

# SUPREME COURT OF INDIA

Rayalseema Paper Mills Ltd.

Vs.

Government of A.P.

(V Khare, A Bhan and S Sinha JJ.)

25.10.2002

## JUDGMENT

**BHAN, J.**

1. These sets of appeal arise from a common judgment of the Division Bench of the High Court of Judicature at Andhra Pradesh whereby the said High Court has rejected the appellants' challenge to the fixation of rates of royalty on bamboo and hardwood to the paper industry in Andhra Pradesh. For the sake of convenience, we would refer to the facts and contentions in Civil Appeal Nos.7519-20 of 1995 arising from Writ Appeal No. 591 of 1984 and Writ Petition No.3927 of 1987 filed by Sree Rayalaseema paper Mills Ltd. It was stated by the counsel for both the parties before us, as was done before the High Court, that these appeals can be taken as representative of the facts and contentions in all the appeals.

2. Relevant facts for determining the points raised in these appeals are:

Till the year 1975 there were only two Paper Mills in the State of Andhra Pradesh, namely, (1) Sirpur Paper Mills, and (2) Andhra Pradesh Paper Mills Ltd. to which the Government was supplying hard and soft wood for manufacture of paper at concessional rates. These rates were being

fixed every five years. By a memorandum dated 2nd September, 1975 the Government of Andhra Pradesh in Forest and Rural Development Department, fixed royalty rates at Rs.30/- per Tonne for barked hardwood and Rs.60/- per Tonne for barked softwood for a period of 5 years commencing from 1-10-975. The Chief Conservator of Forests was requested to get the agreement drafted and furnish to the Government for approval after enquiring into the needs of the mills and after locating the areas in consultation with the mills for the supply of hard and soft wood. The duration of agreement was to be for 20 years. Pending the finalisation of the agreement, the Chief Conservator of Forests was requested to allow the mills to have the wood on payment of royalty, as indicated above, on adhoc basis after obtaining an undertaking from the mills that they would abide by the conditions prescribed by the Government for the supplies to be effected.

3. Another factor which needs to be mentioned although not relevant for the purpose of these appeals is that on a representation made by Rayalaseema Paper Mills Limited and Bhadrachalam paper Boards Limited which were set up in a backward area, Government of Andhra Pradesh by G.O.Ms. No.665 dated 15th July, 1976, a further concession in the rate of royalty on bamboo and hard wood by 50% was extended to these two mills for a period of 5 years from the date of their going into production. On a further request made by them the period of concession was extended from 5 to 10 years subject to the condition that Government reserved its right to review the position after first 5 years. This concession commenced from 1.10.1978. Concessional period of first five years expired on 30th September, 1983. The Government of Andhra Pradesh reviewed the matter and issued orders contained in G.O.Ms. No.65 dated 9.2.1984 withdrawing the said concession altogether w.e.f. 1.10.1983. G.O.Ms. No.65 dated 9.2.1984 was challenged by filing writ petitions which were dismissed by the single Judge of the High Court. Further appeal filed before the Division Bench was also dismissed. However, it was held that the said G.O.Ms. being administrative in character, could not be given retrospective effect. This judgment became final between the parties.

4. To continue with the facts from the previous paragraph the rates of royalty fixed by the Government Memorandum dated 2.9.1975 @ Rs.60/- per Tonne for barked soft including Bamboo and Rs.30/- per Tonne for barked hard wood were valid for the period 1-10-1975 to 30th September, 1980. The Government desired to fix revised royalty rates for the next five years. It appears that the Chief Conservator of Forests submitted proposals in February and June, 1980 suggesting a rate of Rs.425/- per Metric Tonne for bamboo and Rs.75/- per Metric Tonne for mixed hardwood for supply to Paper Mills. He based his figures on the minimum cost of production as per policy accepted by the Central Board of Forests. The Government, however, appointed a Committee of officials to consider the factors relating to fixation of royalty rates on the forest produce to be supplied to wood based industries on a sustained basis, and to make recommendations to the Government. The Committee consisted of

1. Secretary to Government, Forests & Rural Development Department(Chairman)

2. Joint Secretary, Industries and Commerce

Department(Member),

3. Deputy Secretary, Finance & Planning(Member),

4. Managing Director, A.P.Forest Development

Corporation(Member), and

5. Chief Conservator of Forests(member/Secretary).

5. The Committee called upon the wood-based industries for such information, as they liked, for consideration of the committee. After looking into the material supplied by the Mills and other material gathered by it, and after examining the several alternative methods for determining the price of forest produce, the committee was of the opinion that the cost of regeneration be taken to be the price at which the forest produce shall be supplied to these industries. On this basis, it opined that for the five year period commencing from 1.10.1980, the rate of royalty for bamboo may be fixed at Rs.284/- per Metric Tonne and for hardwood at Rs.135/- per Metric Tonne. The Committee further recommended that instead of fixing a uniform flat rate for the entire 5 year period, it would be desirable to fix royalty at a sliding rate with annual increases limited to the prevailing rates of interest. The Government accepted the recommendations of the Committee and accordingly issued G.O.Ms. No.538 dated 4.11.1981. It directed that the "rates for royalty on the forest raw materials, namely, the bamboo and the hardwood which are to be supplied to the wood based industries shall, with effect from the base year 1980-81 be as follows: Year (Bamboo per M.T. Hardwood per M.T.

w.e.f. 1.10.1980) (w.e.f. 1.4.1980)

1 2 3

1980-81 210 100

1981-82 233 111

1982-83 258 123

1983-84 287 137

1984-85 318 152".

In paragraph 6 of the said G.O., the Government stated:-

"6. The Committee has also envisaged that the arrangements should be worked out to ensure that adequate funds are provided for raising pulpwood plantations and for improving the management of forests for sustained supply to the industries. Accordingly, the Government have to decide to create the 'Industrial Plantation Fund' from out of the additional royalty revenues revised annually to meet the said requirements."

6. As per this G.O., the rates of royalty for bamboo suddenly went up from Rs.60/- to Rs.210/- per Metric Tonne and the rates continued to rise with each passing year. However, so far as Rayalaseema Paper Mills and Bhadrachalam Paper Boards Limited were concerned, they were entitled to 50% concession for a period of five years commencing from 1.10.1978. It was liable to pay only half of the said royalty rate. The five year concession period expired on 30th September, 1983. It was not extended further as indicated earlier in para No.3 of this judgment.

7. The validity of G.O.Ms No.538 dated 4.11.1981 was challenged by filing writ petitions on two grounds:

(i) by an executive order the Government cannot enhance the rates of royalty for purposes of developmental activities of the State. Such an enhancement amounts to levy of tax, and no tax can be levied except under a Statute; and

(ii) the increase in the rates of royalty contrary to agreement is unreasonable.

8. On behalf of the State preliminary objection was raised with respect to the maintainability of the writ petitions. It was submitted that the revision in the rates of royalty had been made in accordance with the conditions of the agreement entered into between the parties and that, in such a case, Article 14 of the Constitution has no application.

9. The single Judge upheld the preliminary objection and held that where there was a concluded contract, Article 14 could not be invoked, even though one of the contracting parties was the Government. On this ground alone all the writ petitions except the writ petition No.1641 of 1982 filed by A.P.Rayans Limited were ordered to be dismissed. So far as the writ petition No.1641 of 1982 is concerned, the learned Judge found that the facts of that case were different inasmuch as the original period of five years in its case had not expired and the Government could not increase the rates before the expiry of five years stipulated in the Government G.O. It was left open to the Government to revise the rates or apply the rates contemplated in G.O.Ms. No.538 dated 4.11.1981 to A.P.Rayans Limited as well after the expiry of five years from the date the agreement was entered upon.

10. Single Judge had disposed of the writ petitions by a common judgment. Appellants being aggrieved filed writ appeals. In writ appeals the appellants did not question the correctness of the judgment of the Single Judge, in so far as it held that the enhancement of royalties did not amount to levy of tax. Counsel, however, disputed the correctness of the other findings including the finding regarding the maintainability of the writ petitions. The Division Bench upheld the objections raised by the appellants regarding the maintainability of the writ petitions and held that the writ petitions were maintainable and proceeded to examine the matters on merits. During the pendency of the writ appeals, the Government further revised the rates for the next quinquennium started from 1985-86 to 1989-90 by issuing G.O.Ms. No.378 dated 12th September, 1985. Appellants filed writ petitions which were admitted and ordered to be disposed of with the writ appeals challenging the order of the Single Judge for the earlier quinquennium from 1980 to 1985 upholding the G.O.Ms. No.538 dated 4.11.1981.

11. On merits the Division Bench examined the dispute between the parties in great detail. After examining the report submitted by the Committee and the order passed thereon by the Government rejected the contentions of the counsel appearing for the appellants to the effect that what was sold to the appellants natural growth(bamboo), replacement cost should not be the criteria for fixing the rates of royalty. It was held that not only can the replacement cost be the criteria, but the State could also fix the price keeping in mind several other factors, like, public revenue, ecology and environment, availability of forest produce, the need of other consumers and even to compel the mills to turn to alternative raw materials. That the State could not be called upon in the absence of any law laying down the criteria for fixing the rates of royalty, to account for the manner in which, or the basis upon which the State has to determine the royalty as explained in the reasoning

of the said judgment.

12. Shri Shanti Bhushan, learned senior counsel appearing for the appellants did not dispute the propositions that price fixation is neither the function nor the forte of the court, it is neither concerned with the policy nor the rates. But the Court cannot deny to itself to jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. Referring to the facts of the present case, it was contended that the Government, in an arbitrary and in unrealistic manner, unmindful of the question of survival of the paper industries, could not increase the rates 5 times from Rs. 60/- to Rs. 210/-. Public interest demands that the paper industries should be kept alive. In such a situation, fixation of an 'impossible' price, which the mills cannot bear, would be an unreasonable and arbitrary act on the part of the Government requiring the stepping in of the courts. Such an act would be adverse to the public interest and totally arbitrary. It was further contended that even if conceding that the government could revise the rates after every five years, it could not stagger the rates of royalty over the period, thus, giving an increase for every subsequent year within the same quinquennium which amounted to increase of rates of royalty for every year instead of being after every five years. That because of the arbitrary increase in price some of the mills have become sick and unviable. Counsel appearing in the other appeals supplemented these two basic submissions of Shri Shanti Bhushan.

13. We now proceed to examine these contentions.

14. Before we enter the discussion, it is made clear that the determination of rates of royalty for supply of forest produce to paper mills is not governed by any statute or a statutory order. The Government while entering into the agreement with the paper mills had undertaken to supply a certain specified quantity of wood each year for a period of 20 years. The government had not assured the mills that it will supply bamboo and other forest produce required by them at a particular rate. Nor was there an agreement between them with respect to the manner in which the rates of royalty would be determined. There was no assurance that the mills would be consulted or associated while fixing the rates of royalty. Even where the matter is governed by a statute or a statutory order, the scope of judicial enquiry is limited. This Court in *Union of India & Another vs. Cynamide India Limited & Another* [(1987) 2 SCC 720] examined the scope of judicial interference in the matters of price fixation and observed:

"We start with the observation, 'Price fixation is neither the function nor the forte of the Court'. We concern ourselves neither with the policy nor with the rates. But we do not totally deny ourselves the jurisdiction to enquire into the question, in appropriate proceedings, whether relevant considerations have gone in and irrelevant considerations kept out of the determination of the price. For example, if the legislature has decreed the pricing policy and prescribed the factors which should guide the determination of the price, we will, if necessary, enquire into the question whether the policy and the factors are present to the mind of the authorities specifying the price. But our examination will stop there. We will go no further. We will not deluge ourselves with more facts and figures. The assembling of the raw materials and the mechanics of price fixation are the concern of the executive and we leave it to them. And, we will not re-evaluate the considerations even if the prices are demonstrably injurious to some manufacturers or producers. The court will, of course,

examine if there is any hostile discrimination. That is a different 'cup of tea' altogether. The second observation we wish to make is, legislative action, plenary or subordinate, is not subject to rules of natural justice. In the case of parliamentary legislation, the proposition is self-evident. In the case of subordinate legislation, it may happen that Parliament may itself provide for a notice and for a hearing—there are several instances of the legislature requiring the subordinate legislating authority to give public notice and a public hearing before say, for example, levying a municipal rate in which case the substantial non-observance of the statutorily prescribed mode of observing natural justice may have the effect of invalidating the subordinate legislation. The right here given to rate payers or others is in the nature of a concession which is not to detract from the character of the activity as legislative and not quasi-judicial. But, where the legislature has not chosen to provide for any notice or hearing, no one can insist upon it and it will not be permissible to read natural justice into such legislative activity.

Occasionally, the legislature directs the subordinate legislating body to make 'such enquiry as it thinks fit' before making the subordinate legislation. In such a situation, while such enquiry by the subordinate legislating body as it deems fit is a condition precedent to the subordinate legislation, the nature and the extent of the enquiry is in the discretion of the subordinate legislating body and the subordinate legislation is not open to question on the ground that the enquiry was not as full as it might have been. The provision for 'such enquiry as it thinks fit' is generally an enabling provision, intended to facilitate the subordinate legislating body to obtain relevant information from all and whatever source and not intended to vest any right in anyone other than the subordinate legislating body. It is the sort of enquiry which the legislature itself may cause to be made before legislating, an enquiry which will not confer any right on anyone."

15. This Court was examining the scope of judicial scrutiny in the matters of price fixation where it was governed by statutory provisions. The scope of judicial scrutiny would be far less where the price fixation is not governed by the statute or a statutory order. Where the legislature has prescribed the factors which should be taken into consideration and which should guide the determination of price, the courts would examine whether the considerations for fixing the price mentioned in the statute or the statutory order have been kept in mind while fixing the price and whether these factors have guided the determination. The courts would not go beyond that point. In the present appeals, there is no law, or any statutory provision laying down the criteria or the principles which must be followed, or which must guide the determination of rates of royalty. No doubt, any arbitrary action taken by the State would be subject to the scrutiny by the courts because arbitrariness is the very antithesis of rule of law. But this does not mean that this Court would act as an appellate authority over the determination of rates of royalty by the government. Government is the owner of the products. While it had agreed to supply a particular quantity every year for specified period, it had never agreed to supply at a particular rate; not did it stipulate with the mill owners the basis upon which it would determine the rates of royalty. It is open to the government to fix such price as it thinks appropriate having regard to public interest, which inter alia, may include interest of revenue, environmental, ecology, the need of mills and the requirements of other consumers. The price is not to be fixed keeping in mind the requirements of the mills alone.

16. We could have ended our enquiry at this point but since the appeals were argued at great length and the point was examined by the High Court as well, we proceed to examine the correctness of the contentions raised by Shri Shanti Bhushan in this regard. G.O.Ms.No.538 dated 4.11.1981 recites the following facts:

"On a review at the end of the quinquennium 1975-80 in respect of the rates of royalty on bamboo and wood, the Chief Conservator of Forests submitted proposals in February and June, 1980 suggesting Rs.425/- per MT for bamboo and Rs.75 per MT for mixed hard wood to be supplied from natural forest, based on the minimum cost of production as per the policy accepted by the Central Board of Forestry.

2. To consider the factors relating to the fixation of royalty rates on the forest produce to be supplied to the wood based industries on a sustained basis and to make recommendations to the Government, a Committee was constituted consisting of:

1

Secretary to Government,

Forests & Rural Develop-

ment Department

Chairman

2

Joint Secretary, Industries

& Commerce Department

Member

3

Deputy Secretary, Finance

& Planning Department

Member

4

Managing Director, A.P.

Forest Development Corpn.

Member

5

Chief Conservator of

Forests

Member/

Secretary

The Committee requested each of the wood based industrialists to present their views. After hearing their views, the Committee also called for such additional information as they would like to place before the Committee. The information made available to the Committee by the Industrialists was also considered by the Committee. Besides, the Committee took note of the following relevant factors relating to the supply of forest raw material for wood-based industries, namely:-

(i) Forests are no longer naturally renewable resources but have been rendered wasted assets due to over-exploitation without corresponding regeneration, resulting in serious environmental and ecological imbalance.

(ii) The forest resources in Andhra Pradesh are heavily depleted over the years resulting in heavy shortages of raw materials for the wood-based industries.

(iii) If the raw material is regenerated within the State itself over a period of time, it will not only ensure sustained supplies but it will also aid such industries getting part of their supplies now from distant States to save the heavy transportation cost.

(iv) To reduce the pressure on reserve forests increasing to almost alarming proportions, replacement or regeneration coupled with improved management, should be at least as fast as the

pace of exploitation.

(v) The depletion of wood resources due to over exploitation is so acute that an analysis of the potential for pulp and paper industries development upto the year 2000 Ad. prepared by the pulp and paper Industries Development Programme of the United Nations, Rome, in February 1980, does not indicate any additional capacities in Andhra Pradesh, in view of the fact that the existing wood resources are already over-strained.

(vi) If raw material supply to the wood-based industry is to be ensured on a sustained basis, the depleting trend has to be recovered by putting back into Nature, what is taken out of it.

(vii) The cost of other inputs in paper manufacture, such as chemicals, dyes, coal, furnace, oil, etc. over the years, has been on the increase due to market prices, while the royalty rates on forest produce were pegged to law level neglecting the need for adequate finances to take up plantations for sustained supplies.

(viii) The need for raising new plantations and improved management of the forest call for heavy investment and the rates of royalty have to necessarily be adequate to meet the cost and improve finances to ensure sustained supply of raw material to woodbased industries.

(ix) The experience in implementing bankable plantation schemes refinanced by Agricultural Refinance & Development Corporation has to be kept in view in fixing

the rates of royalty since such schemes are financed on long term basis by A.R.D.C. on well established principles."

17. Reading of G.O.Ms. shows that the government has accepted the report of the Committee implicitly. It would, therefore, be instructive to examine the report of the Committee, which is a part of the record. Relevant portions of the report of the Committee has been verbatim taken and reproduced in the G.O. which has been reproduced in the previous paragraph.

18. We have gone through the report of the Committee in fixation of the rates of royalty. The committee took into consideration the status of the paper industry in the country and in the State of Andhra Pradesh. Thereafter the Committee proceeded to examine the various alternative methods for fixing the rates of royalty. It was noted that the Committee did not come across any norms evolved so far anywhere in the country for determining the rates of royalty when captive forest

resources are offered by the State to the industry. They referred to a study by the Central Board of Forestry(1973) in which the Central Board of Forestry commended the guiding principle as follows:

"The incentive of the produce be kept alive and a proper price be paid for the raw material which will enable the Forestry sector to carry out the needed maintenance and improvement of natural forests as well as grow plantations which are economically viable from the point of Forestry Sector."

19. After examining the various methods including the past rates, rates prevalent in the neighbouring States, administrative cost/expenses on silvicultural needs, market price, cost of production of paper, replacement cost for manmade forest material, market price as royalty etc., it adopted the method of replacement cost to be the guiding principle for fixing the rates of royalty. The relevant factors which prevailed with the committee for adopting the regeneration/replacement cost method were detailed in the report which have been referred to and reproduced by us in this judgment. It would be noted that the committee came to the conclusion that forests are no longer naturally renewable resource but have been rendered wasted assets due to over-exploitation without corresponding regeneration, resulting in serious environmental and ecological imbalance. To reduce the pressure on reserved forests, increasing to almost alarming proportions, replacement or regeneration coupled with improved management, should be at least as fast as the pace of exploitation. The forest resources in the State of Andhra Pradesh depleted over the years resulting in heavy shortages of raw materials for the wood-based industries. In order to ensure the supply of raw material, on sustained basis, the depleting trend could be arrested by putting back into nature, what was taken out of it. After taking into consideration the cost of inputs needed for raising the new plantations, the cost of other inputs in paper manufacture, the need for raising new plantations and improved management of the forest call for heavy

investment and to generate enough resources to meet the cost and improve finances to ensure sustained supply of raw material to wood-based industries and the experience in implementing bankable plantation schemes refinanced by Agricultural Refinance & Development Corporation the Committee made recommendations indicating an over all rate of Rs.284/- per Metric Tonne for bamboo and Rs.135/- per Metric Tonne for hard wood as the rates of royalty for the next five years beginning from 1980. The rates of royalty of Rs.284/- per Metric Tonne for bamboo and Rs.135/- per Metric Tonne for hard wood were arrived at by an involved process which is indicated in the report, which to us seems to be fair and reasonable. The Government did not arrive at the rates of royalty in an arbitrary manner. It had appointed a Committee of experts which went into the question of fixation of rates of royalty in great detail and after examining the different methods adopted/

accepted the 'regeneration' or 'replacement' cost of the wood as the reasonable criteria for fixing the rates of royalty. The Government thereafter considered the report and accepted the same. It cannot be said that the method adopted or the price determined was either arbitrary or unreasonable. To us, it seems to be reasonable, fair, realistic and keeping in mind the requirement of the wood for the future generations as well.

20. We cannot agree with the contention urged by some of the counsel appearing for the appellants that since what is sold to the appellants is natural growth (bamboo), the replacement cost should not be the criteria for fixing the rates of royalty. Not only can be the replacement cost be the criteria, but the State can fix the price keeping in mind several other factors, like public revenue, ecology and environment, availability of forest produce in future, the need of other consumers and some other such relevant considerations.

21. Though the Committee had arrived at flat rates of royalty of Rs.284/- and Rs. 135/- per Metric Tonne for bamboo and hard wood respectively for the entire quinquennium period of 1980-85, the Committee suggested that instead of fixing the uniform flat rate for the entire quinquennium it is desirable to fix royalty at a sliding rate with annual increases limited to the prevailing interest rates starting from Rs. 210/-per metric tonne for bamboo and Rs. 100/- per metric tonne for hardwood for the base year 1980-81. The Government could have fixed a higher royalty rates applicable for the entire period but thought it is better to fix a lower rates in the beginning and gradually increasing it in the final year as by that time selling price of paper will also increase as was noted by the general trend. We do not agree with the contention raised by Shri Shanti Bhushan that the Government could not fix the sliding rates especially in view of the fact that the rates of royalty for the 1980-85 was fixed for Rs. 284/- per metric tonne for bamboo and Rs. 135/- per metric tonne for hardwood which was reduced to Rs. 210/-per metric tonne for bamboo and Rs. 100/- per metric tonne for hardwood for the base year 1980-81 with gradually increasing at the bank rates for the coming years. Since the rates of royalty was reduced for the base year from the suggested price it shows the fairness on the part of the State Government in dealing with the appellants. This was done for the benefit of the appellants and perhaps at their instance.

22. For the reasons stated above, we do not find any infirmity in the impugned judgment, accordingly, the appeals are dismissed. The interim order granted by the High Court, which was later on permitted to be continued by this Court, stands vacated. The State Government is put at liberty to encash the Bank Guarantee and recover the amount due to it from the appellants in accordance with law. No orders as to costs.