

(1999) 02 MP CK 0040

In the Madhya Pradesh High Court

Case No : Writ Petition No's. 487 to 490 of 1998

National Mineral Development Corporation Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 25-02-1999

Acts Referred:

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

Citation : AIR 1999 MP 112 : (2000) 1 J LJ 12 : (2000) 1 MPLJ 429

Hon'ble Judges : A.K. Mathur, C.J.; Dipak Misra, J

Bench : Division Bench

Advocate : V.R. Reddy and P.S. Nair, for the Appellant; R.S. Jha, Dy. A.G., for the Respondent

Final Decision : Dismissed

Judgement

A.K. Mathur, C.J.

All these four writ petitions involve common question of law; therefore, they are being disposed of by this common order.

For convenient disposal of all the petitions, facts given in Writ Petition No. 487 of 1998 are taken into consideration.

The petitioner by this petition has prayed that by appropriate writ or order or direction, letter dated 14-1-1997 issued by Collector, Bastar (Annex. P-1), order dated 30-5-1997 passed by Additional tahsildar demanding a sum of Rs. 18,58,61,568.00 (Annex. P-2), order dated 17-12-1997 passed by Minister for Mineral resources, Department of Madhya Pradesh (Annex. P-3) and letter of the Collector dated 8-1-1998 (Annex. P-4) claiming royalty on iron ore slimes may be quashed.

The petitioner is a Company registered under the Companies Act. It is a Government Company,-- an undertaking of the Central Government. The petitioner Company obtained a mining lease measuring area 672.25 from the

State Government in the year 1965 for extracting iron ore. It started production in the year 1977. Iron Ore is found in the shape of hills and these hills are blasted and the blasted material turns into boulders, fragments, fines and other extraneous materials into small pieces and they are transported by dumpers to the crushing plant erected for that purpose. The big boulders are thereafter crushed into 150 m.m. size and then the whole material is transferred to the screening plant by automatic process i.e. through conveyor belt. In the screening plant, water is pumped for pollution control, benefaction and segregation of different fragments i.e. the lump and fine. The said process, lump and fine are segregated and through conveyor system they are transported to loading yard. In the process of the said screening, waste material and extraneous material like mud, shale which forms the slurry is transported through pipeline to tailing dam where the whole material gets deposited and extra water flows out. It is alleged that in the process of Running of Mines (ROM) ore is extracted and separated into "Ore Lumps", "Ore fines" and waste material is generally called "slime" which is not an ore within the meaning of the provisions of the said enactment and it is dumped.

The petitioner Company pays royalty on the basis of despatches of iron ore. It is alleged that some dispute arose with the State Government with regard to royalty and the matter was finally settled after prolonged discussions and under the said settlement, a sum of Rs. 70,74,791.00 was paid to the State Government against reconciliation in the presence of representative of the Collector. It is alleged that the petitioner Company is regularly paying the royalty on ore produced, i.e. quantity of ore lump, ore fines and slime. It is alleged that in 1985, audit objection was raised by the Accountant General that the royalty has to be paid on the entire ROM produced. It is alleged that the explanation was filed and the department felt satisfied. However, the Collector Bastar by his letter dated 14-1-1997 claimed additional royalty in the sum of Rs. 18,58,61,568.00. The petitioner Company protested that the entire royalty due in accordance with the Act has been paid and no further royalty is liable to be paid. Subsequently, by communication dated 1-4-1997, the State Government directed the Collector Bastar that no royalty is liable to be paid on Slime as it is not a mineral. By another communication dated 24-2-1997, the matter was again explained to the Collector Bastar that the expression "Slime" is not iron ore and demand raised is not well founded. Then again a detailed explanation was given by the Director (Production) of the petitioner Company by letter dated 25-4-1997 that the slime is not chargeable to royalty. Despite this explanation, a demand was served on the petitioner Company on 30th May, 1997 Annex. P-2 in the sum of Rs. 18,58,61,568.00. Thereafter some meetings were held but on 17-12-1997 Annex. P-3, the Minister passed a detailed order and observed as under : "It is found on examination of the case that the wet fines by defining as slimes and not treating them as mineral the contention presented by NMDC for non-payment of royalty on this is not acceptable. By deducting the quantity of lumps from the quantity of ROM produced by NMDC treating the remaining quantity as fines, the

royalty should be calculated on the basis of iron content and it should be paid." The Collector, Bastar by order dated 8-1-1998 forwarded this communication Annex. P-4 to the petitioner Company and directed to pay the royalty as demanded. Therefore, the present writ petition has been filed by the petitioner Company claiming that the action of the State of M. P. is ultra vires of the MMRD Act.

Before we proceed to examine the case on merits, it may be relevant to mention here that the Parliament has enacted. The Mines and Minerals (Regulation and Development) Act, 1957 (for short the MMRD Act). Section 2 gives a declaration that the regulation of mines and development of mineral shall be governed by Union as provided under the MMRD Act. That means that the regulation of certain mines which are governed by the provisions of the Act, the Parliament alone shall be competent to enact. We are concerned primarily in the present case with regard to provisions of Section 9 which is a charging section. Section 9 of the MMRD Act reads as under:

"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 the mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall 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 at the rate for the time being specified Scheduled in respect of said mineral.

(2A) The holder of a mining lease whether granted before or after commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972 (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the official gazette, amend the second schedule so as to enhance or reduce the rate at which the royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during the period of three years."

Section 9 of the MMRD Act says that a holder of a mining lease shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sublessee from the leased area after such

commencement, at the rate for the time being specified in the Second Schedule in respect of the mineral. Second Schedule provides various rates for various minerals. We are concerned with the Iron Ore which is Item No. 21 and the same reads as under:

21, Iron Ore:

(i) Lumps (a) 65 per cent Fe content or more

Twenty one rupees and fifty paise per tonne.

(b) 62 per cent Fe content or more but less than 65 per cent Fe,

Twelve rupees per tonne.

(c) 60 per cent Fe content or more but less than 62 percent Fe,

Eight rupees and fifty paise per tonne.

(d) Less than 60 percent. Fe content

Six rupees per tonne

(li) Fines (including inter alia natural fines produced incidental to mining and sizing of lumpy ore)

(a) 65 per cent Fe content or more

Fifteen "rupees and fifty paise per tonne.

(b) 62 per cent Fe content or more but less than 65 per cent Fe,

Bight rupees and fifty paise per tonne.

(c) Less than 62 per cent- Fc content

Six rupees per tonne

(iii) Concentrates prepared by beneficiation and/ or concentration of low grade ore containing 40 per cent Fe or less. "

Two rupees and fifty paise per tonne.

By virtue of Section 9 read with Item No. 21 of Second Schedule of the MMRD Act, iron ore is to be charged with various rates of royalties depending on the varied contents of ferreous. Primarily, there are three categories of iron ore, one "lumps", second "Fines" and the third "concentrates". Lumps denotes bigger pieces of the iron ore and fines denotes small pieces namely natural fines produced incidental to mining and sizing of lumpy ore. The concentrates denotes low grade ore containing 40 per cent ferreous or less. The contention of the learned counsel for the petitioner is that there are only two items which can be subjected to royalty i.e. lumps and fines and the slime which is produced on account of this iron ore does not fall either in the category of iron or lumps or fines; therefore, it cannot be subjected to royalty as they are not used for any

commercial purposes and are to be stored in a tail dam where is sprinkled over it so that it gets settled it may not pollute the surrounding areas. Learned counsel for the petitioner does not dispute that the slime also may contain a small quantity of the iron ore i.e. ferreous but he submits that it is not used for any purpose and it is only placed in a dump. Hence, it cannot be subjected to royalty. However, learned counsel submits that now recently a new technic has been developed by which perhaps such slime can also be used by retrieving the iron ore contents therein.

The respondents in their reply have pointed out that even slime contains average grade of ferreous above 63.70 per cent. They have also produced report Annex. R-2 in which it is pointed out that every year, slime to the tune of 1,05,054 is produced and ferreous content is to the extent of 63.72 per cent.

This is the report by the Mines Manager to the Controller General, Indian Bureau of Mines. It is also submitted that the expression "ore" is defined as under:

"Ore. The term "ore" designates the compound of a metal and some other substance; a metalliferous mineral or, rock. It is generally regarded as mineral. The word "ore" has definite signification and in its usual acceptance, it designates the compound of a metal and some other substance, such as oxygen, sulphur, or arsenic, called its mineralizer, by which its properties are disguised or lost; a metalliferous mineral or rock, especially one which is of sufficient value to be mined, a solid crude containing a valuable constituent in such amounts as to constitute a promise of possible profit in extraction, treatment and sale."

It is submitted that ore includes a solid crude containing valuable constituent i.e. the metalliferous mineral or rock and to say that the slime which is nothing but left out of the solid rocks available in the most powdery form with some solid contents of the ferreous, it is known as slime; but nonetheless, it is an ore and it is subject to royalty. It is submitted that simply because it is stored in the tailing dam, it does not mean that it ceases to be ore and therefore it is not liable to be subjected to royalty.

Learned counsel for the petitioner strenuously urged before us that Section 9 read with Second Schedule of the MMRD Act only enables the State to charge royalty and that there are only three categories provided, namely lumps, fines and concentrates. It is submitted that the slime being a category apart from the above three classifications, it is not chargeable to royalty. Learned Counsel invited our attention to the concept of royalty. Learned counsel invited our attention to a brochure on "Mineral Royalties" issued by Controller General, Indian Bureau of Mines, Nagpur Government of India, Ministry of Steel and Mines, Indian Bureau of Mines, Mineral Economics Division. It has been observed therein that the concept of "Royalty" in law means payment made to the owner of certain types of rights by those who are permitted by the owners to exercise such rights. The rights concerned for example are literary, copyright, patent etc. and include rights in mineral deposits. The term originated from the fact that in

Great Britain centuries gold and silver mines were the property of the Crown. Such "royal" metals could be mined only if a payment ("royalty") were made to the Crown. Mineral deposits have nothing in common with the fruits of intellectual and artistic endeavours except that they are often exploited by persons other than the owners upon payment of royal ties. This brochure deals with the concept of "royalty" in India ancient as well as post independent era. But the fact remains that royalty is to be charged on the minerals, the moment the minerals are removed from the leased area. This concept has been accepted all through.

"Royalty" has also been defined in various text-books. Wharton's Law Lexicon (14th Ed., p. 833) defines royalty as under ;

"Royalty, payment to a patentee by agreement on every article made according to his patent; or to an author or publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised."

Royalty has been defined in Black's Law Dictionary (5th Edition) as under :

"Compensation for the use of property, usually copyright material or natural resources, expressed as a percentage of receipts from using the property or as an account per unit produced. A payment which is made to an author or composer by an assignee, licensee or copyright holder in respect of each copy of his work which is sold, or to an inventor in respect of each article sold under the patent. Royalty is share of product or profit reserved by owner for permitting another to use the property. In its broadest aspects, it is share of profit reserved by owner for permitting another the use of property."

Royalty has been defined in Venkataramaiah's Law Lexicon and Legal Maxims (Vol. 3 P. 2128) as under:

" "Royalty" on mines and minerals cannot be a fee but a levy of the nature of a tax. Royalty on minerals should be taken as an imposition of a tax or impose and would come under the definition given in Article 366, Clause (28) of the Constitution."

The Oxford Companion to Law (page 1092) defines "royalty" as under :

"(Also) a periodical payment to the owner of minerals by a party authorised to extract and remove the minerals."

The New Webster's Dictionary (p. 838) defines royalty as under:

"Royalty : A compensation or portion of proceeds paid to the owner of a right, as an oil right, as over minerals, granted by a sovereign to a person or corporation; the payment made for such a right."

Suffice it to say that since iron ore is a mineral and it vests in State, therefore, it is right of the sovereign to charge royalty on this mineral. There is no two

opinions in the matter that on this subject (iron ore) the Parliament alone is competent to legislate and the State has no jurisdiction. It is also not disputed that the taxing statute has to be construed strictly. But nonetheless question before us is that the slime which is alleged to be a mineral is liable to be charged to royalty or not. Learned counsel for the petitioner tried to emphasise that since slime is neither lumps, nor fines," nor concentrates, therefore it cannot be subjected to payment of royalty. Submission of the learned counsel does not appear to be correct. As mentioned above, Section 9 categorically lays down that the royalty is to be charged in respect of any mineral removed or consumed from the leased area at the rate prescribed in the Schedule. It cannot be said that slime is not part of the iron ore. Iron ore is a general expression and the Second Schedule, Item No. 21 provides three categories of iron ore i.e. lumps, fines and concentrates. The dust which is left because of crushing of the big boulders of the iron ore turns into slime. Lumps are nothing but bigger pieces of iron ore and fines are smaller pieces. Slime has been defined in Hand Book of Mineral Dressing by Arthen F. Taggart as under :

"Slime is the term used in milling practice to describe a suspension in water of the far divided fraction of pulverized ore; also the solid, whether suspended or after settling and drying. The terminology is not precise, e.g., the overflow of a mechanical classifier or for guarding the discharge of a grinding mill may be called SLIME as distinguished from the coarser sand, even though the separation be made at upward of 0.5 mm size. The ore of a hydraulic classifier is called slime, more or less irrespective of the size of the coarse grains."

Slime has also been defined in Mining Engineers" Hand Book by Robert Peeli, Vol. II as under:

"Slimes refer strictly to the colloidal and semi-colloidal portion of the pulp; but in practice they are usually considered as being the portion that is composed largely of particles that will pass a 200 mesh screen. They can be treated by cyanide solution in agitation tanks, followed by separation of the metal-bearing solutions from the solids by settling and filtration."

In Random House Unabridged Dictionary, Second Edition, the word "stine" means :

(1) Thin, glubinous mud (2) any copy or viscous liquid matter, esp. of a foul kind; (3) a viscous secretion of animal or vegetable origin; (4) slang -- a repulsive or despicable person; (5) to cover or smear with or as if with slime; and (6) to remove slime from, as fish or canning."

Therefore, slime is nothing but powdery form of iron ore and it contains small grain of ferrous. The royalty is charged at various rates depending upon the contents of the ferrous therein. Some times, its contents may be 65% and some time less than 62%. Wherever the contents of the ferrous in this tine powdery form are less than 62%, then the royalty is at Rs. 6.00 per tonne i.e. the minimum royalty. Third category is concentrates which is said to be prepared

for benefaction and ore concentrates of low grade contain 40% ferreous or less, then the royalty is charged at Rs. 2.50 p. per tonne. Thus, there are three categories of iron ore depending upon the ferreous. The Legislature contemplates three categories of iron ore and the technical term known as slime which is used in the mineral parlance is nothing but a sort of "fines" and it cannot be said that it does not contain the iron contents. It does contain the iron contents but the contents of ferreous is very low. It is not correct to submit that the slime does not contain ferreous contents. Learned counsel for the petitioner very frankly conceded that it does have ferreous contents and it is to be stored in a tailing dam. But that does not mean that it ceases to have contents of iron ore. Therefore, the submission of the learned counsel that slime is not iron ore and it is not liable to be subjected to royalty is not correct. The basic concept of the charging of the royalty on the mineral is that the moment mineral is removed from the leased area, then the same is exigible to royalty. It is different matter that it cannot be put to use for commercial purposes. The moment mineral is removed from the earth, then the royalty is liable to be charged. It is different that the Parliament has given varying rates depending upon the quality of iron contents in the mineral, that does not mean that slime which also contains ferreous cannot be exigible to royalty. Slime is also a part of mineral though ferreous contents may be minimal but it does not cease to be the iron ore. Merely because slime has not been identified in all the three categories of iron ore, that does not mean that it ceases to have character of iron ore. It is nothing but part of second category i.e. "fines". As per the description given in the petition, it is more than apparent that at the time of crushing of the big boulders of the iron ore, certain powder in the form of iron is also produced which the present petitioner is not utilising and it is thrown as waste and dumped. Nonetheless, it contains fine ore. Simply because it is commercial commodity, it does not cease to be ore. It is a part of fines only and it is exigible to royalty.

Learned counsel for the State in this connection invited our attention to a decision of the Apex Court in the case of State of Orissa and Others Vs. M/s. Steel Authority of India Ltd., . It was a case of extraction of lime stone and dolomite for using as raw materials. In that, the question arose that they extracted mineral and subjected to a certain process to remove waste and foreign matter. It was observed that such processing amounts to consumption and therefore, the lessee is liable to pay royalty on the entire mineral extracted by him and not only on the net quantity of mineral obtained after processing. Identical is the case here. Only difference is it bears to lime stone and in the present case, it bears to be iron ore. Entry 23 of the Second Schedule of the Act deals with the lime stone and that is in two categories--one L.D. grade having less than 1.5 per cent silica content and the second "others". Here two rates have been prescribed depending on the grades of the lime stone. Their Lordships interpreted Section 9 of the Act and held :

"11. It is to be noted that the levy of royalty is in respect of minerals removed or consumed by the contractor from the leased area. We have seen earlier the

process that the mineral was said to undergo before the same was removed from the leased area. Section 9(1) of the Act also contemplates the levy of royalty on the mineral consumed by the holder of a mining lease in the leased area. If that be so, the case of the appellants that such processing amounts to consumption and, therefore, the entire mineral is exigible to levy of royalty has to be accepted. We are unable to agree with the distinction made by the High Court and the conclusion that the royalty can be levied only on the quantity of mineral obtained after processing."

Their Lordships further observed in paragraph 13 which reads as under :

"In the Western India Theatres Ltd. v. Cantonment Board, Poona Cantonment it was held that an entertainment tax is dependent upon whether there would or would not be a show in a cinema house. If there is no show, there is no tax. It cannot be a tax on profession or calling. Professional tax does not depend on the exercise of one's profession but only concerns itself with the right of practice. It appears that in the instant case also no tax can be levied or is leviable under the impugned Act if no mining activities are carried on. Hence, it is manifest that it is not related to land as a unit which is the only method of valuation of land under Entry 49 of List II, but is relatable to mineral extracted. Royalty is payable on a proportion of the mineral extracted."

Thus, it is manifest what is to be exigible is a mineral extracted and royalty is payable on a proportion of the mineral extracted. In this view of the matter, we are of the opinion that the slime is nothing but a part of fine and it has a ferrous contents, it is a mining ore and it is exigible to royalty u/s 9(1) of the MMRD Act read with the Second Schedule.

Consequently, this petition and connected petitions are dismissed. In the circumstances of the case, there shall be no order as to cost.