

HIGH COURT OF MADHYA PRADESH
BENCH AT GWALIOR
JUSTICE SUJOY PAUL.

Writ Petition No. 5555/2010

M/s Shri Ram Sharma Stone Crushers
Vs.
State of M.P. And Ors.

Ms. Nandita Dubey, Advocate for the petitioner.
Shri Vivek Jain, Advocate for the respondents No. 2 to 5.

Writ Petition No. 254/2005

Sanjeev Kumar Gupta and Anr.
Vs.
M.P. State Electricity Board and Ors.

Shri Santosh Agrawal, Advocate for the petitioners.
Shri Vivek Jain, Advocate for the respondents No. 1 to 5.

Writ Petition No. 4614/2010

Smt. Lata Sharma
Vs.
M.P. Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr.

Shri Sanjay Sharma, Advocate for the petitioner.
Shri Vivek Jain, Advocate for the respondents.

Writ Petition No. 7537/2010

M/s Maa Baglamukhi Stone Crushers
Vs.
State of M.P. And Ors.

Ms. Nandita Dubey, Advocate for the petitioners.

Shri Vivek Jain, Advocate for the respondents No. 2 to 6.

ORDER
(28 / 09 / 2015)

In view of commonality of issues involved, on the joint request, these matters were analogously heard and decided by this common order. This order will dispose of WP No. 5555/2010, WP. 4614/2010, WP.7537/2010, WP.254/2005.

Facts are taken from WP No. 5555/2010

2. The case of the petitioner is that it is a proprietorship firm owned and represented by Shri Ram Niwas Sharma. The petitioner firm is engaged in the business of crushing of black stones at village Mou, District Gwalior. A high tension electricity supply agreement was executed on 01.03.2006 between petitioner and respondent No.2 for sanction of 300 KVA power at 11 K.V. As per this agreement, the electricity energy was supplied in bulk at village Mou, District Gwalior. As per said agreement, the petitioner was required to pay charges for use of electricity energy every month.

3. Ms. Nandita Dubey, learned counsel for the petitioner, urged that at the time of taking connection, the petitioner was informed that apart from tariff, duty at the rate of 8% will be charged from him. Initially they started charging duty at the rate of 8%. By taking this Court to various bills, it is urged that all the dues were paid to the respondents. Relevant column shows that there was no arrear due in relation to any entry. It is submitted that in June, 2010, the petitioner received a bill wherein duty was charged at the rate of 40% instead of 8%. On contacting the respondents, petitioner gathered that it is enhanced as per letter of Chief Engineer (Electricity) dated 30.03.2010 (Annexure R/3). It is

submitted that on the strength of this letter only, the respondents have enhanced the duty to the tune of 40%. She submits that the said action is wholly arbitrary and runs contrary to principles of 'promissory estoppel'. She submits that respondents have erred in passing order dated 17.07.2010 whereby they recalculated the duty at the rate of 40% retrospectively and initiated recovery.

4. Ms. Dubey further submitted that since petitioner had already paid duty at the rate of 8%, respondents decided to recover the difference i.e. $40\% - 8\% = 32\%$. Ms. Dubey urged that the said action of respondents is arbitrary and without any legal basis. She submits that as per Section 56(2) of the Electricity Act, 2003 read with clause 10.19 of M.P. Electricity Supply Code, 2004 (Code), recovery beyond the period of two years from the date when such sum became due is impermissible. She submits that petitioner, by no stretch of imagination, can be treated as "mine". She submits that crusher in question is situated at survey No. 440 and 441 of village Mou. It is about a distance of 5 Kms. from the mine which was owned by petitioner's father. She further contended that in view of judgment of this Court in WP No. 3154/2004 (Shri Krishan Mehrotra Vs. M.P. State Electricity Board and Ors.), the respondents cannot treat the petitioner as 'mine' nor petitioner's crusher can be treated to be adjacent to a mine. She relied on *(2004) 1 SCC 139 (State of Orissa and Ors. Vs. Mangalam Tiber Products Ltd.)* in support of her contention that assurance initially extended but subsequently curtailed will attract principle of promissory estoppel against Government. Reliance is also placed on *(1974) 2 SCC 293 (Dhan Singh Ramkrishna Chaudhari and Ors. Vs. Laxminarayan Ramkishan and Anr.)*.

5. *Per Contra*, Shri Vivek Jain, learned counsel for the respondents submits that whole action is based on M.P. Electricity Duty Adhinyam, 1949, which was amended w.e.f. 15th May, 1995 (Annexure R/1). Duty at the rate of

40% is not charged on the strength of letter dated 30.03.2010 (Annexure R/3). It is charged on the basis of statutory provision of the Adhiniyam 1949, amended in 1995. He relied on various paragraphs of the return and definition of 'mine' given in the said Adhiniyam of 1949 and in the Mines Act, 1952. It is urged that petitioner's crusher is adjacent to the mine. As per clear provision in the agreement, tariff does not include taxes duty and other charges on electrical energy. Section 56(2) of the Electricity Act, 2003 and clause 10.19 of the Code have no relation to electricity duty. It is submitted that electricity duty is not charged by supplier of the electricity, but it is charged by the State Government. Duty is not part of electricity tariff of the supplier or electricity. Licensee only collects the duty and remit it to the State Government. It is further submitted that petitioner has not approached the court with clean hands. Initially, it is pleaded in para 5(a) of the petition that petitioner is engaged in business of "mining of black stones". However, later on it was amended in order to wriggle out the definition of 'mine', so that the liability to pay duty can be avoided.

6. Shri Jain further submits that petitioner earlier filed WP No. 7567/2011 (Ram Niwas Sharma Vs. State of M.P.). In the said WP, it was admitted that mine which was in the name of his father was transferred in the name of petitioner. He placed reliance on mining lease (Annexure R/5) to contend that condition of lease relates to extraction of black stones and manufacture of 'Gitti'. Lastly, he relied on Division Bench judgment of this Court in M.P. 2821/1988 (Hindustan Copper Limited Vs. The State of M.P. & Ors.).

7. Ms. Nandita Dubey, during the course of argument, also relied on Annexure P/8 dated 10th August, 2008, whereby M.P. Electricity Duty Adhiniyam, 1949 was further amended. She also relied on M.P. Vidyut Shulk

Adhiniyam, 2012 (Annexure R/9). She submits that petitioner's unit is covered by entry of "other industry" and therefore, 40% tariff cannot be charged.

8. No other point is pressed by learned counsel for the parties.

9. I have heard the parties and perused the record.

10. Before dealing with the rival contentions, I deem it apposite to quote definition of 'mine' mentioned in Adhiniyam of 1949. It reads as under :-

"mine" means a mine to which the mines Act, 1952 (No. 35 of 1952) applies and includes the premises or machinery situated in or adjacent to a mine and used for crushing, processing, treating or transporting the mineral"

In the Mines Act, "mine" is defined as under :-

(j) "mine" means any excavation where any operation for the purpose of searching for or obtaining minerals has been or is being carried out on and includes.:-

(iv) all open cast workings;
** ** **

(xi) any premises in or adjacent to and belongings to a mine on which any process ancillary to the getting, dressing or preparation for sale of minerals or of coke is being carried on."

11. The stand of the petitioner is that machinery is situated at survey No. 440 and 441 whereas mine is situated at survey No. 319. Although respondents have disputed this fact, one thing is clear that admittedly the mine and machinery both are situated in the same village i.e. Mou, Gwalior. This court in *Shri Krishan Mehrotra*(supra) considered the definition of 'mine' and dealt with the meaning of word 'adjacent'. In the peculiar facts and circumstances of the said case, this Court opined that machinery is not situated adjacent to mine. Para 3 of said judgment shows that respondents have admitted that mine is situated at a distance of 10 Kms. This aspect is considered by the Division Bench of this Court in *Hindustan Copper Limited* (supra). This court opined that word

'adjacent' does not mean 'adjoining' or 'abutting', but has a wider connotation and would include close proximity such being in the same locality. As per the petitioner's own pleadings, the mine and the crusher in question are in the same village. Thus, there is no difficulty in holding that both are in the same locality. In view of this Division Bench judgment wherein word 'adjacent' is interpreted, the judgment of single Judge in *Shri Krishan Mehrotra* (supra) is of no assistance to the petitioner.

12. The definition of mine shows that it is applicable to mines and it further includes the premises and machinery situated in or adjacent to a mine and used for crushing, processing, treating and transporting etc. Suffice it to say that once the mine and machinery in the question are situated in the same locality, it falls within the ambit of 'mine' under the Adhiniyam of 1949. Section 2(1)(j) of Mines Act also makes it clear that any premises in or adjacent to and belonging to mine will fall within the ambit of 'mine'. This is trite law that expression 'mine' used in explanation (b) to Part B of Section 3 creates a legal fiction. While interpreting the legal fiction, the court is required to ascertain for what purpose the fiction is created [See : *State of Bombay Vs. Pandurang Vinayak and Others*, AIR 1953 SC 244]. In explanation (b) while defining 'mine' the expression 'means and includes' has been used which has to be considered as exhaustive. In other words, the definition will embrace only what is comprised within the ordinary meaning of 'mine' part together with what is mentioned in the inclusive part of the definition. Thus, in my view, the definition of "mine" is wide enough to include the petitioner firm.

13. Section 56 of the Electricity Act, 2003 reads as under :-

“Disconnection of supply in default of payment :- (1) Where any person neglects to pay any charge for electricity or any sum other than a charge for electricity due from

him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity to him, the licensee or the generating company may, after giving not less than fifteen clear days' notice in writing, to such person and without prejudice to his rights to recover such charge or other sum by suit, cut off the supply of the electricity and for that purpose cut or disconnect any electric supply line or other works being the property of such licensee or the generating company through which electricity may have been supplied, transmitted, distributed or wheeled and may discontinue the supply until such charge or other sum, together with any expenses incurred by him in cutting off and reconnecting the supply, are paid but no longer :

Provided that the supply of electricity shall not be cut off if such deposits, under protest,-

(a) an amount equal to the sum claimed from him, or

(b) the electricity charges due from him for each month calculated on the basis of average charge for electricity paid by him during the preceding six months,

whichever is less, pending disposal of any dispute between him and the licensee.

(2) Notwithstanding anything contained in any other law for the time being in force, no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.

Clause 10.19 of the Code reads as under :-

“10.19. No sum due from any consumer shall be recoverable after the period of two years from the date when such sum became first due unless such sum has been shown continuously as recoverable as arrear of charges for electricity supplied and the licensee shall not cut off the supply of the electricity.”

(Emphasis supplied)

14. On the strength of aforementioned provisions, it is urged that recovery beyond two years cannot be made. This conundrum needs serious consideration. It is relevant to note here that M.P. Electricity Duty Act, 1949 has aimed to provide for levy of duty for sale and consumption of electricity energy. The Act has been enacted in exercise of power under Item 48 (b) list (II) of Government of India Act, 1935 which corresponds to Entry 53 of list (II) of (VIIIth) schedule of Constitution of India, namely, "tax on consumption or sale of electricity." In the Statement of Objects and Reasons, it is mentioned that it is enacted as an anti inflationary measure and in order to augment the revenues for meeting essential expenditure it is considered advisable to levy a duty on sale of electric energy. Section 3 of the Act provides that every distributor of electrical energy and every producer shall pay every month to the State Government at the prescribed time and in the prescribed manner a duty calculated at the rate specified in the table of units of electrical energy sold or supplied to a consumer by himself for his own purposes or for the purposes of his township or colony during the preceding month. Division Bench in *Hindustan Cooper Limited* (supra) opined that electricity duty under the Act is tax, which is levied on sale and consumption of electricity. The duty on mines is highest. The classification made under Section 3 of the Act has a clear nexus with the object sought to be achieved. Section 56 aforesaid and clause 10.19 of the Code do not include duty / tax. It talks about such sum, which are due to licensee / Electricity company. The licensee is merely a collecting agent which collects the duty from consumer and pass on the same to State Government.

15. Apart from this, a microscopic reading of Section 56 (1) aforesaid shows that it covers certain recoveries other than *charge of electricity or any sum other than a charge for*

electricity due from him to a licensee or the generating company in respect of supply, transmission or distribution or wheeling of electricity. In view of language employed in Section 56 (1), it is clear that such sum which is “other than a charge” for electricity due from consumer to a licensee is recoverable subject to conditions / limitations mentioned in sub-section (2) of Section 56. As noticed, the electricity duty is a 'tax'. Thus, it is a sum “other than a charge for electricity due”. Thus, sub-section 2 of Section 56 does not improve the case of the petitioner relating to aspect of recovery because sub-section 2 also employs the words “no sum due from any consumer, under this section shall be recoverable after the period of two years from the date when such sum became first due”. Sub-section 2 provides protection in relation to recovery regarding such sum which is recoverable under Section 56. Similarly clause 10.19 of the Code talks about “arrear of charges for electricity supplied”. This provision deals with an arrear of charges for electricity supplied. It does not cover duty / tax. These provisions are of no assistance to the petitioner. Thus, duty / tax is not as per clause 10.09 of the Code and Section 56 (2) of the Act of 2003. Thus, those provisions are of no help to the petitioner.

16. The next question is relating to applicability of principle of 'promissory estoppel'. Petitioner contended that he was given an impression that rate of duty would be 8% only. However, there is no such basis available for said contention. Clause 29(b) of agreement aforesaid for high tension reads as under :-

“29 (b) The tariff set out in the schedule does not include any tax, duty or other charges on electrical energy that may be payable in accordance with law in force such charge will be payable by the consumer in addition to tariff charges.”

(Emphasis supplied)

This provision in no uncertain terms makes it clear that agreement / schedule does not cover any tax, duty

or other charges on electrical energy.

17. There is no material on record to show that respondents gave any impression to the petitioner that duty will be charged at the rate of 8%. Adhinyam of 1949, amended from 1995, makes it clear that for mine, the rate of duty is 40%. If respondents have wrongly charged the duty at a lesser rate, it will not preclude them to charge it in accordance with law. This is also settled that there no estoppel operates against law. The Adhinyam of 1949 makes it clear that for mines the rate of duty is 40%. Thus, judgments cited by petitioner's counsel have no application in the facts and circumstances of the this case.

18. **WP No. 254/2005** :- In this case, the respondents have filed a return and specifically averred that crusher of petitioner has been established just adjacent to the mine / quarry. Copy of quarry lease is filed as Annexure R/2. The petitioner has not chosen to file rejoinder to rebut this assertion. Thus, there is no doubt that petitioner falls within the ambit of 'mine'.

19. **WP No. 7537/2010**:- In para 5(a) of the petition, petitioner averred that it is a partnership firm and engaged in business of mining of black stones, ballast at village Mou. Thus, as per the pleadings of petition itself, it is clear that it is covered in the definition of 'mine'.

20. **WP No. 4614/2010** :- In para 5(i) of the petition, the petitioner has admitted that it is carrying a business of mining and operating the crusher. In para 5.5 of the return, respondents have stated as under :-

“That in the reply it is submitted by the petitioner that he has not employed more than 20 persons in the unit. However, this interpretation is wrong because the limit of 20 persons applies only when the mining is being carried out for prospecting and not for obtaining mineral for commercial purpose. In the present case the petitioner has been granted mining lease for obtaining mineral

for commercial purpose. Thus, she is not entitled to claim that her unit is not covered under the Mines Act.”

Petitioner has not filed any rejoinder to rebut the aforesaid contention. Thus, it is clear that petitioner is covered within the definition of 'mine'.

21. As analyzed above, it is clear that action of respondents in recovering the duty at the rate of 40% is neither without authority of law nor barred under any other legal provision. Thus, no fault can be found in the action of respondents. They are justified in claiming 40% duty as per Adhinyam of 1949.

22. Petitions san substance and are hereby dismissed.

The Registry is directed to keep a true of this order in all the connected petitions.

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(Sujoy Paul)
Judge