

(1980) 03 PAT CK 0020
In the Patna High Court
Case No : C.W.J.C. No. 23 of 1977 (R)

Tata Engineering and Locomotive Company Limited	APPELLANT
Vs	
The District Mining Officer and Cess Collector (Mining) and The State of Bihar	RESPONDENT

Date of Decision : 19-03-1980

Acts Referred:

Bihar and Orissa Public Demands Recovery Act, 1914 — Section 3(6), 4
Constitution of India, 1950 — Article 14, 19(1)(f), 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 3(e)

Citation : (1981) PLJR 86

Hon'ble Judges : K.B.N. Singh, C.J;P.S. Sahay, J

Bench : Division Bench

Advocate : R.J. Joshi and Chunni Lal, for the Appellant; Lal Narayan Sinha, Attorney General, R.B. Mahto, Govt. Advocate and Ashutosh Jha, J.C., for the Respondent

Final Decision : Allowed

Judgement

P.S. Sahay, J.—This application is for quashing the order dated 7th January 1977 passed by the District Mining Officer, Jamshedpur, as contained in Annexure 3, under the provisions of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as Concession Rules). By the aforesaid order, a demand of Rs. 21,94,380.95 p. has been made for the period 2nd February 1965 to 31st December 1975, over and above a cess to the tune of Rs. 89,116.27 p. for the period 1st April 1975 to 31st December 1975. In order to appreciate the points raised in this application it is necessary to state some facts. The petitioner Company were incorporated under the Companies Act, 1913. For their works and Township at Jamshedpur, contractors were employed for the construction of the Township on a lump sum basis, and they used to bring their own materials, such, as, sand, bricks, stone boulders, stone chips, etc., and payment was made to them in respect of the entire job, and thus they were free to bring the materials from anywhere they liked and the petitioners were not concerned with the source

of supply. A notice was served by respondent no. 1 by Memo no. 2796/M dated 22nd November 1976 under the Concession Rules to furnish figures of minor minerals supplied and used by the petitioner-Company and also to show cause why assessment of royalty should not be made under Rule 26(4) of the Concession Rules on the figures available to the Department from various documents for the last five years and the figures taken from the traffic survey conducted by a team of Mining Inspectors of the office. A copy of the letter has been filed along with the application and marked as Annexure 1. The petitioners by their letter dated 2nd December 1976 prayed for two months' time in order to file their show cause; and they were directed to pay one-third of the demand, that is, Rs. 10,00,000/- towards the royalty and Rs. 30,000/- towards the cess on or before 31st December 1976. The petitioner-Company filed their show cause of 23rd December 1976 denying their liability completely. A copy of the letter has been filed and marked Annexure 2, in which it was specifically stated that the supply of minor minerals had been made by the contractors, and if any royalty or cess was payable, it was by the contractors themselves and not by the petitioners who were not liable in any way under the Concession Rules. A specific prayer was also made that before proceeding further in the matter, personal hearing in this regard may be granted to the petitioners so that the entire matter may be made clear before the authority concerned. Respondent no. 1, however, rejected the show cause filed by the petitioners, and by his order dated 7-1-77 confirmed the demand and directed the petitioners to make payment within ten days of the receipt of the aforesaid order, failing which Certificate Case will be started against them. A copy of the aforesaid letter is Annexure 3. Being aggrieved by the aforesaid order the petitioners have moved this Court under Article 226 of the Constitution of India.

2. Counter-affidavit and reply thereto and supplementary affidavit have also been filed in this case. In the counter affidavit filed on behalf of the State, it has been submitted that the order passed by respondent no. 1 was perfectly valid and justified, and the aforesaid order was passed after reasonable opportunity had been given to the petitioner-Company to show cause and they had only denied their liability. It has also been stated in their affidavit that the petitioner-Company has been benefited by getting minor minerals at cheaper rate for their Township and thus they were liable to pay royalty under Rule 26(4) of the Concession Rules. It has also been asserted that respondent no. 1 was competent to make assessment under the provisions of the Concession Rules, though at the time of argument a different stand was taken on behalf of the State that respondent no. 1 had no power to make assessment and that the order passed in Annexure 3 was in the nature of a demand. This aspect of the matter I shall discuss in detail while dealing with the argument of the State.

3. Mr. R.J. Joshi, learned counsel appearing on behalf of the petitioners has urged that the petitioners were not lessees under the Mines and Minerals (Regulation and Development) Act or the Concession Rules, and thus there was no liability on their part to pay the amount, and the entire demand was, therefore, wholly

without jurisdiction. He has further argued that even if respondent no. 1 was justified in making the assessment, no reasonable opportunity was given to them to place their case, because such assessments are of quasi-judicial nature; and in that view of the matter, it was bad in law. Lastly, it has been submitted that Rule 26(4) of the Concession Rules is beyond the rule-making power of the State Government, as the same cannot be said to be for purposes connected with the grant of prospecting licence or mining lease or quarrying lease or other mineral concessions and is to that extent ultra vires and void. The aforesaid rule, according to the learned counsel, violates and infringes Article 14 of the Constitution of India, because the authority has been given absolute, uncanalised; unguided and uncontrolled power and discretion to determine the person or persons liable for payment of penalty, which is highly discriminatory and irrational and has no rational relation or nexus with the object sought to be achieved by the said rules. It also violates and infringes Article 19(1)(f) and (g) of the Constitution, and the restrictions imposed by the aforesaid rules are not reasonable and are not in the interest of general public and thus void.

4. The learned Attorney-General of India appearing on behalf of the State has submitted that the order passed by respondent no. 1 as contained in Annexure 3 is in the nature of a demand under the provisions of the Bihar and Orissa Public Demands Recovery Act, 1914 (hereinafter referred to as the Recovery Act) and the petitioner Company were at liberty to agitate all matters, before the Certificate Officer, and, therefore, the writ was premature. He has also submitted that the petitioner-Company having been benefited by the minor minerals, the demand was fully justified.

5. In view of the submissions made at the Bar, the main point for consideration is whether the petitioner-Company are liable under the Concession Rules, and then only it will be relevant to consider whether the petitioner should agitate the matter in the certificate proceedings or they are entitled to relief by this Court. The Bihar Minor Mineral Concession Rules, 1972, shortly to be termed as Concession Rules, came into force from 22nd June 1972. It has been framed u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957, which gives power to the State Government to make rules in respect of minor minerals. "Minor Minerals" have been defined u/s 3(e) of the Development Act, 1957, and are as follows:

Minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the official Gazette, declare to be a minor mineral;.

Rule 4 of the Concession Rules prohibits mining operation without permission or mining lease. It would be better to reproduce the entire rule:

4. (1) No person shall undertake any mining operation in any area, except under and in accordance with the terms and conditions of a quarrying permit or, as the

case may be, a mining lease, granted under these rules:

Provided that nothing in this sub-rule shall affect any mining or quarrying operations undertaken in any area in accordance with the terms and conditions of a mining lease or quarrying permit before the commencement of these rules which is in force at the time of such commencement.

(2) No quarrying permit or mining lease shall be granted otherwise than in accordance with the provisions of these rules.

Chapter 1A deals with the application for grant and renewal of certificate of approval. Chapter III deals with the application for grant of mining lease, which has to be submitted in a prescribed form; and there are different provisions for disposal of such applications. After the grant of lease it is executed under Rule 25. Rule 26 deals with the assessment of rent, royalty and penal rent. It is better to quote Rule 26:

26. (1) When a lease is granted or renewed:--

(a) Dead rent shall be charged at the rates specified in Schedule I;

(b) Royalty shall be charged at the rates specified in Schedule II, and

(c) Surface rent shall be charged at the rate specified by the Collector from time to time for the area occupied or used by the lessee.

(2) On and from the date of commencement of these rules, the provisions of Sub-rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date.

(3) If the lease permits the working of more than one mineral in the same area, the Collector may charge separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral, whichever be higher in amount.

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6. The above provisions show that dead rent is charged according to Schedule I and Royalty as per Schedule II from the lessees. Then, the important rule is Rule 26(4), which is the subject matter of interpretation in this case and is as follows:

Whoever removes or uses minor minerals or on whose behalf such removal or use is made otherwise than in accordance with the provisions of these rules, shall be liable to pay royalty up to four times of the rate of royalty specified for the minor minerals in Schedule II without prejudice to other action being taken against him under these rules.

Reading the various provisions of Rule 26, it is clear that liability has been created for person or persons who obtain mining lease for conducting mining operations and who have been granted lease under the Concession Rules or

persons acting on their behalf. Even according to Sub-rules (6) and (7) of Rule 26 by which the State Government may reduce or enhance the rent or royalty, it is the lessee who has to file the return in the prescribed form. The learned Attorney-General has laid great stress on the words "on whose behalf such removal or use is made" occurring in Rule 26(4) of the Concession Rules and has argued that minor minerals have been consumed for the benefit of the Company and, therefore, they are liable under the aforesaid rules. I am unable to accept this contention, and it would be stretching the provision too far so as to include even persons who are mere consumers of such minor minerals. The petitioner-Company may have been benefited by using those materials in their Township, but those materials according to Mr. Joshi were obtained on payment of price to the contractors who might have removed those materials themselves or on behalf of the lessees. If the lessees or persons acting on their behalf have defaulted in making payment of the royalty according to the rules and the terms and conditions made in the lease, how can the petitioner-Company be held to be liable? Neither any liability is created under the provisions of the rules so far as they are concerned, nor is any duty cast upon them to ensure that rent and royalty have been paid by the contractors who had supplied minor minerals or their principals.

7. "Royalty" has not been defined either in the Mines Act or the Development Act or the Concession Rules. According to Mozley and Whiteley's Law Dictionary,:

A prorata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the errant or lease. The word is especially used in reference to mines, patents and copyrights.

Royalty is a payment made to a landowner by the lessee of the mine in return for the privilege of working it. It is different from rent; it is a kind of levy in proportion to the minerals worked. Royalty thus, according to the Concession Rules, is a compulsory exaction and recoverable in the event of nonpayment of arrears of land revenue. The word "royalty" occurring in Rule 26(4) will therefore, refer to only those persons who are bound by the lease or persons acting on their behalf and not those who might have utilised the materials extracted by the lessee or persons acting under him, there being no assertion that contractors were working on their behalf.

8. Now, I would consider the other part of the argument of the learned Attorney-General that the order of respondent no. 1 as contained in Annexure 3 is in the nature of a demand and could be agitated before the Certificate Officer, and respondent no. 1 has no power to make assessment. Here, I may point out that in the notice issued by respondent no. 1, as contained in Annexure 1, it was asserted that for the purpose of assessment the petitioner Company should produce all relevant materials. In the counter-affidavit on behalf of the State the assessment has been justified, and it has also been stated that the order of assessment, as contained in Annexure 3, was passed after giving an opportunity to the petitioner, but a different argument, as I have said above, has been

adopted by the learned Attorney-General. This part of the argument, in my opinion, cannot be accepted which I will presently indicate.

9. According to Rule 37 of the Concession Rules, the amounts of rent, royalty or penalty payable under these rules shall be recoverable as a public demand under the Bihar Public Demands Recovery Act, 1914. The definition of "public demand", as given in Section 3(6) of the Bihar and Orissa Public Demands Recovery Act, 1914, is as follows:

Public demand means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under part II.

Section 4 of Part II of the Recovery Act deals with the filing of certificate for public demand payable to the Collector and is as follows:

When the Certificate-officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

And the certificate for public demand has to be filed in Schedule II under the form prescribed therein. Therefore, unless those formalities are complied with, it cannot be termed as public demand within the meaning of the Recovery Act. Now, reading the order of the District Mining Officer (respondent no. 1) as contained in Annexure 3, it is clear that it is in the nature of assessment order. It will be useful to quote the concluding portion of the aforesaid order which is as follows:

Since the said company failed to furnish the exact figures of consumption, the liability for royalty is assessed on the basis of traffic survey conducted by a team of experts.

Issue demand for Rs. 21,94,380.95 for royalty and for Rs. 89,116.27 for cess to the said Company for making payment within ten days of receipt of this order failing which certificate case should be filed over demand from 2.2.65.

If the contention of the learned Attorney-General is to be accepted, then respondent no. 1 has no power of making assessment and the aforesaid order therefore must be held to non-est.

Thus, on a harmonious construction of the various provisions of the Concession Rules and the Recovery Act, I am of the opinion that the petitioner--Company is not liable, and, therefore, the order passed by respondent no. 1, as contained in Annexure 3, is wholly without jurisdiction and without any authority of law and must be quashed in view of the fact that the petitioner-Company have succeeded on the first point, it is not necessary to consider the other points raised on their behalf. Let a writ of certiorari issue quashing the order of respondent no. 1, as contained in Annexure 3. The application is accordingly allowed; but in the circumstances of the case, there will be no order as to costs.

K.B.N. Singh, C.J.

I agree.