(2007) 05 AHC CK 0328

In the Allahabad High Court

Suresh Dwivedi and Subhash Yadav — APPELLANT

Vs

The District Magistrate and The Mines Officer — RESPONDENT

Date of Decision : 21-05-2007

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 15, 21, 4

Citation : (2008) 5 AWC 4547 : (2007) 103 RD 160

Hon'ble Judges : Shishir Kumar, J;R.P. Misra, J

Bench : Division Bench

Final Decision : Allowed

Judgement

1. By means of the present writ petition the petitioners have approached this Court for quashing the impugned notices dated 6.4.2002 arid 22.2.2002 (Annexures 1 and 2 to the writ petition).

2. The petitioners who are traders of sand morrum and gitti having their business premises on different plots in village Sitalpur and Kalauli in District Hamirpur. The petitioners purchased the minerals from open market and also from various lease/ permit holders from storing and transporting for sale to various customers to take the aforesaid minerals for private consumption/use.

3. Notices dated 6.4.2002 and 22.2.2002 were received from the mines officer by which the petitioners were directed to clarify the position regarding the genuineness of the stock of morrum. According to the aforesaid notices u/s 4(1-A) of the Act, no person can stock or transport minerals without permission, otherwise action be taken u/s 21 of the Act, Section 4 of the Act under the heading "Prospecting or mining operations to be under license or lease" has been amended by the Mines and Minerals (Regulation and Development) Amendment Act, 1999 and a new Section 4(1-A) is being quoted below:

4(1-A) - No person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the rules made thereunder.

4. The aforesaid section is an enabling provision and it enables the Central Government to make rules in exercise of powers u/s 13 and the State Government has been conferred power u/s 15 of the Act. It is n dispute that till date no rules have been framed under the Act or the 1963 Rules either by the Central Government, in exercise of powers u/s 13 or 13-A of the Act, or by the State Government in exercise of powers u/s 15 of the Act, which prohibits the storing and selling of minerals by wholesale and retail dealers, who are not lease/ permit holders and who are carrying on their business outside the mining areas. There is no provision in the Act nor under Rules which prohibits the storing of minor minerals outside any mining area for being sold by retail or wholesale by any son who is not a lease or permit holder. The intention of the legislature while amending Section 4 and inserting Section 4(1-A) was to safeguard its royalty, which was being evaded by the lease and permit holders by storing minerals within the mining area and removing them after expiry of mining se or permit, without payment of royalty. If the legislature was to apply ended section to all the minerals then the entire construction work and repair work even by the private persons will come to a standstill because even they cannot transport or store sand even for the construction purposes of their uses, since they will be liable for prosecution under the amended Section 21(1) of the Act. Section 21(1) is being reproduced below:

21(1) Whoever contravenes the provisions of Sub-section (1) or Sub-section (1-A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.

5. In case, the amended section are applied even without framing any relevant rules, then a person cannot have a possession even a bagful of sand and will be liable for prosecution u/s 21 of the Act.

6. Rule 70 of the U.P. Minor Minerals (Concession) Rules 1963 is the only provision in respect of transportation of minerals. Rule 70 is being reproduced below:

70. Restriction of transport of minerals.-

1. The holder of mining lease or permit or a person authorised by him in this behalf may issue a pass in Form MM-11 to every person carrying a consignment of minor mineral by a vehicle, animal or any other mode of transport. The Stale Government may, through the District Officer, make arrangements for the supply of printed MM-11 Form books on payment basis.

2. No person shall carry, within the State, a minor mineral by a vehicle, animal or any other mode of transport, excepting railway, without carrying a pass in Form MM-11 issued by Sub-rule (1).

3. Every person carrying any minor mineral shall, on demand by any officer authorised under Rule 66 or such officer as may be authorised by the State

Government in this behalf, show the scud pass to such officer and allow him to verify the Correctness of the particulars of the pass with reference to quantity of the minor mineral.

4. The State Government may establish a check post for any area included in any mining lease or permit, and when a check post is so established public notice shall be given of this fact by publication in the Gazettee and in such other manner as may be considered suitable by the State Government.

5. No person shall transport a minor mineral for which these rules apply from such area without first presenting the mineral at the check post established for that area, for verification of the weight or measurement of the mineral.

6. Any person found to have contravened any provision of this rule shall, on convictions be punishable with imprisonment of either description for a term which may extend of six months or with fine which may extend to one thousand rupees or with both.

7. From the perusal of the aforesaid rule, it is clear that lease or permit holder will issue a pass in Form MM-11 to every person carrying a consignment of minor mineral by a vehicle, animal or any other mode of transport. Admittedly, the business Premises of the petitioners are outside the mining areas, as such, no Form MM-11 is required for trading in minor minerals and there cannot be any restriction for the same. Form MM-11 is issued by the lease/permit holder as proof of payment of royalty. There is no provision under the Act and rules under which any permission is required for storing any minerals. The amended section is an enabling provision and it enables the Central Government to make rules in exercise of powers u/s 13 and the State Government u/s 15 of the Act, but till date, no rules have been framed under the Act or under 1963 Rules either by the Central Government or by the State Government. There is no enabling provision under 1963 Rules, which prohibits the storing or transporting the minor minerals outside any mining area for being sold by retail or wholesale by any person who is not a lease or permit holder.

8. In view of the aforesaid fact, the learned Counsel for the petitioners submits that the notice itself is bad and is liable to be quashed.

9. Further submission has been made that the Form MM-11 is issued for transportation of minerals. It is not for the purposes of storage of minerals. Rules 57, 58 and 59 of the U.P. Minor Minerals (Concession) Rules, 1963 are not applicable in the case of the petitioners. Rule 57 provides regarding, penalty for unauthorised mining. Rule 58 is regarding non-payment of royalty, rent or other dues and Rule 59 is regarding consequences of contravention of certain conditions mentioning thereby that if a lease holder itself commits any breach of any conditions, provided in Rules 44 and 46 shall on conviction be punished with imprisonment or fine. Admittedly, the petitioners are not the mining lease holders. They purchased the minerals and store it and sell it and there is no restriction to this effect.

10. The reliance has been placed upon a Judgment in M.P. Contractors Sangh, Indore and Others Vs. State of M.P. and Others, State of Tamil Nadu Vs. M.P.P. Kavery Chetty, and in Karnataka Rare Earth and Another Vs. The Senior Geologist, Department of Mines and Geology and Another, Further reliance has been placed in Sharma and Co. and Others Vs. The State of U.P. and Another, . The learned Counsel for the petitioners in support of the, aforesaid decisions stated that royalty cannot be recovered in the facts and; circumstances of the case. It imposes a liability only on holders of mining lease granted tinder the Rules to pay royalty in respect of minerals recovered at the rate for the time being specified. As the petitioners are not holder of mining lease, no royalty can be charged from the petitioners.

11. A counter affidavit has been filed on behalf of the respondents. It has been submitted on behalf of the respondents that in view of Section 4(1-A) no person has a right of keeping stock or can transport without permission and if he violates he is liable for punishment as provided u/s 21 of the Act of 1957. As the petitioners has not produced any document neither has produced Form MM-11. therefore, they are liable for punishment for keeping unauthorisedly the stock of minerals. As the petitioners are keeping stock of minerals without payment of any royalty to the State and due to the aforesaid act, there is a loss of the Government, therefore, notices dated 6.4.2002 and 22.2.2002 have been issued to petitioners for payment of an amount. Further it has been submitted that petitioners have an alternative remedy by way of filing an appeal under Rule 77 of the Act. The writ petition is liable to be dismissed.

12. We have heard Sri Mukesh Prasad, learned Counsel for the petitioners and Sri Vishnu Pratap learned Standing Counsel for the respondents.

13. Rule 4(1-A) of the Minor Minerals (Regulation and Development) Act 1957 provides that no person shall transport or store or cause to be transported or stored any mineral otherwise than in accordance with the provisions of this Act and the Rules made thereunder. Rule 70 of the U.P. Minor Minerals (Concession), Rules 1963 also put a restriction of transport of minerals which restricts that no person shall carry within the State a minor minerals without carrying a pass in Form MM-11. The submission of the learned Counsel for the petitioners are that Section 4(1-A) has been inserted by an amendment in 1999 provides that no person shall transport or store the mineral otherwise in accordance with the provisions of this Act. It has been submitted by the petitioners that the aforesaid amended rule is an enabling provision and cannot be enforced unless rules are made making it obligatory to obtain a license or permit to store or cause to be transported or stored any mineral by a person not being a lease or permit holder. It is not disputed that no rules have been framed till date of notice issued to the petitioners. The expression otherwise than in accordance with the provisions of the Act and Rules made thereunder occurring in Section 4(1-A) of the Act is significant in the sense that if both the Acts and Rules are silent about the procedure for transportation or storage, then it will be treated to be vague and

arbitrary.

14. From the perusal of the aforesaid Act of 1957 Rules of 1963, no rules have been framed either by the Central Government or by the State Government.

15. Admittedly, now the legislature only to prevent the illegal transportation, mining and possession of minerals have notified a Rule namely Uttar Pradesh (Prevention of Illegal Mining Transportation and Storage) Rules 2002 but the nature of the aforesaid rules are prospective in nature it is not retrospective.

16. Now the question for consideration by this Court is whether the person involved in selling the minerals after purchasing it from the lease holder and stores in his godown for selling to the customers, whether it can be called an Act in view of the provision of Section 4(1-A) of 1957 Act or in view of the provision of Rule 70 of 1963 Rules because it clearly says that Form MM-11 is necessary and the minerals cannot be sent outside the mining area unless and until rovalty is paid and the requirement given in Form MM-11 is complete. It clearly indicates that immediately when the mineral is excavated and it is shifted to other place royalty has to be paid. The Government has fixed the rate of royalty which is to be both before the goods are taken out by the lease holder from the quarries and the person who has purchased subsequently in terms of sale either from the lease holder or from any person then it will not be possible for the person like petitioners to have any document regarding payment of royalty. In this way these goods were coming to the market through several hands with the result that obviously the subsequent purchaser do not have and cannot have the royalty pay receipt relating to the articles.

17. From the record it is clear that no rules were framed till the notice to the petitioners have been given, therefore, we are of the view that notice given by the respondents to the petitioners itself is bad in law and no action u/s 21 of the Act for contravention of Section 4(1-A) can be initiated against the petitioners.

18. In view of the aforesaid fact, the writ petition is allowed and the impugned notices dated 6.4.2002 and 22.2.2002 (Annexures 1 and 2 to the writ petition) are hereby quashed.

19. No order as to costs.

