

MADHYA PRADESH HIGH COURT

Surajdin Laxmanlal

Vs.

State of M. P

Misc. Petn. No. 109 of 1956

(Shiv Dayal, J.)

24.04.1959

JUDGMENT

Shrivastava J.

1. By this petition under Article 226 of the Constitution the petitioner challenges the right of the State Government to recover certain amounts from him as arrears of land revenue.

2. The facts leading to the petition are as follows. As a result of auction, the petitioner was granted a license to distil liquor in Kawardha in 1953 and 1954. The amount which the petitioner had to pay to the State Government was Rs. 18,100/- and Rs. 27,000/- respectively for the two years. At the time of the first auction, the State Government had intimated to the bidders that a surcharge or 7% per cent over the amount of the bid would be charged to all out still contractors for the privilege to remove fuel and mahua from the Government forest. At the time of the second auction also, a similar condition was announced. Accordingly, the State Government sought to recover Rs. 1357-8-0 for the first year and Rs. 2032-8-0 for the second year from the petitioner. Respondents 2 to 4, who are respectively the Deputy Commissioner, Durg, the Divisional Forest Officer, Durg Division, Rajnandgaon, and the Tahsildar, Kawardha, have threatened to recover the amounts due from the petitioner as arrears of land revenue. Actually warrants for recovery of the amounts by attachment have been issued. The petitioner's case is that the demand of the amounts is without any jurisdiction and the mode of recovery as arrears of land revenue is also illegal.

3. The respondents in their return have stated that the petitioner is liable for the

surcharge as claimed by them on the basis of the condition which was announced at the time of the auctions. Sri H. L. Khaskalam, Addl. Government Advocate, for the respondents, justified the levy on the grounds that :

- (1) It is recoverable under the contract;
- (2) It amounts to a "commutation" charged under the Commutation Rules framed under section 32 of the Indian Forest Act, 1927 (XVI of 1927); and
- (3) The amount is in the nature of "royalty" and is recoverable as arrears of land revenue.

4. In the Excise Sale Memorandum of the Durg District inclusive of integrated States for the year 1954, condition No. 63 is as follows :

"The State Government have decided that with effect from 1-1-1954 royalty at 7 = per cent of license fee for out still shops should be recovered from Excise contractors in the merged States to cover the value of mahua and fuel extracted from the reserved or protected forests by a contractor for his still. This will affect out still contractors of Kawardha Tahsil only."

In the Excise Sales Memorandum of the Durg District inclusive of integrated States for the year 1955, the same condition, as reproduced above, is repeated, but it is added that "the matter is under Government's consideration and orders will be issued in due course". The petitioner has admitted that these conditions were announced at the time of the auction and that he offered his bid, subject to these conditions. Sri D. L. Jayawant, for the petitioner, however, contends that these conditions merely amount to giving information by the Government regarding some liability which might arise in future. From the wordings of the clauses in the memoranda, the contention seems to be justified. It is not, however, necessary to decide whether the inclusion of the condition amounts to a contract to pay the surcharge. Further under Section 143 of the Madhya Pradesh Land Revenue Code, 1954, moneys due to the State Government under any contract can be recovered as arrears of land revenue, only if there is an express condition in the contract to that effect. It is not alleged in the return filed by the respondents that such a condition was included in the auction sale of the right to run out stills. Accordingly, the amount cannot be recovered as arrears of land revenue, even if there was a contract to pay it.

5. The learned Additional Government Advocate sought to justify the levy under the Rules framed under Section 32 of the Indian Forest Act 1927. These rules deal with a claim of commutation, according to which, upon annual payment of a fixed sum, an individual gets the privilege of obtaining reasonable quantities of forest produce from the protected forests. Rule 6 of these rules provides that liquor contractors may collect fuel on payment of royalty as provided therein. It appears that the basis for recovery of the amounts for commutation under these rules is a voluntary agreement between the parties. Rule 3 provides that "commutation shall be permitted only upon an agreement by all residents of the village in that behalf." In the instant case, there is nothing to show that the out still contractors as a class agreed to make any payment. Further, Rule 6, which imposes a liability on liquor contractors, clearly says that they would be entitled to collect fuel from a protected forest on payment in advance of a royalty. This means that a contractor who wants to avail of this privilege, should pay the amount in advance and then only he can take fuel from the forest. It does not impose the levy of a royalty on all liquor contractors irrespective of the fact whether they take any fuel from the forest or not. Section 32 of the Indian Forest Act, 1927, which is the authority for making these rules, does not give power for a general levy of a royalty on all persons in this manner. Presumably Clauses (b) and (c) of Section 32 are the basis for the commutation rules. They only provide for granting of licenses to persons living in the villages in the vicinity of protected forests to take trees, timber or other forest produce for their own use. These rules have thus no application to the case of liquor contractors who have not specifically agreed to avail of the privilege of removing any forest produce.

6. The third contention of the learned Additional Government Advocate is that the levy of the surcharge amounts to "royalty" and according to section 143 of the Madhya Pradesh Land Revenue Code, 1954, it can be recovered as arrears of land revenue. In the correspondence by the Government, the levy has been described differently as a tax, a surcharge, a royalty and a cess.

7. In Wharton's Law Lexicon (Fourteenth Edition) the word "royalty" has been explained as "payment to a patentee by agreement on every article made according to his patent; or to an author by a publisher on every copy of his book sold; or to the owner of minerals for the right of working the same on every ton or other weight raised". In Mozley and Whiteley's Law Dictionary (Sixth Edition) "royalty" has been

defined as a "a pro-rata payment to a grantor or lessor, on the working of the property leased, or otherwise on the profits of the grant or lease. The word is especially used in reference to mines, patents and copyrights." It, therefore, appears that royalties are payments which the Government may demand for the appropriation of minerals, timber or other property belonging to the Government. Two important features of royalty have to be noticed : they are, that the payment made for the privilege of removing the articles is in proportion to the quantity removed, and the basis of the payment is an agreement. The petitioner, in the instant case, did not represent to the Government that he wanted to remove any fuel from the forest and to pay for it.

It does not appear that the Government can of itself, impose a compulsory levy on all liquor contractors irrespective of the fact whether they avail of the privilege of removing fuel from the protected forest or not. In this aspect, the levy would amount to a "tax" or a "cess" which can only be imposed under the authority of law as provided in Article 265 of the Constitution.

8. In the result, we find that the imposition of a surcharge at 7% per cent on the amount of bid on the liquor contract which is being levied against the petitioner is without the authority of law. Further the recovery of the amount as arrears of land revenue is illegal.

9. The petition is allowed. We quash the order dated 6-5-1955 passed by the Divisional Forest Officer, Durg Division, Rajnandgaon, (respondent No. 3) and the order dated 7-5-1955 passed by the Deputy Commissioner, Durg (respondent No. 2) and direct that the recovery of the amount shall not be made as arrears of land revenue. The State Government shall pay the costs of the petition. Hearing fee is fixed at Rs. 50/- The outstanding amount of the security shall be refunded to the petitioner.

Petition allowed.