counsel for the petitioner states that the petitioner would be entitled to the benefit of the said judgment. It is contended that despite the petitioner having made several representation for refund of the royalty amount, the same is being deducted from the running bills/bills of the petitioner and same has not been refunded to the petitioner in terms of the aforesaid judgment.</p> <p>3. While disposing of the <u>W.P.(C) No.11830 of 2013</u>, vide order dated 18.03.2015, this Court has observed as follows:</p>	

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		<p>“xxx xxx xxx</p> <p>3. On receipt of such certificates, the same may be produced before the respective Tahasildars and the Tahasildars shall in turn treat the certificates as applications for refund of royalty. However, we make it clear that the petitioners who have ongoing projects with the State, may, instead of seeking refund of any excess royalty paid, may opt for allowing adjustment of the refundable amount against any ongoing projects that they may be undertaking.”</p> <p>4. Further, it is seen that the issue involved in the writ petition is covered by the decision of this Court in <i>Akuli Charan Das v. State of Orissa and others and batch of cases</i>, 2006 (Supp.-II) OLR 672. The relevant portion of the said judgment reads as under:</p> <p>“21. Under the circumstances, the writ applications, where agreements have been signed before 31.8.2004 i.e., the date of promulgation of the Orissa Minor Minerals Concession Rules, 2004, are disposed of with the following directions:</p> <p>(1) It is hereby declared that the petitioners are justified in their claim for reimbursement on the basis of the revised rate stipulated in 2004 Rules.</p> <p>(2) The petitioners may revise their bills to incorporate such enhanced claim on account of revised royalty.</p> <p>(3) The State is to effect reimbursement/payment towards royalty subject to the petitioners furnishing evidence of payment of such royalty.</p> <p>With the aforesaid observations and directions, the writ petitions are disposed of.”</p>	

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		<p>5. Upon hearing learned counsel for the parties, we are of the considered opinion that the writ petition will be governed by the above decisions of the Court.</p> <p>6. In that view of the matter, we direct that in the event the petitioner, with regard to the grievance made in this petition, files a <u>comprehensive representation attaching running account bills along with certified copy of this order annexing therewith the judgment of this Court dated 18.03.2015 passed in W.P.(C) No.11830 of 2013 and batch of cases and the decision in Akuli Charan Das (supra) within four weeks hence, the same shall be considered and decided by a reasoned and speaking order as expeditiously as possible preferably within a period of four months from the date of filing of such representation.</u> It is further directed that in case the petitioner is found to be entitled for refund of any amount, the same shall be refunded to him within three weeks from the date of passing of the order or adjust the refundable amount against any ongoing/ completed</p>	

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AD		<p>projects that they may be undertaking if the petitioner may opt for.</p> <p>7. The writ petition is allowed to the aforesaid extent.</p> <p>Urgent certified copy of this order be granted on proper application.</p> <p>Sd/- K. S. Thaveri, C.J.</p> <p>Sd/- K. R. Mohapatra, J.</p> 