

# SUPREME COURT OF INDIA

State of Rajasthan

Vs.

Dev Ganga Enterprises

C.A.No.8152 of 2009

(R V Raveendran and K.S.Radhakrishnan JJ.)

08.12.2009

## JUDGEMENT

### **R.V.Raveendran J.**

1. Leave granted. Heard learned counsel.

2. The question that arises for consideration is where the State Government enters into an 'Excess Royalty Collection Contract' under Rule 32 of the *Rajasthan Minor Mineral Concession Rules, 1986* ('Rules' for short), whether a contractor is entitled to a grace period of 15 days (from the date when the amount becomes due) for paying the dues without interest under Rule 61 of the said Rules.

3. The respondents entered into an 'Excess Royalty Collection Contract' with the State of Rajasthan, agreeing to pay a fixed amount of Rs.36.52 crores per annum in consideration of the State granting them a 2 contract to collect from mining lease holders excavating and removing marble from the mines of such leaseholders, excess royalty on marble, in regard to the mining leases within the revenue boundaries of Tehsil Rajsamand, Kumbhalgarh, Amet and Railmangra of Distt. Rajsamand, during the period 19.7.2003 to 31.3.2005. The contract required the contractor to pay the annual fixed amount in instalments, that is, the first instalment on or before the signing of the agreement and the balance in eleven monthly instalments, payable in advance upto the 10th day of the month. Sub-clause (11) of clause 2 of the agreement provided as follows:

“The Contractor shall pay the instalments of contract money according to the stipulations laid down in the contract, and if any amount is not paid on due date it shall be collected as an arrears of land revenue and an interest @ 12% will be charged irrespective of any other action being taken for cancellation of contract or imposition of penalty under relevant rules.”

4. The annual amount payable by the respondents was increased to Rs. 42,32,36,000/- per annum on account of revision in rates of royalty.

“On the ground that there was delay on the part of the respondents, in paying the instalments, the department raised a demand for interest of Rs.18,46,899/-, by its letter dated 30.12.2004. The respondent paid the said amount under protest on 22.1.2005 and filed a suit on 24.1.2005 for setting aside the said demand and seeking a mandatory injunction to adjust the amount recovered from them as interest, towards their future dues. The trial court dismissed the suit vide judgment and decree dated 3 29.3.2006. However the High Court allowed the appeal filed by the respondent by judgment dated 27.2.2008 holding that the respondent was entitled to a grace period of 15 days under Rule 61 of the Rules, after the tenth day of the `month' when the amount fell due. This meant that in a contract which commenced on 19.7.2003, if the instalment was due in terms of the agreement on 29.7.2003 (that is 10th day of the month commencing from 19.7.2003), the contractor who commits default cannot be charged interest if the payment was made on or before 13.8.2003 and that interest could be charged on delayed payments only from 14.8.2003.

The said judgment is challenged in this appeal by special leave. The appellants contended that only the first ten days of the contract month were interest free, and the contractor was not entitled to any further interest free period of 15 days.”

5. A reference to the relevant Rules is necessary to consider the tenability of appellant's contention. Rule 3(xiii-a) defines `Excess Royalty Collection Contract' thus:

“Excess Royalty Collection Contract" means a contract for specified mineral(s) and area given to collect royalty in excess of annual dead rent, on behalf of the Government from the holder of mining lease (s) under the contract whereunder the contractor shall pay a fixed amount annually to the Government as per terms of the contract."

`Royalty Collection Contract' is defined in clause (xxi) of Rule 3 as follows:

"Royalty Collection Contract" means a contract for the specific mineral or minerals given to collect royalty [with or without permit fee as the case may be] on behalf of the Government from the quarry licensees and short term permit holders who excavate minor minerals from the lands specified under the contract whereunder the contractor undertakes to pay fixed amount annually to the Government save as exempted under rule 58;"

Rule 32 provides that the Government may grant by auction or tender, Royalty Collection Contract/Excess Royalty Collection Contract, in regard to such area and such mineral as the Director may by general or special order direct, for a maximum period of two years. Sub rule (3) of Rule 32 provides that the amount to be paid annually by the contractor to the Government shall be determined in auction or by tender to be submitted for acceptance by the authority competent to grant the contract.

Rule 34 regulates the procedure for auctions and Rule 35 regulates the procedure for calling tenders. Rule 34 (g)(iii) and Rule 35 (g)(iii) provide that where the oral bid/tender exceeds Rs.10 lakhs it shall be recovered in 12 monthly instalments and the first instalment shall be deposited before the execution of the agreement and the remaining amount shall be deposited in 11 equal monthly instalments by the 10th of each month in advance. Rule 37(2) provides where the bid/tender for Royalty Collection Contract/Excess Royalty Collection Contract has been accepted by the competent authority the bidder/tenderer shall execute an agreement in Form No.10 within a period of one month from the date of the order accepting the bid/tender and that the terms and conditions included in the notification issued under Rule 34 or 35 shall be treated as a part of the agreement. Form No.10 is a common form for agreement for collection of royalty or excess royalty. The Rules also contain a rule (Rule 61) relating to rate of interest which reads thus:

"Interest at the rate of 12% shall be charged on all dues in respect of dead rent, royalty, quarry licence fee and royalty collection contract amounts after 15 days from the date of it becomes due"

[Note: `12%' amended as `15%' by Notification dated 18.12.2004]."

6. The appellants contend that having regard to Rule 35 (g)(iii) and 37, the 11 monthly instalments shall be paid by 10th of each month in advance, and if the contract commences as in this case on 19.7.2003, the first instalment shall be paid within 10 days from the 19th July, that is, by 29th July. It is contended that except the said grace period of 10 days given under the Rules and under the terms of the contract, the contractor is not entitled to any further interest-free grace period. It is pointed out that Rule 61, which is a general provision regarding rate of interest, clearly states that the interest provided therein shall be charged on all dues in respect of dead rent, royalty, quarry licence fee and royalty collection contract amounts after 15 days from the date of it becomes due. It is pointed out that `Excess Royalty Collection Contract Amount' is not included in the items in regard to which the 15 days grace period is made available. It is further pointed out that there is a specific mention of `Royalty Collection Contract Amount' in Rule 61, but not `Excess Royalty Collection Contract'. Therefore, it is contended that the 15 days 6 grace period mentioned in Rule 61, will be inapplicable to amounts due in regard to Excess Royalty Collection Contract.

7. On the other hand the respondents submit that Rules 34 (g)(iii), 35(g)(iii) and 37(2) deal with both Royalty Collection Contracts and Excess Royalty Collection Contracts together, treating them in an identical manner. Even Form No.10 is common and identical for agreements for collection of royalty and excess royalty. It is contended that Rule 61 is a general provision relating to interest in regard to all amounts due under the Rules and is therefore applicable to all contracts entered under the Rules; and that the mandatory provision in Rule 61 that interest shall be chargeable only after 15 days from the date when it becomes due, clearly means that all amounts due and payable under the Rules will enjoy the benefit of 15 days interest free period.

8. We have carefully considered the contentions. It is no doubt true that the procedures for auction/tender in regard to Royalty Collection Contracts and Excess Royalty Collection Contracts are the same. It is also true that the form of contract for both types of contracts is the same. It is also true that under both types of contract, the government gives contracts to collect royalty in regard to particular areas in consideration of payment of a fixed amount annually. But these factors do not lead to an inference that the Royalty Collection Contracts are same as Excess Royalty 7 Collection Contract. It is clear from their definitions in clauses (xxi) and (xiii-a) of Rule 3 that they are conceptually different. Royalty Collection Contracts refer to contracts given to the contractors to collect royalty on behalf of the Government from quarry licensees and short term licence holders who excavate minor minerals. On the other hand, Excess Royalty Collection Contracts refer to contracts given to contractors to collect royalty in excess of annual dead rent on behalf of the Government from the holders of mining leases. Therefore an Excess Royalty Collection Contract cannot be equated with a Royalty Collection Contract. Rule 61 clearly sets out the nature of dues in regard to which it will apply. It specifically refers to dues in regard to "dead rent, royalty, quarry licence fee and royalty collection contract amounts". 'Excess Royalty Collection Contract Amount' is neither a dead rent, nor royalty nor quarry licence fee nor a royalty collection contract amount. 'Royalty Collection Contract' was a concept that was conceived and contemplated in the Rules as originally framed. On the other hand, 'Excess Royalty Collection Contract' was a new concept introduced by amendment dated 12.8.1994 by inserting a new definition under clause (xiii-a) of Rule 3.

“After the said amendment in 1994 introducing the concept of 'Excess Royalty Collection Contract', Rules 32, 34, 35 and 37 were amended by inserting 'Excess Royalty Collection Contract' wherever the words 'Royalty Collection Contract' occurred by amendment dated 27.3.2003, 8 thereby emphasising that the two were different. But significantly such an insertion was not made in Rule 61. If the intention was to apply the provisions of Rule 61 even in regard to Excess Royalty Collection Contracts, then Rule 61 also would have been amended, when Rules 32, 34, 35 and 37 were amended, to include 'Excess Royalty Collection Contracts'. In the absence of any reference of 'Excess Royalty Collection Contract Amount' in Rule 61, it is evident that the 15 days interest holiday is not available in regard to 'Excess Royalty Collection Contracts', even though it may be available in regard to the four categories of dues referred to therein.”

9. The respondent next submitted that under the contract the rate of interest was 12% per annum; that originally the rate of interest specified under Rule 61 was also 12% per annum; that the rate of interest under Rule 61 was increased from 12% to 15% per annum by amendment dated 18.12.2004; and that on the basis of the said amendment of Rule 61, when there was some delay in payment of instalments subsequent to 18.12.2004, the appellants demanded payment of interest at the rate of 15% per annum relying upon Rule 61. It is contended that the said action clearly demonstrated that even according to the appellants, Rule 61 was applicable in regard to the Extra Royalty Collection Contracts. We are not concerned with such subsequent dispute. Further a wrong or untenable subsequent claim by the government cannot justify a wrong interpretation of Rule 61. The wording of Rule 61 is

clear and unambiguous. The State has categorically contended before us that Rule 61 is inapplicable, as the said rule does not refer to `Excess Royalty Collection Contracts'. If the State Government wrongly applied Rule 61 to demand higher rate of interest in regard to any subsequent period, it is open to the contractor to contend therein that Rule 61 is inapplicable to Excess Royalty Collection Contracts.

10. We, therefore allow this appeal, set aside the judgment of the High Court, restore the decision of the trial court and uphold the demand for interest at 12% per annum in respect of the delayed payment of instalments relating to `Excess Royalty Collection Contract', without applying the grace period of 15 days under Rule 61 of the Rules.