
(1978) 11 MP CK 0024
In the Madhya Pradesh High Court
Case No : M.P. No. 164 of 1971

Manoharlal Awal

APPELLANT

Vs

State of M. P. and others

RESPONDENT

Date of Decision : 28-11-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 12, 13, 14

Citation : (1979) J LJ 448

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari and D.M. Dharmadhikari, for the Appellant; J.M. Sood, Government Advocate for respondents Nos. 1, 2 and 4 and R.P. Sinha, for the Respondent

Final Decision : Allowed

Judgement

G.P. Singh, C.J.—The petitioner's father Uttamchand was granted mining leases in five villages of Tahsil Maihar, District Satna, between 1951 and 1956. These leases were granted under the Mineral Concession Rules, 1949 which were made under the Mines and Minerals (Regulation and Development) Act, 1948. The leases were for extracting limestone without mentioning any purpose. Demands of royalty were made from the petitioner in respect of different periods. It appears from the orders assessing royalty that the petitioner used a part of the limestone from his mines for lime burning in kilns. Royalty on the quantity of limestone burnt by the petitioner in kilns was assessed at the rates applicable to minor mineral. The petitioner was also made liable to enhanced royalty under the Mines and Minerals (Regulation and Development) Act, 1957. The petitioner filed revisions against the various assessment orders to the Central Government which were dismissed by orders passed on 6th January 1970. Recovery proceedings were then started against the petitioner. The petitioner filed this petition under Article 226 of the Constitution challenging the demands of

enhanced royalty.

2. The rate at which the royalty was payable under the leases is mentioned in clause (3) of part 5 of the lease-deeds. Under this clause, the lessee was liable to pay royalty at the rate of 5 per cent of the sale value at the pit's mouth subject to a minimum of 6 annas per ton. It was further provided that the rate was subject to such alteration as may be prescribed by the Central Government under the proviso to rule 41(1)(i) of the Mineral Concession Rules, 1949. Rule 41 of these rules laid down the conditions to be included in the mining leases. Rule 41(1)(i) provided that the lessee shall pay royalty on minerals despatched from the leased area at the rate specified in the First Schedule to the rules. There was a proviso to rule 41(1)(i) stating that the rates shall be liable to be revised with effect from the beginning of the year 1955 and thereafter once in every ten years.

3. In the Mines and Minerals (Regulation and Development) Act, 1948 (hereinafter referred to as the 1948 Act) there was no definition of minor Minerals. The Mineral Concession Rules, 1949 (hereinafter referred to as the 1949 Rules), which were made by the Central Government u/s 5 of the 1948 Act, defined "minor mineral" in rule 3(ii). "Limestone used for lime burning" was included as a minor mineral in this definition. Rule 4 contained an exemption in respect of minor minerals. The rule provided that the 1949 rules were not to apply to minor minerals and that the extraction of minor minerals would be regulated by such rules as the State Government might prescribe. The 1948 Act, in so far as it dealt with mines and minerals, was replaced by the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957), hereinafter referred to as the 1957 Act. Section 3(e) of this Act defines "minor minerals" to mean building stones, gravel ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the official Gazette declare to be a minor mineral. By a notification issued on 1st June 1958, limestone used for lime burning was declared to be a minor mineral. By another notification issued on 20th September 1961, which amended the earlier notification, "limestone used in kilns for manufacture of lime used as building material" was declared to be a minor mineral. Section 9(1) of the 1957 Act provides that the holder of a mining lease granted before the commencement of the Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral. Limestone is mentioned at item No. 8 of the Second Schedule. Section 14 of the 1957 Act provides that the provisions of sections 4 to 13 shall not apply to prospecting licences and mining leases in respect of minor minerals. The 1949 Rules continued to be applicable under the 1957 Act until they were replaced by the Mineral Concession Rules, 1960, herein-after referred to as the 1960 Rules, which were made by the Central Government under the 1957 Act. The State Government made the

Madhya Pradesh Minor Minerals Rules, 1961, hereinafter referred to as the 1961 Rules, u/s 15 of the 1957 Act for regulating the grant of quarry leases in respect of minor minerals. Royalty in respect of quarry leases of minor minerals is regulated by Rule 24 of these Rules. This rule provides that the holder of a quarry lease granted before the commencement of these rules shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any minor mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the First Schedule in respect of that minor mineral.

4. The demand of royalty from the petitioner on the basis of rates applicable to limestone as a minor mineral is made on the authority of Rule 24 of the 1961 Rules. Rule 24, however, can apply only when the leases held by the petitioner can be said to be leases for limestone as a minor mineral. There are two reasons why the leases in favour of the petitioner cannot be said to be leases for limestone as a minor mineral. The first reason is that the petitioner's leases were admittedly granted under the provisions of 1949 Rules and in the form prescribed by the said rules. Rule 4 of the said Rules, as earlier noticed provided that the Rules were not to apply to leases in respect of minor minerals. The admitted position that the petitioner's leases were granted under the 1949 Rules, therefore, is a very strong circumstance to indicate that the leases of limestone in favour of the petitioner were not for limestone as a minor mineral. The second reason for holding that the petitioner's leases were not for minor mineral is that the mineral mentioned in them was limestone without any qualification. We have earlier seen that limestone used for lime burning was a minor mineral as defined in Rule 3(ii) of the 1949 Rules. Had the leases in favour of the petitioner been intended to be for minor mineral, it would have been expressly mentioned in them that they were for extracting limestone used for lime burning. The 1957 Act came into force on 1st June 1958. Limestone used for lime burning continued to be a minor mineral by the notification issued by the Central Government u/s 3(e) of this Act. The petitioner's leases did not become leases for minor mineral even after the coming into force of the 1957 Act. The leases were governed by section 9 of the 1957 Act. The petitioner was liable to pay royalty at the rate for the time being specified in the Second Schedule to the Act in respect of limestone. As the petitioner's leases were not for a minor mineral section 14 of the 1957 Act was not applicable and similarly the 1961 Rules made by the State Government for minor minerals u/s 15 were also not applicable to the petitioner. As earlier noticed, by the notification issued in 1961 the category of limestone as a minor mineral was further restricted. According to this notification, with effect from 20th September 1961, limestone would be a minor mineral only when it is used in kilns for manufacture of lime used as building material. The notification had no effect on the character of the leases held by the petitioner. The petitioner's leases contained no restriction as to the use of limestone for any particular purpose. The petitioner's leases continued to be leases of limestone as a major mineral. As the petitioner's leases were not for

limestone as a minor mineral, the petitioner was not governed by rule 24(1) of the 1961 Rules. It was section 9(1) of the 1957 Act which was applicable to the petitioner. Section 9 applies to leases of limestone granted otherwise than as a minor mineral, and rule 24 applies to leases of limestone granted as a minor mineral. It is the character of the lease which determines the applicability of section 9(1) or rule 24(1). These two provisions are mutually exclusive. The use made by a lessee of the mineral extracted by him may be relevant to find out the character of the lease, but once it is established that the lease is of limestone as a major mineral, the character of the lease does not change simply because the lessee is using the limestone extracted by him like a minor mineral. The liability to pay royalty does not depend upon the use made by the lessee of the limestone but on the character of the lease unless the rules or conditions of the lease otherwise provide which is not the position in the instant case. If the lease is for a minor mineral, rule 24(1) applies, if the lease is not for a minor mineral, section 9(1) applies. As earlier pointed out by us, there are in the instant case unimpeachable indications that the leases were granted for limestone as a major mineral. The petitioner was, therefore, not liable to pay royalty on limestone as a minor mineral under rule 24(1) of the 1961 Rules.

5. The learned Government Advocate relied upon. Gyan Prasad and two others v. The State of M.P. and another Miscellaneous Petition No. 458 of 1967, decided on 4-12-1970, and Gorelal Dubey v. The State of M.P. and others Miscellaneous Petition No. 328 of 1968, decided on 14-12-1970. The authority of these cases is greatly shaken by the Supreme Court ruling in Gorelal Dubey Vs. The State of Madhya Pradesh and Others, Gorelal Dube was the appellant before the Supreme Court. He was granted a quarry lease for limestone for burning purpose under the 1961 Rules. By the judgment in Misc. Petition No. 328 of 1968, which is relied upon by the learned Government Advocate, the High Court held that royalty payable on limestone as a major or minor mineral would depend upon the use to which the mineral was put by the lessee. The Supreme Court, contrary to the decision of the High Court, held that Gorelal Dube was liable to pay, for the period he held the lease, royalty on the footing that the lease was for a minor mineral. Indeed, before the Supreme Court, Gorelal Dube withdrew writ Petition Nos. 328 of 1968 and 390 of 1968 challenging the demands made by the Government from him of royalty as a minor mineral. It would further be seen that respondent No. 3 in the Supreme Court, who was granted lease of limestone as a major mineral under the 1960 Rules, was held liable for payment of royalty for the period of the lease as a major mineral. The Supreme Court did not hold that royalty would be recoverable by the State according to the use of limestone made by the lessees. In our opinion, therefore, the cases relied upon by the learned Government Advocate do not now hold the field. As earlier pointed out by us, it is the character of the lease which will determine the applicability of section 9(1) of the 1957 Act or rule 24(1) of the 1961 Rules. The applicability of these provisions does not depend upon the use made by the lessees of the mineral extracted by him.

6. The legal position that the petitioner is liable to the enhanced rate of royalty according to section 9(1) of the 1957 Act was not disputed by the learned counsel for the petitioner. Indeed, the point is concluded against the petitioner by the Supreme Court's decision in *State of Madhya Pradesh v. Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Pvt. Ltd* 1972 JLJ 222: 1972 MPLJ 680 (SC).

7. The petition is partly allowed. The State Government is restrained from demanding royalty from the petitioner on the basis of rate applicable for limestone as a minor mineral. The demand notices are to that extent quashed. There shall be no order as to costs. The security amount be refunded to the petitioner.