
(1957) 04 MP CK 0008
In the Madhya Pradesh High Court
Case No : C.F.A. No. 181 of 1952

State	Vs	APPELLANT
Khan Saheb M. Hassonjee and Sons		RESPONDENT

Date of Decision : 29-04-1957

Acts Referred:

Mines and Minerals (Regulation and Development) Act, 1948 — Section 4, 5

Citation : (1957) JLJ 819

Hon'ble Judges : V.R. Sen, J; T.C. Shrivastava, J

Bench : Division Bench

Advocate : H.L. Khaskalam for the State, for the Appellant; R.S. Dabir, for the Respondent

Final Decision : Dismissed

Judgement

1. This is a first appeal filed by the defendant against the decision of the A.D.J. Chhindwara in C.S. No. 3-A of 1951 decided on 26th September 1952, allowing the claim of the respondent for a sum of Rs. 40,865 and interest.

2. One Haji Zahiruddin of Bhopal, held a mining lease d/ 29-5-23 of 189.76 acres of land in Chhindwara for extracting coal. This lease was transferred on 4th September 1940 to the respondent. The respondent was anxious to acquire some land from two adjacent collieries. After protracted negotiations, the State Government agreed in 1947 to grant their consent to the transfer of the adjacent lands to respondent subject to the condition that the respondents took a consolidated lease for the whole area at an enhanced rate of royalty. The respondent agreed and executed an agreement dated 11th January 1949 (Ex. P-3) by which the royalty rate was raised from Rs. 5 per ton to Rs. 10 per ton. The respondent started working the mines, though no formal mining lease was executed as contemplated. The State Government claimed Rs. 40,865 being the difference between the old and new rates of royalty on the coal removed. The respondent paid the sum on different dates in February and March, 1950. He brought this suit for refund of the extra amount so paid with interest.

3. The case of the plaintiff is that he was liable to pay royalty at the rate of Rs. 5 per ton only as the agreement to pay enhanced rate of royalty was void in as much as it contravened Rule 50 of the Mining Rules then in force, and also because it was contrary to the provisions in Sec. 4 and Rules made under Sec, 5 of the Mines and Minerals (Regulation and Development) Act, 1948. It was also contended that the agreement was executed on a representation from the State Government, that the Mining Rules were being amended to raise the rates of royalty. Ultimately, the draft amending rules which had been published for this purpose were not brought in force. The agreement was hence pleaded to be void as having been obtained by a misrepresentation. These contentions have been accepted by the trial court and the suit has been decreed. Hence this appeal.

4. We will first consider the position with reference to the Mining Rules which were framed in 1913. Prior to the coming into force of the Government of India Act 1935 the Provinces did not have any separate entity. All the lands, buildings and other property belonging to the Government of India vested in His Majesty and the Secretary of State for India acted for His Majesty. The constitutional position changed in 1935 and the Provinces were for the first time given an independent status in certain matters and the Government properties became vested in them. It was provided in Sec. 172 of the Government of Indian Act that all lands and buildings which were till then vested in "His Majesty for the purposes of the Government of India" were to vest either in "His Majesty for the purposes of the Government of Province" or in "His Majesty for the purposes of the Government of the Federation", according as the purposes for which the property was held were under that Act the purposes of the Government of the Province or of the Federation. The general effect of the section is that lands in the Provinces vested in His Majesty for the purposes of the Province except in a few cases.

5. The Mining Rules of 1913 have the following preamble: --

In supersession of the Rules published with Resolution No. 18-17-2 dated the 20th May, 1899, the Governor General in Council is pleased to prescribe the following Rules for regulating the grant by the Local Government of licenses to prospect for minerals and the grant of mining leases in British India.....

It is clear from these Rules that they have not been made under the authority or any statute, but are only in the nature of executive instructions. The Governor General on behalf of the Secretary of State framed these Rules for the management of lands by Local Governments, The Government of India was at that time holding all lands and buildings; the Local Governments were acting only as their agents for managing these properties. The Government of India could delegate some of its functions to the Local Governments subject to any conditions they thought fit, just as any other owner could authorise his agent to act on his behalf. It was by virtue of these general powers that the Mining Rules appear to have been framed.

6. After the passing of the Government of India Act 1919, the Government envisaged was unitary and all properties continued to be vested as before. The Mining Rules thus continued in force as delegations to Local Governments. As stated earlier, it was in 1935, that the conception of Federal Government was introduced and the properties were for the first time vested in "His Majesty for the purposes of the Government of the Province". Thereafter, the authority of the Government of India was taken away in respect of these properties.

7. The change in the constitutional position in 1935 affected vitally the Mining Rules of 1913, As already stated, these Rules were in the nature of instructions given by an owner of property to his agent for managing such property. When in 1935, the property passed to the Provinces and vested in them, they ceased to discharge any agency functions with respect to those properties. The necessity of the instructions ceased in the new context and they became ineffective as the purpose for which they were issued no longer existed.

8. It is true that the Mining Rules have continued to be the guiding policy of the Madhya Pradesh Government in matters of mining leases even after 1935, The character of the rules underwent a change, After 1935, they were merely executive instructions of the M.P. Government issued to their officials for the sake of uniformity In the management of lands. The fact that the Rules were observed or that the public was asked to take objections when it was intended to modify them would not affect their character as mere executive instructions. The officers administrating the department of mining, were bound to observe them and could be taken to task for failure to do so, but that would be only because they were, as officers, expected to carry out the instructions of Government. The Government, itself would be at liberty to deviate from the Rules in any particular case, if they so desired and could not be compelled to stick to the Rules. In other words, action taken by Government contrary to the Rules would not be declared invalid in a court of law.

9. Mere executive Instructions which are not issued under the authority of any law are not justiciable. It is only when the instructions are issued under the authority of some statute and amount to delegated legislation that the question of compelling the Government to act according to them arises. On this point we may quote some observations in "Judicial Control of Public authorities in England and Italy" by Galeott:--

What is the position of English law on this point can be easily inferred from *Blackpool Corporation vs. Locker* 1948 (1) K.B. 349 where Circulars addressed to certain local authorities, including Blackpool Corporation provided a ground of challenge of a requisition order by the Corporation, on the assumption that those circulars were considered a kind of delegated legislation thus limiting the power of the public authority. Theoretically, therefore, the difference between the Italian system is clear cut, The Italian Judicial Control is exercised upon a breach of merely executive circulars; the English one needs to affirm the legislative character of these circulars, whilst, it is only a mere executive direction

containing only advice and administrative Instruction, it cannot be invoked to control a public authority's activity. (P. 156).

The case referred to in the above extract arose in the context of certain powers of requisitioning which were delegated to the Corporation by regulations framed under the authority of a State. The principle laid down in that case is that unless it is possible to clothe the instructions with statutory authority, they will not be amenable to judicial control. We have stated that the so called Mining Rules were not framed under the authority of any statute and retained the character of mere executive instructions by Government as owner of certain properties to their officers in relation to the management of those properties. It follows that any action by the Government contrary to the Rules would not be invalid or illegal and would not be set aside by a court of law.

10. Even if the Rules are treated as having a binding character, there is authority in the rules themselves for the Governor to grant a lease otherwise than in accordance with the Rules. Rule I of the Mining Rules runs as follows:--

No licence to prospect for minerals or lease of mines and minerals can be granted by any local Government otherwise than in accordance with these rules except with the previous sanction of the Secretary of State for India in Council or with that of the Governor General in Council under any general or special authority which he may have received in this behalf from the Secretary of State in Council...

This Rule will have to be read with suitable modification which becomes necessary on account of the constitutional changes in 1935. The Secretary of State or the Governor General ceased to exercise any authority in respect of lands in the context of mining and had therefore no power to grant any sanction under this rule. In the changed context, appropriate authorities have to be substituted in the rule to give it a proper meaning. The reference to Secretary of State or the Governor General should be construed a reference to the Governor to whom the authority has passed. Rule 1 would thus mean that all mining leases will have to be granted in accordance with these rules, but with the previous sanction of the Governor, there could be a departure from them in any particular case.

11. We may refer to the correspondence between the parties, regarding the demand for higher rates of royalty. On 4th June 1947 (Ex. P-8), the Government had informed the plaintiffs that they agreed to grant him a lease "on condition that he will take a consolidated mining lease over the whole area i.e. 51. 45 + 8 = 59. 45 acres on the new rates viz. royalty at 10 P.C. of the pit's mouth value subject to a minimum at -/8/ per ton." On 25th June 1947, the plaintiff wrote (Ex. D10) that he fully agreed to the "revised rates of royalty" provided it was charged on 8 acres only. Ultimately on 27-9-47, the plaintiff replied (Ex. D 8) agreeing to "the revised rates of dead rent and royalty". Finally on 6-1-48, the plaintiff accepted (Ex. P-12) the terms of Government and asked for permission

to start working pending execution of lease. The letter Ex. P-8 dated 4-6-47 in which the new rates were proposed is "By order of the Governor". From this correspondence, it is clear that the Government had deliberately raised the rates of royalty and plaintiff accepted them knowing the full implication. The draft amendments d/ 12-7-47 (Ex, D-13) issued "By order of the Governor" continued the same policy of raising royalty. It can be presumed from this correspondence between parties that the Governor had sanctioned the higher rates of royalty in this case. It will thus appear that the rates charged are in consonance with the Mining Rules in view of the specific power given to the Governor in Rule 1 to depart from the Rules whenever he thought it fit to do so.

12. In para 27 of the Judgment, the trial court has observed that the lease was void because previous sanction of the Governor General was not obtained. This is not correct. The sanction of Governor General could not be obtained as in respect of lands vesting in His Majesty for the purposes of the Provinces, the Governor General had ceased to exercise any functions. Rule 1 of the Mining Rules which contemplates such sanction should be read with necessary modifications and the sanction of the Governor would be sufficient.

13. We will now consider the effect of Sec. 4 of the Mines and Minerals (Regulation Development) Act 1948 (Act XIII of 1948) and the Rules framed under Sec. 5 thereof, This Act was enacted by the Parliament by virtue of the powers under entry No. 54 of List 1 of the Seventh Schedule. In spite of the fact that the lands vest in the States, that entry gives power to Parliament to legislate for "Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest" The restrictions imposed by any such law would be binding on the State Governments.

14. The Act came into force on 8-9-48. Rules under Sec. 5 of the Act known as Mineral Concession Rules, 1949 came into force on 25-10-49. The position which existed during the period 8-9-48 to 25-10-49 will have to be considered separately.

15. Sec. 4 of the Act runs thus:--

No mining lease shall be granted after the commencement of this Act except in accordance with the rules made under this Act.

This provision cannot be interpreted to mean that no mining lease could be granted at all until the Rules were framed. The positive requirement of the section is that leases granted after the Act must conform to the Rules thereunder. If no rules were in existence, the terms of a lease could not be said to be contrary to them. It is only after the rules have been brought into force that the question of leases "being in accordance with them" can arise. The position prior to the coming into force of the relevant rules would be that the powers of the State Governments to grant leases and to enter into agreements about exploitation of minerals would continue unfettered. Further, when the rules come

into force they would apply prospectively only to leases granted after that date and would not have retrospective effect to invalidate leases or agreements which were entered previous to their promulgation. We are of the view that any agreement entered into by the parties prior to 25-10-49 will be binding on the parties until the Mineral Concession Rules came into force.

16. The position would, of course, change after 25-10-49. After that date no mining lease can be granted contrary to the provisions in the rules. The rate of royalty under the M.C. Rules have been fixed under item 1 Schedule 1 as "Five per cent of F.O.R. Statutory price subject to a minimum of 0-8-0 per ton in the case of coal". No mining lease in respect of coal can be granted after this date providing for a rate in excess of this rate.

17. We may mention in passing that no mining lease has yet been granted in the instant case; only an agreement has been entered into. It is not necessary for us to decide in this case, what the effect of the M.C. Rules will be on the lease which has to be executed between the parties. It is sufficient to observe, that the period during which coal has been raised by the respondent is from 27-10-47 to 30-0-49 and during this period, the agreement entered into by the parties about the rates of royalty was not affected by the Mineral Concession Rules.

18. It is contended on behalf of the respondent that the agreement was vitiated by the misrepresentation on the part of the appellant that the Government had a new policy in mining under contemplation, according to which they wanted to raise the rates of royalty and to have consolidated mining leases. On 12-7-47, draft amendments to the Mining Rules were published for inviting objection from the public (Ex, D-13). These draft amendments were never finalised. It is argued on behalf of the respondent that the agreement was induced by the representation that there was going to be a change in mining rates and as the rates were not subsequently changed, the agreement should be treated as void.

19. It is true that in the correspondence, reference has been made to the contemplated new policy. At that time, the Government seriously intended to change the rates of royalty as is evident from the publication of draft rules (Ex. D-13). The idea was subsequently given up. We do not think that this would amount to a misrepresentation about any material term of the contract. The terms of the contract were clear to both the parties and it was entered into voluntarily with full realization about their implications. The reasons which impelled the Government to demand higher rates for royalty may have become non-existent at a subsequent date, but that would not affect any of the terms of the contract.

20. The respondent was in a hurry to enter into an agreement and was anxious to start exploiting operations at once on a new area to take advantage of high prices. He sought permission to raise coal in anticipation of formal execution of a mining lease and did not mind the raised rates of royalty about which there was no mistake. He got the necessary permission and has taken full advantage of it.

Our view is, that the contract is not vitiated even if the Government later gave up the idea of their intention of effecting a change in policy. The agreement would be binding on the respondent for the period prior to the coming into force of the Mineral Concession Rules, 1949.

21. In the light of the findings above, the decree passed by the trial court is set aside, instead, a decree dismissing the suit will be drawn up. The respondent will pay costs of the appellant and bear his own throughout.