State Of Rajasthan vs Associated Stone Industries (Kotah) ... on 1 February, 1985

Equivalent citations: AIR1985SC466, 1986(1)ARBLR270(SC), 1985(1)SCALE1159, (1985)1SCC575, 1985(17)UJ331(SC), AIR 1985 SUPREME COURT 466, 1985 (1) SCC 575, 1985 (18) TAX LAW REV 144, 1985 UJ (SC) 331

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Bench: O. Chinnappa Reddy, R.B. Misra

JUDGMENT

O. Chinnappa Reddy, J.

1. These appeals arise out of the judgment of the High Court of Rajasthan in First Appeal No. 112 of 1958 reported in AIR 1971 Raj 128 filed by the State of Rajasthan, successor of the State of Kotah. Civil Appeal No. 625 of 1971 is by the State of Rajasthan while Civil Appeal No. 694 of 1971 is by the Associated Stone Industries (Kotah) Limited. The Ruler of the erstwhile State of Kotah entered into an agreement (Exh. A) with the Associated Stone Industries (Kotah) Limited granting monopoly rights to the company to quarry Kacha stone from Ramganj Mandi and Chechet Tehsils. The agreement was to be effective for a period of 15 years from October 1,1944. Clause 18(1) of the agreement which is material for the purposes of these two appeals was in the following terms :

> In consideration of the concessions and privileges granted by the Grantor and in lieu of Income-tax, Super tax and excess profit tax, the Grantee covenants to pay to the grantor royalty on the stone excavated at the rate of rupee one per 100 sq. ft., subject to the minimum amount of Rs. 1,50,000/- per financial year. Provided that the aforesaid rate of Re. 1/- per 100 sq. ft. will be operative so long as the selling rate of unpolished, slabs does not exceed Rs. 10/- per 100 sq. ft. In the event of the selling rate going above this figure, the royalty per 100 sq. ft. shall be increased by 25% of the excess over ten rupees.
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> It is common ground that at the time of the agreement no income tax, super tax or excess profits tax was leviable in the State of Kotah. The clause was perhaps introduced in anticipation of the introduction of the taxes. as income-tax had just then been introduced in the neighbouring State of Bundi. The State of Kotah ultimately became part of the State of Rajasthan and the Union of India. On April 1,1950, the Finance Act extended the Indian Income-tax Act, 1922 to Rajasthan with a result that income-tax became leviable in the territory which formed part of the

erstwhile State of Kotah also. On June 2, 1952, the Government of Rajasthan served a notice on the Company cancelling the agreement (Exh. A) on the ground that it was against the public interest and that the terms and concessions granted to the Company were extravagant and unreasonable. The Company filed, suit No. 8 of 1952 to restrain the State of Rajasthan from taking possession of the quarries and obtained an interim injunction. The period stipulated by the agreement (Exh. A) expired on September 30, 1959. Thereupon suit No. 8/52 became infructuous and was dismissed as such. Thereafter the State of Rajasthan granted a fresh lease to the company under the Rajasthan Minor Mineral Concession Rules for a period of 10 years and it is worthy of note that the royalty stipulated under the new lease was Rs. 2.50p per 100 sq. ft. Meanwhile "when the earlier suit was still pending, on December 5, 1953, the Company filed the suit out of which the present appeals arise against the Union of India and the State of Rajasthan. The principal reliefs sought were a declaration that income tax, super tax and excess profits tax were not leviable on the income of the plaintiff company and for an injunction to restrain the defendants from levying such taxes. In the alternative, it was prayed that the second defendant should not recover from the plaintiff company such part of the royalty stipulated under Clause 18 of the grant as was attributable as consideration for the exemption granted to the Company from payment of income-tax, super tax and excess profits tax. It was also prayed that that part of the royalty already recovered from the company which was attributable as consideration for the exemptions granted to the Company from liability to pay income-tax, super tax and excess profits tax should be refunded to the Company. The learned District Judge held that the Income-tax Act was applicable to the Company, but that the agreement (Exh. A) was binding on the State of Rajasthan. It was held by the District Judge that the amount of royalty stipulated above the sum of Rs. 1,50,000/- was in lieu of income tax, etc. and therefore, the State of Rajasthan was not entitled to recover anything by way of royalty from the Company over and above the sum of Rs. 1,50,000/- per year. A decree followed on the findings of the learned District Judge. The State of Rajasthan preferred an appeal to the High Court of Rajasthan. When arguments were concluded On March 12, 1970, the Court expressed a tentative opinion that the agreement (Exh. A) was void and on that basis Sections 65 and 70 of the Contract Act were attracted. The Court wanted the parties to produce relevant material to enable the Court to pass an appropriate decree. Both parties requested that time might be granted and thereafter filed affidavits and furnished other necessary material to the Court. After giving an opportunity to both the parties to produce further documentary evidence, arguments were once more heard and the Court proceeded to pronounce judgment. It was held that the agreement was void and the finding is not now in dispute before us. The High Court then considered the question as to the measure of compensation to which the State was entitled to be paid by the company under Section 65 of the Contract Act. It was held that for the three years preceding the suit, the State was entitled to recover reasonable royalty from the Company and not the profits earned by the company as a result of its quarrying operations as claimed by the Government. The Court fixed one rupee two annas per hundred sq. it. as reasonable royalty and on that basis concluded

that the State was entitled to a sum of Rs. 2,73,484/- for the years from December 15, 1950 to December 15, 1953. The Court also found that the State was entitled to be compensated for the monopoly lights granted to the company over a vast areas and on the basis of royalty paid by some other lessees other than the Company in subsequent years, the Court awarded a sum of Rs. 1,39,486/- towards the loss caused to the State on account of the grant of monopoly rights for the period December 15, 1950 to December 15, 1953. The total amount thus payable by the Company to the Government for this period came to Rs. 2,73,484/- plus Rs. 1,39,486/-, that is, Rs. 4,12,970/-. As this was less than the minimum of Rs. 1,50,000/-per year payable under the agreement (Exh. A), the Court allowed a sum of Rs. 4,50,000/- for the period December 15, 1950 to December 15,1953 as compensation under Section 65 of the Contract Act. A sum of Rs. 12,34,539,9 annas and 3 paise had already been paid by the company to the State during this period and, therefore, it was held that the plaintiff was entitled to a decree for. Rs. 7,84,539.60p. against the State. In regard to the period subsequent to December 15, 1953 the date of filing of suit, it was found that a sum of Rs. 21,18,909.05 was paid by the Company to the Government. The High Court held that it had no jurisdiction to determine the amount of compensation payable to the State under Section 65 of the Contract Act for the period subsequent to the filing of the suit. As the whole of the amount of Rs. 21,18,909.05 was paid by the Company to the State subsequent to the filing of the suit, the whole of that amount was directed to be refunded to the Company without deducting any amount towards compensation payable to the State. The State and the Company have both come up in appeal to this Court

2. The first submission of Shri Lodha, learned senior counsel for the State of Rajasthan was that there was no prayer in the suit for adjustment based on Section 65 of the Contract Act and that it was, therefore, not open to the High Court to consider that question. We are afraid it is rather late in the day to make this submission. When the High Court arrived at the tentative conclusion that the contract itself was void and asked the parties if they wanted to file affidavits and documents to measure the compensation to which the State would be entitled to recover from the Company under Section 65 of the Contract Act, both parties did so without demur and invited the Court to adjudicate upon the question so that an appropriate decree might be passed. We do not, therefore, think that any objection to the relief granted to the parties on the basis of Section 65 of the Contract Act can be raised in these appeals on the ground of want of necessary plea.

3. The second and third submissions of Shri Lodha were that the measure of compensation under Section 65 should be the actual profits derived by the company and not the royalty which the State might have otherwise levied from the company and that the High Court was in error in ignoring the period subsequent to December 15,1953. He invited our attention to Section 65 of the Contract Act and urged that when an agreement was discovered to be void or when a contract became void, the person who had received any advantage under such agreement or contract was bound to restore it, or to make compensation for it, to the person from whom he received it. According to Shri Lodha the net profits earned by the Company during the relevant period was the advantage received by the Company under that agreement which under Section 65 he was bound to restore to the Government.

It is difficult to agree with this submission. It is not as if all that the Company did was to excavate stone. The Company in order to market the excavated stone had to carry on various other activities besides extracting stone from the quarries, such as, polishing, plastering, flooring, painting, cementing, etc. It is not as if the Company was investing funds separately for each one of the activities carried on by it. A huge establishment had to be maintained and the net profits could only be arrived at after the final product was sold and the accounts were taken of all the activities. Shri D.K. Parikh, Joint Secretary of the Company has filed an affidavit in which he has stated :

> That the respondent Company carries on several other businesses besides the business of excavating rough stone (flooring lime stone) viz. polishing of stones, flooring jobs and dealing in paints, cement and other building materials. The respondent company has invested on an average Rs. 30 lacs during the period from 1950 to 1959. The expenses of all the business activities and the profits accruing to the Company on its investment as given in Balance Sheets and Profits and Loss Accounts relate to all the business activities of the company. The net profits stated in paragraph 9 of the above affidavit do not relate only to the business of the respondent company of excavating and selling of rough stone. These profits are from all the business activities carried on by the Company. The respondent-company has not kept separate accounts of income and expenditure in respect of its various business activities.

> We do not have the slightest doubt that net profits realised by the Company as a result of all its various business activities can never be the measure of the compensation to be awarded under Section 65 of the Contract Act. It is not as if Section 65 of the Contract Act works in one direction only. If one party to the contract is asked to disgorge the advantage received by him under a void contract so too the other party to the void contract may ask him to restore the advantage received by him. The restoration of advantage and the payment of compensation has necessarily to be mutual. In Firm Govindram Seksaria v. Edward Radbone , the Privy Council pointed out that the result of Section 65, Contract Act was that each of the parties became bound to restore to the other any advantage which the restoring party had received under the Contract. As a result of the contract being void, the State could at the most recover from the contractor the value of the rough stone excavated from the quarries. But then it would have to make good to the company the expenditure incurred by the company in the quarrying operations and extraction of the rough stone. It is for that reason that the Court instead of involving the parties and itself in impossible and speculative calculations adopted the basis of royalty as the measure of compensation. Royalty, as is well known, is, in (he case of a lease of a mine, the payment reserved by the grantor proportionate to the amount of the demised mineral worked within a certain period. In a case like the present where the grantor is the State and the lease is for excavation of stone, the measure of the compensation payable to the grantor should be the reasonable royalty which the State would have otherwise received from the grantee. Had the grantee not paid a pie under the contract on the ground that the contract was void, he would in our opinion be liable

to pay reasonable royalty for the excavated stone. In addition, he would also be liable to pay compensation for the exclusive rights granted to him. That was how the High Court proceeded with the matter and we see nothing wrong with the approach of the High Court which in the circumstances of the case was perhaps the only reasonable way of solving the problem.

4. In regard to the rate of reasonable royalty and the compensation for the grant of monopoly rights, the High Court took into account various factors including the circumstance that under the Rajasthan Minor Mineral Concession Rules of 1955, the rate of royalty was fixed at Re. One and two annas per 100 sq. ft. in 1955 and that it was later raised to Re. one and 8 annas per 100 sq. ft. on August 30, 1956. The High Court also estimated the limit of the loss caused to the State on account of the monopoly rights enjoyed by the Company during the period December 15, 1950 to December 15, 1953 with reference to the quantity of stone extracted by other lessees in the latter years, i.e. after 1959-60. Though this was not perhaps the right way to assess compensation for the grant of monopoly rights, in the absence of any suggestion of a better way of assessing compensation for such grant, we are not prepared to dissent from what the High Court has done. The entire calculation was done on the basis that one rupee two annas would be the reasonable rate of royalty. We are unable to say that the view taken by the High Court is unreasonable in the peculiar circumstance of this case.

5. For the period subsequent to December 15, 1953, the High Court while directing the Government to refund the entire amount paid by way of royalty to the Government, made no allowance for the compensation to which the Government was entitled under Section 65 of the Contract Act. We see no justification for the direction given by the High Court that the entire amount paid by way of royalty should be refunded to the contractor without any adjustment towards compensation payable to the Government. No purpose except a multiplicity of litigation would be served by the direction given by the High Court. In regard to the period subsequent to December 15, 1953, Shri G.B. Pai, learned Counsel for the company suggested that royalty may be fixed at the rate of Rs. 1.50 per 100 sq. ft. and compensation for monopoly rights may be fixed at 0.50 paise. He suggested that the company might be directed to pay an amount calculated at the rate of Rs. 2/- per 100 sq. ft. of excavated stone on the basis that Rs. 1.50p. represented reasonable royalty and 0.50 paise represented reasonable compensation for the grant of monopoly rights. We find that though in 1956 the rate of royalty under the Mineral Concession Rules was fixed at Rs. 1.50p. very soon thereafter it was raised to Rs. 2.50p. We think that in the circumstances of the case, we may adopt Rs. 2/- per 100 sq. ft. as the reasonable rate of royalty and a sum of 0.50 paise as compensation for the grant of exclusive privilege. On that basis the amount of reasonable royalty for the period 1953-59, would come to Rs. 11,12,377 according to the statement furnished to us by Sh. Pai and the compensation for the grant of exclusive privilege would come to Rs. 2,78,097.25p. The result of our calculation would be that for the period 1950-53, the plaintiff would be entitled to get a refund of Rs. 7,84,539.60p. and for the period 1953-59, the plaintiff would be entitled to get the sum of Rs. 21,18,909.05 less Rs. 13,90,474. that is, a sum of Rs. 7,28,435.

6. Shri G.B. Pai, learned Counsel for the Company urged that the High Court was in error in refusing to allow any adjustment for the years 1948-49 and 1949-50 on the ground of limitation. The suit was

filed on December 15,1953. The income-tax in respect of the accounting years 1948-49 and 1949-50 had become payable on April 1, 1950 and the claim for adjustment was therefore, rightly disallowed by the High Court in regard to those two years.

7. In the result the appeal filed by the Company is dismissed and the appeal filed by the State of Rajasthan is allowed to the extent that the direction to refund Rs. 21,18,909/- is modified to a direction to refund Rs. 7,28,435/-only.

8. There will be no order as to costs in either appeal.