

(1996) 07 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Writ Petition No. 1969 of 1983

Associated Stone Industries, Kota

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 15(3), 9
Rajasthan Minor Mineral Concession Rules, 1959 — Rule 17, 41

Citation : AIR 1997 Raj 146 : (1996) 3 RLW 578 : (1996) 2 WLN 10

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Prem Asopa, for the Appellant; K.K. Sharma, for the Respondent

Final Decision : Allowed

Judgement

V.K. Singhal, J.—The petitioner has challenged the order of reassessment in respect of royalty for the period from 1-10-1974 to 30-9-1975 and 1-10-1975 to 30-9-1976 and also the validity of Rule 17(1)(c) of the Rajasthan Minor Mineral Concession Rules.

2. The facts of the case are that the petitioner was granted a mining lease for quarrying time stone as building stone for an area of 4810.16 acres in Tehsil Ramganjmandi, District Kota for a period of 10 years commencing from 1-10-1959. The lease was renewed for a further period of 10 years from 1-10-1969 and an agreement was executed in which it was contemplated that the petitioner would pay Rs. 3/- per hundred sft. treating the minor mineral to be excavated i.e. time stone as building stone. The petitioner was making the payment on the basis of the agreement entered into and even initial assessment was framed accordingly.

3. According to the submission of the learned counsel for the petitioner, the Rajasthan Minor Mineral Concession Rules, 1959 had provided even lesser amount of royalty in Schedule I, but the agreement is alleged to be entered into

at a higher figure. It is stated that the rates were raised from 5-8-1975 and before that there was a notification dated 25-9-1972. In accordance with the provisions of Rule 17(1)(c) of the Rules, the revision in the rate of royalty could not have been more than once in the period of four years at that time and it is stated that the revision on 5-8-1975 is contrary to the provisions of Rule 17(1)(c) of the Rules as well as proviso to Section 15(3) of the Mines and Minerals (Regulation and Development) Act, 1957. u/s 14 of the said Act, it is provided that the provisions of Sections 4 to 13 shall apply to the major minerals and minor minerals are excluded therefrom. By the amendment of 1986 these Sections have been changed to Sections 5 to 13 now. Section 9 provides the royalty in respect of major minerals and under Sub-section (3) of the said Section, it is provided that the Central Government may by notification in the Official Gazette, amend the Second Schedule to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the Notification. The proviso further provides that the Central Government shall not enhance the rates in respect of any mineral more than once during the period of four years. This period of four years has also been reduced to three years by the amendment of 1986. The powers which are contained in Section 15(3) in respect of minor mineral are similar to those which are u/s 9(3) of the Act. The power u/s 9 could be exercised by the Central Government while u/s 15, it could be exercised by the State Government. The validity of Section 9 was considered by the Apex Court in the case of State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, and it was observed as under :--

In view of the Constitution Bench it is no longer open to the writ petitioners to submit that Entry 50 of List II can still be available to State Legislature. It is easy to visualise that once Parliament has occupied the field in connection with regulation of mines and minerals development in the country and when Parliament declares that it is expedient in the public interest so to do. Entry 23 of the State List regarding regulation of mines and minerals development would be of no avail to the State Legislature as Entry 23 of List II is subject to the provision of List I, nor will Entry 50 of the State List be of any assistance to the State Authorities. In short, both the entries will be out of way in enacting appropriate legislation imposing the rates of royalty to be paid by those who extract minerals in the country. Once these entries are out of picture, it is Entry 54 in the Union List which will operate and the imposition of tax on minerals extracted would be squarely got covered by Entry 54 of the Union List. To recapitulate, as the entire Act has been upheld by this Court in its earlier decisions to which we have made reference in the light of Entry 54 of the Union List, Section 9 being part and parcel thereof cannot be out of the sweep of Entry 54. However, even assuming that there should be a specific taxing entry regarding taxing of royalty on mineral rights which can sustain such legislation under the said entry, being a topic of legislative power, we find that there is no such specific entry in Union List nor in State List or Concurrent List which can be

of any assistance in this connection. Entry 50 in the State List is out of picture as we have seen earlier. In these circumstances, the State Legislature, cannot rely on any entry in the State List or Concurrent List for imposing such a tax once a valid legislation by Parliament under Entry 54 of the Union List is holding the field. In the alternative imposition of such a hybrid tax on mines + capital + labour would be covered by residuary Entry 97 of the Union List which empowers Parliament to enact laws on topics not covered by other specific entries in List II or List III. This conclusion squarely flows from the observations made by Oza, J. in his concurring judgment in India Cement case. It must, therefore, be held that Section 9 of the Act is within the legislative competence of Parliament both under Entry 54 of the Union List as well as Entry 97 thereof. The first ground of attack on Section 9 by Shri Sanghi is thus devoid of substance and is, therefore, rejected.

4. In view of the decision of the Apex Court so far as the validity of the Rule 17 is concerned, suffice to observe that similar provisions exist u/s 15 of the Act and the validity of Section 9 in respect of major minerals has been upheld. On the same analogy, the provisions of Section 15 could not have been challenged and accordingly the provisions of Rule 17 cannot be termed as violative of any provision of the Constitution or ultra vires of the Act.

5. The other contention which has been raised by the learned counsel for the petitioner is that even if the rule is considered valid then the action of the respondents is invalid inasmuch as the power could have been exercised once within a period of four years only and in the present case the power has been exercised twice i.e. on 25-9-1972 and 5-8-1975. The copy of the notification dated 25-9-1972 has not been produced. There may be a notification which might have been issued with regard to minor mineral but if Schedule I to the Rajasthan Minor Mineral Concession Rules, 1959 is looked into, it would be apparent that in respect of building stone three different criteria have been laid down for determination of royalty and one of such is charge the royalty on the basis of weight i.e. per ton. The other is to charge the royalty on the basis of cubic meter i.e. the total area of mineral excavated is taken into consideration and the third is where the royalty is charged on the basis of per square meter in which only the upper area is taken into consideration and on that basis the royalty is charged. The case of the petitioner falls in the third category and even if any notification has been issued with reference to other two categories, the petitioner is not effected. The contention of the petitioner that there was exercise of power more than once under Rule 17 and, therefore, cannot be considered a valid contention. This matter was considered by the Central Government where also the contention was taken that the royalty was revised on 25-9-1972 as well as by second notification on 5-8-1975 resulting in revision more than once within a period of four years. The respondents have denied the revision by notification dated 25-9-1972. I am not going to this dispute as to whether they have passed the order of revision on 25-9-1972 or not. If the petitioner wanted to rely on some document then it was his duty to have placed notification before this Court.

The burden to prove was on the petitioner that there was revision more than once within the a period of four years and simply by mentioning a date that the notification was issued on 25-9-1972, it cannot be considered that in fact there had been revision more than once within a period of four years. The reassessment order which has been framed also do not support the contention of the petitioner because till 4-8-1975, the assessing authority has taken the rate which was prevalent from the date of grant of mining lease to the petitioner i.e. from 1965 (notification dated 7-10-1965 published in Gazette on 9-12-1965) and it was only from 5-8-1975 that the rate was enhanced. This contention, therefore, has no force.

6. The power to make reassessment is provided under Rule 41, which provides that if for any reason the whole or any part of the despatches of mineral from the leased area or consumption of mineral within the leased royalty or was assessed at a low rate in any year, the assessing authority may serve a notice upon the assessee in the form 13 and may proceed to assess or reassess the correct amount of royalty. The phrase "for any reason" was interpreted by the Apex Court in the case of Maharajadhiraj Sir Kameshwar Singh Vs. The State of Bihar, the word any reason was interpreted of wide import dispensing with the conditions by which Section 34 of the Income Tax Act is circumscribed. It was also considered by the Full Bench of this Court in the case of Amba Lal Chunnilal v. State, S.B. Civil Writ Petition No. 1266/76, decided on 5-10-1985 and it gives the long rope to the assessing authority to reassess for any reason and the words for any reason cannot be reflected with any conditions or circumstances. But the Full Bench considered that the word "any reason" will include "all reasons". But the reason must be "good reason". The contention which has been raised that the agreement which was executed remained in force and the reassessment should not have been made even because of change in the rate of royalty on 5-8-1975 has also no substance in view of the decision of the Apex Court in the case of D.K. Trivedi & Sons v. State of Gujarat AIR 1986 SC 1323, wherein it was observed as under:--

"A State Government is entitled to amend the rules u/s 15(1) enhancing the rates of royalty and dead rent even as regards lease subsisting at the date of such amendment. In this connection, it cannot be said that a mining lease is the result of a contract entered into between two parties and dead rent is part of the consideration for the grant of the lease, and in the absence of a provision like the one contained in Section 15(3), the power to enhance the rate of dead rent cannot be so exercised as to affect subsisting leases and that unless this construction were placed upon Sub-section (1), the power conferred by that sub-section would be bad in law as being an arbitrary power. Sub-section (3) of Section 15 does not confer any power to amend the rules made u/s 15(1), for the power to amend the rules is comprehended within the power to make the rules conferred by Sub-section (1) of Section 15."

7. In view of the specific provisions contained in Section 15(3) where the royalty

is payable on the basis of rate prescribed for the time being under rule, even if an agreement is entered into it cannot be enforced and the provisions of Rules/ Act will prevail thereon. This contention, therefore, has also no force.

8. The notification dated 5-8-1972 has amended, Schedule I with regard to rate of royalty and for dimensional stone, the rate was prescribed from Rs. 3/- to Rs. 6.50 per ton. This was done under the power which was conferred under Rule 17(1)(b). In Schedule III, the Director of Mines and Geology has been authorised to exercise the power to fix the rate of royalty in sliding scale and to exercise option to fix rate on volume basis.

9. Learned counsel for the respondents has produced a copy of the letter Number F.1(11)Khan/Gr.IV/74, dated 13th August, 1975 written by the Mining Engineer to the Director, Mines and Geology Department, Rajasthan, Udaipur, for fixing the royalty. The language of the said letter is as under:

Kindly refer to the notification issued on the 5th instant regarding revision of the Schedule I of the rate of royalty under Minor Mineral Concession Rules, 1959. In this connection I am directed to intimate, that the rate of royalty on limestone and sandstone of dimensional stone quality where rate of royalty has been given as Rs. 3.00 to Rs. 6.50 may please be fixed as follows for the different areas:

Sandstone:

- i) Kota, Bundi & Jhalawar district. Rs. 4.00 per ton.
- ii) Sawai Madhopur district. Rs. 5.00 per ton.
- iii) Bharatpur district. Rs. 5.94 per ton.
- iv) Rest of the district. Rs. 3.00 per ton.

Limestone:

- i) Kota district Rs. 5.00 per ton.
- ii) Rest of the (district) Rs. 3.00 per ton.

This may kindly be intimated to all the officers concerned.

10. After this letter it is stated that a telegram was sent by the Director, Mines Udaipur to Mining Engineer, Kota which reads as under:

^"kklu ds vkns" k izkIr gq, gSa fd xTV uksfVfQds"ku fnukad 5 vxLr] 75 esa jk;YVh fu/kkZfjr jsUt esa dksVk fMfLV?d esa ls.M LVksu dks jk;YVh 4 :i;s izfrVu o ykbe LVksu dh jk;YVh 5 :i;s izfrVu olwy dh tkos A**

11. Thereafter, the Senior Mines Karyhadeshak, Ramganjmandi has issued another order on 2-9-1975 in which the rate of Rs. 5/- on limestone (dimensional stone) was made effective.

12. After the letter of the State Government dated 13-8-1975 it was incumbent

on the part of the Director, Mines and Geology to fix the rate of royalty. The letter dated 13-8-1975 cannot be considered that the rate of royalty has been fixed. It is only an information by the State Government to the Director, Mines and Geology to fix the royalty and different areas as mentioned in the said letter. No order of Director, Mines and Geology has been produced in which the rate of royalty is fixed. Even the copy of the telegram dated 23-8-1979 cannot be considered as fixation of royalty by the Director. Another aspect of the matter which has to be considered is that if any rate of royalty is fixed, then it should be notified. It could have been either by amendment of the Schedule or could be by issue of notification. If the notification is issued, then it should be published in the Gazette. In the absence of publication of the notification in the Gazette, it cannot be considered that the compliance of law has been made. The order dated 2-9-1975 issued by the Senior Mines Karyadeshak has further complicated the matter as it says that the rate of royalty would be applicable with effect from 2-9-1975. The respondents have failed to prove that after the amendment of Schedule I on 5-8-1975 where the limestone was subjected to royalty between Rs. 3/- to Rs. 6.50/- per ton, any power has been exercised by the State Government or Director, Mines and Geology to fix any sum between Rs. 3/- to Rs. 6.50/- per ton as royalty. The Schedule has only given the minimum and maximum rate but the exact rate has to be fixed. The fixation could be either by the State Government or by the Director, Mines and Geology. As stated above, the letter of 13-8-1975 is not of fixation of royalty, but the Director, Mines and Geology has been asked to fix the rate of royalty and, therefore, it was incumbent on the part of the Director, Mines and Geology to have fixed the rate of royalty. The copy of the telegram dated 23-8-1975 cannot be considered as fixation of royalty. It is only an information which has been sent to the Mining Engineer and have a reference that this communication is sent on the basis of the orders of the State Government. Firstly, there should have been fixation of royalty and then communication. The letter dated 2-9-1975 has fixed the royalty with immediate effect i.e. from 2-9-1975 and no proof has been produced that the assessee/mine owners were informed or communicated of the determination of such royalty.

13. In these circumstances, the very basis for re-assessment at the enhanced rate goes. The re-assessment orders are quashed and the writ petition is accordingly allowed.