SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Jaipur Udyog Ltd.

C.A.Nos.1743 and 1744 of 1973

(M. P. Thakkar and B. C. Ray, JJ.)

14.07.1988

JUDGEMENT

THAKKAR, J.:-

1. The High Court having struck down the Notification dated January 29, 1970 issued by the Central Government authorising the levy and collection of royalty on limestone at Rs. 1.25 per tonne, the State of Rajasthan which was recovering royalty at the aforesaid rate under the Mines and Minerals (Regulation and Development) Act, 1957 (Act) has approached this Court by way of these two allied appeals by special leave. The impugned Notification has been struck down by the High Court on the ground that the Central Government had enhanced the rate of royalty by virtue of the said Notification in disregard of the statutory embargo embodied in Cl. (b) of the proviso to S. 9(3)1 of the Act which prohibits enhancement "more than once during any period of four years".1

1 . "S. 9 - Royalties in respect of mining leases.

(3) The Central Government may, by notification in the Official Gazette, amend the Second

Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the Notification :

Provided that the Central Government shall not :-

(a) x x x

(b) Enhance the rate of royalty in respect of any mineral more than once during any period of four years."

2. The contention of the respondents (original Writ Petitioners in the High Court) was that enhancement by amending the schedule could be effected only once within four years of the 'earlier enhancement'. The interpretation canvassed by them (referred to as Writ Petitioners hereafter) was that the, expression "during any period of four years" would mean during the block of four years 'commencing from the last date on which the enhancement was made'. This interpretation was accepted by the High Court.

Now this Court in D. K. Trivedi and Sons v. State of Gujarat, 1986 (Suppl) SCC 20: (AIR 1986 SC 1323) has interpreted this very expression in a provision which is in pari materia as prohibiting enhancement of royalty in respect of any mineral more than once during any period of four years 'commencing from the date of the enforcement of the Rules.' In other words while the High Court has taken the view that the point of commencement of the period of embargo must begin with effect from the date on which the last enhancement was made, this Court has taken the view that the four year period of embargo must commence from the date of the commencement of the Rules. And that further enhancement can be made only once during the subsequent block of four years so computed. Of course in D. K. Trivedi's case this Court was concerned with an analogous provision in the Gujarat Rules. But the problem of interpretation was identical namely whether the four year block would commence from the 'date of enforcement of the Rules' or whether each block would commence from the 'date of last enhancement'. Madon, J. speaking for the Court has resolved the controversy in the passage extracted hereinbelow (at p. 1352 of AIR) :-

"As the Gujarat Rules have been amended from time to time by the impugned notifications so as to enhance or reduce the rate of royalty or dead rent or both, it is necessary at this stage before turning to the Gujarat Rules to consider what the expression "during any period of four years" occurring in the proviso to S. 15(3) mean. It is pertinent to note that the words used in the proviso are "shall not enhance the rate of royalty..... for more than once during any period of four years". This is a wholly different thing from saying that where the rate of royalty has been enhanced once it shall not be enhanced again for a period of four years or, in other words, until a period of four years from the

date of such enhancement has expired. The period of four years for this purpose must be and can only be reckoned from the date of coming into force of the rules and it is open to a State Government to enhance the rate of royalty or dead rent at any time during the period of four years from the coming into force of the rules and after each period of four years expires at any time during each succeeding period of four years. The Gujarat Rules came into force on April 1, 1966. Therefore, in the case of Gujarat Rules the first period of four years would be April 1, 1966 to March 31, 1970, the second period would be April 1, 1970 to March 31, 1974, the third period would be April 1, 1974 to March 31, 1978, the fourth period would be April 1, 1978 to March 31, 1982, the fifth would be April 1, 1982 to March 31, 1986 and so on thereafter. Thus, during any of these periods of four years both dead rent and royalty can be enhanced by the Government of Gujarat but only once during each such period."

(Emphasis added)

Thus the question regarding interpretation is no more res integra. Applying the law as declared by this Court in Trivedi's case (supra) an enhancement in the rate of royalty can be effected once in the successive four-year blocks succeeding on the heels of the first four-year block commencing from June 1, 1958 and expiring on 31st May, 1962.

In other words the rate of royalty could have been lawfully enhanced once during each of the four-year blocks specified hereunder viz :-

1-6-1962 to 31-5-1966

1-6-1966 to 31-5-1970

1-6-1970 to 31-5-1974

The rates of royalty were however revised in the manner indicated hereafter. During the first block of four years that is to say from 1-6-1958 to 31-5-1962 the rate of royalty on limestone was fixed at Rs. 0.75 per tonne subject to a rebate on extractions made by recourse to a particular process (froth flotation method). During the second block of four years commencing from 1-6-1962 to 31-5-1966, no change was effected in the rate of royalty. In the third block commencing from 1-6-1966 to 31-5-1970, the Central Government issued a notification dated 1-7-1968 whereby the rate of royalty in respect of limestone was again revised. The relevant entry reads thus :-

"8. Limestone : (i) Superior grade with 45% or more Ca0 Rs. 1. 25 per tonne.

(ii) Inferior grade with less than 45% Ca0 Rs. 0.75 per tonne."

On January 29,1970 in the same block of four years commencing from 1-6-1966 to 31-5-1970, the Central Government issued another notification, the impugned Notification (dated January 29, 1970) whereby the distinction between the two grades of limestone was abolished and rate of royalty was fixed at Rs. 1.25 per tonne. This was achieved by substituting the entry pertaining to royalty leviable on limestone by an entry in the following terms :-

"Limestone - Rs. 1.25 per tonne."

3. The change effected by the impugned Notification vis-a-vis earlier Notification is better comprehended when the entries are juxtaposed as under :-

'First' and 'second' four year Blocks 1958-62 and 1962-66 'Third' four-year Block 1966-70

Date of Notification 29-6-68 29-1-70

Rate of royalty fixed for limestone Rs. 0.75 per tonne (subject to a rebate of Rs. 0.38 per tonne on limestone beneficiated by froth floatation process) (a) Superior grade with 45% or more CaO - Rs. 1.25 per tonne

(b) Inferior grade with less than 45% CaO - Rs. 0.75 per tonne Limestone Rs. 1.25 per tonne

4. In the net result the position which emerges is thus :

The writ petitioners were paying royalty at Rs. 0.75 per tonne subject to a rebate which was granted on the extraction being made by recourse to a particular process till the third four year block commencing on June 1, 1968. Thereafter by virtue of the Notification dated June 29, 1968 the petitioners had to pay royalty at Rs. 0.75 per tonne for the inferior grade limestone but the rebate was discontinued. Under the circumstances the Writ Petitioners complained that as a matter of fact enhancement was effected twice during the four year block of 1966-70. It was contended that by virtue of the Notification dated 29-6-1968 inasmuch as the rebate of Rs. 0.38 per tonne which was hitherto being granted was withdrawn by virtue of the impugned Notification dated January 29, 1970, it constituted the first enhancement during this block and inasmuch as the rate of royalty was again enhanced to Rs. 1.25 per tonne persuant to the impugned Notification dated January 29, 1970 it constituted an enhancement for the second time in the same four-year block. On these premises it was urged that the embargo engrafted by S. 9(3)(b) of the Act was violated by the impugned Notification and consequently the said Notification was null and void. The High Court upheld the plea and came to the conclusion that the second enhancement would be being enforced for the first time in the fourth four-year block commencing from June 1, 1970. The learned Counsel for the appellant is, under the circumstances, perfectly justified in submitting that the High Court instead of striking down the Notification in toto could well have made the Notification unenforceable for a period of four months of the third four-year block expiring on 31st May, 1970, without prohibiting its enforcement even with effect from June 1, 1970 from which date the fourth four-year block commenced, and the enhancement could have been made without any impediment in law. The High Court was exercising high prerogative jurisdiction under Art. 226 and could have moulded the relief in a just and fair manner as required by the demands of the situation. The High Court could well have proceeded on the premise that the enhancement made pursuant to the Notification dated January, 29, 1970 was unenforceable for the four months preceding June 1, 1970 on which date the enhancement could have been lawfully enforced pursuant to the Notification. Till then the Notification would have remained unenforceable for that limited period of four months during which the embargo would have been in operation. In our opinion, the enhancement was merely premature and not void in the sense that the enhancement could have been lawfully enforced with effect from June 1, 1970 and could not have been made enforceable on the date of the issuance of the Notification on 29th January, 1970. Such a Notification, in the eye of law, must be treated as dormant for the interregnum of about four months till it becomes enforceable on June 1, 1970 upon the commencement of the fourth four-year block. The enhancement was authorised by the Legislature. However, there was an embargo making it enforceable only once during the course of the four-year block. It would be taking a super-technical view to hold that a fresh Notification could have been issued on June 1, 1970 and that the Notification issued on 29th January, 1970 should be quashed for all times notwithstanding the fact that it was unenforceable only for the interregnum of four months and there was no impediment to its enforcement on the expiry of the third four-year block on 31st May, 1970. An illustration will make the point clear. The Writ Petitions giving rise to both the appeals were instituted after fourth four-year block which commenced on 1-6-1970 and the embargo no longer subsisted. The effect of the impugned Notification was that it authorised the appellant to collect royalty at the rate of Rs. 1.25 every day subsequent to the issuance of the Notification. For four months expiring on 31st May 1970 the Writ Petitioners could successfully contend that the enhancement cannot be enforced in view of the statutory embargo raised by proviso (b) to sub-sec. (3) of S. 9 of the Act. But from June 1, 1970 onwards this legal weapon of resistence was not available to the Writ Petitioners. They could not have sought shelter under the umbrella of proviso (b) to sub-sec. (3) of S. 9 of the Act, having regard to the fact that the enhancement was being enforced for the first time in the four-year block commencing on June 1, 1970. Such being the position the just and fair order to pass would have been to restrain the appellant from enforcing the

Notification for the interregnum between January 29, 1970 till 31st May, 1970, i.e. for about four months, instead of quashing the Notification. The learned Counsel for the Writ Petitioners has however contended that enforcement even subsequent to June 1, 1970 was not permissible in law. In support of this proposition reliance was placed on Mahendra Lal Jaini v. State of Uttar Pradesh, 1963 (Suppl.) 1 SCR 912 : (AIR 1963 SC 1019). We are unable to accede to this submission. In Mahendra Lal Jaini's case (supra) this Court was dealing with a post-constitutional legislation which was inconsistent with the fundamental rights conferred by the Constitution of India and was accordingly rendered void by virtue of Art. 13(2) of the Constitution of India. It was in this context that the expression 'still born' was used in regard to the impugned legislation. Of course having regard to the constitutional command embodied in Art. 13(2) no State can make any law abridging the rights conferred by Part III of the Constitution of India and any such law made in contravention of this clause would be void. As a matter of fact in Mahendra Lal Jaini's case the doctrine of eclipse enunciated in Bhikaji Narain Dhakras v. State of Madhya Pradesh, (1955) 2 SCR 589 : (AIR 1955 SC 781) to the effect that the questioned law would remain dormant till the clout was removed whereupon it would become alive, has been approved. In the present case we are not concerned with a piece of legislation which offends Art. 13(2) of the Constitution of India. It is therefore futile to contend that the principle enunciated in Mahendra Lal Jaini's case would justify striking down of the Notification for all times in future. As has been observed earlier the only vice in the impugned Notification, is that the enhancement was authorized nearly four months too soon in advance. The enhancement could have been made with impunity without violating proviso (b) to sub-sec. (3) of S. 9 about four months later. The enhancement was therefore unenforceable only during this period of four months. It is not even disputed that the enhancement could have been lawfully made without any impediment on June 1, 1970. Inasmuch as it was made nearly four months too soon, on January 29, 1970, the enhancement would be unenforceable during this interregnum of approximately four months. During this period the Notification would have remained dormant. Under the circumstances the just and fair course to adopt is to issue a writ restraining the State of Rajasthan from enforcing the enhancement for the interregnum of about four months expiring on 31st May, 1970 instead of striking down the Notification in absolute terms for all times as has been done by the High Court. It would have become vibrant and enforceable with effect from June 1, 1970. There is absolutely no warrant or justification to restrain recovery at the enhanced rate for the period subsequent to June 1, 1970 notwithstanding the fact that there is no legal bar under proviso (b) to sub-sec. (3) of S. 9 to give effect to the Notification with effect from that date. Under the circumstances we allow the appeals partly. The order passed by the learned single Judge of the High Court quashing the impugned Notification dated January 29, 1970 as confirmed by the Division Bench of the High Court is set aside. In place thereof the State of Rajasthan is restrained from enforcing the impugned Notification till 31st May, 1970 with the clarification that the enhancement as per the said Notification authorising collection of levy at Rs. 1.25 per tonne would be enforceable with effect from June 1, 1970 onwards. Such amount as remains to be recovered in the light of this judgment will have to be paid by the Writ Petitioners on or before September 30, 1989. On failure of the Writ Petitioners to do so the appellant will be entitled to recover from them the sum representing the difference between the sum recoverable as per this judgment and the sum paid by the Writ Petitioners. We substitute the order in the aforesaid terms in place of the order passed by the High Court which we have set aside.

5. The appeals are partly allowed accordingly. There will be no order regarding costs throughout.

Appeals partly allowed.

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