(2003) 12 AP CK 0088

In the Andhra Pradesh High Court

Case No : Writ Petition No. 27459 of 1997

Deccan Lime Stone Mining Company (P) Ltd. APPELLANT

Vs

Assistant Director of Mines and Geology and Another RESPONDENT

Date of Decision : 04-12-2003

Acts Referred:

Mineral Concession and Development Rules, 1988 — Rule 54, 55

Citation : (2004) 1 ALD 265 : (2004) 2 APLJ 64

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : E. Ayyapu Reddy, for the Appellant; Government Pleader for Industries and Commerce, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Petitioner was granted a Mining Lease for quarrying limestone, in an area of 46.00 acres in Madhavaram Reserve Forest, Dhone Mandal, Kurnool District. The royalty payable on it is fixed under Schedule-II of the Mines and Minerals (Regulation and Development) Act (herein after referred to as ''the Act''), at Rs. 25/- per Metric Ton, since revised to Rs. 32 - per Metric Ton, if the Silica content in it is more than 1.5% and Rs. 50/- per Metric Ton, if the Silica is less than 1.5%. It had quarried various quantities of limestone from time to time and paid royalty at the rate of Rs. 25- or Rs. 32/- per Metric Ton, as the case may be. On being issued the necessary transport permits, it supplied the mineral to its customers.

2. Petitioner was issued letter dated 11-7-1997 by the Assistant Director of Mines and Geology-the first respondent, wherein it was stated that certain samples were taken from the quantities excavated and permitted to be transported between 7-12-1996 and 3-7-1997. It was further stated that on an analysis of the said samples, it emerged that the Silica content in 15 samples representing about 16,000 Metric Tons, was less than 1.5%. By levying the corresponding differential amount of royalty, a sum of Rs. 3,36,250/- was demanded. Similar

letters were issued on 23-7-1997 and 27-9-1997 in respect of some other quantities quarried and transported at subsequent points of time.

3. Petitioner challenges the demand made by the respondents. According to it, the respondents have no authority to reassess the royalty, once it was paid on a mineral. It is also contended that no procedure is prescribed under the Act or the A.P. Mineral Concession Rules (hereinafter referred to as the Rules), for taking the samples and analysing the same to enable the authorities of the Department to revise the royalty. Petitioner further contends that the first respondent did not issue any show-cause notice, before fixing the liability. It also disputes the extent of Silica content in the limestone as alleged by the respondents.

4. In the counter-affidavit filed by the respondents, detailed reference is made to the circumstances under which the lease of the petitioner came to be renewed. That, however, is out of the scope of this writ petition. As regards the demand under the impugned proceedings, it is stated that permits were given to the petitioner on payment of royalty, duly reserving the right of the department to draw samples, analyse the same and to revise the royalty, depending on the outcome of the analysis. It is stated that the samples were taken in a scientific and fool proof manner, and that the analysis was conducted according to the procedure prescribed therefor. It is also stated that the Manager of the Mines-the representative of the petitioner, was very much present when the samples were drawn.

5. Sri E. Ayyapu Reddy, learned Senior Counsel for the petitioner submits that the action taken by the respondents, be it in drawing the samples or levying the amounts through the impugned proceedings cannot be sustained either under the Act or under the Rules. According to him, any mineral has to be levied royalty before it is taken away from the mouth of the mine, and once that takes place, it is not open for the authorities to revise the royalty. He asserts that if the respondents wanted to ascertain the quality of the mineral with reference to the Silica content, they ought to have conducted necessary tests before the royalty was levied, transport permits were issued, and the mineral was removed. He further submits that the petitioner was not put on notice, either at the time of taking samples or before issuing the impugned proceedings. He refers to the various provisions of the Act and Rules in this regard.

6. Learned Government Pleader for Industries, on the other hand, submits that it was only with a view to facilitate the petitioner to remove the mineral without delay, that the royalty was levied provisionally and transport permits were issued, reserving the right of the Department to get the sample analysed. He contends that drawing of the samples is provided for under Rule 54 of the Mineral Conservation and Development Rules 1988 (hereinafter referred to as "the Conservation Rules") and the same is traceable to Section 18(1) of the Act.

7. Petitioner was granted Mining Lease in respect of limestone, which is classified as major mineral. The working of the Mine is governed by the Act and Rules

referred to above. There is no dispute that the petitioner paid the royalty on the mineral, which he had quarried and supplied to its customers. The dispute in this writ petition is as to whether it is competent for the respondents to levy additional amount towards difference of royalty on the basis of the classification of the material. The Act contains broader aspects of grant of leases for different kinds of minerals. The Government of Andhra Pradesh has framed Mineral Concession Rules, 1960 as regards grant of leases for major minerals and the A.P. Minor Mineral Concession Rules, 1966 for leases in respect of minor minerals.

8. Section 9 of the Act mandates that the holder of mining lease shall be liable to pay royalty in respect of any mineral removed or consumed by the lessee, at the rate specified in the II Schedule of the Act. Item 29 of II Schedule deals with limestone. The Lime Stone is divided into two categories in this context. If the Silica content is less than 1.5%, royalty payable thereon is Rs. 50/- per ton. For the other category; it was initially Rs. 25 - per ton and was later on revised Rs. 32/- per ton. Rules 27(1)(c) and 45(iv) emphasizes the obligation of the lessee to pay the royalty and provide for consequences for nonpayment of the same. By its very nature, the royalty is payable before the mineral is permitted to be taken away from the quarry.

9. It is not in dispute that the petitioner had paid the royalty on the mineral removed by it. The demand through the impugned proceedings is on the basis of the analysis of samples. The respondents could have justified such an action, if only there existed a provision under the Act or the Rules enabling them to draw samples for the purpose of determination of royalty and conferring power to revise the royalty once collected from a lessee. The respondents are unable to point out any provision to this effect. An attempt is made to justify the action by making reference to Rule 55 of the Conservation Rules. That rule reads as under:

"The Controller General or any officer duly authorised by the Government to enter and inspect a mine, may examine any mineral deposit in any area under prospecting licence or mining lease and take samples therefrom at any time for the purpose of these rules."

10. The nomenclature of the Rules indicates that they are framed with an object of conservation and development of mines and minerals. Mineral development as distinguished from grant of leases and licences, is dealt separately under the Act also. Section 18 endows the Central Government with a duty to take all steps for the purpose of conservation and development of minerals and for protection of environment by preventing or controlling any pollution, which may be caused by prospecting or mining operations. Subsection (2)(g) of this Section provides for submission of samples by the owner of the mine or taking of samples by the authorities of the Government. Rule 55, extracted above, is referable to this purpose and object. The collection and examination of samples under Rule 55 of the Conservation Rules has absolutely nothing to do with the fixation of royalty. Therefore, the impugned action cannot be sustained on the basis of that rule.

11. An anomalous situation would arise if levy of royalty is permitted to depend on subsequent analyses. Basically the determination or classification of mineral is to be undertaken by the authority before it grants any lease for a particular mineral. Once that is done, the lessee has to be levied royalty on the basis of such classification or determination. The formation of mineral is not bound to be in a uniform pattern. In the same area or pit, mineral of different characteristics may be available. It is absolutely impossible for anyone to keep on analyzing each and every unit of mineral for the purpose of fixation of royalty. Just as so much waste material has to be removed before the actual mineral is extracted, there will be instances, where certain quantities of the mineral of a superior quality may be found here and there. That does not constitute a basis for revising the royalty for different quantities of the mineral.

12. Sampling is by itself, a systematic and scientific activity. Since its consequences visit the lessees or licencess with financial liabilities, such an activity can be undertaken, if only it is permitted under the Act or the Rules. Even where such sampling is permitted under the rules, it varies from material to material. For example, the Fertilizer Control Order, issued under the Essential Commodities Act, provides for drawal of samples of fertilizers. It specifies the number of samples to be drawn, depending on the quantity of fertilizer, which is the subject-matter of inspection. It mandates the arrangement of bags in such a way so as to ensure that the sampling would represent, by and large, the entire quantity. Similar provisions are made in respect of other commodities also. The rule making authority is required to take into account, the various intricacies involved in the matter and ensure that indiscriminate steps are not taken by the agencies.

13. The Parliament, which enacted the Act, and the Government of Andhra Pradesh, which framed the rules, did not provide for such an exercise for minerals in general, and major minerals in particular. In the absence of any provision specifically empowering them, the respondents are not entitled to draw the samples, much less, to revise the royalty on the basis of the result of the analysis thereof.

14. There is another aspect of the matter. The petitioner was not put on notice by the respondents to the effect that samples are going to be drawn for the purpose of determining the quality of the material and, in turn, fixation of royalty. Had it been issued a notice or informed by the respondents in this regard, the petitioner would have submitted its objections or at least insisted on adherence to a set of norms that may be applicable for this purpose. The entire exercise undertake by the respondents was unilateral in nature. No corresponding sample was left with the petitioner to be used in the event of any dispute. In cases of commodities like toddy, the relevant provisions require the concerned authorities to leave a sample with the licensee and, another with the Court, whenever samples are drawn. The object is that if the licensee disputes the analysis of the sample that was taken by the department, the samples left

with the licensee or the one left with the Court can be sent to an independent examiner for analysis. The petitioner was denied of even such an opportunity. Further, there is no provision under the Act or Rules, enabling the respondents herein to revise the royalty, once it was levied and collected.

15. The result of the foregoing discussion is that the impugned proceeding of the respondent cannot be sustained in law. Accordingly, they are set aside.

16. The writ petition is allowed. There shall be no order as to costs.

