Raojibhai Jivabhai Patel And Ors. Etc. ... vs State Of Gujarat And Ors. Etc. Etc on 7 December, 1989

Equivalent citations: 1989 SCR, SUPL. (2) 406 1989 SCC SUPL. (2) 744, AIRONLINE 1989 SC 149

Author: E.S. Venkataramiah

Bench: E.S. Venkataramiah, K.N. Singh, N.M. Kasliwal

PETITIONER:
RAOJIBHAI JIVABHAI PATEL AND ORS. ETC. ETC.

Vs.

RESPONDENT:
STATE OF GUJARAT AND ORS. ETC. ETC.

DATE OF JUDGMENT07/12/1989

BENCH:
VENKATARAMIAH, E.S. (CJ)
BENCH:
VENKATARAMIAH, E.S. (CJ)
SINGH, K.N. (J)
KASLIWAL, N.M. (J)

CITATION:
1989 SCR Supl. (2) 406 1989 SCC Supl. (2) 744
JT 1989 (4) 505 1989 SCALE (2)1297

ACT:
Mines and Minerals (Regulation and Development) Act 1957/ Gujarat Minor Minerals Rules, 1966: Section 15/Rule 21--Royalty-Levy of by State Government on minor minerals validity of.

HEADNOTE:
The Petitioners in these petitions have challenged the validity of a Notification issued by the Government of Gujarat on June 25, 1985 whereby the Gujarat Minor Mineral Rules were amended with effect from 1.7.1985. By the said notification, original Rule 21 of the Rules was substituted by a new Rule 21 which provided that a holder of a quarry lease or any other mineral concession granted under the Rules shall pay royalty in respect of minor minerals provid-

ed in column 2 of the Schedule. It is under this Notification that the rate of royalty in respect of Black trap and Hard Murrum was increased from Rs.4 to Rs. 7 per metric tonne.

The validity of Rule 21 as it stood prior to its amendment by the aforesaid impugned notification was considered and upheld by this Court on March 6, 1986 in D.K. Trivedi & Sons & Ors. v. State of Gujarat & Ors., [1986] 1 SCR 479. The impugned notification was issued at a time when the Writ Petitions in the aforesaid case were pending in the High Court. The increase in the levy of royalty effected by the impugned notification is now questioned in these petitions. The Petitioners raised the following contentions viz;

(1) That the royalty levied and covered under the Rules should be applied only for mineral development and since the royalty is being treated as part of the consolidated fund of the State and used for other purposes by the State, the levy was bad; and

(2) That the impugned notification in question was in contravention of clause (c) of Art. 304 of the constitution.
(3) That the impugned notification is discriminatory in character.
407
Dismissing the Writ Petitions, this Court,

HELD: That Act is no doubt passed for development of minerals but while discharging its functions relating to development, if the State incidentally allows mining to be carried on in the public interest and levies in that connection a tax, it does not mean that the said tax should be used only for development of minerals and not for other purposes sanctioned by law. [412B]

The India Cement Ltd. etc. v. The State of Tamil Nadu etc., [1989] 4 SC--Judgment Today 190.

No restriction is being imposed on the freedom of trade of the petitioners by the levy of royalty. The minerals belong to the Government and if anybody wants to have the right as a lessee to exploit the mines to the exclusion of others and to remove the minerals with a view to making profit, he has to pay a royalty imposed in accordance with law. [412E]

In the instant case, the levy is made under a law made by the Central Government. It is not an imposition made by a law made by the State Legislature on which alone, the restriction contemplated under Art. 304(b) applies. [412F]

If the Executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the Courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute conferring the power or the power which has been conferred by it. [413B-C]

Since the power exercised is legislative in character, the authority which is exercising the said power has the power to make Rules equitable by necessary implication. No

express power need be conferred on such subordinate authority in order to make a classification for purposes of implementing the policy of the Act under which the Rules are made. [415G]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition (Civil) Nos. 12676-77 of 1985 etc. etc. (Under Article 32 of the Constitution of India) R.F. Nariman, P.H. Parekh, N.N. Keshwani, Mrs. H. Wahi and R.N. Keshwani for the Petitioners.

G.A. Shah, M.N. Shroff, K.M.M. Khan and T.U. Mehta for the Respondents.

The Judgment of the Court was delivered by VENKATARAMIAH, CJ. The petitioners in these petitions have questioned the validity of a notification issued by the Government of Gujarat on June 26, 1985 in exercise of its powers conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957), herein- after referred to as the Act, amending the Gujarat Minor Mineral Rules 1966, hereinafter referred to as the Rules, with effect from 1-7-1985 substituting the original rule 21 of the Rules by a new rule which reads as follows:

> "21. Rate of Royality: The holder of a quarry lease or any other mineral concession granted under these rules shall pay royalty in respect of minor minerals, specified in column 2 of the schedule, removed or consumed by him or by his agent, manager, employee, contractor or sub lessee from the leased area at the rates respectively specified against them in column 3 of the said schedule.
>
> Provided that:
>
> (i) the holder of a Parwana granted under these rules shall pay royalty at the rate of fifty percent of the rate of royalty specified in the said schedule.
>
> (ii) no royalty shall be charged from Nimbha-

das of village potters who manufacture upto one lakh bricks per year.

(iii) no royalty shall be charged from Nimbha- das of village potters if their annual produc- tion is not exceeding two lakhs bricks and they supply at least one lakh bricks to the Rural Housing Board or Panchayats.

(iv) Royalty shall be recoverable in whole rupees, fraction fifty paise and above to be rounded upwards to a whole rupee and fraction below fifty paise shall be ignored"

> and fixing the royalty payable by the lessees in respect of minor minerals known as Black Trap and Hard Murrum at Rs.7 per metric tonne by amending schedule of the

Rules which was being levied at Rs. 4 till the date of the said amendment.

In order to understand the case of the petitioners it is necessary to set out some other provisions of law governing the case. The Act was passed in the year 1957 by Parliament to provide for the regulation of mines and development of minerals under the control of the Union and it was made applicable to the whole of India. Under section 3A of the Act the word 'minerals' is defined as including all minerals except mineral oils. Clause (e) of the said section defines 'minor minerals' as building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may. by notification in the Official Gazette, declare to be a minor mineral. It is not disputed that Black Trap and Hard Murrum are notified as minor minerals. The Act has made provision with regard to the issue of prospecting licences and mining leases in respect of various kinds of minerals other than minor minerals and the procedure to be followed in that connection in the matter of issue of prospecting licences and mining leases. Section 9 of the act empowers the Central Government to levy royalty in respect of the minerals which are won by the mining lease holders under the Act at the rates prescribed in the Second Schedule to the Act. It empowers the Central Government to enhance or reduce the rate of royalty prescribed by the Second Schedule in respect of any mineral subject to the condition that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years. Section 14 of the Act provides that sections 5 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals. Section 15 as it stood during the relevant time read thus:

"15. (1) The State Government may, by notifi- cation in the Official Gazette, make rules for regulating the grant of (quarry leases, mining leases or other mineral concessions) in re- spect of minor minerals and for purposes connected therewith.

(2) Until rules are made under sub-section (1), my rules made by a State Government regulating the grant of (quarry leases, mining leases or other mineral concessions) in re-

spect of minor minerals which are in force immediately before the commencement of this Act shall continue in force.

(3) The holder of a mining lease or any other mineral concession granted under any rule made under sub-section (1) shall pay royalty or dead rent, whichever is more in respect of minor minerals removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee at the rate prescribed for the time being in the rules framed by the State Government in respect of minor minerals;

Provided that the State Government shall not enhance the rate of royalty in respect of any minor mineral for more than once during any period of three years."

It is seen from section 15 that the State Government is empowered to make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in re- spect of minor minerals and for purposes connected there- with. In exercise of the said power under section 15 the Government of Gujarat promulgated the Gujarat Minor Minerals Rules, 1966 which are referred to as the Rules as stated above. Rule 21 of the Rules provides for the determination of the rate of royalty payable in respect of minor minerals. The original rule 21 was substituted by new rule 21 by the issue of impugned notification on 26-6-1985 which provides that a holder of a quarry lease or any other mineral conces- sion granted under the Rules shall pay royalty in respect of minor minerals provided in column 2 of the Schedule, removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rates specified in column 3 of the said Schedule. It is under this notification the rate of royalty in respect of black trap and Hard Murrum was increased from Rs. 4 to Rs.7 per metric tonne. The rule also provides that the holder of a Parwana granted under the Rules shall pay royalty at the rate of 50 per cent of the rate of royalty specified in the said Sched- ule and that no royalty shall be charged from Nimbhadas of village Potters who manufacture upto one lakh bricks per year. It further provides that no royalty shall be charged from Nimbhadas of villages potters if the annual production is not exceeding two lakh bricks and they supply at least one lakh bricks to the Rural Housing Board or Panchayats. The validity of rule 21 as it existed prior to the issue of the impugned notification was considered in B.K. Trivedi & Sons and Ors. v. State of Gujarat and Ors., [1986] 1 SCR 479 as under the said rule the royalty payable in respect of some of the minor minerals had been enhanced. Originally all lessees had to pay a minimum dead rent in respect of the area covered by a minor mineral lease issued in respect of any minor mineral or the royalty prescribed in respect of quantity of minor minerals owned by him, which-ever was higher. The history of the legislation of the Rule from the year 1986 is set out in detail in the said decision. Hence it is not necessary to refer to it in detail here. By the said decision the constitutionality of section 15 of the Act and the validity of a notification issued on June 18, 1981 under which the rate of royalty had been raised was upheld and the writ petitions in which the said validity had been questioned were dismissed. That decision was rendered on March 5, 1986. During the pendency of the said petitions in the High Court the impugned notification was issued increasing the royalty payable in respect of Black Trap and Hard Murrum from Rs.4 to Rs.7. In these petitions the impugned notification issued in the year 1985 is questioned. Since many of the contentions raised by the parties in respect of the constitutionality of section 15 of the Act and the validity of Rules made thereunder had been considered and the contentions urged by the petitioners against the said rule in those petitions had been rejected, in the present case the petitioners have confined their case only to the following points which according to them had not been considered in the said decision.

Shri R.F. Nariman, learned counsel for the petitioners in some of the petitions had two contentions:

1. that the royalty levied and covered under the Rules should be applied only for mineral development and since the said royalty is being treated as part of the consolidated fund of the State and used for other purposes by the State the levy was bad; and

> 2. that the impugned notification in question was in contravention of clause (b) of Article 304 of the Constitution.

The contention of the learned counsel was that under Entry 50 of List II of the 7th Schedule to the Constitution, the royalty recovered by the State Government had to be used only for mineral development and could not be used for any other purpose. According to him the Act had been passed for purposes of regulation and development of minerals. He depended upon the language of Entry 50 which reads thus:

> "taxes on mineral rights subject to any limitations imposed by Parliament by law relating to mineral development"

We do not find much substance in this contention. Re- cently a Constitution Bench of this Court has held in The India Cement Ltd. etc. etc. v. The State of Tamil Nadu etc., [1989] 4 S.C.--Judgments Today 190 that the royalty levied on the extracted mineral was in the nature of a tax and it was not in the nature of a fee which could be used only for specific purposes. Any tax realised by the State Government forms part of the consolidated fund of the State and the said tax can be used by the State Government for any of the purposes to which its executive powers extend subject to any law made by the State Legislature in that regard. We do not, therefore, find any substance in the above conten- tion. It is no doubt true that the Act is passed for devel- opment of minerals, but while discharging its functions relating to development, if the State incidentally allows mining to be carried on in the public interest and levies in that connection a tax, it does not mean that the said tax should be used only for development of minerals and not for other purposes sanctioned by law.

In support of the second contention the learned counsel Shri Nariman argued that notwithstanding anything contained in Article 301 or Article 303 the Legislature of a State may by law impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as required in the public interest. Provided that no Bill or amendment for the purpose of sub-clause (b) shall be intro- duced or moved in the legislature of a State without the previous sanction of the president.

We do not find that clause (b) of Article 304 has any relevance on the point in question. No restriction is being imposed on the freedom of trade of the petitioners by the levy of royalty. The minerals belong to the Government and if anybody wants to have the right as a lessee to exploit the mines in question to the exclusion of all others and to remove the minerals with a view to making profit, he has to pay a royalty imposed in accordance with law. In the instant case the levy is made under a law made by the Central Gov- ernment. It is not an imposition made by a law made by the State Legislature on which alone the restriction contemplat- ed under Article 304(b) applies.

We do not also find much substance in the contention that the levy in question is unreasonably heavy and has been imposed in an arbitrary manner. The burden of establishing that the levy is unreasonably heavy, is on the petitioners. It is urged that in the other States the royalty is being levied at the rate of Re. 1 per metric tonne of Black Trap and Hard Murrum and Rs.7 levied in the notification is excessive. The fact that in other States the royalty is fixed at Re. 1 is not by itself

sufficient to hold that Rs.7 per metric tonne is unreasonably high rate of royalty. In Trivedi's case (supra) this Court had upheld the levy of Rs.4 per metric tonne which had been fixed in 1981 and in 1985 it was increased to Rs.7. Having regard to the depreci- ation in the value of the rupee and the increase in the cost of' administration of the State, which is ever increasing, as a welfare State we cannot say that Rs.7 is an unreasonably high rate. We have taken this view after going through the observations made by this Court in Trivedi's case (supra) at page 544 where this Court has observed that where a statute confers discretion- ary powers upon the executive or an administrative authority, the validity or constitutionality of such power cannot be judged on the assumption that the executive or such authority will act in an arbitrary manner in the exercise of the discretion conferred upon it. If the executive or the administrative authority acts in an arbitrary manner, its action would be bad in law and liable to be struck down by the courts but the possibility of abuse of power or arbitrary exercise of power cannot invalidate the statute con- ferring the power or the power which has been conferred by it. We do not find that the levy is arbitrarily imposed. It is obvious that the petitioners are lessees who are exploiting the mining areas for purposes of business and that the royalty in question is ultimately passed on to the consumers. It is not shown that the business ,of the peti- tioners has been adversely affected in such a way that it is liable to be struck down on the ground of arbitrariness. We do not, therefore, find any substance in the contention urged by Shri Nariman.

In Civil Writ Petition No. 618 of 1987 filed by Jai Sholanath Quarry Works and another, Mr. Keswani, learned counsel for the petitioners contended that the impugned rule 21 which was substituted in the place of the former rule 21 was invalid as it was discriminatory in character. He con- tended that the concession shown in favour of Parwana hold- ers was discriminatory and violative of Article 14.-Under clause 1 of the proviso to the impugned rule 21, a holder of a Parwana granted under the Rules has to pay royalty at the rate of 50 per cent of the royalty payable by the lessees and no royalty is payable by village potters who manufacture upto one lakh bricks per year and by the village potters whose annual production was not exceeding two lakh bricks and who supply at least one lakh bricks to the Rural Housing Board or Panchayats. His contention was that section 15 of the Act which authorised the State Government to make rules in respect of minor minerals does not specifically authorise the State Government to make such discrimination. We find no substance in this contention too.

It is obvious that a valid classification of persons and things for purposes of imposing any obligation on them would not be violative of Article 14 provided the classification is a reasonable one. It is well settled that a classification to be valid has to satisfy two conditions:

> (1) that there is an intelligible differentia between those who are included in the class which is affected by any law or rule and those who are placed outside the said rule; and (2) that there is a reasonable nexus between the classification and the object to be achieved by the rule or law in question.

The Act under the Rules was made for purposes of regu- lation and development and conservation of minerals. It is equally clear that while levying a tax the authority con- cerned is entitled to grant concessions and exemptions wherever necessary having regard to the purpose of the Act, the levy of

royalty is incidental to the regulation and development of minerals. Many a time absence of such classi- fication may itself result in the invalidation of the law or rule. Whoever is given an exclusive right to exploit a mine will have to pay some amount by way of return to the Govern- ment of India as authorised by entry 50 of List II of the 7th Schedule to the Constitution. Having regard to the broad policy underlying the Constitution if a concession is shown in favour of the poor and the down-trodden, it cannot be said that the exemption or concession is invalid. According to rule 2(vi)(a) of the Rules a "quarrying Parwana" means a quarrying Parwana granted under these rules to extract and remove any minor mineral from land not exceeding a specified area. Rule 33-A provides that the competent officer may notify areas of limestone, Black Trap, sand stone and build- ing stones for the purpose of grant of quarrying parawana, as he deems fit. When any area is so notified, no quarry lease shall be granted for such notified area. Rule 33-B of the Rules reads thus:

> "33.B.--Grant of quarrying Parwana--On an application made to the competent officer, he may grant a quarrying Parwana to extract and remove from the specified area within his jurisdiction the minor mineral from a plot not exceeding 2,000 square meters, as may be specified by the competent officer. The compe- tent officer may grant such Parwana in the following priorities:
>
> (a) Individual families to Khanias belonging to the Scheduled Castes or the Scheduled Tribes, who do physical work I of excavating minor mineral in the area applied for.
>
> (b) Individual families of 'Khanias' who do physical work in excavating minor minerals in the area applied for.
>
> (c) New individual Khanias who do physical work in excavating minor minerals in any other areas."

Rule 33-C provides that the lease shall be granted for one year ending 31st December on a payment of a fee of Rs.50 for an area upto 1,000 square meters and Rs. 100 for an area above 1,000 square meters and upto 2,000 square meters. Thus it is seen that a Parwana can be given only respect of plots not exceeding 2,000 square meters and for a limited period of one year. It is only in the case of such people who are described in the Rules and who invariably belong to the weaker sections of society the concession is shown under rule 21, whereas the mining lease may be given to persons mentioned in rule 9. Under rule 18 of the Rules the period of lease in the case of the minor minerals can be for a much longer period, it can be upto 10 years in respect of minor minerals except in the case of ordinary sand, Kankar, Mur- ram, Gravel and in the case of Kankar, Murram and gravel a lease can be granted upto three years, and the area or land covered by a mining lease is governed by rule 15 which says that no quarry lease shall be granted for an area exceeding 10 hectares in case of specified minor mineral and 20 hec- tares in the case of other minerals. So a comparison of the relevant rules would show that a larger restriction is imposed both on the area in respect of which a Parwana could be issued and the duration of the Parwana right and as also stated that the persons who take quarrying Parwana are persons belonging to the weaker sections of society and if under rule 21 a concession is shown in their favour it cannot be said that there is no reasonable nexus between the classification for purposes of the proviso to rule 21 to show concession in the matter of

payment of royalty and the social policy underlying the Constitution, the statute and the Rules. The fact that section 15 of the Act does no authorise the State Government to show such concession while promulgating the Rules which are in the nature of subordi- nate legislation is also of no consequence. Since the power exercised is legislative in character the authority which is exercising the said power has the power to make rules equi- table by necessary implication. No express power need to conferred on such subordinate authority in order to make a classification for purposes of implementing the policy of the Act under which the Rules are made.

We do not also agree with the contention that levying of royalty in the State of Gujarat on the minor minerals would impose in any way the freedom guaranteed under Article 301 of the Constitution regarding movement of goods from one State to another for the activity of quarrying does not involve any movement as such. The mineral may be consumed inside the State and in some cases may latter on be taken outside the State. But the movement outside the State is not the direct consequence of quarrying.

We do not, therefore, find any substance in any of the contentions urged before us.

These petitions are dismissed with costs. Each of the petitioners shall pay a sum of Rs.2,000 by way of costs to the State of Gujarat.

Y. Lal Petitions dis-
missed.