RAJASTHAN HIGH COURT

Bherulal

Vs.

State of Rajasthan

Civil Writ No. 42 of 1955
(Wanchoo, C.J. and Modi, J.)

06.03.1956

JUDGMENT

Wanchoo, C. J.

1. This is an application under Article 226 of the Constitution by Bherulal against the State of Rajasthan and Mangalram, praying for an order in the nature of prohibition in connection with certain dues which are being realized from the applicant as royalty.

2. The facts, which have led to this application, are these - The applicant is a stone merchant, and purchases building stone from quarry-men of different quarries situate in Tahsil Nimbahera in district Chittorgarh. Thereafter, he sells these stones either in Nimbahera itself or in other parts of Rajasthan, and even beyond Rajasthan Mangalram is a contractor appointed by the State of Rajasthan for collecting what is called royalty in connection with these quarries. Mangalram holds a contract from the State of Rajasthan for this purpose as he offered the highest bid of Rs. 39,251/- for collection of royalty. According to the contract entered into between Mangalram and the State of Rajasthan, he is authorised to collect royalty on stones from the quarry-holders or from persons taking the stone from such quarry-holders at the rate specified in the schedule attached to the contract. The contract is valid for 3 years from 1-4-1954, to 31-3-1957. One of the terms, prescribes that stone would be supplied free of royalty to *bona fide* cultivators who are able to produce a certificate to that effect from certain authorities. The rate prescribed in the schedule is of two kinds so far as the particular brand of stone with which we are concerned. There is what is called a general rate, and a rate for local use. The general rate is Rs. 2/- per cart-load of stones where the cart is drawn by two bullocks, while the rate for local use for the same quantity of stone is Re. 1/-.

3. It is also said that in order to realize this royalty, the contractor has fixed Nakas (some kind of posts) round about the quarries, and he is realizing Re. 1/- for every bullock-cart drawn by two bullocks where the stone is for local use, and Rs. 2/- where it is exported outside Nimbahera. Tahsil.

4. The contention of the petitioner is twofold before us. In the first place, he contends that this charge is not royalty, and as it is not authorised by any law, it cannot be realized at all. In the second place, it is contended that even if it is royalty, it can only be realized at one rate namely Re. 1/- per cart-load for a bullock-cart drawn by two bullocks, and that double the rate cannot be charged for the same quantity simply because the stone is meant for export outside Nimbahera Tahsil. This it is contended amounts to imposition of a kind of export duty in the guise of royalty, and the State is not authorized to charge anything above the minimum of Re. 1/- per cart fixed by it. It is further contended that this amounts to discrimination, and is hit by Article 14 of the Constitution as there is no reasonable basis for the Classification.

5. The application has been opposed on behalf of the State as well as by Mangalram. Two preliminary objections have been taken, namely (1) that the application has been made with great delay and should be thrown out on that ground, and (2) that the applicant cannot challenge the rates for the royalty is to be paid by the quarry-men, and not by the purchasers, and the applicants have, therefore-no interest in the matter. Besides these preliminary objections, it is urged that different rates can be fixed by Government depending upon where the stones are going to be used, and that this does not amount to discrimination, it is urged that it is merely classification which has got a reasonable basis for it. It is also urged that the extra charge on stones to be sent out of Nimbahera Tahsil is not in the nature of a customs duty nr export duty, and is merely a royalty.

6. We shall deal with the preliminary objections first. So far as the matter of delay is concerned, the contract came into force from 1-4-1954, and this application was made in May, 1955. So there is apparently some delay in the making of the application. It seems however, from the documents filed that the applicant started objecting from October 1954, and came to this Court in May, 1955, when he failed to get redress from the State. In the circumstances, it can hardly be said that there was serious delay in this case. Besides, the royalty is being realized from day to day, and will continue to be realized according to the contract till March, 1957. In these circumstances, the

applicant can certainly come to us and ask us to stop realization if the royalty cannot be properly and legally levied at the rates mentioned in the contract. There is no force, therefore, in this objection, and it is hereby overruled.

7. The second preliminary objection is that the applicant has no locus standi to object to the rate of royalty, and that it is only quarry-men who can do so as the charge of royalty is made from the quarry-men. It is enough to say in this connection that though the charge is to be made from the quarry-men, the contract with Mangalram itself lays down that the contractor is authorized to collect the royalty from the quarry-holders or from persons taking stones from such quarry-holders. Further, it appears that even though the quarry-men may be legally liable, the purchasers do pay the royalty at the rates specified in the contract on behalf of quarry-men. Affidavits of three quarry-men have been filed, which show that what the quarry-men do is to ask the purchaser to pay the royalty, though they would have us believe that they do so only when they have not got money with them to pay the royalty. There is also an affidavit of a dealer who gays that the royalty is paid by the quarry-men, and sometimes when they have not got the money, they ask the purchaser to pay it. In any case, it is clear that the royalty is passed on to the purchaser, and this is in the usual course of business. The applicant and other purchasers like him are, therefore, interested in the rates of royalty for it is they who have ultimately to pay it. In these circumstances, the applicant is entitled to maintain the application as a person interested in the royalty, and this preliminary objection is also overruled.
8. Let us now turn to the merits of the case. It is well to be clear what royalty is before we consider the points raised in this case. In Wharton's Law Lexicon, 'royalty' is denned 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."

The present case is of the third kind, namely payment to the owner of minerals for the right of working the same. This payment is based on produce, and the rate is fixed as so much per ton or other weight. It is clear that royalty has nothing to do with where the purchaser is taking the mineral, or to whom he is going to sell it, whether at the place where the mine is situated or at some place hundreds of miles away. There were

no mineral rules framed when this contract was given. The rules have recently been framed as the Rajasthan Minor Mineral Concession Rules, 1955, and would be found in. the Gazette Extraordinary of 11-6-1955, Part IV (C) at page 254. These rules also prescribe a rate of royalty in Schedule I. There is, however, no difference in the Schedule to these rules in the rate of royalty based on where the stone is going to be taken or consumed. It is clear, therefore, that royalty is a charge by the owner of minerals from those to whom he gives the concession to remove them, and the charge is on production, the rate being fixed according to weight. The fixation of different rates of royalty depending upon where the mineral extracted is going to be consumed is against the very principle of royalty, and learned counsel for the opposite parties have not been able to show us any royalty rule anywhere where different rates of royalty have been fixed depending upon where the mineral taken out is going to be consumed. In the very nature of things, therefore, the State could not fix different rates as royalty in this case depending upon where the stone was to be consumed whether in Nimbahera Tahsil or outside that Tahsil. The reason why this seems to have been done is historical. Before 1947, Nimbahera was part of the former state of Tonk, and was surrounded on all sides by other former states. The Tonk State, therefore, fixed one rate for consumption of stone within Nimbahera and another rate if it was to be consumed outside Nimbahera. That State could do so because it had the power to impose an export tax, and the difference in rates was really due to an extra amount being put on the royalty as an export tax. The same system seems to have been continued by the state of Rajasthan, though the former state of Tonk has disappeared, and Nimbahera is a part of Rajasthan like any other part.

9. The question then arises whether the Rajasthan State can charge royalty at one rate where the consumption is to be within Nimbahera Tahsil, and at another rate if it is to be outside Nimbahera Tahsil, i.e., in other parts of Rajasthan or in other parts of India beyond Rajasthan. We are of opinion that it cannot do so.

10. So far as differentiation between Nimbahera and other parts of Rajasthan is concerned, fixation of different rates within the same State is hit as a discriminatory act by Article 14 of the Constitution, unless it can be supported on the basis of a reasonable classification. Is there then any reasonable basis for making this difference in the rate of royalty ? In this connection, we may refer to a term of the contract according to which *bona fide* cultivators have been exempted from royalty. Now that discrimination may be justified as a reasonable classification for the State may very

well feel that the class of cultivators, who are generally poor, should be given a concession as compared to other classes. This, however, should not be taken as our final opinion, for the point does not directly, arise in this case. But we can see no reasonable basis for making a discrimination between a man living in Nimbahera Tahsil, and another man living just outside Nimbahera Tahsil.

It is said on behalf of the State that a low rate is being charged from the local persons just to give them benefit of getting stones from their localities. We must say that we have not been able to understand what this really means. If one were to analyse the implications of this differentiation, one would find that while a poor man, say in Pali, will have to pay Rs. 2/- per bullock-cart of two bullocks a rich man in Nimbahera would pay only Re. 1/- per bullock-cart, and this advantage is being given in spite of the fact that there is comparatively speaking little charge for transport where the purchaser is of Nimbahera, while the charge for transport for the purchasers in Pali is much greater. The result of this is that a poor man in Pali has not only to pay a large amount as transport charges, but also double the amount as royalty. We cannot see any reason behind such a classification. We are, therefore, of opinion that different rates of royalty as between Nimbahera Tahsil find other parts of Rajasthan, as fixed in this contract, are hit by Article 14 of the Constitution, as they deny equality before law to citizens of various parts of this State.

11. As to the case where the stone is to be exported outside Rajasthan, we must say that fixing a larger amount as royalty is really going round the provisions contained fir Part XIII of the Constitution, and particularly Article 303. Now that customs duty has come to an end in all Part B States since 1-4-1955, what the State is doing by doubling the royalty, where goods are to be sent outside Rajasthan, is really charging an extra export duty which, it is obvious, it cannot do under the camouflage of royalty. The State cannot be allowed to do indirectly through a camouflage what it cannot do directly. We are, therefore, of opinion that so far as exports of stone outside Rajasthan are concerned, an extra amount charged as royalty is nothing more or less than export duty, and the State cannot now charge it after 1-4-1955.

12. Then we come to the contention of the applicant that this is not royalty at all, and that the State cannot charge anything. This contention is, in our opinion, incorrect. The charge is undoubtedly in the nature of royalty, and the State can charge at the same rate on every bit of production from these quarries. It is immaterial whether the payment is made directly by the quarry-men or indirectly on their behalf by the

purchaser. But the charge must be at the same rate. We find from the Schedule of royalty rates that so far as Singi stones are concerned, there are two rates - one general and the other local. In view of what we have said, the State as well as the Contractor can only charge the local rate as royalty. and cannot charge the general rate which is double the local rate on the ground that Singi stone is going to be sent outside Nimbahera Tahsil or outside Rajasthan.
As for the Chesa and Khanda stones, there is only one rate namely general, and there is no local rate, and so that one rate stands. It has been urged that the Contractor would be hit by our decision. If so, that is a matter for adjustment between the contractor and the State, and the amount of contract money might have to be reduced.

13. We, therefore, allow the application, and prohibit the State as well as the contractor from charging royalty on Singi stones at anything more than the local rate mentioned in the schedule to the contract. The applicant will get his costs from the State.

Application allowed.