
(2001) 04 RAJ CK 0012
In the Rajasthan High Court
Case No : Civil Writ Petition No. 533 of 2000

Vijai Construction Co., Bikaner

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 17-04-2001

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 9

Citation : AIR 2001 Raj 326 : (2001) 4 RLW 348 : (2001) 3 WLN 92

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : S.L. Jain, for the Appellant; R.L. Jangid, A.A.G. and Vimal Kumar Mathur, for the Respondent

Judgement

B.S. Chauhan, J.—In this case, the notifications issued by the Government (Mines Department) dated 23-11-1989, 22-9-1994 and 8-11-1996 are under challenge. All these three notifications provide for collection of royalty from the contractors of the Government departments. The rate of royalty had been varied from time to time and as per the subsequent notifications, it provides for imposition of royalty @ 2%.

2. Today when this case was called for hearing, Shri R.L. Jangid, learned Addl. Advocate General, and Shri Vimal Mathur were directed to appear for respondents. They had been served the copies and they filed a copy of the Government order dated 18-11-2000 by which all the aforesaid notifications have been withdrawn. Therefore, the only question remains before this Court about the refund of royalty already collected, as the aforesaid Government order dated 18-11-2000 applies prospectively and does not waive the royalty imposed, the case was heard on merit.

3. Royalty is equivalent to Jura regalia or jura regia, i.e. royal rights and prerogatives of a sovereign. Royalty means imposition of particular amount on the lessee for the State something out of what the State conveys, i.e. part of reddendum payable in cash or kind for rights and privilege obtained. It means a

payment to the owner of mineral for the right of working the same and charging is based on produce. Government may demand payments for the apportionment of minerals, timber or other property belonging to the Government. But while imposing royalty, it must be ensured that the payment is made for the privilege of removing the articles in proportion to the quantity removed and the basis of payment is an agreement. (Vide Sethi Marble Stone Industries and Others Vs. The State of Rajasthan and Another, India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, and Inderjeet Singh Sial and another Vs. M/s. Karam Chand Thapar and others, Therefore, in the agreement of grant of lease, the grantor/ lessor reserves something for himself out of which he grants.

4. In State of State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, the Apex Court held that connotation of "Royalty" has to be used in the context of the case and practice prevalent etc. which generally authorise the owner to recover some part of the value of fallen trees, timber and extraction and utilisation of the other forest produce.

5. In The Quarry Owners Association Vs. The State of Bihar and Others, , the Hon"ble Supreme Court observed as under (Paras 33, 34 and 35) :--

"In conserving or regulating the development of any mineral resources, the price factor is inherent. Any development requires planning, execution, management and with reference to the excavation of mines, controlling the extent and manner of mining, to check its wastage, protecting the environment and controlling pollution etc. which are provided in this Act. All this requires expenditure to be incurred by the State coupled with considerations for parting with the wealth of the State, as minerals belong to the State except on private land. They are all guiding factors in fixing, modifying or enhancing the rate of royalty. Thus development of mineral resources inherently refers to the price factor to be recovered by the owner.

One of the submissions of the appellants is, since royalty is a tax, delegation for its enhancement cannot be left unbridled on the delegatee and if two interpretations are possible, the one which favours an assessee should be accepted. It is true that this Court has held royalties on the minerals to be a tax in India Cement Ltd. and Others Vs. State Of Tamil Nadu and Others, M/s. Orissa Cement Ltd. and Others Vs. State of Orissa and others, State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, and P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED],

In considering this submission we have to keep in mind, tax on this royalty is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. This royalty includes the price for the consideration of parting with the right and privilege of the owner, namely the State Government who owns the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price of minerals which are the property of the State. Both royalty and dead rent are integral parts of a lease.

Thus, it does not constitute usual tax as commonly understood but includes return for the consideration for parting with its property. In view of this special nature of the subject under consideration, namely, the minerals, it would be too harsh to insist for a strict Interpretation with reference to minerals while considering the guidelines to a delegatee who is also the owner of its mineral."

6. A Division Bench of this Court, in DBCSA No. 1277/1979, Shubh Marbles v. State of Rajasthan decided on 15-9-1988, held that minerals cannot be subjected to royalty twice.

7. Thus, on the basis of the above, it is evident that royalty has to be fixed as per the quantity excavated on the basis of the agreement and the material so excavated cannot be subject-matter of payment of royalty twice. In the instant case, to avoid the said situation, after hearing the learned counsel for the parties and by their consent, the following orders are passed :--

1. As the material used by the contractor cannot be subject-matter of royalty twice, the matters requires to be assessed/examined by the competent authority;

2. If the department comes to the conclusion that the royalty has already been paid on the mineral by the user/contractor/ licensee of the mines and minerals/ lease holder or by the contractor if he was holding the short term licence the question of imposing the royalty would not arise;

3. In case the material used has never been subjected to royalty, the department will make proper assessment and the petitioner contractor shall be liable to pay that only up to the date of withdrawal of notification i.e. 18-11-2000;

4. Petitioner is directed to furnish the complete particulars/Information regarding the purchase/excavation of materials within a period of 30 days from today before the Assessing Authority of the respondent department and the latter shall proceed in accordance with law as explained above. Needless to say that if it is found that there are certain outstanding dues of the petitioner contractor, the respondents are directed either to adjust if any amount is due or to refund it. The respondent authority is directed to decide the same within a period of four months from the date o furnishing the particulars;

5. There shall no order as to costs.