(1989) 12 KAR CK 0027

In the Karnataka High Court

Case No : W.Ps. No''s. 14241 to 14247 of 1989

Subash Rukmayya Guttedar APPELLANT

Vs

State of Karnataka RESPONDENT

Date of Decision : 14-12-1989

Acts Referred:

Karnataka Minor Minerals Concession Rules, 1969 — Rule 19
Mines and Mineral (Development and Regulation) Act, 1957 — Section 15

Citation : (1990) ILR (Kar) 1823

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : H.N. Narayan, Raja Venkatappa Naik and Somanath Reddy, for the Appellant; T.R. Subbanna, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.A. Swami, J.—As common questions of law and fact arise in these petitions, the same are heard together. The respondents have also filed the statement of objections.

2. The only question that arises for consideration in these petitions is as to whether the State Government is entitled to demand and recover royalty in respect of a minor mineral permitted by the State Government to be removed by the petitioners for using the same in execution of the work entrusted to them by the State Government under the contract entered into by their with the State Government.

3. Royalty is demanded from the petitioners at the rates specified in the schedule to the Karnataka Minor Mineral Concession Rules, 1969 as amended by the Karnataka Minor Mineral Concession (Amendment) Rules, 1986 (hereinafter referred to as the ''Rules''). These Rules are made in exercise of the powers conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the ''Act'').

4. The facts necessary for the purpose of deciding the contentions raised by the petitioners are no more in dispute. The petitioners are contractors. They have undertaken to execute the work of the State Government coming under the Public Works Department and have entered into contracts as per Schedule of Contract Forms. For the purpose of execution of that work, they are required, and they are permitted by the State Government, to remove the minor mineral from the area belonging to the State Government. According to the case of the State Government, as per Clause 35 of the Schedule of Contract Form:

i) All quarry fees, royalties, octroi dues and ground rent for stocking materials, if any, should be paid by the contractor, who will however, be entitled to a refund of such of the charge as are permissible under the Rules on obtaining a certificate from the Executive Engineer or other Competent Authority that the materials were required for use on Government work.

ii) All quarry fees, royalties, octroi duties and ground rent for stocking materials, if any, should be paid by the contractor, no ground rent is leviable Government land acquired for this project made available to the contractor for stocking materials and erection of temporary sheds."

5. The contention of the respondents is that Rule 19 of the Rules read with the Schedule to the Rules enables the State Government to levy royalty on the minor minerals quarried from the leased area at the rates specified in the schedule. It is contended that Clause 35 of the contract read with Rule 19 of the Rules, the area in which the petitioners are permitted to quarry minor minerals becomes the leased area, therefore, Rule 19 of the Rules is attracted. It is further submitted by Sri Subbanna, learned Government Advocate that the expression ''lease'' though not defined in the Rules, it means a contract by which one owning such property grants to another the right to possess or use and enjoy it for a specified period of time in exchange for periodic payment of a stipulated price referred to as rent (See: Black''s Law Dictionary, 5th Edition, Page 800).

6. On the contrary, It is contended on behalf of the petitioner that they are not the lessees of the minor minerals. No lease has been granted as per the provisions contained in the Rules; that merely because they are permitted by the State Government to remove the minor minerals from the area specified by them for using the minor minerals for the Government Work, they do not become lessees so as to attract the provisions of Rule 19 of the Rules and the schedule thereto as long as lease is not granted as per the provisions contained in the Rules.

7. In the light of these contentions, the point that arises for consideration is as to whether the petitioners can be considered to be the lessees of the minor minerals so as to attract the provisions of Rule 19 of the Rules.

8. If it would have been a matter not covered by the statute, probably the contention of the learned Government Advocate would have gained ground. The subject as to leasing of a minor mineral is covered by the statute. Therefore, the

State Government has to lease the area comprising a minor mineral only in accordance with the provisions contained in the Act and the Rules.

9. Chapter II of the Rules deal with the grant of quarrying lease in respect of the land in which minor minerals belong to Government. Rule 19 of the Rules is a charging rule. It specifically provides that "Royalty shall be leviable on minor minerals quarried from the lease area at the rates specified in the Schedule." The rates of royalty are revisable from time to time. For our purpose, it is not necessary to refer to the same. Thus from Rule 19 it is clear that Royalty can be levied and collected by the State Government only on minor minerals quarried from the lease area. The Rules define the expression ''quarry'' as meaning any area declared as such by the Controlling Officer and set apart for quarrying any minor mineral. The expression ''quarrying lease'' is also defined as meaning a lease granted to quarry a minor mineral. Rule 3 of the Rules lays down certain restrictions on the grant of quarrying lease. Rule 4 provides that every application for a quarrying lease in respect of any land in which the mineral belongs to Government shall be in Form-A and shall be made to the Competent Officer and it also further provides the particulars which the application should contain and the documents to be produced along with the application. Rule 5 provides for security deposit. As per the said Rule, every application for a quarrying lease shall be accompanied by an earnest money deposit of Rs. 500/- which shall be held as security for the due fulfilment of the provisions of the Rules and of the Conditions of the lease and which shall be refunded on the expiry of the period of the lease subject to such deductions as may be made in accordance with the Rules. As per Rule 6, every application for a quarrying lease shall be disposed of within three months from the date of its receipt and if it is not disposed of within that period, the application shall be deemed to have been refused. Rule 7 provides for priority and the manner in which priority has to be determined. Rule 8 directs that a register of applications for quarrying tease shall be maintained by the Competent Officer in Form-C. Rule 9 provides for grant of quarrying lease. It provides that on receipt of an application under Rule 4, the Competent Officer, on making such enquiries as he deems fit, may sanction the grant of quarrying lease to the applicant or refuse to sanction it. It also provides that after the quarrying lease is sanctioned, a formal lease shall be executed within three months of the order sanctioning the lease or within such further period as the Competent Officer may allow in that behalf and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. Rule 3(3) further provides that the Competent Officer shall forward to the Controlling Officer one copy of the quarrying lease as soon as the lease is executed. The lease has to be executed In the prescribed form. A register of quarrying lease in Form-D has to be maintained by the Competent Officer as per Rule 12 of the Rules. The period of lease shall have to be for a period not exceeding 10 years and it may be renewed for one or more periods, the period of each renewal not exceeding the duration of the original lease. It is also provided under Rule 11 that when the quarrying lease is granted

by the Competent Officer, arrangements shall be made at the expense of the lessee for the survey and demarcation of the area granted under the quarrying lease.

10. Thus it is clear that under the Rules, no quarrying lease can be granted by mere permitting a person or a contractor to remove a minor mineral from the area belonging to the State Government. The Rules prescribe the form of the application, the procedure to be followed for making an application and for processing and consideration. Norms are also laid down for sanctioning the quarrying lease. That being so, the contention of the learned Government Advocate that by providing a clause in the work contract permitting the contractor to quarry a minor mineral from the land belonging to the Government, quarrying lease is created so as to attract the provisions of Rule 19 of the Rules cannot be accepted. If such a contention is accepted, the Rules have to be completely given a go by. Further those who want to seek quarry lease for quarrying a minor mineral will be deprived of the right to seek such a quarrying lease. In addition to this, when the Statute and the Rules framed thereunder prescribe a particular mode for sanctioning the quarrying lease for quarrying a minor mineral, that mode alone has to be followed and not any other mode. Therefore, the contention of the learned Government Advocate that the permission granted to the petitioners under Clause 35 of the work contract amounts to sanctioning a quarrying lease to quarry the minor mineral cannot be accepted. Thus it is not possible to hold that in this case, the petitioners have been sanctioned the quarrying lease to quarry a minor mineral from the area from which they are permitted to remove a minor mineral for using It in execution of the work undertaken by them under the schedule of contract form. Consequently it follows, that Rule 19 of the Rules is not attracted. Rule 19 of the Rules is attracted only when there is a quarry lease granted for quarrying a minor mineral, from the area leased under the quarrying lease. In the absence of any such quarrying lease, a person who removes a minor mineral with the permission of the State Government will be liable to pay the value of the minor mineral but he is not liable to pay the royalty under Rule 19 of the Rules. However, it is open to the State Government to refuse such permission for removing a minor mineral.

11. It is next contended that if the contractors remove the minor mineral from the lease area, the State Government is entitled to levy royalty. If the petitioners remove the minor mineral from the area leased to them, they are undoubtedly liable to pay the royalty as contemplated under Rule 19 of the Rules read with the schedule. However, if they remove minor mineral from the area leased to another person, that person to whom the minor mineral area is leased, is liable to pay and not the person who removes the minor mineral on behalf of the lessee or with the permission of the lessee from that area. Accordingly, it is held that as the petitioners are not the lessees of the area from which they have removed the minor mineral, they are not liable to pay the royalty as prescribed under the Rules.

12. For the reasons stated above, the Writ Petitions are allowed. The respondents are directed to refrain from demanding payment of royalty under Rule 19 of the Karnataka Minor Mineral Concession Rules 1969, as amended by 1986 Amendment from the petitioners as long as the petitioners are not lessees of the Government Sand from which they are permitted to remove the minor mineral.

13. The question as to whether the petitioners are liable to pay the value of the minor mineral removed by them from the Government land under any other law because they are not permitted to remove the minor mineral by way of gratis and the mode of determination of the value and the mode of recovery of the same under any other law are left open to be considered in appropriate proceedings and this order shall not be construed as affecting such right of the State Government.