(2000) 06 KAR CK 0083

In the Karnataka High Court

Case No : Writ Petition No''s. 34072 to 34075 of 34075 of 1993 connected with Writ Petition No''s. 34139 to 34142 of 1993

Gem Granites — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 21-06-2000

Acts Referred:
Constitution of India, 1950 — Article 19 (1) (f), 19 (1) (g), 226
Karnataka Minor Minerals Concession Rules, 1969 — Rule 2

Citation : (2000) ILR (Kar) 2821 : (2000) 5 KarLJ 536 : (2000) 4 KCCR 259 SN

Hon'ble Judges : H.L. Dattu, J

Bench : Single Bench

Advocate : Sri D.L.N. Roa, for the Appellant; Sri S. Udayashankar, Government Advocate, for the Respondent

Judgement

1. Since common questions of fact and law are involved in all these writ petitions, they are clubbed together, heard and disposed off by this common order.

2. For disposal of these petitions, facts and grounds urged in W.P. Nos. 34072 to 34075 of 1993 are noticed. They are:

Petitioner was granted quarry lease by the competent authority to excavate black and pink granites in the applied area under the provisions of Karnataka Minor Mineral Concession Rules, 1969. The Director of Mines and Geology had executed lease deeds in Nos. 2209, 2238, 2674 and 2679 in favour of petitioner-firm. Petitioner had paid royalty on the excavated materials on the basis of the demands made by the respondent-authorities from the time of grant of lease upto 1992, Petitioner in support of this assertion has produced the demand notices and reports of the Statutory Auditors. These documents would demonstrate that the demand for payment of royalty was made by the department on the basis that 3.5 tonnes of granite is equal to 1 cubic metre. All these demands were made based on detailed scientific examination conducted by

Senior Geologist of the Department.

3. Petitioner was surprised to receive a revised audit report in respect of quarry lease No. 2209 from Senior Geologist, Bijapur, dated 1-10-1992, In this audit report, there seems to be change of opinion and in that process, the respondent-authority has adopted the volume weight ratio of 4.5 to 1 cubic metre of granite despatched from 1979 upto March 1990. Based on this revised opinion, has issued demand notice inter alia directing for payment of the difference of royalty for all the anterior periods. The basis for this demand seems to be the instructions contained in the Circular bearing No. DMG/DCG/QL/1992-93/6410, dated 8-7-1992 issued by the Director of Mines and Geology, Department of Mines and Geology. Disturbed by these demand notices, petitioner-firm had submitted a detailed representation to the Senior Geologist bringing to his notice that he himself had conducted a scientific study and arrived at the conclusion that 1 cubic metre weighs 3.51 tonnes and demand was issued on that basis from the date of lease upto 1990. Not being satisfied with the explanation in the representation, the third respondent, who is the competent authority has issued one more demand notice dated 4-1- 1993, inter alia directing the petitioner to pay the revised demand relating to quarry lease Nos. 2209 and 2238. This was followed by another demand notice dated 16-7-1993, revising the audit report retrospectively for all four quarry leases held by petitioner. Since petitioner-firm did not comply with this unreasonable, arbitrary and excessive demands, it appears, the third respondent-authority stopped issuing transport permits for transportation of quarried blocks in spite of requests made by petitioner to desist from demanding excess royalty retrospectively. Petitioner being aggrieved by this impugned demand notice revising the audit report, is before this Court in a petition filed under Article 226 of the Constitution inter alia seeking a writ to quash the demand notice demanding the payment of difference of royalty and further, for a direction to the respondents not to demand and collect royalty retrospectively other than on the basis of volume/weight ratio at 1 cubic metre of pink granite at 3.5 tonnes.

4. Before I notice the submission of the learned Counsel for petitioner, first let me extract the circular dated 8th July, 1992, which is the basis for the respondents to issue a revised demand notice revising the audit report. The circular is as under:

"GOVERNMENT OF KARNATAKA No. DMG/DCG/QL/92-93/6410

Office of the Director, Department of Mines and Geology, Bangalore, dated 8-7-1992.

CIRCULAR

Sub: Adoption of volume weight ratio in specified minor minerals -- Regarding.

According to Rule (2), the mode of computation of royalty in Part VI of KMMC Rule, 1969, the computation of royalty has to be made on the mineral actually produced from the quarry and despatched taking into consideration any volume or weight as the case may be. But in case of granite only weight has to be considered since the royalty is chargeable only on the weight (tonnes).

Considering the above factor, directions were given in several cases to examine the bill of lading and Form 39 at the time of audit of accounts and charge the royalty.

This has resulted in variation of the volumetric weight and was not possible to adopt uniform volumetric weight throughout the State.

On verifying the volumetric weight received from Mangalore Port Trust and considering several aspects of volume/weight of various granites, it was felt to adopt uniform weight upto 31-3-1990 to avoid complication and confusion in arriving at the volumetric weight. It is therefore directed to follow the following ratio upto 1-4-1990 i.e., upto the date of revision of royalty rates.

5 MT = 1 cm in respect of black dyke/black granite. 4.5 MT = 1 cm in respect of other coloured granites except black. This circular is in supersession of all other circulars, orders/proceedings etc., issued in this regard.

The audit report of all the concerned lease may be revised accordingly and arrive at the correct arrears position upto the date of revision of royalty on granites during 1990.

Action taken may be intimated early. The receipt of the circular may please be acknowledged".

5. The subject-matter of the circular is with regard to adoption of volume-weight ratio on specified minor mineral. The circular is in supersession of all the other circulars. In the circular, the authorities conceded that in the case of granite only weight requires to be considered for levy of royalty payable by the quarry operator. The authorities further observe in the circular that they have verified the volumetric weight received from Mangalore Port Trust and after considering several aspects of volume/weight of various granites, they have adopted uniform weight upto 31-3-1990 to avoid complication and confusion in arriving at the volumetric weight. Lastly, the Director of Mines has directed its subordinates to follow the ratio indicated in the circular.

6. Now coming to the contentions canvassed, Sri D.L.N. Rao, learned Counsel for the petitioners submits that the circular issued by the Director of Mines and Geology has no scientific basis whatsoever, and therefore, it illegal, arbitrary and unsustainable. Secondly, the Director without ssuing any notice to the petitioner and similarly placed traders could no have fixed the volume/weight ratio unilaterally and arbitrarily. Lastly, without affording an opportunity of hearing to the traders could no have directed the third respondent to revise the audit report retrospectively. Insofar as demand notices are concerned, the learned Counsel submits that the third respondent has no authority of law to demand royalty on the basis of difference in volume/weight ratio with retrospective effect. Secondly,

it is stated that the third respondent is estopped from demanding royalty retrospectively for the reason that the petitioner has exported granite blocks from the date of lease upto 1990 on cost of production and royalty levied and now he would not be in a position to recover the royalty from his buyers. Therefore, it is submitted that the impugned demand notices directing the petitioner to pay the difference of royalty retrospectively is wholly illegal and invalid.

7. Sri Udayashankar, learned Counsel for the revenue sought to justify the circular dated 8th July, 1992 issued by the Director of Mines and Geology and the impugned demand notices issued by third respondent-authority inter alia demanding royalty from the petitioner with retrospective date.

8. The issues which require to be considered and decided in these petitions are:

I. Whether the second respondent was justified in issuing circular bearing No. DMG/DCB/QL/1992-93/6410, dated 8-7-1992?

II. Whether the second respondent was justified in law in directing the third respondent to recover royalty with retrospective date?

III. What order?

9. The top most executive authority is entrusted with the power to issue instructions and directions to all officers and persons employed in the execution of Rules, 1969, in the form of circulars. These departmental circulars are not law. It will bind the administration but not the Appellate Authorities including Tribunals and the Courts. Normally, these circulars are issued to maintain uniformity in the execution of rules by the subordinate officers. In the instant case, the administrative head of the department has issued the impugned circular to its officers to adopt uniform volumetric weight throughout the State for quantifying royalty payable by the quarry operators. Prior to the issuance of this circular, the officers of the department were issuing demand notices for payment of royalty by adopting the ratio of 3.5 metric tonnes as equal to 1 cubic metre, since the royalty is chargeable only on the weight of the granites. Now by the impugned circular, the administrative head directs its subordinate officers to adopt the ratio of 4.5 metric tonnes is equal to 1 cubic metre in respect of coloured granites except black granite. To arrive at this ratio, the administrative head of the department does not indicate in the circular any scientific basis; but its learned Counsel Sri Udayashankar, informs me that the basis for issuing the impugned circular is the letter of Mysore Minerals Limited, which is a Government of Karnataka undertaking, wherein they have stated that the volume-weight ratio taken by Mysore Minerals Limited for the payment of royalty purpose is 1 cubic metre is equal to 5 metric tonns in respect of black granites and for others, 1 cubic metre is equal to 4.5 metric tonnes and also that of the letter of Senior Geologist, Mangalore, who has stated that 1 cubic metre of pink granite is equal to 4.4994 metric tonnes. This information would clearly demonstrate that the administrative head of the department before issuing the impugned circular has

not adopted any scientific basis but merely relies upon the communication of M/s. Mysore Minerals Limited and the opinion of Senior Geologist, Mangalore. In my opinion, the Director of Mines and Geology before framing the impugned circular and further directing his subordinate officers to follow a particular volume-weight for quantification of royalty payable should have independently examined the matter with reference to scientific method to find out the bulk weightage of one cubic metre of pink granite instead of merely relying upon the communication of Mysore Minerals Limited. In fact, in the instant case, the Senior Geologist of Gulbarga Division after adopting two different procedures to find out the bulk weightage of one cubic metre of pink granite has opined that the weight of the pink granite blocks measuring sizes of one cubic metre is 3.5 metric tonnes by taking into consideration of all the possible irregularities rendering higher weightage to the block. The opinion of the Senior Geologist, Gulbarga Division, is one of the annexures to the writ petition papers. Similarly, the Department of Metallurgy, Indian Institute of Science, Bangalore, on the request made by the petitioner has opined that the weight of pink granite block measuring one cubic metre is 2.879 ton/m3. These opinions would clearly demonstrate that there are different scientific methods to find out the bulk weightage of one cubic metre of pink granite. The Director of Mines and Geology without adopting anyone of the scientific methods, in my opinion, could not have assumed that the ratio adopted by Mysore Minerals Limited is the correct ratio and basing on that could not have directed his officers to follow a particular ratio upto the date of revision of royalty rates.

10. Secondly, it is well-settled legal proposition that the administrative orders and circular instructions, which are of executive in character cannot have any retrospective effect. Only law could be made retrospectively, if it is expressly provided by the legislature in the statute. In the present case, the authority issuing the circular directs his subordinate officers to give effect to the circular with retrospective date and further directs them to revise the audit report of the lessees from the date of lease upto 1-4-1990 i.e., upto the date of revision of royalty rates. Firstly, as I have already observed, the circular cannot be given retrospective effect unless the statutory provisions so authorise. In the instant case, the learned Counsel for the revenue has not brought to my notice any of the provisions in the rules, which empowers the authority to issue administrative instructions by way of circulars retrospectively. In the absence of such specific provision in the statute itself, it is difficult to sustain a circular which is retrospective in character. Secondly, by this process, the revenue is trying to recover the difference of royalty from the date of lease, an unreasonably long period of time. It would not be possible for the lessees to recover from the buyers the royalty sought to be imposed by the impugned circular. The retrospective imposition without any limitation of time of fresh royalty, which could not be recovered by the lessees from his buyers would make an appreciable impact on the finances and impose unreasonable restrictions on the fundamental rights guaranteed by Article 19(1)(f) and (g) of the Constitution.

Therefore, it is difficult to sustain the impugned circular.

11. The submission of the learned Counsel for the petitioner that the petitioner should have been heard in the matter before issuing the circular has no merit whatsoever for the simple reason that these are policy decisions and the head of the department is authorised to issue administrative instructions to maintain uniformity in arriving at the volumetric weight of granites. This is permissible under law.

12. In view of the foregoing discussion, it is difficult to sustain the impugned circular dated 8th July, 1992 and the consequential demand notices issued for recovery of difference of royalty payable by these petitioners. Therefore, the following:

ORDER

I. Writ petitions are allowed. Rule made absolute.

II. The impugned circular bearing No. DMG/DCB/QL/1992-93/6410, dated 8th July, 1992 is quashed. Consequently, the demand notices are set aside. However, liberty is reserved to the respondents to issue a fresh circular, if they so desire in accordance with law, keeping in view the observations made in the course of the order. If for any reason, petitioners and similarly placed lessees have paid the difference of royalty pursuant to the circular dated 8th July, 1992, the same will lie with the department till fresh orders/instructions are issued.

III. In the facts and circumstances of the case, parties are directed to bear their own costs. Ordered accordingly.

