

(1997) 04 MP CK 0008

In the Madhya Pradesh High Court

Case No : Writ Petition No. 3307 of 1996 (3)

M/s Neogy and Sons

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 03-04-1997

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 3(a)

Citation : (1997) 2 MPJR 278

Hon'ble Judges : A.K. Mathur, C.J.; S.K. Kulshrestha, J

Bench : Division Bench

Advocate : Revindra Shrivastava, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

All the aforesaid three petitions involve common question of law and facts: therefore, they are disposed of by a common order.

For the convenient disposal of all the aforesaid petitions, the facts given in Writ Petition No. 3307/96 (M/s Neogy & Sons, Jaitwar & others V/s State of M.P. & others) are taken into consideration.

The petitioners are holding mining leases for extraction of others, bauxite, limestone, clay minerals in district - Jabalpur, Satna, Rewa and Shahdol, in the State of Madhya Pradesh. The grievance is that the respondents are insisting the petitioners to obtain transit passes for transportation of Minerals from leased area to various destination. It is submitted that this Court in its judgment dated 4.5.1995 passed in M.P. No. 686/93 has declared that the State Government through its Officers and agents have no authority to direct the lease holders for major minerals to maintain the transit pass-books or issue the same and for absence of transit passes, they have no power or authority to seize the vehicles or minerals.

The State Government, in order to check the pilferage of mineral and evasion of royalties, framed regulations known as "Mineral Transit Pass Regulations, 19%". By virtue of these Regulations all dispatches of minerals have to be accompanied by transit passes and transportation of mineral without transit passes, has been considered to be a violation of lease deed and penal actions can be initiated; therefore, by this petition, the petitioners have again challenged the validity of Mineral Transit Passes Regulations, 1996, being ultra vires of powers of the State Government.

(A) It may be relevant to mention here that so far as major minerals are concerned, they are governed by the Mines and Minerals (Regulations & Development) Act, 1957 (hereinafter referred to as the ACT of 1957"), Section 3 (a) of the Act defines "minerals", which reads as under:-

S.3 (a): "Minerals" includes all minerals except mineral oils.

Section 3 (e) defines minor minerals", which reads as under:

S.3 (e): "Minor Minerals" means 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. Therefore, all the minerals which are notified by the Central Government in the Official Gazette apart from already mentioned in this provision, shall be treated to be a minor mineral and rest will be the major minerals. There is no dispute that the leases which have been granted to the petitioners, are all major minerals. Section 4 of the Act lays down for prospecting or mining operations to be under license or lease. Section 13 lays down that the rules for regulating these major minerals, shall be framed by the Central Govt., Section 14 of the Act says that sections 5 to 13 are not to apply to minor minerals meaning thereby that all the provisions relating to major minerals will not be applicable to the minor minerals. By virtue of Entries 23 and 50 of List-II State List of VIIth Schedule of the Constitution, it gives a power to the State Government to legislate on the minor minerals. Section 15 of the Act gives a power to the State Government to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected there with. Therefore, so far as the minor minerals are concerned, it is the State Government who can regulate the same. The Central Government in exercise of powers contained in section 13 of the Act, has framed the rules known as Mineral Concession Rules, 1960, (hereinafter referred to as the Rules of 1960"), we are not concerned with the Scheme of the Rules as that contemplates the procedure for grant of license and the manner in which it has to be applied and thereafter how the licence is granted. However, we are only concerned with the Rule 27 of the Rules, which lays down the conditions. One of the conditions to which our attention has been invited and it has relevant bearing, is Condition No. 27 (1) (i) which reads as under:-

R.27. Conditions :- (1) Every mining lease shall be subject to the following

conditions:-

XXX XXX XXX

(1) the lessee shall keep correct accounts showing the quantity and other particulars of all minerals obtained and despatched from the mine, the number and nationality of persons employed therein, and complete plans of the mine, and shall allow any officer authorised by the Central Government or the State Government in this behalf to examine at any time any accounts, plans and records maintained by him and shall furnish the Central or State Government with such information and return as it or any officer authorised by it in this behalf may require.

A similar condition has also been incorporated in the lease agreement also. Our attention was also invited to Part VI Clause 2, Part VII Clause 7 and Part XI clause 1 of the lease agreement which read as under:-

Part VI:- Provisions relating to the rents and royalties:-

XXX XXX XXX

Cl. 2 ; For the purposes of computing the said royalties the lessee/ lessees shall, keep a correct account of the mineral /minerals produced and despatched, The accounts as well, as the weight of the mineral/ minerals instock or in the process of export may be checked by an officer authorised by the Central or State Government.

Part VII:- The covenants of the lessee / lessees:-

xxx xxx xxx

Cl.7 To allow inspection of working :

The lessee/lessees, shall allow any officer authorised by the Central Government or the State Government in that behalf to enter upon the premises including any building excavation land comprised in the lease for the purpose of inspecting, examining, surveying, prospecting and making plans thereof sampling and date and the lessee shall with proper person employed by the lessee and acquainted with the mines and work effectually assist such officer, agents, servants and workman in conducting every such inspection and shall afford them all facilities information connected with the working of the mines which they may reasonably require and also shall and will conform to and observe all orders and regulations which the Central and State Governments as the result of such inspection or otherwise may, from time to time see fit to impose.

Part IX :- General Provisions :

Cl. 1 In case the lessee /lessees or his / their transferee /assignee does /do not allow country or inspection by the officers, authorised by the Central or State Government under clause (1) (j) (1)of Rule 27 of said Rules State Government shall give notice in writing to the lessee/ lessees requiring him/them to show

cause within such time as may be specified in the notice why the lease should not be determined and his / their security deposit forfeited; and if the lessee / lessees fails/ fail to show cause within the aforesaid time to the satisfaction of the State Government the State Government may determine the lease and forfeit the whole or part of the security deposit.

In this back ground, we will examine the contentions raised by the learned counsel for the petitioners.

The Regulations which have been framed by the State Government, have been framed under Clouse (i) of Sub-rule (1) of Rule 27 of the Rules, 1960, read with clause 7 and clause 10 of Part-VII of Model from the Mining lease. Regulation 2 which is relevant for our purposes, reads as under :-

Reg. 2 : All dispatches of Mineral and ores except those directly by rails or aerial ropeway shall be accompanied by transit passes in Form A" annexed to these regulations. However, dispatches to railway siding located beyond the lease area shall also be accompanied by the transit passes.

Regulation 3 lays down that how the mining book containing transit passes shall be obtained and how one carbon copy of transit pass would be accompanied with the goods and other would be given to the check post and how the driver of the truck who is taking the mineral, shall take one carbon copy with him. Regulation 3 reads as under:-

Reg. 3 (a): The mine owner shall obtain transit pass books from the Mining Officer to maximum extent of his three months reuquireinent of the production of treasury challan showing deposit of the cost of the books under the head of account at the rate of Rs. 35/- or at the rule as may be prescribed by the State Government from time to time for each book containing 100 transit passes in duplicate in from "A" the transit passes shall be machine numbered with book number and serial number of the pass. Before issue of the book to the mine owner, the passes in the book should be sealed with the office Seal of the Mining Officer on the reverse. After the first issue subsequent issue will be made on surrender of the used books,"

(b) On receipt of the used book, the Mining Officer shall get its original counterfoils checked in the office with regard to the material entries in the relevant transit passes. After such checking and verification, the Mining Officer shall return to the Mine owner within three months of surrender, the used books having each counterfoil sealed with the rubber stamp "CHECKED" which shall also bear the signature of the Mining Officer or Mining Inspector;

(c) The duplicate copy of the pass will be issued by the mine owner to the driver of the carrier transporting Ore or Mineral from the mine. The copy should be made by carbon process. The original copy should be left in the book.

Regulation 5 says that in case, it is not accompanied them it will be treated as a violation of the covenants of the lease. Clause 5 reads as under:-

Reg. 5 (a) Whenever any mine owner transports the minerals raised in the mine without a valid transit pass, it will be treated as a violation of the covenants of the lease, and action shall be taken accordingly under the penal provisions of the lease deed.

(b) The mine owner shall be responsible for the strict compliance with these instructions by the driver of the carrier employed by them and shall ensure that the carriers produce necessary transit pass on being asked by the Officers authorised for the purpose.

The validity of these provisions has been challenged before us.

The learned counsel for the petitioners submits that the State Government has no power under clause (i) of sub-rule (1) of Rule 27 of the Rules, to frame these Regulations as it is the Central Government who is only competent to frame the rules and the State Government in purported exercise of powers under clause (i) of sub-rule (1) of Rule 27 cannot frame these Regulations. According to the learned counsel for the petitioners, rules for regulating to major minerals can only be framed by the Central Government in purported exercise of powers conferred u/s 13 of the Act; therefore, the learned counsel for the petitioners submits that these Regulations which have been framed by the State Government, are totally authorised and beyond the jurisdiction of the State. In support, thereof, the learned counsel has invited our attention to the decision of this Court given in the case of *Neogy & Sons v. State of M.P.* M.P. No. 686/93 decided on 4.5.1995, wherein some what similar action of the State came up for challenge before this Court and this Court struck down the same holding that the State Government had no power to frame these rules insisting for transit passes under Rule 25 (viii) (a) of M.P. Minor Mineral Rules, 1961. It was observed in para 23 of the said judgment:

Under these circumstances, this Court can only direct that State Government has no authority to apply rule 25 (viii) (a) of M.P. Minor Mineral Rules. 1961, to the despatch and movement of the major minerals.

The decision given by this Court was affirmed by the Hon. Supreme Court when the State preferred SLP and the same was dismissed by Hon. Supreme Court by order dated 4.4.1996 in SLP No. 19109/95.

The learned counsel for the petitioners submitted that the State Government has, now again brought similar provision by taking a recourse to Rule 27 of the Mineral Concession Rules. 1960, (framed by the Central Government) which is also beyond the jurisdiction of the State Government. The learned counsel has invited our attention to the decision of Hon. Supreme Court in *India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others*, . Their Lordships in para 27 of the judgment, observed;

Our attention was drawn to the decision of the division bench judgment of the High Court of Mysore in *M/s Laxminarayan Mining Co. Bangalore v. Taluk Dev*

Board AIR 1972 May 299. There speaking for the Court: one of us, Venkataramaih, J. of the Mysore High Court, as the learned Chief Justice then was, observed that a combined reading of entries 23 and 50 in list-II and entry 54 of list -I established that as long as the Parliament does not make any law in exercise of its power under entry 54, the powers of the State Legislature in entries 23 and 50 would be exercisable by the State Legislature." But when once the Parliament makes a declaration by law that it is expedient in the public interest to make regulation of mines and minerals development under the control of the Union, to the extent to which such regulation and development is undertaken by law made by the Parliament, the power of the State Legislature under entices 23 and 50 of list-II are denuded. There the Court was concerned with the Mysore village Panchayats and Local Boards Act, 1959. Thus, it was held that it could not therefore, be said that even after passing of the Central Act, the State Legislature by enacting section 143 of the Act intended to confer power on the Taluk Board to levy tax on the mining activities carried on by the persons holding mineral concessions. It followed that the levy of tax on mining by the Board as per the impugned notification was unauthorised and liable to be set aside. At P. 306 of the said report; it was held that royalty u/s 9 of the Mines and Minerals Act was really a tax.

The learned counsel has also invited our attention to the decision of Hon. Supreme Court in M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, Para 50. Their Lordships of Hon. Supreme Court in para 50 of the said judgment, observed:

It is clear from a perusal of the decisions referred to above that the answer to the question before us depends on a proper understanding of the scope of MMRD Act, 1957, and an assessment of the encroachment made by the impugned State Legislation into the field covered by it. Each of the cases referred to above turned on such an appreciation of the respective spheres of the two legislations. As pointed out in Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, the mere declaration of a law of Parliament that it is expedient for an industry or the regulation and development of mines and minerals to be under the control of the Union under Entry 52 or Entry 54 does not denude the State legislatures of their legislative powers. With respect to the fields covered by the several entries in List-II or List-III. Particularly, in the case of declaration under Entry 54, this legislative power is eroded only to the extent control is assumed by the Union pursuant to such declaration as spelt out by the legislative enactment which makes the declaration. The measure of erosion turns upon the fields of the enactment framed in pursuance of the declaration. While the legislation in The Hingir-rampur Coal Co. Ltd. and Others Vs. The State of Orissa and Others, and Pooran Chand Vs. Motilal and Others, was found to fall within the pale of the prohibition those in State of Haryana and Another Vs. Chanan Mal and Others, ; Ishwari Khetan Sugar Mills (P) Ltd. and Others Vs. State of Uttar Pradesh and Others, and Western Coal fields were general in nature and traceable to specific entries in the State List and did not encroach on

the field of the Central enactment except by way of incidental impact. The Central Act, considered in Chaman Mal, seemed to envisage and indeed permit state legislation of the nature in question.

So far as the principle of law is concerned, it is settled that on the question of major it is the Central Government which is competent to frame the rule. Therefore, so far as legal proposition as submitted by the learned counsel is concerned there is no dispute.

As against this, the learned counsel for the respondent State has submitted that by virtue of clause (i) of sub-rule (1) of Rule 27, the Central or the State Government has been given a power to check the accounts, plans and records maintained by the lessee and can ask to furnish such information and returns as it or any officer authorised by it in this behalf may required. In order to regulate the supply of these minerals, the said rules have been framed by the State Government so that an evasion of royalty may be checked: Learned counsel for the State in this connection, has invited our attention to various clauses of the lease agreement wherein it has been made a part of a covenant that the State Government can ask for the information from the licensee and can also issue necessary orders connected with the working of the mines and like wise in clause (2) of Part -VI the State Government can also insist that for the purposes of computing the royalties, proper accounts has to be maintained by the licensee and that can be checked by an officer authorised by the Central or State Government Likewise, he submitted that by virtue of clause (i) of Part IX of lease agreement in the event of breach of these orders, the State Government can determine the lease and forfeit the whole part of the security deposit Therefore the learned counsel submits that though the reference of word Regulation may be misnomer, bur non-the-less this may be treated as an (sic) instruction for regulation the lease and to prevent evasion of royalties.

We have considered the rival Submissions of the learned counsel for both the parties. In fact the reference of the Regulation is a misnomer in the present case. It is true that so far as regulating these leases for major minerals are concerned it is the Central Government who can frame the rules and Central Government has framed the Rules known as Mineral Concession Rules, 1960 Therefore designation Regulation may be little misleading. In fact, it is only an order issued by the Government for regulating the transit of these minerals. Clause (i) of sub-rule (1) of Rule 27 of the Rules read with clause 2 of Part-IX and cluase 7 of Part. VII of the lease agreement contemplate that the State Government can issue, the orders from time to time and these orders are binding on the lessee license and if there is any breach committed by them, then in that connection by virtue of clause (i) of part IX reproduced as above lease can be determined and security can be forfeited. Therefore, these are nothing but instructions and they have been wrongly termed as Regulation. The State Government can issue such instructions if it is of the opinion that in the interest of mineral development, it is necessary so to do. Even under sub-rule 1 (i) of Rule 27 of the Mineral

Concessions Rule, the State can seek such information as it deems fit. Under Rule 27(1) (i) of the Rules, it is incumbent on the lessee to maintain the correct accounts showing the quantity and other particulars of all minerals obtained and despatched from the mine and that can be examined by the authorised officers of the Central or State Government. In order to ask for information regarding accounts showing the quantity despatched and royalty paid, the State Government can ask for such information and in order to regulate that proper accounts is maintained and proper despatch register is maintained for that purpose, this power has been conferred on the State Government. In order to effectuate this power, the State Government has framed the so called Regulations. In fact, the reference of the word "Regulation" may be miss leading, these are nothing but instructions which have been issued in exercise of powers conferred under Rule 27 (1) (i) read with various clause of agreement as reproduced above so that proper dispatches of the minerals is maintained and evasion of royalty could also be checked.

Rule 27 does not contemplate framing of rules except sub-rule (3) of Rule 27 but it enables the State to issue instruction under Rule 27 (1) (i) of the Rules. It is only an instruction which has been issued in order to effectuate the purpose contained in Rule 27 (1) (i) that the State Government can be properly informed of all the minerals which are taken out from the mines and transported. It is only a regulatory measures for effectuating the purposes mentioned in Rule 27. It is true that it has been mentioned as a Regulation which is misnomer. What it contemplates is issuance of the order by the State Government; therefore, these Regulations are only order laying down the procedure that how lessee shall keep state informed of mineral taken out and its accounts. This so called Regulations are nothing but an administrative instruction issued by the State Government by implementing the purpose mentioned in Rule 27 (1) (i). This is also clear because a reference has been made to various clauses of agreement as reproduced above. The clause 7 of Part VII empowers the State Government to ask for information connected with the working with the mines and likewise, clause (2) of Part VI of the lease agreement lays down that for the purpose of computing royalty, a correct account has to be produced and despatched by the lessee and that can be checked by the authorised officer of the Central or State Government. Therefore, in order to check the accounts and dispatches, a power has been conferred to the Central Government and the State Government. In order to effectuate the power, the so called Regulation has been framed by the State Government. Thus, we are satisfied that these Regulations are nothing but an instruction in order to effectuate the purpose contained in Rule 27 (1) (i), Clause 2 of Part VI and Clause 7 of Part-VII of the lease agreement.

The learned counsel for the petitioners has also invited our attention to a decision of Patna High Court in case of the C.M. Gupta v. State of Bihar C.W.J.C. No. 1832/81 decided on 29.4.1985, wherein the Mineral Transit Pass Regulations, 1976 are declared ultra-vires. That may be so, but we have examined the matter and find that these Regulations are nothing but an instruction in order to

effectuate the purpose contained in Rule 27 (1) (i) and as per terms of the agreement which require that the State Government can check the accounts and despatches of the minerals. They are more in a nature of instructions and they can not be declared ultra-vires of the Act. Therefore, with great respect, we disagree with the view taken by the Patna High Court.

So far as the earlier case decided by this Court in the case of M/s Neogy & Sons (supra), the question was that the Rules were framed by the State Government in exercise of powers conferred under Rule 25 (viii-a) of the M.P. Minor Mineral Concession Rules. 1961. In that context, it was observed that the State Government has no power to frame rules with regard to major minerals. Therefore, the source under which the earlier rules were framed, was found to be without jurisdiction with regard to major minerals. But these so called Regulations are nothing but a sort of instruction which has been issued for the purpose of effectuating the purpose mentioned in Rule 27 (1) (i) and various clause of the lease agreement as reproduced above, which require the State Government to seek information from the lessee with regard to quantity of mineral drawn, despatch and royalty paid. Therefore, these are Regulations to effectuate that purpose and that cannot be said to be ultra-vires.

Our attention was invited by the learned counsel for the State to the order of this Court passed in M.P. No. 471/88 dated 19.2.1988 where similar challenge was negatived.

In the result, we do not find any merit in this petition and also in connected petitions and they are dismissed. No order as to costs.