(1996) 10 RAJ CK 0014

In the Rajasthan High Court

Case No : Civil Writ Petition No. 989 of 1988

Nathdwara Mines Owners Association and Another APPELLANT

Vs

State of Raj. and Others RESPONDENT

Date of Decision : 08-10-1996

Acts Referred:

Citation : (1996) 3 RLW 271 : (1997) 1 WLC 720 : (1996) 2 WLN 270

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Instant writ petition has been filed seeking relief to quash circular dated 17.10.87, Anx. 2, circular dated 6.11.87, Anx. 3 and orders dated 15.12.87, Anx. 4 and 5 to the writ petition passed by respondent No. 3.

2. The relevant facts necessary for disposal of the present writ petition are that petitioner No. 1 is an Association of Mine-holders while petitioner No. 2 is its president. It is alleged that the Association named as Nathdwara Mines Association is highly interested in the welfare of the lease-holders working at lime stone mines at Nathdwara and Udan etc.

3. It is averred in the writ petition that mining leases of lime stone are regulated by Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as the Rules of 1986). It is also averred in the writ petition that procedure for assessment of royalty has been prescribed under rules 38 and 68 of the Rules of 1986. It is further alleged in the writ petition that if the respondent No. 2 intends to check evasion of royalty he can direct for setting up of check posts or erection of barriers as contemplated under Rule 68 of the Rules of 1986.

4. After service of notices, a return has been filed on behalf of the respondents denying the averments made in the writ petition.

5. It is averred in the reply that the lessees are free to deposit the amount of

royalty even during the year on the basis of their own estimate of the quantity of mineral removed by them. If the lessees fail to furnish required informations and documents, then, the Assessing Authority i.e. Mining Engineer/Assistant Mining Engineer are vested with the powers to determine the amount of royalty on the basis of their best assessment.

6. It is emphatically denied in the reply that Rawannas show the correct weightment of mineral transported by mining operators. It is alleged that Rawannas contain approximate weightment of minerals transported by lessees as they do not have truck weighing facility at their mines. In absence of proper weighment of minerals transported by lessees the assessing authorities used to assess royalty on the basis of their best assessment/judgment on their whim and fancy leading to hostile discrimination between two similarly circumstanced lessees, therefore, in order to introduce objectivity in best assessment judgment of royalty by assessing authorities definable guide lines are circulated vide circulars Anx. 2 and 3 which are eminently just, legal and proper.

7. It is urged by the learned Counsel for the petitioners that the Circular dated 17.10.87, Anx. 2 and Circular dated 6.11.87, Anx. 3 to the writ petition arc in violation of the statutory rules 38 and 39 of the Rules of 1986.

8. Learned Counsel for the respondents has refuted the aforesaid argument and supported the legality and validity of circulars in question on the basis of grounds taken in reply filed on behalf of the contesting respondents.

9. I have given my thoughtful consideration to the rival contentions raised at the Bar and perused the materials available on record.

10. It is to be imbibed that every department is legally entitled to issue a circular, office memorandum or departmental instructions providing guide-lines ,to its officers provided such circular, office memorandum or departmental instructions are not in contravention of any Act or statutory Rules. Learned Counsel for the petitioners made an attempt to convince the Court that Anx. 2 and 3 are in contravention of rules 38 and 68 of the Rules of 1986 but I am not convinced with the aforesaid argument of the learned Counsel for the petitioners.

11. In my considered opinion, the circulars Anx. 2 and 3 are complementary to each other. These two circulars Jill up gap of the mandatory provisions envisaged under rules 38 and 68 of the Rules of 1986 and as such are supplementary to the aforesaid statutory provisions. Nothing has been brought to the notice of this Court that these circulars contravene any of the provisions of either Rule 38 or Rule 68 of the Rules of 1986. Issuance of these two circulars Anx. 2 and 3 are not forbidden either under Rule 38 or under Rule 68 of the Rules of 1986.

12. To my mind, these two circulars Anx. 2 and 3 are not only required to be in confirmity with statutory rules 38 and 68 of the Rules of 1986 but further these two circulars also required to be just, fair and reasonable.

13. I have examined these two circulars on the anvil of reasonableness.

Indisputably Rawannas prepared by mine operators do not speak about correct weighment of minerals transported by them in trucks as they have no weighing facilities at their mines. These Rawannas prepared by mine operators accompaning with the trucks loaded with minerals use to mention only approximate weighment of minerals.

14. Looking into the ground realities of mining operations it is not practicable to set up check posts or to eract barriers for each and every mine operator with weighing facilities who is operating mines far away from Pucca Road. Such mine operators are bound to transport minerals by vehicles/trucks through Kachcha Road and correct weighment in these cases in practically impossible. In view of the fact that as correct weighment in these cases are impossible hence assessment of royalty is bound to be made on the basis of best assessment judgment of the assessing authorities.

15. I am of the view that circulars in question are eminently just, fair and reasonable. These two circulars have reasonable nexus to introduce objectivity in assessing royalty on basis of best assessment Judgment by assessing authorities between two similarly circumstanced mining operators and these circulars are also in consonance with the doctrine of equality and equal treatment between two persons similarly circumstanced.

16. The aforesaid conclusions discussed in preceding paragraphs are inescapable as the petitioners have not challenged the vires of non obstante mandatory provisions of best assessment judgment of royalty by assessing authorities as envisaged under Sub-rule (6) of rule 38 of the Rules of 1986.

17. As a result of the aforementioned discussion, the instant writ petition lacks merit and it is hereby dismissed with costs assessed to Rs. 2,000/-. The Circulars dated 17.10.87 and 6.11.87, Anx. 2 and 3 respectively, are declared legal and valid and orders Anx. 4 and 5 do not require interference of this Court. Costs of Rs. 2,000/- is to be recovered from petitioner No. 2 alone.