(1992) 03 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Writ Petitioner No. 3014 of 1991

Gordhan Lal APPELLANT

Vs

State of Rajasthan and Another RESPONDENT

Date of Decision : 17-03-1992

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (1992) 2 WLN 27

Hon'ble Judges : Milap Chand Jain, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Milap Chandra Jain, J.—This writ petition has been filed for directing the respondents to reduce the royalty collection amount in proportion to the reduction in the rate of royalty from Rs. 20/- to Rs. 15/- per metric tonne, to pay interest @ 18% p.a. on the amount of Rs. 9.50 lacs deposited as security and Rs. 2.46 lacs deposited as first monthly instalment from the date of deposit to the date of execution of the royalty collection contract and to award Rs. 30,000/- as compensation.

2. The averments made in the writ petition may be summarised thus. The Assistant Mining Engineer, Nimbahera (Chittorgarh) (respondent No. 2) invited tenders for royalty collection contract in respect of lime stone slabs and masonary stone for query-blocks situated in Nimbahera and Bhadesar tehsils for the period ending on March 31, 1992 by his notification dated December 5, 1990 (Annexure 1). This period was extended upto March 31, 1992 by subsequent notification Annexure 2. On March 11, 1991 the petitioner submitted an application (Annexure 3) before the respondent No. 2 requesting him to issue a certificate regarding the present rate of royalty on stone slabs as it was not specified either in the notification or in the tender documents. The same day, the respondent No. 2 issued certificate (Annexure 4) that the royalty rate on the lime stone and patti farsi is Rs. 20/- per metric tonne w.e.f. January 23, 1991 and on

the masonary stone Rs. 3/- per metric tonne w.e.f, March 11, 1991. Thereafter, the petitioner gave tender for Rs. 75,75,075/-for two years. It was provisionally accepted by the respondents. He deposited FDR No. 55276B9 dated March 11, 1991 for Rs. 9.50 lacs as security and demand draft No. 37B660 for Rs. 2,46,257/- as the amount of the first instalment. By his letter dated March 16, 1991, the respondent No. 2 notified that the royalty rate of lime stone slabs has been reduced from Rs. 20/- to Rs. 15/-, per metric tonne as notified in the Rajasthan Gazette dated February 29, 1991. The petitioner addressed a letter (Annexure 7) to the respondent No. 2 for proportionately reducing the amount of contract money. He also addressed a letter (Annexure 8) to the Director, Mines and Mineral Department, Udaipur for directing the authorities to permit the petitioner to collect royalty. His tender was finally accpeted by the State Government and sanction dated May 8, 1991 (Annexure 9) was issued. One of its conditions is that the rate of royalty will be as per rates revised from time to time under the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter called "the Rules''). The respondent No. 2 issued letter dated May 14,1991 (Annexure 10) stating that by Government notification published in Rajasthan Gazette dated February 28, 1991 the rate of royalty of lime stone and patti Farsi has been reduced from Rs. 20/- to Rs. 15/- per metric tonne and it is being realised at the reduced rate with effect from March 16,1991 and directed him to execute agreement. He submitted representation (Annexure 11) on May 13, 1991 for proportionately reducing the amount of the royalty rates. The Assistant Mining Engineer, Nimbahera (respondent No. 2), the Superintending Engineer and the Director, Mines and Geology, Udaipur recommended the case of the petitioner to the Government as was done in the case of Bichora Area Tehsil Begun. Despite these recommendations the petitioner is being required to pay the said amount of Rs. 75,75,075. Rule 32 provides that in case of enhancement in the rate of royalty the Contractor shall be liable to pay an increased amount of contract money in proportion to the enhancement for the remaining period of contract from the date of such enhancement. But significantly it does not provide for the refund of any amount in proportion to the reduction in the rate of royalty for the remaining period of contract from the date of such reduction in the rate of royalty.

3. The respondents have filed reply to the show cause notice admitting the aforesaid averments except the date of the commencement of the contract and the recommendation for the reduction of the contract amount. It has been averred in it that the royalty collection contract was to commence from the date of the execution of the agreement and not from April 1, 1991.

4. It has been contended by the learned Counsel for the petitioner that last date for the submission of the tender was March 11, 1991, on that very day the respondent No. 2 issued certificate (Annexure 4) stating that the courrent rate of royalty was Rs. 20/- per metric tonne for the lime stone and patti farsi and Rs. 3/- for the masonary stone, the same day tender for Rs. 9,46,885/- was subsequently submitted by the petitioner and if the certificate would not have been issued and the petitioner would have known that the rate of royalty has

been reduced from Rs. 20/- to Rs. 15/- per metric tonne he would not have given the tender for the said amount. He further contended that in a similar case of Bichora area the government proportionately reduced the tender amount. He also contended that Rule 32 of the Rules provides that in case of enhancement in rate of royalty the contractor shall be liable to pay the increased amount of contract money in proportion to the enhancement for the remaining period of contract from the date of said enhancement but there is no similar provision for a case of reduction of royalty rates during the subsistence of contract of the royalty collection and the provisions of Article 14 of the Constitution are attracted in this case.

5. The learned Counsel for the respondents contended that the petitioner was aware of the reduced rate of royalty which was notified in the Government Gazette issued in February, 1991, despite it he gave his tender for the said amount and as such he is not entitled for the reduction of the contract money. He further contended that the petitioner inquired about the current rate of royalty by his letter dated March 11, 1991 (Annexure 3) and not about the future rate of royalty and the respondent No. 2 was correct in issuing the certificate (Annexure 4) as the revised reduced rate was effective from March 15, 1991.

6. Admittedly, the rate of royalty on the lime stone and patti farsi was Rs. 20/- per mertric tonne till March 14, 1991, the tender was submitted by the petitioner on the last date fixed for this purpose i.e. on March 11, 1991 for Rs. 75,75,075/- and the rate of royalty was reduced from Rs. 20/- to Rs. 15/- per mertic tonne with effect from March 15, 1991. It has been averred in para No. B/2 of the writ petition as follows:

The petitioner also understands that the Director has categorically recommended that even in the past wherever there had been a reduction in the rate of royalty subsequent to the last date of receipt of the tender, the total amount of royalty contract was reduced in proportion to the reduction in the rate of royalty. In this regard reference may be made to the case of Bhichora Area Teh. Beghu District Chittorgarh where similar reduction has been agreed to by the State Government and Respondents may be directed to produce these documents before this Hon''ble Court.

In reply, all these averments have been admitted. A clear case of discrimination is proved against the respondents by their own admission. No explanation has been put forward for this unreasonable discrimination.

7. Sub-rule (3) of Rule 32 of the Rules runs as under:

(3) The amount to be paid annually by the contractor to the Government shall be determined in auction or by tender to be submitted for acceptance by the authority competent to grant the contract:

Provided that in case of enhancement in the rate of royalty given in Schedule I the contractor shall be liable to pay an increased amount of contract money in proportion to the enhancement for the remaining period of contract from the date of such enhancement.

There is a provision for the proportionate enhancement of the amount of contract money in case of enhancement of the rate of reoyalty but there is no provision in the Rules for the proportionate reduction of the amount of contract money in case of reduction in the rate of royalty. Obviously, such a rule is arbitrary and unreasonable. There should have been a similar provision for the reduction of the amount of contract money in proportion to the reduction in the rate of royalty. It has been held in Indian Express Newspapers V Union of India AIR 1986 SC 515 at page 542 para 73, that rules may successfully be challenged on the ground of being unreasonable.

8. It has been stated in para No. B/1 of the reply that the petitioner was fully aware of the reduction in the rate of royalty before he submitted his tender. There is no material on record in support of this version of the respondents. If the petitioner would have been aware of the reduced rate of royalty, he would not have written letter dated March 11, 1991 (Annexure 3) to the respondent No. 2. Even the respondent No. 2 was not aware of the reduced rate of royalty otherwise he would have mentioned the same in his certificate dated March 11, 1991 (Annexure 4). The receipt No. 250689 dated March 15, 1991 (Anneuxre 6) shows that the royalty was collected @ Rs. 20/- per metric tonne till March 15, 1991. Thus the writ petition deserves to be allowed with costs.

9. The writ petition is allowed with costs. The royalty collection amount is reduced in proportion to the reduction in the rate of royalty. The royalty collection contract will be given to the petitioner for two years on the reduced rate, amount of security and monthly instalments will also be reduced accordingly. The petitioner will get interest on the amount deposited by him @ 13% per annum from the date of deposit to the date of the execution of the contract. The amount deposited in excess and also the amount of interest may be adjusted towards monthly instalments.

10. If on account of any subsequent event, the contract for royalty collection cannot now be given under rules to the petitioner the respondents will return through Account payee cheque with in two months from today the entire amount deposited by him (petitioner) with interest @ 15% (fifteen percent) per annum from the date of deposit to the date of return.

