

(1977) 10 RAJ CK 0009

In the Rajasthan High Court

Case No : Civil Writ Petition No's. 1126 of 1972 and 1117 of 1972

Nemi Chand and Bhanwarlal

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-10-1977

Acts Referred:

Constitution of India, 1950 — Article 19, 226

Citation : (1977) RLW 430 : (1977) WLN 513

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.L. Jain, J.—Both these petitions, namely, Nos. 1126/1972 and 1117/1972 raise common questions of law, and shall be disposed of by this common order.

2. The facts of the writ petition No. 1126/1972 are that the petitioner despatched 1115.4 metric tonnes of stone from the Railway Station, Tinwari, District Jodhpur. The Mines Department of the State Govt. found that the petitioner had excavated the said stone during the period from 26-2-66 to 3 12 69. It proceeded to issue a notice on 17-9-70 to the petitioner that the mineral was excavated without any lease, licence or permit and directed the petitioner to deposit a sum of Rs. 1951 26 p. against royalty amount within a period of 7 days. It was also said that on failure to so deposit the amount, recovery proceedings under the Land Revenue Act, 1956, will be taken. In reply to the notice, the petitioner stated that he had purchased stone from the market at Jodhpur from where he brought it to Tinwari and despatched. He was not therefore, liable to pay any royalty. The stone was Khanda for masonry and as per item No. 1 (b)(ii) of the Schedule I to the Rajasthan Minor Mineral Concession Rules, 1959 (hereinafter called the R.M.M.C. Rules). the royalty payable at the rate of 0.30p. per tonne was only of Rs. 335 and not of Rs. 1951.26 as demanded by the department. But the Assistant "Engineer (Recovery) issued a writ of demand on 29-5-72 u/s 229 of the Rajasthan Land

Revenue Act 1956, read with Rule 24 of the Land Revenue (Payments, Credits, Refunds and Recovery) Rules, 1958, asking the petitioner to deposit the aforesaid amount within 15 days of the receipt of this writ of demand. The petitioner has, filed the present petition on 15-6-72 praying that the State be restrained from recovering any amount on account of royalty, from the petitioner and that the notices issued in that behalf as aforesaid be also quashed.

3. The facts of the writ petition No. 11 17/1972 are that the petitioner undertook two PWD contracts for the construction of certain portions of Bikaner Lunkaransar and Lunkaransar-Kalu Roads. According to the PWD Bills, the petitioner is alleged to have used Murrar, Jhajra, Kankar, stone and gravel in these works. On Bikaner-Lunkaransar Road, he consumed 14, 38, 052 eft. of mineral upto 17-11-71. The royalty at Rs. 1.22p. per 100 eft. payable thereon was Rs. 17344.23p. On the Lunkaransar Kalu Road, he consumed upto 12-10-71, mineral to the tune of 7, 04-3, 75 cum. and 20.358;92 cum. on which the royalty payable at the rate of 42 p. per cum was Rs. 2;958, 37p. and Rs. 8,850,75p. respectively. The total amount of royalty thus, payable was Rs. 29,053 35p, Notices directing payment of these amounts were issued on 29.11.71 and 1.12.71 requiring payment within 15 days. The petitioner contended that he did not excavate, any material from the Government mines. He purchased the mineral from various private parties after attestation by the concerned Tehsildar. He refused to pay the amount. The Assistant Mining Engineer (Recovery) Jodhpur, then issued a writ of demand on 24-5-72v The petitioner has also filed the present petition on 7-6-72 praying for the quashing of the notices and for restraining the respondents from any recovery.

4. The State Government has taken the stand that under Rule 55, 64 and 65 of the R.M.M.C. Rules as amended on 13-1-72, the State Government has been empowered to recover the value of any mineral excavated or removed or used without obtaining any lease, rent-cum-royalty lease or short term permit, such value being a sum ten times the highest amount of royalty payable as per schedule to the said Rules. Any such value can be recovered as arrears of land revenue under the law in force relating to such recovery.

5. The learned Additional Government Advocate, relying upon Krishan Gopal Joshi v. Municipal Board RLW 1977 1631 further submitted that the petitions have abated in virtue of the Constitution (42nd Amendment) Act as alternative remedy was provided under Rule 60 of the R.M.M.C. Rules by way of a revision to the State Government. They could also file a suit u/s 257 B of the Rajasthan Land Revenue Act. 1956 He also contended that Rule 55 of the R.M.M.C. Rules only provides for the mode of recovery and Rule 64 creates no new liability. Though these were amended on 13-1-72, they operate retrospectively. The petitioners were in any case bound to make payment for the mineral which is the property of the State Government as declared by Section 89 of the Rajasthan Land Revenue Act, 1956. He also pointed out that the amended sub-Section (2) of Section 25 of the Mines and Minerals (Regulations and Development Act),

1957, provides that any rent, royalty, tax, fee or "other sum due" to the Government either under this Act or any rule made thereunder or under the terms and conditions of any prospecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same-manner as if it were an arrear of land revenue, Sub-section (5) of Section 21 of the said Act further provides that whenever any person raises without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or where such mineral has already been disposed of, the price thereof and may also recover from such person rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority. The learned Additional Govt. Advocate contended that though Section 21, sub-Section (5) and Section 25, sub-Section (2) were amended on 13-9-72 but they are retrospective in character and therefore, the State Government is entitled to effect the recoveries in question of the price of the mineral raised or disposed of even before 13-9 72 as in these cases.

6. The learned Additional Government Advocate also added that the petitions should be rejected on the ground of unexplained laches.

7. The learned Counsel for the petitioners challenge the recoveries and stand of the State Government on the following grounds:

(1) There is a serious dispute regarding the facts. The petitioners say, they have not excavated any mineral from the Government lands, while the State Government contends that they have done so. The Government has made no inquiry to ascertain the fact of excavation by the petitioners, the actual quantity excavated, and the royalty, or value payable for such excavations, if any. The fixing of amount being arbitrary and in violation of principles of natural justice, the recovery proceedings are mere nullities and deserved to be quashed. The cases relied upon are Chief Conservator of Forests and Others Vs. Rattan Singh, and Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others, , The Board of High School and Inter-mediate Education, U.P. and Others Vs. Kumari Chitra Srivastava and Others, and Dadabhoy's New Chirimiri Ponri Hill Colliery Co. Private Ltd. Vs. State of Madhya Pradesh and Others, . It was also urged that the procedure u/s 256 of the Land Revenue Act is stringent and therefore the claims as here, which are seriously disputed and which are neither ascertained nor properly ascertained under the statute under which they are raised, cannot be recovered under this procedure. Reliance is placed upon Ganesha Ram Vs. Collector, Jalore and Others, It was also pointed out that the proposed recoveries do not fall into any of the several categories specified in the said section and therefore cannot be recovered as arrears of land revenue.

(2) Under Clause (XVII) of Rule 3 of the R.M.M.C. Rules, "royalty" means the charge payable to the Government in respect of ore or mineral excavated from any Government land leased out under these rules. No royalty therefore, can be charged, it is urged, upon the mineral obtained otherwise than under a lease. It

is no body's case that the petitioners held leases. There is no proof that the mineral in question was even excavated by the petitioners from any quarry but their contention, in one case is that it was purchased from the market at Jodhpur, and in the other is that it was obtained from the private parties. There is no provision for charging any royalty on any such mineral which is despatched by any person from a railway station, or obtained from other sources. In this connection my attention was drawn to a decision of this court delivered on 7-4-69 in Ramlal v. State of Rajasthan in S.B. Civil Writ Petition No. 318/66, and also to Rule 17 Clause (I) of the R.M.M.C. Rules, which provides a condition for payment of royalty by lessees.

(3) The Rules 64 and 55 have come into operation on 13-1-72, while the mineral was despatched some time in the year 1966-69, in one case and consumed in 1971 in the other. Therefore, no price of the mineral can be recovered much less as arrears of land revenue. Rule 64 creates a liability with retrospective effect, which cannot be done by subordinate legislation.

(4) The petitioners are not required to seek any alternative remedy under Article 226 because firstly, the orders of recoveries are nullities and secondly, the petitioners' right under Article 19(1)(f) of the Constitution is violated by these illegal recoveries.

8. I have given my anxious consideration to this matter and it appears to me that these writ petitions must fail for the reasons presently appearing which shall in their turn dispose of the arguments stated above:

(1) These writ petitions were filed in June, 1972. The cause of action in one case arose in September, 1970 and in, the other in November December 1971. I do not consider it appropriate to uphold the objection of the Government and throw out these petitions on the ground of delay. But since the facts are fiercely in dispute; one petitioner saying that he had purchased the mineral from the market, the other saying that he got them from land-holders, while the State maintains that these were won from its lands, such disputed facts cannot conveniently be decided in this jurisdiction, vide Radhakishan and Another Vs. State of Rajasthan and Others,

(2) The writs of demand in question have been issued by the Assistant Engineer (Recovery), Jodhpur who has been authorised to exercise all the powers of the Collector under the Rajasthan Land Revenue Act, 1956, Chapter X and the Rajasthan Land Revenue (Payments, Credits, Refunds and Recovery) Rules, 1958 by a Government notification dated 16-2-1970 published in the Rajasthan Gazette Extra-ordinary part IV(C)(II) at page 495. u/s 75 of the Rajasthan Land Revenue Act, a first appeal from an order of the Collector lies to the Revenue Appellate Authority. Since the petitioners are aggrieved by the writs of demand dated 24-5-72 and 29-5-72 issued by the Assistant Mining Engineer who is Collector for the purpose, their remedy is first by way of such an appeal. Since the money is payable to the State on account of natural products u/s 256(c)(ii)

of the Rajasthan Land Revenue Act, there was one more remedy as held in *Parushottamdas v. The Collector RLW 1967 289*, available to the petitioners under 257 B of the Land Revenue Act by way of a suit after making deposit of the money demanded. Since the recoveries are being initiated under the R.M.M.C. Rules, a revision did certainly lie to the State Government under Rule 60 of the said Rules as well. All these alternative remedies being available, these writ petitions must abate. The contention of the petitioners that their cases are covered by Clause (1) of Article 226 of the Constitution has to be stated only to be rejected. I am aware of no fundamental right of excavating and removing mineral without authority and without payment concessional or otherwise and when a demand for price is made, of refusing to pay and then opposing recovery by lawful coercive process. Nor can the recoveries be condemned as nullities being, as urged, violative of principles of natural justice because these are not quasi-judicial orders but only administrative. But even in administrative matters a duty is no doubt implicit that the State shall act fairly & justly, & not arbitrarily or capriciously, vide *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, . The quantity consumed could not be denied because it was based upon Railway and P.W.D. papers prepared and submitted by the petitioners. The officers did issue notices asking the petitioners to pay the royalty and in future to obtain proper permits. They could have recovered ten times the royalty as value but they did not do so. They only demanded royalty. What more fairness was wanting in the circumstances? The rules of natural justice depend 513 to a great extent on the facts & circumstances of the case, frame work of the relevant law and the constitution of the person or authority administering it. "They cannot be stretched too far. Only too after the people who have done wrong seek to invoke the rules of natural justice so as to avoid the consequences;" see in *Re H.K. (1967) 2 QB 617* and *R v. Home Secretary (1973) 3 WLR 650*.

(3) No one can "excavate" any mineral without permission (on or without any payment) of the State Government and any unpaid and unauthorised excavation creates a liability both civil and criminal. It is only in order to encourage development of mineral resources that the R.M.M.C. Rules extend certain concessions to persons who have obtained a prior lease or a permission for the purpose. The learned Counsel for the petitioners urged that the petitioner may be prosecuted and punished under Rule 47 of the R.M.M.C. Rules or penalised, u/s 89(7) of the Land Revenue Act 1956, but in the absence of any rule to that effect operating at the relevant time, no recovery of price or royalty can be made except by way of a suit. I am unable to uphold this contention. No court can and that too in an extra-ordinary jurisdiction, countenance that a person who has obtained a lease or other permission for excavation can be made to pay the royalty, while a person like the petitioners making an unlawful excavation can do so without any liability for payment of royalty much less its price. To my mind, the very conduct of the petitioners disentitles them to seek any extra-ordinary remedy under Article 226 of the Constitution, as held in *Mangilal Sharma Vs. Appellate Tribunal of State Transport Authority, Rajasthan and Others*,

9. The Mines and Minerals (Regulation and Development) Act, 1957, only provides for the regulation of excavation as the Parliament has declared in accordance with entry 54 of the Union list of the Constitution that it is expedient in the public interest that the Union should take under its control the regulation of mines and development of minerals to the extent provided in the Act. The minerals are the property of the Government of the State. Section 89 of the Rajasthan Land Revenue Act places the matter beyond any dispute. Even the Collector is authorised to impose a penalty upon any unlawful extraction or removal "without prejudice to any other action that may be taken in such a case" Section 256 of the Rajasthan Land Revenue Act provides that the State Government can recover the price of natural products as an arrear of land revenue. Therefore, even where there was no provision in the rules or in the Mines and Minerals (Regulation and Development) Act, 1957, the State Government was entitled to recover in respect of the mineral excavated without any grant, if not the actual price, at least such concessional charge as royalty at rates prescribed under the Rules.

10. The term royalty, no doubt, has been defined in the rules to mean a charge payable in respect of mineral excavated from any Government land leased out under the rules under a lease but then, that meaning shall be limited and shall be applied only where the term royalty is being used with reference to a lease. Since minerals vest in the State Government, it is entitled to recover royalty even in cases to which the R.M.M.C. Rules are not attracted and as long as it is not prohibited under the Mines and Minerals (Regulation and Development) Act. The royalty that the State is proposing to recover means nothing more or less than a charge which every sovereign as owner is entitled to recover for the right or prerogative granted him specially over minerals etc. such grant being implied or made even ex post facto.

11. The State Government appears to have demanded royalty in case of petition No. 1117/72 at the rate of 42p. per cum and 1.22p, per hundred cft. while in petition No. 1126/72, at the rate of 1.75p per tonne. To my mind if the charges are at par with the charges that are shown in the Schedule to the R.M.M.C. Rules, this cannot be considered arbitrary or excessive. However, if there is any mistake in calculation of the amount, then, I have no doubt that if the authorities concerned are approached in the prescribed manner, they shall certainly rectify the mistake in calculation.

(4) The decision of this court in S.B. Civil writ petition No. 313/66 decided on 7.4.99, cannot be made applicable because since then, the law has been amended. The learned Counsel for the petitioners vehemently contended that Rule 64 of the R.M.M.C Rules was added and Rule 55 was amended only on 13-1-72 and can not apply to the cases of the petitioner because no rule can be made with retrospective operation. These rules as stated above provide that in cases of unauthorised excavation of mineral, its value can be recovered as arrears of land revenue; such value being 10 times the maximum amount of

royalty payable therefore under the said rules.

12. Now, "retrospective operation" is an inaccurate term causing confusion. The purest cases of retrospective laws are those in which the date of commencement is earlier than enactment, or which validate some invalid law. Otherwise, every statute effects rights which would have been in existence but for the statute & a statute does not become a retrospective one because a part of the requisite for its action is drawn from a time antecedent to its passing. All that it means is that save in cases where the law creates a new offence or increases a penalty, the legislature is not prevented from enacting an ex post facto law but if any such law takes away or impairs any vested right acquired under an existing law, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, it must so provide in express terms or such by a necessary implication from the language employed. That is why where an act is in its nature procedural declaratory or explanatory, or where a statute, it does, unless otherwise provided operate retrospectively obviously because it does not affect vested rights. That is further why a law enacted for the benefit of the community and also of individuals, may relate to a time antecedent to its commencement.

13. The rule is not much different in case of subordinate legislation. In *Income Tax Officer, Alleppey Vs. M.C. Poonnoose and Others*, , it was held that it will depend upon the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. It is only where no such language is to be found, that the person or authority exercising subordinate legislative functions cannot make a rule or regulation or by law which can operate with retrospective effect. The Rules 55 and 64 create no new liability because whenever a man excavated or carried any mineral, he was supposed to pay for the same.

14. The learned Additional Government Advocate rightly canvassed that the language of sub-Section (5) of Section 21 of the aforesaid Act clearly employs a language which shows that the enactment is retrospective in character. It provides inter alia that whenever any person without any lawful authority has already disposed of any mineral which has been raised without any lawful authority, the State Government can recover the price thereof besides royalty. Similarly, Section 25, sub-Section (2) also empowers the State Government to recover any sum due to the Government under the Act or any rule made thereunder as an arrear of land revenue. I agree that this is a provision purely procedural made for the purpose of recovery of the price or royalty for the mineral taken out otherwise than in virtue of any grant. In *Gwalior Red Chalk Corporation, Partnership firm Lashkar, Gwalior Vs. Additional Tahsildar, Pargana Gird, Gwalior, Madhya Pradesh and Another*, , it was held that the word "due" occurring in the said Section 25(2) merely means payable without any reference to any time. It enables recovery of any sum becoming payable prior to or after

the commencement of the enactment. These provisions are retrospective in character and any rule such 55 and 64 of the R.M.M.C. Rules which though made before 13-9-72 and even if suffered from any defect of vires, stood fully validated by the protective cover retrospectively spread over them by the aforesaid amendments in the parent Act; as per remarks of Bachawat and Hidayatallah, JJ. in the Bihar Mines Ltd. v. Union of India(15).

16. The aforesaid decision of this court in S.B. Civil Writ Petition No. 318/66 cannot retrieve the situation for yet one more reason. Mr. Parekh who also appeared in that case was there frank enough to admit which he now declines to do, that his client was under an obligation to pay the account of royalty on the mineral that the petitioner had recovered after the expiry of the lease, at the rates specified in the Rules and undertook not to object to the payment of such amount of royalty. In the cases before me, what the respondents are recovering is only royalty though they could recover the value of the material. How can then this decision be pressed into service? I do not know why the respondents failed to demand the value causing loss to the public revenues and further to prosecute the petitioners. I should however not be understood to agree to hold that in the absence of an agreement, neither royalty nor rent nor dead rent nor value could be realised under the Act and the R.M.M.C. Rules.

17. Before closing the discussion, I cannot resist the temptation to quote Krishna Aiyer J. who speaking of precedents in Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others, said, "judges are not prophets and only interpret laws in the light of the contemporary ethos. Legislative exercises directed towards distributive justice, as in the present case, cannot be considered in the light of a dated value system, though sanctified by by-gone decisions of courts."

18. For the foregoing reasons the writ petitions are dismissed. There shall however be no order as to costs.