

(2003) 04 MP CK 0110
In the Madhya Pradesh High Court
Case No : M.P. No. 475 of 1992

Mysore Cements Ltd.

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 29-04-2003

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30, 9, 9(1)

Citation : (2004) 1 MPLJ 431

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : P.K. Jaiswal, for the Appellant; Ashok Agarwal, Panel Lawyer, for the Respondent

Final Decision : Dismissed

Judgement

Arun Mishra, J.

Petitioner is assailing the order Annexure-O dated 14-1-1992 passed by the Collector requiring the petitioner to pay the royalty on the basis of lime stone which has been removed by the petitioner, demand of Rs. 8,78,287/-has been raised. Petitioner has also prayed for refund of an amount of Rs. 4,05,000/-, and to prohibit the respondents to recover the amount as per Recovery Certificate Annexure/P.

It is averred in the petition that lime stone is a major mineral required for manufacturing of cement by the petitioner Mysore Cements Ltd. State Government granted a mining lease Annexure/A on 31-7-1975 for a period of 20 years. Earlier upto September, 1987, petitioner was paying royalty on the basis of the quantity transported and stacked at a place meant for the purpose, where from it was consumed for manufacture of clinker. Upto September, 1987, the petitioner paid the royalty in respect of the entire material stacked irrespective of the fact whether the same was consumed or not. After September, 1987, petitioner changed the method of payment of royalty and started paying it on the

basis of actual consumption of said lime stone. Lime stone extracted is consumed by the petitioner for manufacturing of cement and not part of it sold out or exported. Petitioner has been submitting monthly return in Form-L and annual return in Form-H7 furnishing details of the number of working days, etc. Royalty has been enhanced to Rs. 10 per MT with effect from 5-5-1987, earlier it was Rs. 4.50 per MT. Method of determination of the royalty had been changed from removal to consumption, the petitioner prepared a statement for the period May, 1987 to October 1987 and it was found that after giving due adjustment of the amount of the royalty already paid and the recalculation at the enhanced rate, a sum of Rs. 9,26,100.51 was found due. Petitioner deposited the said amount and intimated the Mining Officer as per letter Annexure-F dated 21-11-1987. No dues certificate Annexure-G was issued on 11-10-1988. Petitioner received a notice dated 28-12-1988 from the Collector, Damoh pointing out that a sum of Rs. 4,02,822/- has been determined on audit, recovery of the royalty for the period 1-4-1987 to 31-3-1988, being difference of rate of royalty. Notice is Annexure-H dated 28-12-1988. Petitioner pointed out that the payment at the enhanced rate has already been paid. Petitioner received notice Annexure-K dated 8-2-1991 to pay an amount of Rs. 4,02,822/-. A writ petition was filed in which an order was passed to recalculate the liability. Matter was again examined by respondents. Reinspection was made. Petitioner was required to submit certain documents by the respondents. Collector as per Order dated 14-1-1992 determined the royalty dues at Rs. 8,78,287.19 and interest at Rs. 5,30,008.56. The said demand is assailed on the ground that there is no dispute with the quantity of the mineral extracted, the only dispute was regarding manner of payment whether the petitioner has to pay on removal or on consumption. There was nothing wrong in petitioner's making the payment of royalty on the basis of lime stone actually consumed. Collector has not properly considered the monthly returns. Material actually consumed could be assessed only from the figure of clinker produced.

A return has been filed by respondents contending that petitioner is liable to make the payment on the quantity of lime stone removed. In view of directions of this Court in MP No. 1011/91, the Collector, Damoh has passed the order. Para 3 of Part-V of the lease deed has been relied upon which provides the liability to pay the royalty in respect of any mineral/minerals removed from the leased area. Reliance is also placed on Part VI Para-2 for mode of computation of royalty according to which it was the duty on the lessee to keep a correct account of mineral-minerals produced and dispatched. The other obligations are flowing from Part VII Para-10 Clause (i) and Part VII, Para 13 and 14. The method of computation of royalty on the quantity of lime stone was not on the basis of consumption in the cement factory but rather the mode of calculating the royalty was agreed to on the basis of the quantity of the lime stone removed from the mine. The petitioner never disputed the position that the basis for calculating the royalty is quantity of lime stone removed from the leased mine. Petitioner is not entitled to change the mode of computation of royalty on lime stone. Petitioner is having alternative remedy to file revision u/s 30 of the Act against the order

passed by the Collector. The calculation of the royalty has been done as per order R-I passed in MP 1011/91. The order has become final and is binding.

Shri P.K. Jaiswal, learned counsel appearing for petitioner has submitted that u/s 9 of Mines and Minerals (Development and Regulation) Act, 1957, royalty is payable on removal or consumption. The word employed in section 9 is "or". Thus, there was nothing illegal in the action of petitioner in making the payment of royalty on consumption of lime stone as the same is in accordance with section 9 of the Act. Thus, the order passed by the Collector is bad in law. He has further submitted that in any case on the entire extracted quantity petitioner may have paid the royalty subsequently on actual consumption, thus, there is no loss caused to the respondents on making payment on consumption.

Shri Ashok Agarwal, learned PL appearing for the respondents has submitted that the order passed by the Collector is proper and as per terms and conditions of lease deed when it is provided u/s 9 of the Act that on the quantity removed royalty has to be paid, thus, there is nothing illegal in the order passed by the Collector. He has also placed reliance on order R-I passed in MP No. 1011/91 by a Division Bench of this Court on 3-4-1991.

Main question for consideration is that whether the order of Collector requiring the petitioner to pay the royalty on the basis of lime stone extracted is bad in law?

Section 9(1) of the Mines and Minerals (Development and Regulation) Act, 1957 is relevant, same is quoted below:

9. Royalties in respect of mining leases. -- (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

Para 3 of Part-V of the lease deed is quoted below:

Subject to the provision of clause 1 of this Part, the lessee-lessees shall during the subsistence of this lease pay to the State Government at such times and in such manner as the State Government may prescribe royalty in respect of any mineral-minerals removed by him/them from the leased area at the rate for the time being specified in the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957. Royalty should be paid in on 15th March for the half year ending 31st December and on 15th September for the half year ending 30th of June, 1976

Part-VI para-2 of the lease deed is also quoted below:

For the purposes of computing the said royalties the lessee/lessees shall keep a

correct account of the mineral/minerals produced and dispatched. The accounts as well as the weight of the mineral/minerals in stock or in the process of export may be checked by an officer authorised by the Central or State Government.

On the conjoint reading of section 9(1) of the Act and the above quoted provisions of the lease deed, it is clear that there is nothing illegal in calculating the demand of royalty on the basis of quantity extracted from the leased area.

Quantity extracted of the lime stone has not been disputed, there is no dispute with respect to the quantity extracted.

This Court while deciding MP No. 1011/1991 has passed the following order R-I on 3-4-1991:

Learned Dy. A.G., appearing on behalf of the State, however, contended that the petitioner is liable to pay more amount as royalty than that demanded vide Annexure-G. It would, therefore, be just to direct the concerned authority, namely, the Collector, Damoh, to recalculate the royalty payable on the lime stone extracted by the petitioner for the period in question. In this process, the Collector shall take into account the reply filed by the petitioner and shall give him an opportunity of being heard. The petition is accordingly disposed of with the aforesaid direction. No costs.

Thus, it is clear that Division Bench of this Court also directed recalculation of royalty on the lime stone extracted by the petitioner for the period in question, the period in question was the same in the previous writ petition. I find no infirmity in the order passed by the Collector.

Resultantly, the petition is sans merit and is dismissed. No order as to costs.