

RAJASTHAN HIGH COURT

Vijai Construction Co.

Vs.

State of Rajasthan

Civil Writ Petn. No.533, of 2000

(B.S. Chauhan, J.)

17.04.2001

ORDER

B.S. Chauhan, J.

1. In this case, the notifications issued by the Government (Mines Department) dated 23-11 -1989, 22-9-1994 and 8-11-1996 are under challenge. All these three notifications provide for collection of royalty from the contractors of the Government departments. The rate of royalty had been varied from time to time and as per the subsequent notifications, it provides for imposition of royalty 2%.

2. Today when this case was called for hearing, Shri R.L. Jangid, learned Addl. Advocate General, and Sri Vimal Mathur were directed to appear for respondents. They had been served the copies and they filed a copy of the Government order dated 18-11-2000 by which all the aforesaid notifications have been withdrawn. Therefore, the only question remains before this Court about the refund of royalty already collected, as the aforesaid Government order dated 18-11-2000 applies prospectively and does not waive the royalty imposed, the case was heard on merit.

3. Royalty is equivalent to Jura regalia Or Jura regia, i.e. royal rights and prerogatives of a sovereign. Royalty means imposition of particular amount on the lessee for the State something out of what the State conveys, i.e. part of reddendum payable in cash or kind for rights and privilege obtained. It means a payment to the owner of mineral for the right of working the same and charging is based on produce. Government may demand payments for the apportionment of minerals, timber or other property belonging to the Government. But while imposing royalty, it must be ensured that the payment is made for the privilege of removing the articles in proportion to the quantity

removed and the basis of payment is an agreement. (Vide *Sethi Marble Stones Industries v. State of Rajasthan*, ¹ *India Cement Ltd. v. State of Tamil Nadu* ² and *Inderjeet Singh Sial v. Karam Chand Thapar*, ³ Therefore, in the agreement of grant of lease, the grantor/ lessor reserves something for himself out of which he grants.

4. In *State of Himachal Pradesh v. Raja Mahendra Pal* ⁴ the Apex Court held that connotation of 'Royalty' has to be used in the context of the case and practice prevalent etc. which generally, authorise the owner to recover some part of the value of fallen trees, timber and extraction and utilization of the other forest produce.

5. In *Quarry Owners' Association v. State of Bihar*,⁵ the Hon'ble Supreme Court observed as under (Paras 33, 34 and 35) :-

"In conserving or regulating the development of any mineral resources, the price factor is inherent. Any development requires planning, execution, management and with reference to the excavation of mines, controlling the extent and manner of mining, to check its wastage, protecting the environment and controlling pollution etc. which are provided in this Act. All this requires expenditure to be incurred by the State coupled with considerations for parting with the wealth of the State, as minerals belong to the State except on private land. They are all guiding factors in fixing, modifying or enhancing the rate of royalty. Thus development of mineral resources inherently refers to the price factor to be recovered by the owner. One of the submissions of the appellants is, since royalty is a tax, delegation for its enhancement cannot be left unbridled on the delegate and if two interpretations are possible, the one which favors' an assessee should be accepted. It is true that this Court has held royalties on the minerals to be a tax in *India Cement Ltd. v. State of Tamil Nadu*. ⁶ *Orissa Cement Ltd. v. State of Orissa*, ⁷ *State of M.P. v. Mahalaxmi Fabric Mills Ltd.* ⁸ and *P. Kannadasan v. State of Tamil Nadu*, ⁹ In considering this submission we have to keep in mind, tax on this royalty is distinct from other forms of taxes. This is not like a tax on income, wealth, sale or production of goods (excise) etc. This royalty includes the price for the consideration of parting with the right and privilege of the owner, namely the State Government who owns the mineral. In other words, the royalty/dead rent, which a lessee or licensee pays, includes the price of minerals which are the property of the State. Both royalty and dead rent are integral parts of a lease. Thus, it does not constitute usual tax

as commonly understood but includes return for the consideration for parting with its property. In view of this special nature of the subject under consideration, namely, the minerals, it would be too harsh to insist for a strict interpretation with reference to minerals while considering the guidelines to a delegatee who is also the owner of its mineral."

6. A Division Bench of this Court, in *M/s. Shubh Marbles v. State of Rajasthan*¹⁰ held that minerals cannot be subjected to royalty twice.

7. Thus, on the basis of the above, it is evident that royalty has to be fixed as per the quantity excavated on the basis of the agreement and the material so excavated cannot be subject-matter of payment of royalty twice. In the instant case, to avoid the said situation, after hearing the learned counsel for the parties and by their consent, the following orders are passed :-

1. As the material used by the contractor cannot be subject-matter of royalty twice, the matters require to be assessed/examined by the competent authority;
2. If the department comes to the conclusion that the royalty has already been paid on the mineral by the user/contractor/ licensee of the mines and minerals/lease holder or by the contractor if he was holding the short term license the question of imposing the royalty would not arise;
3. In case the material used has never been subjected to royalty, the department will make proper assessment and the petitioner contractor shall be liable to pay that only up to the date of withdrawal of notification i.e. 18- 11-2000;
4. Petitioner is directed to furnish the complete particulars/information regarding the purchase/excavation of materials within a period of 30 days from today before the Assessing Authority of the respondent department and the latter shall proceed in accordance with law as explained above. Needless to say that if it is found that there are certain outstanding dues of the petitioner contractor, the respondents are directed either to adjust if any amount is due or to refund it. The respondent authority is directed to decide the same within a period of four months from the date of furnishing the particulars;
5. There shall no order as to costs.

Order accordingly.

Cases Referred

1. AIR 1958 Raj 140
2. (1990) 1 SCC 12
3. AIR 1996 SC 247
4. AIR 1999 SC 1786
5. AIR 2000 SC 2870
6. (1990) 1 SCC 12
7. 1991 (Supp) 1 SCC 430
8. 1995 Supp (1) SCC 642
9. (1996) 5 SCC 670
10. DB CSA No.1277/1979, decided on 15-9-1988