

RAJASTHAN HIGH COURT

Rakesh Ink Industries

Vs.

State, (Rajasthan)

C.W.P. No. 2083 of 2002

(Prakash Tatia, J.)

26.02.2003

ORDER

Prakash Tatia, J.

1. Heard learned counsel for the parties finally.

Brief facts of the case are that the petitioner firm was granted license by the Executive Engineer for excavation of the sand from the land for brick kiln for a period of five years on 24th May, 2000. Copy of the license is placed on record as Annexure 1. On 5th March, 2002, the Assistant Secretary to the State Irrigation Department conveyed to the respondent No. 2, approval of water supply to the petitioner for the purpose of brick kiln in Chak No. 2J Bada in the name of Rakesh Cement Udhyog to the extent of Order 03 cusecs for a period of 2 years on the condition that the petitioner will be bound by the conditions imposed by the State Government. Copy of this order is Annex. 2.

2. It is alleged that the respondent can charge the amount for water supplied to the petitioner in accordance with the Item No. 1 of Schedule I of the Rajasthan Irrigation and Drainage Rules, 1955 only whereas the petitioner is being compelled to pay Rs. 20/- per 1,000 cubic feet of water supply, treating the water supply to petitioner in category of water supply in bulk for industrial purposes under Item No. 5(a) of Schedule I. It is said that an affidavit was obtained from the petitioner firm that the petitioner would pay the rate fixed by the State Government and if the rate are charged @ 20/-, then the petitioner would pay the same. According to the petitioner, such demand is absolutely illegal and contrary to law. The Division Bench of this Court has already settled the controversy in the case of *Rajendra Kumar Goyal v. State I* wherein it has been held that the brick making is a specific item under Schedule I of

the Rules of 1955 and the rates of water supply can be charged only in accordance with the rates given in Item I of Schedule I only. Therefore, according to learned counsel for the petitioner, once the Division Bench of this Court has already decided the matter that water supply for the purpose of brick making and pise wall building is in a specific category then the respondents cannot create a demand or ask for payment by treating the water supply in general category by including this water supply in the category provided for industrial supply.

3. Learned counsel for the respondents submits that when the Division Bench decided Rajendra Kumar Goyal's case, the Rule 14 of the Rules of 1955 was not brought to the notice of the Division Bench and therefore, that judgment has no application to the present case.

4. Learned counsel for the respondents further submits that Entry No. 1 of the Schedule I is applicable to the temporary supply of water for brick making and pise wall building and the regular supply of the water for brick making and pise wall building falls in the Rule 15 of the Rules of 1955.

5. Learned counsel for the respondent relied upon sub-clause (f) of the Section 32 of the Rules of 1955 and submitted that, in view of the said provisions, no writ of any nature including the mandamus can be issued against the State for supply of water and therefore, the writ petition of the petitioner deserves to be dismissed.

6. After considering the submission made by learned counsel for the parties, the submission of learned counsel for the respondents, that the relevant provisions of law were not brought to the notice of the Division Bench when the Division Bench decided the case of Rajendra Kumar Goyal (2002 WLC (Raj) (UC) 194), deserves to be rejected simply because of the reason that when the Division Bench has categorically held that the supply of water for brick making and pise wall building falls in Item No. 1 of the Schedule I, it is required to be presumed that the Division Bench looked into the entire Rules. The reasoning given by the Division Bench in its judgment itself makes it clear that the brick making and pise wall building is a specific entry Item I in the schedule I whereas the Entry No. 5 in the Schedule I of the Rules of 1955 is more of general nature, which is clear from a bare reading of the above entries in the Schedule I of the Rules of 1955. The brick making and pise wall building may fall in under term of "industrial purpose" but when the legislature in its wisdom made a separate entry for specific item in the Schedule I of the rules 1955, then it is given purposefully to exclude it from the Item No. 5 of the Schedule I of the

Rules of 1955. The "Industrial purpose" is genus and the "water supply for Brick Kiln" is species of the genus Industrial purpose. Former include latter but latter cannot include former in it. Learned counsel for the respondents tried to make a different distinction by saying that, in case a temporary water supply is given for brick making and pise wall building, this will fall in Item No. 1 of the Schedule I. Such arguments is not supported by any of the provisions or rules. Learned counsel for the respondents wants to insert words "temporary water supply for" before the words used in the Entry No. 1 of the Schedule I to make a limited purpose of the Entry No. 1, which is not permissible.

7. The submission of the learned counsel for the petitioner on the basis of Rule 15 is also devoid of any force. The Rule 15 of the Rules of 1955 has no application at all to the point in controversy because it provides only the requirement of previous permission of the Divisional Irrigation Officer (Executive Engineer) for getting water supply for filling the tanks and for getting the supply of water from the tank and canal for purposes other than irrigation. The Rule 15 has no relevance for the purpose of charging the rate for supply of water for brick and pise wall building under the category of Item No. 5 of the Rule 1. Even in Rule 15 of the Rules of 1955 itself it is clearly mentioned that for this purpose also Irrigation Officer can charge the rate mentioned in the Schedule I only. It nowhere gives arbitrary power of charging of rate for water supply or empowers authority to put one category of water supply in another category of water supply for the purpose of charging the rates for water supply contrary to schedule.

8. The arguments of learned counsel for the respondents that no writ can be issued for direction for supply of the water in view of the sub-clause (f) of the Section 32 of the Rules of 1955, appears to be absolutely misconceived. No rule can take away or control, the power of the High Court, which is available under Article 226 of the Constitution of India. Apart from this, sub-clause (f) of Section 32 nowhere puts any restriction upon the Court as suggested by learned counsel for the respondents. The sub-clause (f) of the Section 35 merely provides that the State Government is not bound to supply water except in accordance with the terms of the Contract in writing. It is nobody's case that anybody asked for supply of water without observing the procedure provided in the Act and Rules. The question is whether the respondent-State or the Irrigation Authorities can demand rates for water supply for brick kiln contrary to what is not permissible under the Rules? The answer will certainly be in negative. The contention raised on behalf of the State appears to be not only

misconceived, but it appears to be only result of arrogant attitude of the State by saying that the State cannot be directed to supply water. The State authorities are bound to act fairly and are bound to follow the Rules and therefore, any demand in excess, than the rate prescribed in the Rules and Act from the petitioner, cannot be justified even by invoking powers of the State Government in sub-clause (f) of the Section 32 of the Rules of 1955.

9. In view of the above reasons, the writ petition of the petitioner deserves to be allowed and hence, allowed. The respondents are directed to provide supply of water by charging the rate for water supply to the petitioner for the purpose of brick making at the rate mentioned in Item I of the Schedule I of the Rules of 1955 and are restrained from charging any higher rate on the basis of entry No. 5 of the Schedule I annexed to the Rules of 1955 from the petitioner. The petitioner is also entitled for the costs.

Petition allowed.

Cases Referred.

1. (DBC Spl. A. (W) No. 697/2001)