(1979) 07 RAJ CK 0030

In the Rajasthan High Court

Case No : Civil Writ Petition No. 669 of 1972

Rangi Lal APPELLANT

Vs

State of Rajasthan and Others RESPONDENT

Date of Decision : 07-07-1979

Acts Referred:
Rajasthan Minor Mineral Concession Rules, 1959 — Rule 17, 17(21), 17(22)

Citation : AIR 1980 Raj 61

Hon'ble Judges : P.D. Kudal, J

Bench : Single Bench

Advocate : S.H. Mehta, for the Appellant; S.B. Mathur, Dy. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.D. Kudal, J.—This writ petition is directed against the order of the State Government dated Dec. 13, 1971, whereby a penalty was imposed on the petitioner for not depositing the dead rent within time. The petitioner carries on the business of quarrying mines. Lease was granted for a period of 3 years with effect from Nov. 26, 1959 to November 25, 1962 for carrying on the business of quarrying mines in villages Dundapura, Gadhi Ka Gaon, Harnagar, Bichpuri, Saseri and Karauli Kasba. This lease was renewed for another term of 3 years with annual dead rent of Rs. 65,300/-. The lease was again renewed for another 3 years on annual dead rent of Rs. 97,800/-. For the third time the lease was renewed for the period of 5 years with effect from November 26, 1968 to Nov. 25, 1973 on annual dead rent of Rs. 1,30,400/-. A security deposit amounting to Rupees 72,600/- was deposited by the petitioner at the time of third renewal.

2. A formal deed of agreement was executed between the petitioner and the State of Rajasthan in respect of the third renewal in accordance with the standard form of mining lease for minor mineral. It appears that the petitioner was called upon to deposit the dead rent; and according to the State Government, as the dead rent was not deposited within the stipulated time

penalty in terms of the order dated Dec. 13, 1971, was imposed.

3. A demand for Rs. 31,803.90 was created vide Ex. P/2 dated Oct. 18, 1970. Vide Ex. P/1 dated Nov. 2, 1970, a demand for Rs. 72,077.01 was created. Vide Ex. P/3 dated Jan. 6, 1971, a demand of Rs. 74,152.71 was created.

4. A formal deed of agreement was executed between the petitioner and the State in respect of the third renewal in accordance with the standard form of mining lease for minor minerals. The contention of the petitioner is, that in accordance with Clause 4 (21) and (22) of the agreement read with Rule 17 (21) and (22) of the Rajasthan Minor Mineral Concession Rules, 1959, it was obligatory on the State Government to serve a notice on the petitioner to pay the dues within 30 days from the date of receipt of the notice and to forfeit the security amount if the dead rent or royalty is not paid within 15 days next after the date fixed in the notice. This agreement between the petitioner and the State Government was executed on July, 18, 1969. Rule 17 (21) was amended on August 27, 1970. According to this amendment, the period of 30 days in Rule 17 (21) was reduced to 15 days. Unamended Rule 17 (21) and (22) reads as under:--

"17 (21). The Government shall have the right to determine the lease after serving a notice on the lessee to pay the dues within 30 days from the date of receipt of notice (and to forfeit the security) if the dead rent or royalty or surface rent reserved or made payable by the lessee is not paid within 16 days next after the date fixed in the lease for payment of the same, Government may also at any time after serving aforesaid notice enter upon the said premises and distrain all or any of the minerals or moveable property therein and may carry away, detain or order the sale of the property so distrained, or so much of it as will suffice for the satisfaction of the rent or royalty due and all costs and expenses occasioned by the non-payment thereof,

(22) In case of any breach on the part of the lessee of any covenant or condition contained in the lease (other than a condition regarding rent or royalty), the Government may determine the lease and take possession of the said premises (and forfeit the service money) or in the alternative, may impose payment of a penalty not exceeding twice the amount of the annual dead rent from the lessee. Such action shall not be taken unless the lessee has failed to remedy the breach after 30 days'' notice;"

5. The amended Rule 17 (21) and (22) reads as under:--

"17 (21) The Government shall have the right to determine the lease after serving a notice on the lessee to pay the dues within 15 days from the date of notice, and to forfeit the security, if the dead rent or royalty or surface rent reserved or made payable by the lessee is not paid within 15 days next after the date fixed in the lease for payment of the same.

Government may also at any time after serving the aforesaid notice en-tier upon the said premises and distrain all or any of the minerals or movable property therein and may carry away, detain or order the sale of the property so distrained, or so much of its as will suffice for the satisfaction of the rent or royalty due and all costs and expenses occasioned by the non-payment thereof.

(22) In case of any breach on the part of the lessee of any covenant of condition contained in the lease (other than a condition regarding rent or royalty), the Government may determine the lease and take possession of the said premises "and forfeit the security money or in the alternative, may impose payment of a penalty not exceeding twice the amount of the annual dead rent from the lessee. Such action shall not be taken unless the lessee has failed to remedy the breach after 15 days'' notice."

6. The contention of the petitioner is that an agreement was executed between him and the State Government under Article 229 of the Constitution of India. This agreement was concluded much before the amendment of the Rule 17 (21) and (22) by the notification dated August 27, 1970. It was further contended that the execution of an agreement is a bilateral act and once the agreement was concluded, then both the parties were bound by the terms and conditions of the agreement. It was further contended that the State Government by an unilateral act did not have the authority to amend the terms and conditions of a concluded contract by a subsequent notification. It was contended that by the notification dated August 27, 1970, the terms and conditions of the already executed and concluded agreement could not have been amended and, under these circumstances, the notice of demand Exs. P/1, P/2 and P/3 were invalid as only 15 days'' time was given instead of 30 days'' time. It was also contended that a notice giving lesser period of time than the stipulated period is invalid and ab initio void.

7. On behalf of the State, it was contended that under Rule 17, it has been contemplated that the conditions mentioned in Rule 17 shall be included in every mining lease, and if they are not so included, they shall be deemed to have been included therein. By virtue of this clause, it was contended that even if certain terms and conditions as contemplated under Rule 17 were not included in the agreement then too, they will be deemed to have been included. It was, therefore, contended that, though, the amendment in the rules became effective from August 27, 1970, yet, by virtue of this condition in Rule 17, the amended Sub-rules (21) and (22) became operative even with regard to the completed and concluded agreements. On behalf of the State, reliance was placed on Deep Chand v. State of Rajasthan (1973) 1 SLR 994.

8. Respective contentions of the learned counsel for the parties have been considered and the record of the case carefully perused.

9. Vide Ex. P/1 and Ex. P/3, only 15 days'' time was given to the petitioner to deposit the dead rent. The petitioner vide his letter dated January 14, 1971, informed the mining authorities that a sum of Rs. 72,700/-have already been

deposited, the date-wise details of which have been given in the representation. The real dispute between the parties is with regard to the penalty clause. The dead rent having been fully deposited, no dispute remains on that score,

10. The execution of an agreement is a bilateral act and, any contract or agreement which is executed with the State is governed by Article 229 of the Constitution of India. According to Clause 4 (21) and (22) read with Rule 17 (21) and (22), the period of demand which should have been contained in the notice was 30 days. This agreement was concluded on July 18, 1959. By a subsequent amendment on August 27, 1970, the period of 30 days, as mentioned in Rule 17 (21) was reduced to 15 days. The question for determination is, whether by amendment in the Rule 17 (21), the period which was contemplated under the terms and conditions of concluded agreement would, be changed or altered. As the agreement is a bilateral act, the period contemplated in Clause 4 (21) and (22) of the said agreement could not be reduced to 15 days by a subsequent amendment of the Rule 17 (21). The contention of the learned Government Advocate that the terms and conditions contained in Rule 17 shall be deemed to be included in every agreement, even if not incorporated, has no force. A bare reading of Rule 17 would show that this rule applies to intended agreement, and not to the concluded agreements. The imposition of penalty by the State Government on the petitioner in violation of Clause 4 (21) and (22) of the agreement and Rule 17 (21) and (22) (unamended), therefore, cannot be justified on any score whatsoever.

11. For the reasons stated above, the writ petition is allowed, and the order of the State Government imposing penalty on the petitioner is hereby quashed. The petitioner shall be entitled to a cost of Rs. 250/- from the respondents,

