

SAURASHTRA CEMENT AND CHEMICAL  
INDUSTRIES LIMITED

v.

THE UNION OF INDIA AND ANR.

NOVEMBER 23, 1993

[R.M. SAHAI AND DR. A.S. ANAND, JJ.]

*Mines and Minerals (Regulation and Development) Act, 1957—Sections 9(1) and 9(3)—Fixation of royalty—Notifications issued by Central Government—Rate of royalty for limestone—Revision of—Taking into account average sale price—Not Unit-wise—Validity of the Notifications.*

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 to the Mines and Minerals (Regulation and Development) Act, 1957. From time to time notifications were issued by the Central Government under S.9 of the Act, modifying the rate of royalty. Validity of these notifications 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, viz., (i) the rate of royalty could not exceed 20% of the sale price of the mineral at the pit's head, and (ii) the Central Government could not enhance it more than once during four years. The High Court upheld the second challenge and negated the first.

Against the High Court's order, the appellant preferred the present appeal.

Dismissing the appeal, this Court

**HELD :** Payment of royalty under sub-section (1) of S.9 of the Mines and Minerals (Regulation) Act, 1957 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. The rate 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. The law does not require that fixation of royalty should be made unit-wise only. It cannot, therefore, be said that the notifications issued by the Govern-

A ment were violative of the proviso to sub-section (3) of Section 9 of the Act.  
[844-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2048 of 1979.

B From the Judgment and Order dated 19.1.79 of the Gujarat High Court in Special Civil Application No. 367 of 1971.

P.H. Parakh for the Appellant.

V.C. Mahajan, R. Singhvi, S.N. Terdol and Ms. A. Subhashini for the Respondents.

C C.B. Babu and Anip Sachthey for the State of Gujarat.

The Judgment of the Court was delivered by

D **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.

E 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 naya 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 forth 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% with 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

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sub-section (3) of Section 9 in two respects, one, the rate of royalty could nor exceed 20% of the sale price of the mineral at the pit's head, second, 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.

As regards first, since facts were not clear and claim of the appellant was that the fixation of royalty at pit's head was more than 20% 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 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.

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

"Section 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.

(2) x x x x x x

(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 percent 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

A           once during any period of four years."

B           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 unitwise. 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.

          In the result this appeal fails and is dismissed with costs.

G.N.

Appeal dismissed.