

(1969) 09 GAU CK 0008
In the Gauhati High Court
Case No : Civil Rule No. 49 of 1966

Woodcrafts

APPELLANT

Vs

The Chief Conservator of Forests

RESPONDENT

Date of Decision : 26-09-1969

Acts Referred:

Assam Forest Regulations, 1891 — Rule 21
Companies Act, 1956 — Section 17
Constitution of India, 1950 — Article 226

Citation : (1969) 09 GAU CK 0008

Hon'ble Judges : S.K. Dutta, C.J;P.K. Goswami, J

Bench : Division Bench

Advocate : S.K. Ghose, J.K. Barua and A.S. Bhattacharjee, for the Appellant;
G.K. Talukdar, Sr. Govt. Advocate, for the Respondent

Judgement

P.K. Goswami, J.—This application under Article 226 of the Constitution of India is directed against the revision of royalties made by the State Government for the two periods- 1959-62 and 1962-65.

2. The Petitioner Is a limited company registered under the Indian Companies Act, with its headquarters in Calcutta and owns a factory run under, the name and style of "Woodcrafts (Assam) Ltds in Marian District Sib-sagar. It manufactures commercial plywood, decorative plywood, tea chests and other things and the raw material of comes from the forest reserves of Assam. On 7th April, 1956 an agreement of lease was entered by the petitioned with the Governor of Assam where By the Petitioner was granted by the Government the sole right to fell logs, remove trees and timber of the species referred to in Schedule B annexed to the document. The lease was for a period of 20 years with an option of renewal. Clause 18 of the lease which is relied upon by the Petitioner, is in the following terms "(18) (a) Rates of Royalty:- That the lessee will during the period upto the 30th September. 1956 commencing; from the date of these presents, pay, in the manner hereinafter specified, royalty at the rates prescribed in or under Schedule "B" hereto annexed on the loss and sawn

timber converted by him. Provided that on 1st October. 1956 and thereafter on the expiry of each period of three years commencing from the 1st October. 1956 the rates of royalty may be revised by the lessor in respect of species listed under Clauses C, D, E and F of Schedule B for which concessions are now allowed in that schedule up to the rates specified in that schedule and from the date of such revision the leasee will pay royalty for these species at such revised rates on all timbers measured by the Forest Officer or his nominees on or from that date; the rates of royalty in respect of classes "A" and "B" species of Schedule "B" are. however not subject to any limitations as regards the rates at which they may be fixed by the lessor as a result of the revision referred to in this clause and the lessee shall pay royalty at these rates on all timber measured by the Forest Officer or his nominees on or from the date of such revision."

Clause (46) may be also set out:

(46) Decision on disagreements or disputes: That in the event of any disagreement between the lessor and the lessee as to the interpretation of any portion of this Agreement or as to the occurrence of any damage or breach of conditions of the Agreement and liability of the lessee thereof, or other dispute or difference whatsoever, the decision of the Government of Assam shall be final and binding on the parties thereto.

2. The Petitioner states that there were certain specified rates of royalty appearing in Schedule "B" which were governing from the date of the presents to 30th September. 1956 at 6-11-6p. per C. Ft. and the same were revised on 30th October, 1956 to Rs. 2/- per C. Ft. which was later reduced on representation of the Petitioner to Rs. 1.37 P. per C. Ft. by letter dated 28th January, 1958, and the Petitioner paid at the reduced rates without any objection for the period 1956-59. Before the commencement of the second period, the Chief Conservator of Forests wrote to the Petitioner on 8th September, 1959 with regard to revision of royalty rates for the period 1959-62 and asked them to continue to pay at the previous rates "without prejudice to your liability to pay such increased rates from 1-10-59 as may be fixed by Government in the light of their consideration of this matter." (Annexure VII to the counter- affidavit). Finally Government took a Cabinet decision on 20th November. 1962 (Annexure "XT to the, counter-affidavit) on the revised rates and the Assistant Conservator of Forests wrote to the Petitioner on 13th December. 1962 communicating Government's decision fixing royalty at Rs. 1.79 P. per C. Ft. for the period 1959-62. It further stated. "You may however continue to pay at this rate from 1-10-62 also on the distinct understanding that the rates are subject to revision." (Annexure "XIT to the counter-affidavit).

Government had to delay the revision of rates as they appear to have sought advice of the Experts, such as the Cost Accountant and was also considering the representation of the Petitioner and perhaps of all other interested parties in the matter. This appears clearly from the correspondence produced by the parties. Then again, on 13th November, 1964, the Chief Conservator of Forests informed

the Petitioner that the rates have been revised from Rs. 1.79 P. to Rs. 2.25 P. for the period 1962-65 (Annexure "XIV to the counter-affidavit). By another letter dated 19th May. 1965, the Chief Conservator of Forests demanded the Petitioner as well as A. R, and T. Co. to pay all arrear dues for 1959-62 at the 1956-59 rates and the dues at the rate of Rs. 2.25 P. per C. ft. from 1962 up-to-date. (Annexure "XV to the counter-affidavit). The Companies were informed that if they pay as ordered in this letter, they will be allowed extraction of timber under the terms of the lease pending further decision regarding realization of dues at enhanced rate with retrospective effect for the period "59-62", On the above facts shortly put, the questions are:

(1) Whether Government's revision of royalty for the period 1959-62 made after the expiry of the period (namely on 20-11-62 when the Cabinet took the decision or on 13-12-62 when it was communicated) is authorised under Clause 18 (a) of the agreement?

(2) Whether Government's decision in revising the rates for 1962-65 communicated to the Petitioner on 13-11-64 that is after 1-10-62 the date of commencement of the particular period in question is competent under Clause 18(a) mentioned above?

(3) The above two questions naturally cannot be decided without interpretation of the terms of the agreement. Mr. Ghose, the learned Counsel for the Petitioner, submits that the agreement dated 7-4-56 is a statutory one made in pursuance of Rule 21 of the Assam Forest Regulation, YTX of 1891, and, therefore, it has statutory force, and, as such, the Petitioner is entitled to enforce by a writ of mandamus a proper compliance with the terms under Clause 18 (a) of the agreement as also forbearance from contravention of those terms. Mr. Ghose, however, does not dispute the jurisdiction of the Government to revise the rates under the agreement provided that is done in conformity with Clause 18 (a). He submits that Government cannot realise royalty by revising the rates for the period 1059-62 and 1962-65 after expiry of 1-10-59 and 1-10-62 respectively.

3. In order to appreciate the above submission, we may refer to, Rule 21 of the Forest Regulation relied upon by the Counsel.

21. No right of any description shall be acquired in or over a reserved forest except by succession or under grant or contract in writing made by, or with the previous sanction, of the Provincial Government, or some person in whom such right, or the power to create such right, was vested when the notification u/s 17 was published.

Mr. Ghose submits that the agreement dated 7-4-56 is a contract in writing made in pursuance of Rule 21, and, as such, the terms thereof are statutory and can be enforced by a Writ. Rule 21 clearly shows that no one has any right in or over a reserved forest except as laid down under the provisions of that rule. This rule authorises the Government to grant rights over reserved forest under a contract in writing. This is one of the methods open to the Government to grant various

rights to persons in a reserved forest. Rule 21 enables the Government to follow a particular method, namely as in this case, to grant certain rights under a contract in writing. The contract entered in pursuance of this rule does not cease to be contract under the law as is ordinarily understood. The contract is a legal and valid contract but is not a statutory contract as submitted by Mr. Ghosh. The agreement has the force of a contract whatever it is and not that of a statute. Contract may be enforced as any other contract between A and B. Because one party is the Government, it does not have a higher status than an ordinary contract at law. It is difficult to accept the contention of Mr. Ghosh that the terms of this contract are statutory terms and hence a contravention thereof is amenable to Writ jurisdiction of this Court. Article 226 of the Constitution cannot be invoked for enforcement of contractual terms even though one of the contracting parties may be the Government, as in this case. Besides under Clause (46), any disagreement between the lessor and the lessee as to the interpretation of the terms of the agreement or breach of any conditions of the agreement are, to be referred to the Government of Assam whose decision shall be final and binding on the parties. It is not necessary for us to consider whether in view of this clause, the Petitioner is entitled to seek remedy in the Civil Court. It is sufficient to state that he has not done so.

4. At one stage Mr. Ghosh very strenuously contended that it is a case of gross injustice and hardship as the delay in the revision of rates has put the Petitioner in great disadvantage in a competing market for the commodity he manufactures out of the raw material. The Petitioner is also unnecessarily burdened" with the increase of royalty after the commodities had been sold out on the basis of price calculated at the rate of the royalty then obtaining. The argument is not without force, but the appeal must be to the Government and not to the Court to give relief if really hardship and injustice have ensued to any party. The Court under Article 226 is confined to administer the law in accordance with the trite and well-recognised principles. Unless the case is brought within the four corners of the tests necessary for inducing the Court to exercise its powers under Article 226 of the Constitution, it will decline to act. We would not therefore be justified in expressing our opinion as to whether the terms of Clause 18 of the agreement have been complied with by Government in this case or not. Our attention has been drawn also to Clause 34 of the agreement providing that all moneys and penalties payable by the lessee shall on failure of payment as provided in this agreement be recoverable from the lessee "as if such sums were arrears of land revenue. This itself does not make the provisions of the Assam Land and Revenue Regulation applicable proprio vigore. This method of recovery of dues is the result of an agreement between the parties and will be enforced as a term of the agreement. The insertion of this clause does not add any more efficiency to the agreement which otherwise it has not under the ordinary law.

From the foregoing discussion it will be clear that no rights of the Petitioner under any law are violated but his complaint is confined to violation of his rights under the contract. There is a difference of opinion between the Petitioner and

the Government regarding the interpretation of the terms of the agreement. This per se would not give the Petitioner any right to invoke the jurisdiction of this Court under Article 226 of the Constitution. No provisions of law or rules have been pointed out to us whereby royalty in a reserved forest can be assessed or realised in terms thereof. It is a pure case of an obligation under the contract which is entered by the Petitioner with the Government. If any authority is necessary it may be sufficient to refer to a recent decision of the Supreme Court, in Lekhraj Satramdas, Lalvani Vs. Deputy Custodian-cum-managing Officer and Others, Lekhraj Sathrarndas Lal-vani v. N.M. Shah, Deputy Custodian-cum-Manafiing Officer, Bombay, wherein the following passage appears at para 5 of the report:

In our opinion any duty or obligation falling upon a public servant out of a contract entered into by him as such public servant cannot be enforced by the machinery of a Writ under Article 226 oXthe Constitution.

Then Lordships further held that the decisions in AIR 1936 269 (Privy Council) , P.K. Banerjee Vs. L.J. Simonds and Another, P.K. Banerjee v. L.J. Simonds lay down the correct law on the point regarding the writ of mandamus.

5. The petition is therefore, without merit and is dismissed. Rule nisi discharged and the stav orders vacated. The parties will bear their own costs.

S.K. Dutta, C.J.

6. I agree.