

## **Saurashtra Cement And Chemical ... vs Union Of India on 23 November, 1993**

**Equivalent citations: 1994 SCC (1) 226, JT 1993 (6) 426, AIRONLINE 1993 SC 155, 2012 (11) SCC 554, (1993) 2 GUJ LH 1176, 1994 (1) SCC 226, (1994) 1 LAND LR 408, (1993) 6 JT 426, 1994 BRLJ 89, (1994) 1 RRR 409, 1994 UJ(SC) 173, (1993) 6 JT 426 (SC), 1994 UJ(SC) 1 173, 1995 SCC (SUPP) 1 304, (2012) 3 SCALE 331**

**Author: R.M. Sahai**

**Bench: R.M. Sahai**

PETITIONER:

SAURASHTRA CEMENT AND CHEMICAL INDUSTRIES LTD.

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 23/11/1993

BENCH:

SAHAI, R.M. (J)

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ANAND, A.S. (J)

CITATION:

1994 SCC (1) 226                      JT 1993 (6)      426

1993 SCALE (4) 508

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by R.M. SAHAI, J.-The only question that survives for consideration in this appeal directed against judgment and order of the Gujarat High Court is if the fixation of royalty under the Mines and Minerals (Regulation and Development) Act of 1957,

(referred to as 'the Act') was contrary to clause (a) of the proviso to sub-section (3) of Section 9 of the Act.

2. The appellant, a manufacturer of cement held a mining lease for excavating limestone. It was required to pay royalty on it at the rate specified in Second Schedule. Limestone appeared at item No. 8. The rate of royalty on it in the Act, when enacted was 5% of the sale price at the pit's mouth subject to minimum of thirty-seven naye paise per tonne. The Schedule was amended in October 1962. It substituted item No. 8 and provided for payment of royalty at Rs 0.75 per tonne subject to rebate of Rs 0.38 per tonne to be given on limestone beneficiated by froth flotation method. The entry was again amended in 1968 and limestone was categorised as superior grade with 45% or more of CaO and inferior grade with less than 45% of CaO. The rate provided was at Rs 1.25 per tonne for the superior grade and seventy-five paise for the inferior grade. The Schedule was amended, again, in January 1970 and the categorisation made in 1968 was done away with and the rate of royalty was fixed at Rs 1.25 per tonne. Validity of these notifications issued under Section 9 of the Act by the Central Government fixing royalty was challenged by the appellant and it was claimed that the power to amend the Second Schedule and to enhance the rate of royalty was circumscribed and limited by proviso to sub-section (3) of Section 9 in two respects, firstly, the rate of royalty could not exceed 20% of the sale price of the mineral at the pit's head, secondly, the Central Government could not enhance it more than once during four years. The High Court accepted the second challenge and held it to be contrary to clause (b) of the proviso to sub-section (3) of Section 9.

3. As regards the first, since facts were not clear and claim of the appellant was that the fixation of royalty was more than 20% of sale price at pit's head the Union of India was directed to file a detailed affidavit explaining the manner of fixation of royalty for the limestone. The affidavit has been filed. It is stated that the restriction of 20% of the sale price of the mineral at the pit's head was worked out by taking the average sale price of the minerals at the pit's head for the entire country and the fixation of royalty by taking sale price of each unit in the country was not visualised by clause (a) nor it was practicable. It is also stated that in the case of appellant's mine there was no sale involved since the limestone produced by the appellant was consumed in its own cement factory. These allegations are not denied.

4. Sub-sections (1) and (3) of Section 9 read as under :

"9. (1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in the instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed by him from the leased area after such commencement, at the rate for the time being specified in the Second Schedule in respect of that mineral.

(3) The Central Government may, by notification in the Official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification:

Provided that the Central Government shall not

(a) fix the rate of royalty in respect of any mineral so as to exceed twenty per cent of the sale price of the mineral at the pit's head, or

(b) enhance the rate of royalty in respect of any mineral more than once during any period of four years."

Payment of royalty under sub-section (1) is in respect of mineral removal from area but fixation under clause (a) of proviso to sub-section (3) is related to mineral and not to area leased or the unit. It did not admittedly exceed 20% of the sale price of the mineral at the pit's head if the average sale price of the mineral for the entire country is taken into account. From the provisions extracted earlier it is apparent that the law does not require that fixation of royalty should be unit wise. In fact it could not be as demonstrated in the counter-affidavit. It cannot therefore, be said that the notifications issued by the Government were violative of the proviso.

5. In the result this appeal falls and is dismissed with costs.

C. Radhakrishna Reddy v. State of A.P., 1990 Supp SCC 638:

1991 SCC (L&S) 454: (1991) 16 ATC 456: 1989 Supp (2) SCR 140; D. Hanmanth Rao v. State of A.P., 1990 Supp SCC 524, relied on Contempt petitions dismissed