
(2008) 04 RAJ CK 0044
In the Rajasthan High Court

DCM Sriram Industries Ltd.	Vs	APPELLANT
State of Rajasthan and Another		RESPONDENT

Date of Decision : 16-04-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 4 RLW 3063

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Shiv Kumar Sharma, J.—The appellant company approached learned Single Judge by filing writ petition against the notification dated May 17, 1995 of the State of Rajasthan whereby price/charges for water supply in bulk for industrial purposes have been raised from Rs. 10 per 1000 CFT to Rs. 20 per 1000 CFT. Learned Single Judge vide order dated October 6, 1999 dismissed the writ petition.

2. The appellant company is, thus, before us.

3. Contextual facts depict that:

(i) For regulating the irrigation and drainage in the State of Rajasthan the Government enacted the Rajasthan Irrigation and Drainage Act, 1954 (for short "1954Act"). u/s 31 of 1954 Act the supply of water from an irrigation work deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the State Government. Section 60 empowers the Government to make rules for regulating the matters enumerated in Clauses (a) to (e) and Sub-section (2) of Section 60. State also framed the Rajasthan Irrigation and Drainage Rules, 1955 (for short "1955 Rules"). Rules 14 and 15 reads under:

Rule 14: Contracts for water for other than irrigation purposes: The Divisional

Irrigation Officer may make contracts for the supply of Canal Water for purposes other than irrigation for any terms not exceeding one year. For terms exceeding one year the previous sanction of the State Government shall be necessary.

Rule 15: Charges for water for other than irrigation purposes in the absence of a special contract: With the previous permission of the Divisional or sub-Divisional Irrigation Officer. Tank may be filled or water may be supplied without a special contract, from a canal direct in small quantities for the purposes other than irrigation at the rates mentioned in Schedule-I.

(ii) Initially the water was being supplied to industrial establishments as per agreement which was for a period of 20 years.

(iii) The schedule to the 1955 Rules provide rates for supply of water for various purposes and so far industrial purposes is concerned the previous rates prescribed for supply of bulk water was enhanced to Rs. 1/- per 1000 CFT during the period when the agreement was in force or even after agreement from June 20, 1982 and bills were accordingly raised on the industrial establishments.

Vide notification dated November 28, 1991, published in Rajasthan Gazette on January 2, 1992 Item 5(a) of the Schedule-I were amended and the rate of bulk supply of raw water was increased to Rs. 20/-. The amendment reads thus:

S.O. 138- In exercise of the powers conferred under Sub-section (1) of Section 60 read with Section 31 of the Rajasthan Irrigation and Drainage Act, 1954 (Act XXI of 1954) the State Government hereby make the following amendment in Item No. 5(a) of Schedule-I of the Rajasthan Irrigation & Drainage Rules, 1955, the other items and their rates shall remain same:

S.No.	Name	of	items	Rate	per	thousand	CFT
5(a)	Water	supplies	in bulk	for Rs. 20/-		industrial	purposes.

Bills were accordingly raised. The appellant challenged the said increase of rates by filing the writ petition No. 2282/1992, which came to be decided on April 2, 1993 with the directions to appoint a Committee which would go into the matter of fixing the charges for supply of water in bulk and in the meantime Rs. 10/- would be charged.

(v) In compliance of the order of Division Bench on April 2, 1993, an Expert Committee was constituted comprising of the Chief Engineer, Irrigation Jaipur as Chairman, Chief Engineer Irrigation (North) Hanu-mangarh and Chief Engineer (Head Quarters) Jaipur as members of the Committee and they were directed to submit its recommendation by June 30, 1993.

(vi) Thereafter on the basis of the recommendation of the Committee notification dated May 17, 1995, published on May 29, 1995, was issued and the charges

have fixed as Rs. 20/- after amending the Schedule for industrial purposes.

(vii) Therefore the appellant preferred the writ petition before the learned Single Judge. Learned Single Judge summoned the original file of proceedings of the Committee and after examining the same, held that the demand was raised as per notification published pursuant to the finding of the Expert Committee constituted under the orders of the Court, no interference was called for.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the appellant contended that learned Single Judge has wrongly observed that the matter already stands settled by a judgment of Division Bench. According to counsel the rates for supply of water could only be prescribed as per law. Water rates could not be levied and demanded by an executive order on the basis of recommendation of the Committee. The legislative function of prescribing rate could not be brushed aside. Even if there was any direction it implied that rates were to be prescribed as per the procedure laid down in the rules. This aspect was not properly considered by learned Single Judge. It is further canvassed that the Division Bench itself referring the notification dated November 28, 1991 had not approved the rate Rs. 10/- per 1000 CFT. The appellant, as per contract dated May 15, 1987, was obliged to pay at the rate of Rs. 1/- per 1000 CFT. These aspects have not been considered by learned Single Judge. Rate could not have been fixed under Rule 15 (old) for supply of raw water while prices may be settled by contract in terms of Rule 14 or prices may be prescribed under Rule 15 for supply of water in small quantities. Prior to May 17, 1995 rates could be changed only Rs. 1/- per 1000 CFT and as per Rules of 1955 of Rs. 10/- per 1000 CFT as per the order of Division Bench. As per amended Rule 15 read with SN 5(aa) of amended schedule rate chargeable comes to Rs. 2/- per 1000 CFT. The case of appellant falls under 5(aa) as water is taken from Talab which is perennial and is linked with river water and no expenses are incurred for supplying it to the appellant and the appellant directly takes it from the Talab. No expenses are incurred by the Government as water is directly used by the Industry. Rules cannot be made applicable with retrospective effect i.e. rates cannot be charged retrospectively. Notification dated May 29, 1995 ordains that rate of Rs. 20/- shall be leviable w.e.f. November 28, 1991, which is prima facie unreasonable as on November 28, 1991 the rate was Rs. 1/- per 1000 CFT. As per Division Bench the prices or the rates may be settled by contract in terms of Rule 14 or prices may be prescribed under Rule 15 for supply of water in small quantities. The amended Rule 15 would be applicable where tanks are filled with the previous permission of Division Irrigation Officer, Rajpura Talab is a part of Right Main Canal of Chambal Project. This aspect was not considered by learned Single Judge. The Government did not supply recommendation of the expert committee to appellant as such it cannot be stated that appropriate exercise was done by the expert committee for levying rate for water supply. Learned Counsel for the appellant placed reliance on the Income Tax Officer, Alleppey Vs. M.C. Ponnose

and Others, The State of Madhya Pradesh and Others Vs. Tikamdas, , B.K. Srinivasan and Others Vs. State of Karnataka and Others, , MT Puttalingappa v. State of Karnataka (1995) 2 SLR 715 and DCM Sriram Consolidated Ltd. v. State of Rajasthan DB Civil Writ Petition No. 2282/1992 decided on April 2, 1993.

6. We have heard rival submissions and scanned the case law placed for our perusal.

7. In Municipal Committee, Patiala Vs. Model Town Residents Asson. and Others, their Lordships of Supreme Court indicated that:

...It is always open to the State Legislature, particularly in tax matters, to enact validation laws which apply retrospectively. The High Court cannot take away the power of the State Legislature to amend the tax law retrospectively. The basis of the law can always be altered retrospectively.

It was further observed that:

The Court cannot usurp the functions assigned to the legislative bodies under the Constitution and even indirectly require the legislature to exercise its power of law making in particular manner. The court cannot assume to itself a supervisory role for the law making power of the legislature under the provisions of the Constitution. The High Court must ensure that while exercising its jurisdiction which is supervisory in nature it should not over step the well recognized bounds of its own jurisdiction.

8. Learned Single Judge while exercising its supervisory jurisdiction dismissed the writ petition on the ground that the notification was published as per the finding of expert committee constituted under the orders of Division Bench.

9. The Apex Court had occasion to construe the supervisory jurisdiction vested in the High Court in Sadhana Lodh Vs. National Insurance Company Ltd. and Another, and indicated thus:

The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is confined only to see whether an inferior Court or tribunal has proceeded within its parameters and not to correct an error apparent on the face of the record, much less of an error of law. In exercising the supervisory power under Article 227 of the Constitution, the High Court does not act as an appellate Court or the tribunal. It is also not permissible to a High Court on a petition filed under Article 227 of the Constitution to review or reweigh the evidence upon which the inferior court or tribunal purports to have passed the order or to correct errors of law in the decision.

10. The arguments canvassed by learned Counsel for the appellant cannot be appreciated in the intra court appeal which has been preferred against the order of learned Single Bench passed in its supervisory jurisdiction. For these reasons, we find no merit in the instant appeal and the same accordingly stands dismissed without any order as to costs.