

MADHYA PRADESH HIGH COURT

Banku Bihari Saha

Vs.

State Government of M.P

Misc. Petn. No. 214 of 1968
(P.V. Dixit, C.J. and G.P. Singh, J.)

03.12.1968

JUDGMENT

Singh, J.

1. The petitioner was holder of a quarry lease for lime stone for a period of five years commencing from 3rd November, 1961. Under Clause (3) of the lease, he was liable to pay royalty at the rate of 10 per cent of the sale value at the pit's mouth subject to a minimum of 0.50 paise per ton for lime stone, 0.75 paise per ton for slacked lime and Re. 1 per ton for unslacked lime. This was also the rate of royalty then prescribed for lime stone in Schedule I to the Madhya Pradesh Minor Minerals Rules, 1961. There was a proviso to Clause (3) of the lease, which enabled the lessor to revise the rate of royalty every five years commencing from the date of the lease. By a notification dated 9th December, 1965 Schedule I to the Minor Minerals Rules was amended by the State Government and the rate of royalty for lime stone was fixed at Rs. 2 per tone from 1st January, 1966. For the period after 1st January, 1966, the petitioner was assessed to royalty by the Mining Officer at the rate of Rs. 2 per tone. The petitioner protested and claimed that in his case the rate of royalty could not be revised before expiry of five years, and that he was governed by the rate of royalty contained in the lease deed. The matter was referred to the Collector under Clause 21 of the lease, who in his order passed in January, 1968 held that the petitioner was liable to pay royalty at the revised rate of Rs. 2 per tone. The petitioner then filed this petition under Article 226 of the Constitution praying that the order of the Collector be quashed and that the Mining Authorities be directed to reassess the royalty according to the rate given in the lease-deed.

2. Before we proceed to set out and examine the contentions raised by the learned

counsel for the petitioner, it is necessary to notice the relevant statutory provisions. By Section 15 of the Mines and Minerals Act, 1957 the State Government has been conferred power to make rules in respect of minor minerals. Sub-section (1) of Section 15 reads as follows :-

"15 (1) The State Government may, by notification in the Official Gazette, make rules for regulating the grant of prospecting licenses and mining leases in respect of minor minerals and for purposes connected therewith." In exercise of the powers conferred by the aforesaid provision, the State Government made the Madhya Pradesh Minor Minerals Rules, 1961. The Rules define quarry lease to mean a mining lease for minor minerals and provide detailed procedure for the grant of quarry lease in respect of such minerals. Rule 25 of the Rules deals with the conditions of quarry lease. This Rule is divided into three sub-rules. Sub-rule (1) enumerates the conditions which apply to every quarry lease. We are here concerned only with Clause (i) (a) of sub-rule (1), which reads as follows :-

"25 (1) Every quarry lease shall be subject to the following conditions :-

(i) (a) The lessee shall pay royalty on minor minerals dispatched from the leased areas at the rates specified in the First Schedule."

Sub-rule (2) enumerates the conditions which may be included by the State Government, if deemed necessary, in a quarry lease. Sub-rule (3) does not by itself contain any condition but empowers the State Government to specify any other special condition that may be included in a quarry lease. The rate of royalty for minor minerals is contained in the First Schedule to the rules. Sub-rule (2) of Rule 24 enables the State Government to revise the rate of royalty from time to time subject to this limitation that the rate shall not be revised more than once during any period of five years. Rule 24 (2) reads as follows :-

"24(2) The State Government may, by notification in the Official Gazette, amend the First Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any minor minerals with effect from such date as may be specified in the notification.

Provided that the rate of royalty in respect of any minor mineral shall not be revised more than once during any period of five years."

Rule 22 of the Rules provides that after a quarry lease is granted, a lease-deed shall be executed in Form No. V. Clause (3) of this form contains the provision for payment of royalty and this clause in its original shape specified the rates which were mentioned in First Schedule and contained a proviso to the following effect :-

"Provided that the rate of royalty on the value of the said minerals at the pit's mouth as hereinabove prescribed may at the option of the Lessor be revised every five years commencing from the date of this lease."

The petitioner's lease was executed in Form No. V and Clause (3) contained the proviso as quoted above.

3. The first contention raised by the learned counsel for the petitioner is that the State Government has no power to make rules fixing rates of royalty for minor minerals. This contention must be rejected. We have already quoted Section 15 (1) of the Mines and Minerals (Regulation and Development) Act, 1957, which empowers the State Government to make rules "for regulating the grant of mining leases in respect of minor minerals and for purposes connected therewith." Royalty is a payment to the lessor proportionate to the amount of the mineral worked; it is paid in addition to dead rent and surface rent and is a normal feature of mining leases (Halsbury's Laws of England Vol. 26, pp. 430, 435). Royalty being a necessary concomitant of mining leases, power to make rules for regulating the grant of mining leases of minor minerals and for purposes connected therewith will necessarily include the power to make rules fixing the rates of royalty in respect of minor minerals.

4. The second contention raised by the learned counsel for the petitioner is that as the lease-deed contained a proviso in Clause (3) that the rate of royalty may be revised after expiry of five years from its commencement, the revision of royalty by amending the First Schedule from 1st January, 1966 did not become applicable to the petitioner's lease before expiration of five years from the date of the lease. In our opinion, this contention is also without any substance. Every quarry lease is subject to the conditions contained in sub-rule (1) of Rule 25, which includes in Clause (i) (a) the condition of payment of royalty at the rates specified in the First Schedule. The liability of the lessee to pay royalty at the rate specified in the First Schedule flows from the rules itself and does not depend upon any term contained in the lease deed. After the Schedule is amended by exercise of the power under Rule 24 (2), the revised

rates become the rates specified in the First Schedule and the lessee becomes liable to pay the royalty at the revised rates. There is one limitation on the power of the Government to amend the Schedule which is contained in proviso to Rule 24 (2). The rate of royalty in respect of any minor mineral cannot be revised more than once during any period of five years. As in the present case, the notification issued in December, 1965 revising the rate of royalty for lime stone from 1st January, 1966 was the first revision after the rules came into force, there is no question of exceeding the power of amending the Schedule. The proviso contained in Clause (3) of Form No. V (form of mining lease), which also finds place in the lease executed in the petitioner's favor, cannot limit the plain language contained in Rule 25 (1) or Rule 24 (2). It is well settled that any provision in a form cannot be permitted to limit the meaning of an unambiguous enactment, though a form may be referred for the purpose of throwing light on the construction of doubtful or ambiguous enactment; (Halsbury's Laws of England Vol. 36, p. 399). The proviso to Clause (3) in the form of mining lease must be read subject to Rules 24 and 25 and so read it may be construed as an additional power conferred by contract to revise the rate of royalty. For instance, even if the Government does not amend the Schedule and make a general revision of the rate of royalty, it may be still open to it to revise the rate of royalty applicable to any particular case under the terms of the lease-deed. Be that as it may, it is at least clear that the proviso in Clause (3) of the form of lease does not limit the power of the State Government under Rule 24 (2) to amend the Schedule and fix a new rate of royalty and similarly it does not affect the liability of the lessee arising under Rule 25 (1) to pay royalty at the rate that may be specified in the Schedule. It may here be mentioned that Clause (3) in the form of lease and the proviso to that clause served no useful purpose and have now been amended by a notification issued in December, 1967 and the new clause reads as follows :

"(3) Subject to the provision of Clause (2), the lessee/lessees shall during the subsistence of this lease, pay to the State Government at such times and in such manner as the State Government may prescribe royalty in respect of any mineral/ minerals removed by him/them from the leased area at the rate for the time being specified in the first schedule to the Madhya Pradesh Minor Minerals Rules, 1961."

In our opinion, the Mining Authorities and the Collector were right in holding that the petitioner was liable to pay royalty at the revised rate of Rs. 2 per tone from 1st

January, 1966.

5. The petition fails and is dismissed with costs. Counsel's fee Rs. 100. The outstanding amount of security deposit shall be refunded to the petitioner.

Petition dismissed.