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HIGH COURT OF ANDHRA PRADESH

Coram : A. Lakshmana Rao, P. L. N Sarma, P. Venkatarama Reddi

Writ Petition 8437 Of 1987

(JUNE 25, 1993)

L. VENKATESWARA RAO VS. SINGARENI COLLIERIES COMPANY LTD

A. Lakshmana Rao

(1) THE petitioners in all these writ petitions are contractors who have undertaken to execute works of civil nature entrusted to them by the Singareni Collieries company Limited (hereinafter referred to as 'the respondent company')- The execution of the work is governed by the terms and conditions incorporated in a written agreement entered into by the respondent company with each one of the contractors. It is stated that till the year 1983 the respondent company was holding lease hold rights for the excavation of minor minerals such as building stone, lime-kankar, sand etc. , from specified quarries. The contractors have been using the minor minerals excavated from the quarries in respect of which, lease-hold rights have been granted in favour of the respondent company by the mines Department under the Andhra Pradesh Minor Mineral Concession rules, 1966, in the execution of the works entrusted to them. As regards the payment of seigniorage fee on the minor minerals excavated by the contractors, a specific clause in the form of Clause (8) had been incorporated in the agreement entered into by the respondent company with the contractors. Clause. 8: For metal, uncoursed rubblestone and coursed rubble stone etc. , royalty charges will be recovered at the following rate if the material is quarried from the Company's quarries. However, the recovery will be effected as per the rules of the government from time to time. (a) Metal: Rs. 2-19 including cess per Cu. m. (Gross) (b) Rough Stone: Rs. 1-25 including cess per Cu. m. (Gross) (c) Sand : Rs. 1-25 including cess per Cu. m. (Gross) (d) Murrain: Rs. 0-43 including cess per Cu. m. (Gross)

(2) HOWEVER, from the year 1984, the respondent company did not obtain any quarry lease from the Mines Department for the excavation of minor minerals. Consequently, the contractors were asked to obtain minor minerals used in the execution of works, for themselves. As regards the payment of seigniorage fee, the following clause in the form of clause No. 7 had been incorporated in the agreement entered into by the respondent company with each one of the contractors. Clause No. 7 "the Singareni Collieries Company Limited do not have any quarry leases for Stone/metal/sand etc. It is the contractor's responsibility to get necessary permits direct from the Government and procure the materials of good quality as approved by the Department. The contractors have to produce documentary evidence for having

paid the Royalty charges to the Government, as otherwise, the royalty charges will be recovered from the bills and paid to the Governments per the royalty rates prescribed by the Government, from time to time. The current rates are as below: metal. . @ Rs. 2. 19 including cess per Cu. m (gross) Stone. . @rs. 1. 25 including cess per Cu. m (gross) Sand. . @rs. 1. 25 including cess per Cu. m (gross) Murram @rs. 0. 43 including cess per Cu. m (gross) Lime @ Rs. 2. 19 including cess per Cu. m (gross) Kankar Bricks. . @rs. 3. 75 including cess for 1000 Nos. (gross)

(3) WHEN the petitioners failed to produce documentary evidence of having paid the seigniorage fee to the State Government for the minor minerals used by them in the execution of the work, the respondent company deducted the seigniorage fee payable by them, from the bills. Aggrieved by the action of the respondent company, the contractors have filed these writ petitions. All the petitioners except those in Writ Petition No. 3568 of 1992 have sought for an appropriate writ declaring that the respondents

"have no authority of law to collect seigniorage fee on the minor minerals used by the petitioners herein for the purpose of civil works undertaken by the petitioners under the respondents as the minerals are not quarries from the mines owned by the first respondent and the proceedings issued by the second respondent authorising the collection of the said seigniorage fee are null and void as the same violated the fundamental rights and constitutional rights guaranteed to the petitioners under Articles 14, 19 (1) (g), 265 and 300-A of the Constitution of India and issue the consequential direction to the respondents not to collect any seigniorage fee from the petitioners on the minor minerals brought by the petitioners from quarries other than the quarries belonging to the first respondent and also to refund the amounts already deducted from the bills of the petitioners towards the seigniorage fee pursuant to the orders issued by the second respondent. "

(4) WRIT Petition No. 3568 of 1992 has been filed for the issue of a writ of mandamus

"to strike down Rule 26 (3) of A. P. Minor Mineral Concession Rules introduced vide G. O. Ms-No. 243, Industries and Commerce Department, dated 8-5-1986 by the Respondent No. 1 and the consequential letter no. 1552/q3/91 dated 10-1-1992 issued by the respondent No. 3 as being ultra vires of Section 15 (1) and 24 (1) of the Mines and Minerals (Regulation and Development) Act, and also violative of Articles 14, 19, 21, 254, 256, 265 and 300-A of the Constitution of India and to grant such reliefs to which the petitioners may be ultimately found entitled. "

(5) EARLIER, some of the contractors filed a batch of writ petitions in this court challenging the action of the respondent-company in deducting seigniorage fee from their bills. The writ petitions were allowed by a Division Bench of this court by their judgment dated 16th February, 1988 in Writ Petition No. 5939 of 1987 and batch directing the respondent company to refund to the petitioners the amount deducted from their bills.

(6) FOR the subsequent years when the respondent company has deducted the seigniorage fee payable by them for the minor mineral used in the works entrusted by the respondent company, these writ petitions have been filed. When they came up before a Division Bench of this Court it was contended by Mr. K. Srinivasa Murthy, learned counsel for the respondent company, that the earlier Division Bench judgment referred to above, was rendered without noticing the relevant provision of law contained in Rule 26 (3) (ii) of the Andhra Pradesh Minor Mineral Concession Rules, 1966 and that the respondent company having been treated as a consumer of minor minerals, is served with a demand notice by the Department of Mines and Geology to pay an amount of Rs. 1. 56 crores towards penalty along with the normal seigniorage fee. It was contended that the earlier judgment of the Division Bench was not correct. In those circumstances the following order of reference was made:

" Having regard to the facts and circumstances of the case and the provision of law referred to above, we are of the view that the matter requires to be considered by a Full Bench. "

(7) IN order to appreciate the rival contentions advanced on behalf of the petitioners and the respondents, it would be necessary to refer to the relevant provisions of the Mines and Minerals (Regulation and Development) Act, 1957 (for short 'the Act') and Andhra Pradesh Minor Mineral Concession Rules, 1966 (hereinafter referred to as 'the Rules'). No person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under the Act and the rules made thereunder, as provided in Section 4 of the Act.

(8) THE holder of a mining lease is liable to pay either royalty or the dead rent whichever is higher in respect of any mineral removed or consumed by him as stipulated in Sections 9 and 9-A of the Act.

(9) THE provisions of Sections 5 to 13 are not applicable to quarry leases or other mineral concessions in respect of minor minerals (vide Section 14). "minor Minerals" means 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".

(10) UNDER Section 15 power is conferred on the State Government to make rules for regulating the quarry leases, mining leases or other mineral concessions in respect of minor minerals. Such rules in particular may provide for the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable. (Emphasis supplied). In exercise of this power the State Government made the Andhra Pradesh Minor Mineral Concession Rules, 1966.

(11) THE holder of a mining lease is liable to pay royalty or dead rent whichever is more in respect of minor minerals removed or consumed by him (vide Section 15 (3)).

(12) WHOEVER contravenes the provisions of sub-section (1) of Section 4 of the act is punishable with imprisonment for a term which may extend to two years or with fine which may extend to ten thousand rupees or with both.

(13) ANY rule made under any provision of the Act may provide that any contravention thereof shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to five thousand rupees, or with both.

(14) WHENEVER any person raises, without any lawful authority, any mineral from any land, and for that purpose brings on the land, any tool, equipment, vehicle or any other thing, such mineral, tool, equipment, vehicle or other thing shall be liable to be seized.

(15) WHENEVER any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, as provided under Section 21.

(16) ANY person authorised by the Central Government may enter and inspect any mine and exercise such other power as mentioned in Section 24.

(17) UNDER the Andhra Pradesh Minor Mineral Concession Rules, 1966, no person shall undertake quarrying of any minor mineral in any area, except under and in accordance with the terms and conditions of a quarry lease or a permit granted thereunder, as provided in Rule 5. This provision is identical to the one contained in sub-section (1) of Section 4 of the Act in respect of minerals other than the minor minerals.

(18) RULE 9 contemplates making of an application for grant or renewal of quarry lease for any minor mineral except sand.

(19) THE holder of a quarry lease is liable to pay under Rule 10, the seigniorage fee or dead rent, whichever is higher, on all the minor minerals despatched or consumed from the land, unless the State Government has waived such collection, under Rule 11.

(20) RULE 26 deals with penalty for unauthorised quarrying or transporting of minor minerals. If any person carries on quarrying operations or transports any minor mineral in contravention of the Rules, he shall be liable to pay as penalty such enhanced seigniorage fee together with assessments as may be imposed by the officer-nominated by the Director of Mines and Geology. Whenever any person raises or transports minor minerals without any lawful authority, such minerals may be seized by an authorised officer. However, the penalty shall not exceed in any case ten times the normal seigniorage fee. But at the discretion of the Deputy Director, the lease or permit already granted can be terminated or cancelled for the contravention.

(21) THE authorised Officer can enter and inspect any premises for the purpose of ascertaining the position of payment of Mineral Revenue due to the government or for any other purpose mentioned in sub-rule (3) of Rule 26. This sub-rule was inserted by G. O. Ms. No. 243, Industries and Commerce (Mines-I) Department, dated 8-5-1986 and it reads as follows: rule 26 (3) (i)

"for the purpose of ascertaining the position of payment of Mineral Revenue due to the Government or for any other purpose under these rules, the person authorised under sub-rule (2) may (a) enter and inspect any premises; (b) survey and take measurements; (c) weigh, measure or take measurements of stocks of minerals; (d) examine any document, book, register or record in the possession or power of any person having the control of or connected with any mineral including the process mineral and place marks of identification thereon and take extracts from or make copies of such document, book, register or record, and (e) order the production of any such document, book, register, record as is referred to in clause (d). (ii) if no documentary proof is produced in token of having paid the mineral revenue due to the Government by any person who used or consumed or in possession of any mineral including the processed mineral, he shall notwithstanding anything contained in sub-rule (1) be liable to pay five times of the normal Seigniorage Fee as penalty in addition to normal Seigniorage fee leviable under the rules. "

(22) THE power to enter and inspect any premises and to levy the penalty for unauthorised quarrying conferred under Rule 26 is almost on the same lines as that conferred under Sections 21 and 24 of the Act. Whereas the Central government framed Rule 52 of the Mineral Concession Rules, 1960 in the exercise of power conferred on it under Section 13 (2) (i) which is in pari materia with Section 115 (I-A) (g), authorising levy of penalty for the alleged contravention, the State Government framed Rule 26 (3) of the Rules authorising levy of fine, on the user of consumer of the minerals.

(23) IN a case where the land is leased out, the lessee and where no lease is granted, the registered holder of the land shall be responsible for the proper working of the quarry (Rule 27-).

(24) THE lessee or the person to whom the permit has been granted shall keep true accounts of quantity and other particulars of all minor minerals obtained and despatched from the quarry. (Rule 28 (3)).

(25) ANY amount due to Government under the Rules can be recovered as an arrear of land revenue. (Rule 29).

(26) AN express embargo has been imposed under Rule 34 against despatch of any minor mineral from any leased area without a valid despatch permit issued by an officer of the Department of Mines and Geology. In case of contravention of the rule, the Assistant Director, Mines and Geology, is empowered to forfeit the security deposit without prejudice to any action that may lie against the lessee, for compounding of the offence.

(27) IN the application in Form-A made by the lessee for issue of a despatch permit, he shall furnish particulars as to the name and grade of the mineral, the quantity in stock, the quantity proposed to be despatched, route and mode of transport, in case of sale, the name and address of the purchaser, destination of the consignment and the name and address of the consignee, etc. The despatch permit is issued in Form-B.

(28) THE despatch permit shall be surrendered, after the quantity noted therein has been despatched, to the department within a week, after last consignment has been despatched.

(29) THE original or certified copies of the sale contracts of the minerals covered by the permit shall also be forwarded to the Department after the final transactions are completed, for the purpose of scrutiny and return.

(30) THE despatch permit contains various other particulars to ensure that no unauthorised quarrying of minor minerals takes place.

(31) THE first and foremost contention advanced on behalf of the petitioners is that the power to levy and collect the seigniorage fee under the rules is conferred on the authorities mentioned therein and the respondent company is neither one such authority nor an agent of any such authority to collect seigniorage fee. Therefore, collection of seigniorage fee from the petitioners by the respondent company is illegal and improper. Rule 5 of Andhra Pradesh minor Mineral Concession Rules, expressly prohibits unauthorised quarrying of minor minerals by specifically providing that no person shall undertake quarrying of any minor mineral in any area except under and in accordance with the terms and conditions of a quarry lease or a permit granted under the rules. When a quarry lease is granted over any area, a lease deed in Form-G, shall be executed in favour of the lessee by the Mines Department (vide Rule 8). In the case of small stray deposits of minor minerals, the concerned authority may grant a permit in favour of any person to carry on quarrying operations under Rule 9 (iii) When quarrying is carried on in any area covered by either a lease deed or a permit, ~~seigniorage fee or dead rent whichever is higher, shall be charged on the~~ minor mineral ~~despatched or consumed from the lands, at the specified rates;~~ as prescribed by Rule 10. As per clauses 5,6 and 7 of the lease deed in Form. G the lessee agrees to pay the dead rent or seigniorage fee, whichever is higher. Rule 26 authorises levy of penalty on any person who carries on quarrying operations or transports minor minerals in contravention of the rules, apart from seizure of the minor minerals raised or transported without any lawful authority. Clause (ii) of sub-rule (3) of Rule 26, in particular, authorises the levy of penalty on any user or consumer of minor mineral or any person who is found in possession of minor mineral including a processed mineral and who is not in a position to satisfy the concerned authority that in respect of such mineral, the seigniorage fee had already been paid. We will test the validity of this provision at a later stage. In all these cases, the respondent company is treated as the user or consumer of the specified minor minerals and on the ground that it had not produced documentary proof in token of having paid mineral revenue due to the Government in respect of minerals

used or consumed by it, it had been served with a demand notice to pay the penalty of five times the normal seigniorage fee. We are not impressed with the argument of the learned counsel for the petitioners that the user or consumer of the minor mineral mentioned in clause (ii) of sub-rule (3) of Rule 26 means no other than the lessee or the permit holder who has used or consumed minor mineral as the raw material and it does not include the respondent company. Obviously, in order to effectively check the unauthorised quarrying of minor minerals and to ensure that the State Government is not deprived of the mineral revenue, sub-rule (3) of Rule 26 has been inserted by G. O. Ms. No. 243 Industries and commerce Department, dated May 8, 1986. For achieving the said object, the state Government has inserted sub-rule (3) in Rule 26 imposing an obligation on any person, other than the lessee or the transporter, who uses or consumes or is in possession of any minor mineral, to produce the documentary evidence in token of having paid the mineral revenue due to the Government. There is no dispute that the respondent company is the consumer of minor minerals in question. If it does not satisfy the concerned authority that the seigniorage fee on the minor mineral consumed by it has already been paid, it can be subjected to levy of penalty upto five times the normal seigniorage fee, in addition to the seigniorage fee leviable under the rules. Therefore, in view of the statutory liability imposed on the respondent company and in order to protect its own interest from being subjected to penalty, it has to necessarily insist upon the petitioners who use minor minerals in the civil works entrusted to them, for the production of documentary proof in token of having paid the mineral revenue due to the Government in respect of the minor minerals used by them.

(32) APART from the statutory sanction, a contractual obligation is cast on the petitioners under clause (7) of the agreement entered into between the and the respondent company which stipulates that the contractor has to produce documentary evidence for having paid the royalty charges to the Government in respect of minor minerals used by him in the civil works entrusted to him by the respondent company and that otherwise, the royalty charges will be recovered from the bills and paid to the Government. Therefore, the liability on the part of the contractor to pay the seigniorage fee in respect of the minor minerals used by him in the civil works entrusted to him by the respondent company, arises out of the contract entered into between the parties, in case the contractor fails to produce documentary proof in token of having paid the seigniorage fee in respect of the minerals used by him. Each of the petitioners herein being a party to the agreement entered into with the respondent company, is bound by the terms of the contract. We will consider about the validity of the relevant clause in the agreement at an appropriate stage.

(33) A similar question as to the liability of a contractor to pay the royalty charges in respect of minor minerals used by him in the work entrusted to him by the State Government under a written contract was the subject matter of discussion before the Supreme Court in State of Karnataka vs. Smbhash Rukmayya guttedar. In that case a written agreement was entered into by the State of Karnataka with individual contractors whereunder the State Government had granted the right to the contractor to extract minor minerals from the quarries owned by it. Clause 2 of the

Schedule 'd' to the contract provided that the unit rates quoted by the contractor were to be considered as inclusive of royalty in respect of various materials viz. , granite/trap/shahabad stone boulders metal mand, marum etc. , supplied by the contractor for execution of the several items of work irrespective of source whether Government quarry or private quarry from where the materials were obtained by him. The Government shall deduct from the bills payable to the contractor, such royalty payable by him at the rates prescribed in the Government Order. One of the pleas urged before the supreme Court on behalf of the contractors was that they were not lessess within the meaning of Mines and Minerals (Regulation and Development) Act, 1957 and the Karnataka Minor Mineral Concession Rules, 1969 and therefore notwithstanding the contract entered into between them and the State government, they are not liable to pay the royalty charges in respect of minerals used by them in the civil works. Rejecting the contention, the learned Judges held that under the terms of the contract they were liable to pay royalty and their liability arose from the contract.

(34) IN view of the foregoing discussion, we do not see any force in the first contention and therefore, it is rejected.

(35) THE next submission made by the learned counsel for the petitioners is that the insertion of clause (7) in the agreement is the result of unconscionable bargain between two parties who are unequals and that the clause itself is arbitrary, opposed to public policy and unconscionable. It is amplified by stating that the agreement entered into between the parties is a printed, standardised proforma prepared by the respondent-company and the contractor has no other alternative than to subscribe his signature to the agreement without any bargain as otherwise he will not be entrusted with any work.

(36) UNDER Section 16 of the Indian Contract Act, 1872, a contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

(37) A person is deemed to be in a position to dominate the will of another, where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other. Where a person who is in a position to dominate the will of another enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person who was in a position to dominate the will of the other.

(38) A contract induced by undue influence is voidable at the option of the party who was induced.

(39) WHERE the consideration or object of an agreement is regarded by the court as immoral or opposed to public policy, then such a contract is void under section 23 of the Contract Act.

(40) WHEN can parties be said to be not equal in bargaining power?

(41) THIS question has been discussed at length in Central Inland Water transport Corporation Limited vs. Brojo Nath and held that it is difficult to give an exhaustive list of all bargains where the bargaining power of the parties is unequal. The learned Judges have given some illustrations but at the same time it has been clearly enunciated that the principle of inequality in bargaining capacity cannot be applied where both parties are businessmen and the contract is a commercial transaction. The learned Judges also cautioned that each case must be judged on its own facts and circumstances. In the instant case, the respondent company is carrying on business in the mining of coal and its sale. In the course of carrying on its business, the company undertakes various civil works. Instead of itself carrying on all the civil works, it entrusts some of the works to the contractors. Persons who carry on business as contractors and who want to undertake execution of civil works, offer to execute the work and enter into a bargain with the company in that regard. As a result of it, a bargain is struck and the work is entrusted by the company to a contractor subject to the terms and conditions agreed to, between the parties. Thus, the agreements entered into are purely commercial contracts between two businessmen. In the case of such a commercial transaction, the question of unequal bargaining power between the parties will not be attracted. When two businessmen strike a bargain in a commercial transaction and enter into a contract, question of one party dominating the will of another and making him sign on a dotted line in a printed proforma agreement will not arise.

(42) AN unconscionable bargain was explained by the Supreme Court in the aforesaid case as the one which was irreconcilable with what was right or reasonable. Stating that the expressions "public policy", "opposed to public policy" or "contrary to public policy" are incapable of precise definitions, the learned Judges observed:

"public policy, however, is not the policy of a particular government. It connotes some matter which concerns the public good and the public interest. The concept of what is for the public good or in the public interest or what would be injurious or harmful to the public good or public interest has varied from time to time. As new concepts take the place of old, transactions which were once considered against public policy are now being upheld by the Courts and similarly where there has been a well-recognized head of public policy, the Courts have not shirked from extending it to new transactions and changed circumstances and have at times not even flinched from inventing a new head of public policy. It is thus clear that the principles governing public policy must be and are capable, on proper occasion, of expansion or modification. Practices which were considered perfectly normal at one time have today become obnoxious and oppressive to public conscience. If there is no head of public policy which covers a case, then the Court must in consonance with public conscience and in keeping with public good and public interest declare such practice to be opposed to public policy."

(43) IN the present case, the State Government framed Andhra Pradesh Minor

mineral Concession Rules, 1966, in exercise of the statutory power conferred on it under Section 15 of the Mines and Mineral (Regulation and Development) Act, 1957. We will advert to the question of validity of these rules at a later stage. But, for the present, it will suffice to say that with the object of preventing unauthorised quarrying of minor minerals and augmenting the mineral revenue to the Government, the State Government framed a rule authorising the levy of penalty on any user or consumer or a person in possession of any minor mineral who does not produce documentary proof in token of having paid the mineral revenue in respect of those minerals. The respondent company being a bulk consumer of minor minerals and is subjected to levy of penalty under Rule 26 (3) of the rules in case it does not produce satisfactory documentary proof in token of having paid the mineral revenue in respect of minor minerals consumed by it, it has entered into an agreement with the petitioners incorporating Clause (7) which is in conformity with Rule 26 (3) of the rules, in order to effectuate the legal liability and to safeguard its own interest. What all the contractors are asked to do under clause No. 7 is only to produce documentary proof in token of having paid the mineral revenue in respect of the minor minerals used by them in the execution of civil works entrusted by the respondent-company. If they produce the proof, the company will not deduct any seigniorage fee from their bills. Only when they fail to produce documentary proof in token of having paid the seigniorage fee, the seigniorage fee payable on the minor minerals used by them, will be deducted from their bills. Such a clause which is complementary to the statutory provision is intended to check unauthorised quarrying of minor minerals and non-payment of mineral revenue due to the Government and it cannot by any stretch of imagination or reasoning be said to be either unconscionable or arbitrary. A clause which is intended to give effect to a legal liability cannot be described as the one opposed to public policy. Therefore, the second submission also cannot be accepted.

(44) WE also do not find any substance in the contention that the collection of seigniorage fee by the respondent company under clause (7) of the agreement entered into between the parties is hit by Article 265 of the Constitution of India. This article provides that no tax shall be levied or collected except by authority of law. We are unable to understand how Article 265 is attracted in this case. The seigniorage fee is collected by virtue of the terms and conditions incorporated in a contract entered into between the parties. Apart from that, the respondent company is not acting as an agent of the State Government to collect seigniorage fee. It is acting in its own interest to avoid payment of penalty at five times the normal seigniorage fee payable in respect of minor minerals consumed by it.

(45) THOUGH an argument is pressed into service by the learned Counsel for the petitioners that non-acceptance of the slips given by the quarry owners and produced by the contractors before the respondent company in token of having paid the seigniorage fee in respect of the minor minerals used by them is arbitrary, the petitioners have not produced any material whatsoever before us to substantiate their plea that the minor minerals used by them had already suffered seigniorage fee. They have not even disclosed the identity of the quarry owner from whom they purchased the minor minerals. Rule 34 of the rules provides that no minor mineral shall be despatched from any part of the leased area without a valid despatch permit

issued by an authorised officer of the Department of Mines and Geology. A quarry owner has to make an application for the issue of a despatch permit giving the particulars of the source of the minor minerals, the quantity of ore in stock, the quantity proposed to be despatched, the route and mode of transport of the quantity, destination of the consignment with the name and the address of the consignee, sale value of the minerals, etc. The despatch permit issued by the Department of Mines and geology contains all the particulars as to the quantity of the minerals that can be despatched, the amount of seigniorage fee paid thereon, etc. It is stated that the petitioners have not even furnished to the respondent company, the particulars of the despatch permit under which they obtained minor minerals nor the details of the quarry and its owner from who they obtained it. Thus, there is no documentary proof whatsoever to arrive at a conclusion that the seigniorage fee in respect of minor minerals in question was already paid. Writ Petition No. 3568 of 1992

(46) IT is submitted by the learned counsel for the petitioners that the Andhra Pradesh Minor Mineral Concession Rules, 1966, in general and Rule 26 (3) (ii) in particular should be read subject to Section 24 (1) of the Act and if so read, it is explicit that the petitioners who are the purchasers of the minor minerals from the lessees or for that matter, even Singareni Collieries Company Limited cannot be subject to the levy and collection of the seigniorage fee in respect of the minerals purchased by them. In other words, it is contended that the Act and the Rules themselves prescribe the time and manner of collection of the seigniorage fee in respect of minor minerals and only the lessees of the quarries are liable to pay the seigniorage fee and the users or the consumers of the minor minerals cannot be subject to levy of seigniorage fee in respect of the minor minerals used or consumed by them. It is also contended that Rule 26 (3) (ii) goes beyond the competence of the rule making authority for the following reasons:-

1. (a) The liability to pay seigniorage fee could be on the lessee or unauthorised person quarrying the mineral (vide Sections 21 (5) and 15 (3)), but not on the user or consumer. (b) The impugned rule does not prescribe any time limit or manner of payment, though Section 15 (1a) (g) contemplates that.

2. The Act does not also contemplate the levy of penalty on a user or consumer of minor mineral, even if the seigniorage fee or dead rent is not paid by the lessee or other person excavating the mineral.

3. In any case, the rule prescribing the penalty at five times is unreasonable. Onerous conditions impossible of compliance are prescribed. It is difficult to prove that actual payment was made by the lessee. It operates harshly against small contractors and consumers. No time limit for proceeding under Rule 26 (3) (ii) has been prescribed. No criterion or method of verification and adjudication has been prescribed.

(47) IN order to appreciate those contentions, let us have a look once again at the relevant provisions of the Act and the Rules made thereunder.

(48) SECTION 4 of the Act prohibits the undertaking of any prospecting or mining

operations in any area, except under and in accordance with the terms and conditions of a prospecting licence, or, as the case may be, a mining lease granted, under the Act.

(49) UNDER Section 13, the Central Government is conferred power to make rules for regulating the grant of prospecting licence and mining lease in respect of the minerals including the fixing and collection of fees for prospecting licences or mining leases; surface rent, security deposits, fines, other fees or charges and the time within which and the manner in which the dead rent or royalty shall be payable. In the exercise of this power, the Central Government made the Mineral Concession Rules, 1960.

(50) SECTIONS 5 to 13 do not apply to quarry leases in respect of minor minerals (vide Section 14). As regards the minor minerals, power is conferred on the state Government under Section 15 to make rules for regulating the grant of quarry leases and other mineral concessions including the fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be payable. In exercise of this power the state Government made the Andhra Pradesh Minor Mineral Concession Rules, 1966. Rule 5 of these rules prohibits the undertaking of any quarrying of minor minerals in any area, except under and in accordance with the terms and conditions of a quarry lease or a permit granted under the rules. This provision relating to minor minerals is similar to the provisions of Section 4 (1) of the Act which deals with other minerals. Section 21 deals with penalties. Whoever contravenes the provisions of sub-section (1) of Section 4, is liable to be punished with imprisonment or with fine or with both. Under sub-section (4) of Section 21, power is conferred on the specified authority to seize any mineral unauthorisedly raised by any person or any equipment or any vehicle used by any person in such unauthorised raising of the mineral. Whenever any person unauthorisedly raises any mineral from any land, the State Government is empowered under sub-section (5) of Section 21, to recover from such person, the mineral so raised or where the mineral has already been disposed of, the price thereof, along with the rent, royalty, or tax, as the case may be, payable for the period during which the land was occupied by such person. For the purpose of ascertaining the position of working of any mine, any person authorised by the Central Government can enter upon and inspect any mine and exercise any of the power conferred upon him under Section 24 of the Act and order the production of any document, book, register or record mentioned therein.

(51) SO far as the minor minerals are concerned, under Rule 10 of the rules, all minor minerals despatched or consumed from any area in respect of which lease or permit has been granted, are subject to the charge of seigniorage fee or dead rent whichever is higher. To the same effect are the provisions of Section 9 and 9-A of the Act so far as the other minerals are concerned.

(52) SO far as levy of penalty in respect of minerals other than minor minerals is concerned, apart from Sec. 21, Rule 52 of the Mineral Concession Rules, 1960, made

by the Central Government provides for penalty. It authorises imposition of punishment by way of imprisonment for the contravention of the Rules 46, 47, 49 and 51 relating to the furnishing of documents or information. So far as the minor minerals are concerned, Rule 26 provides for penalty in case of unauthorised quarrying and it puts a ceiling on the penalty which shall not exceed ten times the normal seigniorage fee. Under sub-rule (3) of Rule 26, any officer nominated by the Director of Mines and Geology is authorised to enter and inspect any premises for the purpose of ascertaining the position of payment of mineral revenue due to the Government and exercise the other powers vested in him under that provision including ordering of production of any documents, books, registers or records mentioned therein. Apart from that, this provision authorises the imposition of penalty upto five times the normal seigniorage fee on any user or consumer or any person in possession of any minor mineral, in case no documentary proof is produced by such person in token of having paid the mineral revenue due in respect of such minor minerals. Clause (xv) of Rule 31 provides that if the seigniorage fee or dead rent payable by the lessee is not paid within three months next after the date fixed in the grant, the concerned authority may enter upon the area under lease and distrain all or any of the mineral belonging to him and standing on the land. Clause (xvii) specifies that the determination of a lease or permit can be effected for violation of conditions mentioned therein, and that all sums paid by the lessee by way of deposit shall be adjusted towards the amounts, if any, due to the Government.

(53) IT is urged by Mr. Anil Kumar, learned counsel for the petitioners, that the method and manner of collection of seigniorage fee in respect of minor minerals is prescribed by the State Government under the Minor Mineral concession Rules on the same lines as prescribed by the Parliament and the central Government under the Act and the Mineral Concession rules, respectively in respect of other minerals. But, in the case of unauthorised quarrying of minor minerals, the rules impose a penalty on the user or consumer of the minor minerals who have nothing to do with the unauthorised quarrying, whereas no such power to levy penalty on user or consumer of other minerals is conferred. Apart from that, Section 15 of the Act does not confer any power on the State Government to make rules authorising the levy of penalty on user or consumer of minor minerals. This contention is sought to be substantiated by referring to the provisions of Section 21 which deals with the levy of penalties in the case of unauthorised mining of minerals. It is submitted by the learned counsel, that under this provision the penalty is imposed only on the person who raises the mineral without any lawful authority and not on any user or consumer of such mineral. It is pointed out that even under Rule 52 of the Mineral Concession Rules made by the Central Government in the exercise of power under Section 13 of the Act, no penalty is intended to be imposed on user or consumer of minerals. It is further stated that under Section 24, persons authorised by the Central Government can enter upon and inspect any mine only for the purpose of ascertaining the position of working of a mine and they do not have any power to ascertain about the payment of the mineral revenue due to the Government. Therefore, the submission of the learned Counsel is that the power exercised by the State Government in the making of Rule 26 (3) (ii) travels far beyond the power conferred on it under Section 15 of the Act and therefore, Rule 26 (3) (ii) is ultra vires the powers of the State Government.

(54) WE do not see any force in the contention of the learned Counsel. Under the provisions of the Act and the Rules, unauthorised mining of minerals whether they be minor minerals or other minerals, is strictly prohibited. The object is to check illicit quarrying of minor minerals. To achieve that object, the state Government made rules providing for the levy and collection of penalty in addition to the normal seigniorage fee in respect of minor minerals unauthorisedly raised. It is not correct that the provisions of the Act and the mineral Concession Rules, 1960 contemplate levy on and collection of royalty from only the lessees or licence holders. As is evident from sub-section (5) of section 21, royalty can be recovered from any person who unauthorisedly carries on mining operations apart from recovering the mineral raised by such person or where such mineral has already been disposed of, the price thereof. There can be no doubt that the State Government has the competence to make rules fixing the seigniorage fee in respect minor minerals, levying fines and providing for their collection. Seigniorage fee is the fee chargeable on the minor minerals despatched or consumed from any land. Rule 26 (3) (ii) of the rules prescribes the method and manner of the levy of normal seigniorage fee and its collection from the user or consumer together with penalty in case such user or consumer fails to produce documentary proof in token of having paid the seigniorage fee in respect of the minor minerals used or consumed.

(55) BEFORE we deal with the legality of levy of penalty on the user or consumer, let us consider the validity of the levy and collection of seigniorage fee from the user or consumer. We have to bear in mind that so long as the character of the levy of seigniorage fee is not lost, the method of collection does not affect the essence of the fees, as was pointed out by the Supreme Court in *J. R. G. Manufacturing Association vs. Union of India*. It was a case arising under the provisions of the Rubber Act, 1947. Prior to the amendment made by the rubber (Amendment) Act, 1960, the duty of excise was payable under Section 12 (2) by the owners of the estate on which rubber was produced and it was to be paid by them to the Board within one month from the day on which they receive notice of demand. By the Amending Act, 1960, Section 12 was amended empowering the Board to collect the duty payable under Section 12 either from the owners of the estates or from the manufacturers who used the rubber. ~~One of the contentions advanced on behalf of the rubber goods manufacturers was that the duty sought to be imposed under Section 12 as amended was beyond the legislative competence of the Parliament and that it suffered from the vice of excessive delegation as uncontrolled and unrestricted discretion was conferred on the Rubber Board to levy and collect duty of excise from either the owners producing the rubber or the users of rubber. The learned Judges rejected both the contentions, holding that it was within the legislative competence of the parliament and that sub-section (2) of Section 12 authorising the Rubber Board to collect excise duty either from the owners of the estates or from the manufacturers who use the rubber, merely provided for the method of collection and it did not in any way affect the essence of the excise duty. Therefore, Rule 26 (3) (ii) whereunder the machinery is merely authorised to collect the seigniorage fee from the user or consumer of the minerals and the essence or character of the seigniorage fee is not in any way altered or changed, is a valid piece of subordinate legislation.~~

(56) IN case the user or consumer fails to produce proof of payment of seigniorage fee in respect of minor minerals used or consumed by him, rule 26 (3) (ii) authorises the levy of penalty on such consumer or user. This provision is intended to check illicit quarrying of minor minerals and to prevent evasion of mineral revenue due to the Government. The learned counsel for the respondent company has drawn our attention to Rule 209-A of the Central excise Rules which authorises levy of penalty in addition to the excise duty on any person who acquires possession of goods, to submit that the excise duty and penalty can be levied on and recovered from any person other than the producer or manufacturer. It is not impermissible for the legislature to leave it to the executive to determine the details of levy and collection of fees and penalty including the selection of persons on whom it can be levied and the rates at which it can be charged, as observed by the Supreme Court in Gwalior Rayon mills vs. Assistant Commissioner of Sales Tax. The Legislature can confer power upon another authority to make subordinate or ancillary legislation. In view of the provisions of Section 15 of the Act, it is within the competence of the State government to make a rule providing for the levy and collection of penalty from an user or consumer of minor minerals in case he fails to produce documentary proof in token of having paid the mineral revenue due to the government in respect of such mineral used or consumed.

(57) WE also do not find any force in the contention of the learned counsel for the petitioners that the power conferred upon the officers under Rule 26 (3) (i) to enter upon and inspect premises of any user or consumer of minor minerals for the purpose of ascertaining the position of payment of mineral revenue due to the Government is arbitrary. As we have already mentioned, the intendment of the rule is to check illicit quarrying of minor minerals and prevent evasion of mineral revenue due to the Government. If for such a purpose, power is conferred on the unauthorised persons to enter and inspect premises of any user or consumer, it cannot be said to be either arbitrary or unreasonable. Merely because the officers authorised by the Central Government under Section 24 of the Act are empowered to enter and inspect any mine and order production of any document, book, register or record only by a lessee, it cannot be said that the State Government does not have the power under Section 15 of the Act to authorise officers to enter and inspect the premises of any person other than the lessee. As we have already held, if the State Government has the power to prescribe the method of collection of seigniorage fee from any user or consumer of minor minerals, as a corollary it follows that it can as well authorise officers to enter upon and inspect the premises of any user or consumer of minor minerals for the purpose of ascertaining the position of payment of seigniorage fee by such user or consumer.

(58) IT is men submitted by the learned counsel that no time limit has been fixed for the collection of seigniorage fee from the user or consumer of minor minerals under Rule 26 (3) (ii) and therefore, the provision leads to unbridled and arbitrary exercise of power. It is, however, submitted by the learned government Pleader appearing for the State Government mat the Rule is intended to be used not against small and petty consumers but only against bulk consumers like the Singareni Collieries Company Limited and that too within a reasonable time, having regard to

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the facts and circumstances of each case. It is pointed out that the levy of penalty of five times the normal seigniorage fee contemplated under the rule works out to very much less than the value of the mineral. Under sub-section (5) of Section 21, the State Government can recover from any person who has raised any mineral without any lawful authority from any land, the mineral so raised or the price thereof apart from the royalty payable thereon.

(59) THE various decisions relied upon by the learned counsel for the petitioners in support of his contentions, in our considered view, do not in any way help him. The decision in Deputy Commercial Tax Officer, Madras vs. Sukraj, is the one rendered under the provisions of Madras General Sales Tax Act, 1939. The question that was raised before the Supreme Court in that case was whether a transferee of a business was liable to pay arrears of sales tax due from the transferor, prior to the amendment of the Act by the Amending Act 15 of 1956. It has been held that a person who purchases a business can be assessed to sales tax only in respect of his turnover and that he has nothing to do with the sales effected by the seller of the business. In the present case, the seigniorage fee which is chargeable on the minor mineral and which was not paid at the time it was despatched from the quarry, is sought to be recovered at the stage it was used or consumed by a person other than the person who raised or despatched the mineral from the quarry. Therefore, the case relied upon by the learned counsel for the petitioners has no application to the facts of this case.

(60) THE other decision cited by the learned counsel for the petitioners is the one in B. C. Banerjee vs. State of Madhya Pradesh. It also has no application to the facts of this case. It is true that no tax can be imposed under subordinate legislation unless the power to impose the tax has been specifically conferred on the executive authority. The rule making authority has no plenary power and it has to act within the limits of the powers granted to it. In the instant case, specific power has been conferred on the State Government for making rules for the purpose of fixing and collection of rent, royalty and fines and the time within which and the manner in which these shall be payable. In exercise of this power, andhra Pradesh Minor Mineral Concession Rules have been framed. Rule 26 is quite within the limits of the statutory power conferred on the State government.

(61) THE distinction pointed out by the Supreme Court in Deena vs. Union of India between challenges based on violation of Articles 14, 19 and 21 of the constitution of India and as to the burden on the State to be discharged, has no relevance to the facts of this case. The respondent company has asked the petitioners only to produce documentary evidence in token of having paid seigniorage fee in respect of minerals used by them in the civil works entrusted to them. The contractors have undertaken in the agreements entered into by them with the company, to produce documentary evidence in token of having paid seigniorage fee in respect of the minor minerals used by them in the works entrusted to them. As they failed to produce the requisite proof, the company is entitled to recover the seigniorage fee from their bills as per the terms of the agreement. In such circumstances, the question of discharge of any burden by the State does not arise.

(62) IN these writ petitions, various points raised on behalf of the writ petitioners do not arise for consideration in view of the written agreement entered into by each one of them with the respondent company wherein a specific clause in the form of Clause No. 7 has been incorporated. Under this clause, the contractor has to produce documentary proof in token of having paid the royalty charges to the Government as otherwise the respondent company can recover the royalty charges from the bills and pay to the government. In view of this clause, contractual obligation is cast on the petitioners to produce documentary proof in token of having paid the seigniorage fee on the minor minerals used by them and consumed by the respondent company. If they have failed to produce satisfactory proof, the respondent company is entitled to recover the seigniorage fee from the bills of the contractors and pay it to the Government.

(63) WE have carefully gone through the judgment of the Division Bench of this Court dated February 16, 1988 in writ petition No. 5939 of 1987 and batch. There is neither any reference to the provisions of Rule 26 of Andhra Pradesh minor Mineral Concession Rules, 1966 nor is there any discussion about the liability of the contractors under clause (7) of the agreement entered into by them with the respondent company, to pay the seigniorage fee, in case they do not produce documentary evidence in token of having paid the seigniorage fee on the minor minerals used by them and consumed by the respondent company.

(64) A learned single Judge of this Court in his judgment dated June 18, 1976 in writ petition No. 6962 of 1974, upheld the action taken by the Department of mines and Geology for the recovery of seigniorage fee from the contractors who supplied stone ballast to the Railway administration on the ground that they failed to produce documentary evidence in token of having paid the seigniorage fee in respect of minor minerals supplied by them. As to the nature of proof to be produced by an user or consumer in token of having paid the seigniorage fee due to the Government, no hard and fast rule can be laid. Normally, if a user or consumer produces a genuine bill from a lessee of a quarry who raised the minor minerals or an authorised dealer of the minor minerals, in token of having purchased the minerals from such lessee or authorised dealer, it shall be considered to be sufficient proof of payment of seigniorage fee due to the government.

(65) THE rule prescribing the penalty of five times the normal seigniorage fee cannot be said to be unreasonable as it is much less than the value of the mineral in respect to which penalty can be imposed. We are not convinced that the requirement of production of documentary evidence in token of having paid the seigniorage fee is impossible of compliance. We, however, make it clear that the power under Rule 26 (3) (ii) shall be exercised within a reasonable period and what constitutes reasonable period depends upon the facts and circumstances of each case.

(66) FOR the aforesaid reasons, we hold that Rule 26 (3) (ii) of Andhra Pradesh minor Mineral Concession Rules, 1966, is not ultra vires the powers of the State government and is not arbitrary or unreasonable. We record the submission made by the learned Government Pleader on behalf of the State Government that the rule is

intended to be used only against bulk users or consumers and that it is not intended to be used against petty or small consumers. The contractors are bound by the terms of the agreements entered into by them with the respondent company and in case they do not produce documentary proof in token of payment of seigniorage fee in respect of the minerals used by them in the execution of civil works entrusted to them by the respondent company, the respondent company is entitled to recover the seigniorage fee in respect of the minor minerals consumed by it, from the bills payable to the contractors and pay it to the State Government. In view of the foregoing discussion, the decision of the Division Bench dated February 16, 1988 in Writ Petition No. 5939 of 1987 and batch is over-ruled.

(67) THE writ petitions are accordingly dismissed. However, there shall be no order as to costs.

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