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STATE OF GUJARAT

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v.

DHRANGADHRA CHEMICAL WORKS LTD.

April 9, 1985

C [D. A. DESAI, A.P. SEN AND V. BALAKRISHNA ERADI, JJ.]

Royalty, claim for — Constitution of India Article 229 — Government contract for rihgt to manufacture salt - Agreement dated 29. 1. 1937 as modified by a further agreements dated 4.1. 1950 - Clauses 2 to 5 — Interpretation of — Whether clauses 3 and 5 obligate payment of royalty for minimum 50,000 tons.

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On January 29, 1937 an agreement had been entered into between the Dhrangadhra Chemical Works Ltd. and the Maharaja of Dhrangadhra whereunder the company purchased from the Government of Maharaja, Shree Shakti Alkali Works in Dhrangadhra and the Salt Works at Kuda with exclusive rights to manufacture salt at the Kuda Works on certain conditions. In April 1948, the princely State of Dhrangadhra got merged in the E newely formed State of Saurashtra. By a further agreement dated January 4, 1950 entered into between the company and the Government Saurashtra, the company agreed to pay to the Government of Saurashtra royalty at the rate of Rs. 0-2-3 (2 annas, 3 pies) per Bengal Maund on the total quantity of salt sold by them every year. The payment of royalty was to be made as and when delivery was given by the respondent company to the purchaser. Under clause 3 of the said agreement the respondent company agreed to F manufacture a minimum quantity of atleast 50,000 tons of salt every year in addition to the quantity required by the respondent company for consumption in their Alkali factory. Clause 5 of the agreement provided for the payment of a minimum royalty equivalent to an amount chargeable on the minimum quantity to be manufactured by the respondent company in accordance with clause 3.

G For the years 1950-53, there was a short fall in the production of salt by the respondent comany aggregating to 27300—0—54 tons, and the respondent company made payments of royalty in terms of clause 2 of the agreement and refused to pay the minmum guaranteed royalty on 50,000 tons taking the stand that clause 3 of the agreement was void due to vagueness and uncertainty and since clause 5 was dependent for its operation on clause 3 the said clause 5 was also void due to vagueness. In spite of repeated demands the H respondent company persisted in its stand.

The State of Bombay, which became the successor State to the State of Saurashtra in 1956 therefore, instituted the suit in the court of Civil Judge, Senior Division, Surendranagar seeking to recover a sum of Rs. 506, 959—5—0 with interest at 6 per cent per annum from the date of suit by way of royalty payable by the respondent company. The trial court, after a careful and detailed consideration of the terms of the agreement as well as all the relevant aspects of the case came to the conclusion that the respondent company was liable to pay royalty on the minimum quantity of 50,000 tons in respect of each year in which the production of salt was less than 50,000 tons after excluding the quantity required for consumptions in their own factory and that for the years during which the production exceeded the stipulated minimum of 50,000 tons, royalty was chargeable only on the quantity of salt sold and delivered by the company and not on the total quantity manufactured by it. In this view it passed a decree in favour of the appellant which during the pendency of the trial became the successor Government to State of Bombay on bifurcation of the State for a sum of Rs. 2,66,462-0-9 and dismissed the appellants' claim.

While concurring with the trial court in the view taken by it that under clause 2 charge to royalty would get attracted not by mere manufacture alone but only at the point of sale and delivery of the salt to the purchasers, the High Court of Gujarat took the view in the two first and cross Appeals, that clause 5 could not be regarded as controlling clause 2 and the liability of the respondent company to pay royalty to government rested solely upon the terms of clause 2 and held that merely on account of the fact that the respondent company had during certain years failed to manufacture the minimum quantity of salt stipulated in clause 3, it could not be saddled with liability for payment of royalty during those years since under clause 2 royalty was to be paid only on the quantity of salt actually sold and delivered. The High Court accordingly set aside the decree passed by the trial court and dismissed the appellant's suit, except regarding an amout of Rs. 16,631 which had been admitted by the respondent company to be payable by it to the appellant. Hence the two State appeals by certificate granted by the High Court under Article 133 (1) (c) of the Constitution, as it stood prior to the Amendment of 1972.

Allowing the appeals, the Court

HELD : 1. On a combined reading of clauses 2 to 5 of the Agreement dated 4. 1. 50 it is clear, that while clause 2 was intended to operate and govern the rights and liabilities of the parties in respect of payment of royalty during years when the company maintained its normal scale of production, clauses 3 and 5 had been deliberately inserted with the object and purpose of ensuring that even in respect of lean years when the production of salt by the comany fell short of the sitpulated minimum of 50,000 tons after excluding the quantity required for the consumption in the company's own factory, the government was to be paid a minimum guaranteed royalty equivalent to the amount chargeable on 50,000 tons of salt which is stipulated as the minimum quantity to be manufactured under clause 3. The interpretation put on clause 2 by the High Court has the result of completely rendering clause 3 and 5 otiose. [637B-D]

2. No doubt clause 2 is the principal clause providing for the payment of royalty but it was to be operative in respect of years when the production of salt by the company fell within the normal limits, that is above the stipulated minimum. Clause 5 is a special provision for payment of a minimum guaranteed royalty in respect of periods when the production of salt by the company fell short of the quantity stipulated in clause 3. Hence there is no conflict between clauses 2 and 5 ; on the contrary, they supplement each other. [637E-F]

3. The terms of clause 2 are absolutely clear and provide for levy and collection of royalty only when the salt is sold and delivered by the company to the purchasers. This obviously means that royalty can be charged thereunder only on the quantity actually sold and delivered by the company and not on the total quantity manufactured by it during the particular years. [638A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2144-2145 of 1970

From the Judgment and Decree dt. 13/14/24.3.69 of the High Court of Gujarat in First Appeal Nos. 981/60 & 270/61.

M.N. Phadke, Girish Chandra, C.V. Subba Rao and *R.N. Poddar* for the Appellant.

Mr. V. Gouri Shankar. K.L. Harhi, M.K. Arora, and *Ms. H. Wahi,* for the Respondent.

The Judgment of the Court was delivered by,

BALAKRISHNA ERADI, J. These two appeals have been filed by the State of Gujarat on the strength of a certificate granted by the High Court of Gujarat under Article 133 (1) (c) of the Constitution of India as it stood prior to the Amendment of 1972.

Dhrangadhra was a princely State in Kathiawar region ruled by a Maharaja, until April, 1948, when pursuant to the covenant entered into by the Maharaja with the Government of India it became merged in the newely formed State of Saurashtra.

On January 29, 1937, an agreement had been entered into between the Dharanagadhra Chemical Works Ltd., (hereinafter called the 'defendant company') and the Maharaja of Dhrangadhra whereunder the defendant company purchased from the Government of Maharaja, Shree Shakti Alkali Works in Dhranagadhra and the Salt Works at Kuda with exclusive rights to manufacture salt at the Kuda Works on certain conditions. That agreement was subsequently modified as per the Minutes of the Board of Directors of the defendant company recorded on April 5, 1953. After the

merger of the Dhrangadhra State in the State of Saurashtra, the aforesaid agreement was further modified by an agreement dated January 4, 1950 entered into between the defendant company and the Government of Saurashtra. It is with that agreement alone that we are concerned with in these appeals. Under that agreement, the defendant company agreed to pay to the Government of Saurashtra roylty at the rate of Rs. 0-2-3 (2 annas, 3 pies) per Bengal Maund on the total quantity of salt sold by them every year. The payment of royalty was to be made as and when delivery was given by the defendant company to the purchaser. Under clause (3) of the said agreement the defendant company agreed to manufacture a minimum quantity of at least 50,000 tons of salt every year in addition to the quantity required by the defendant company for consumption in there Alkali factory. Clause (5) of the agreement provided for the payment of a minimum royalty, equivalent to an amount chargeable on the minimum quantity to be manufactured by the defendant company in accordance with clause (3).

There was a short fall in the the production of salt by the company for the years 1950-53 aggregating to 27300-0-54 tons. The royalty payable in respect of the said quantity of salt calculated at the agreed rate of 2 annas, 3 pies per Bengal Maund amounted to Rs. 1,07, 495-10-0. Differences arose between the Government of Saurashtra and the defendant company with respect to the royalty payable under the agreement. The said dispute mainly centred round two points. According to the Government, irrespective of the quantity of salt actually sold by the company during any year, the company was bound to pay a minimum guarantee royalty in respect of 50,000 tons of salt by virtue of the combined operation of clauses (3) and (5) of the agreement. The stand taken by the defendant company that clause (3) of the agreement was void due to vagueness and uncertainty and since clause (5) was dependant for its operation on clause (3), the said clause (5) was also vide due to vagueness. According to the defendant company their liability to pay royalty was only under clause (2), whereunder royalty was realisable by the Government only on the total amount of salt actually sold and delivered by the defendant company in each year. In spite of repeated demands made by the Government of Saurashtra, the defendant company persisted in its aforesaid stand. While matters stood thus, that as a result of the State reorganisation of

1956, the State of Bombay became the successor State to the State of Saurashtra.

The State of Bombay instituted the suit out of which these two appeals have arisen in the Court of Civil Judge, Senior Division, Surendranagar seeking to recover Rs. 506,959-5-0 with interest at 6 per cent per annum from the date of suit by way of royalty claimed to be payable by the defendant company on the terms of the aforesaid agreement of 1950. In defence to the suit, the defendant company reiterated the position it had taken in response to the claims made on it by the Government of Saurashtra namely, that clauses (3) and (5) of the agreement were vague and void and that under clause (2) its liability was to pay royalty only on the actual amount of salt sold by the company during each year:

The basis of the claim put-forward by the plaintiff was that during the years when there was a short fall in the production, the company was bound to pay royalty on the minimum guaranteed quantity of 50,000 tons of salt and that a sum of Rs. 1,07,495-10-0 was due on this account. It was further urged on behalf of the plaintiff that on a proper construction of clause (2) of the agreement, the liability of the company was to pay royalty not on the quantity of salt sold and delivered by them during the years when more than the minimum quantity stipulated in clause (3) had been manufactured but on the actual quantity manufactured by the company irrespective of whether any portion thereof remained unsold.

The Trial Court after a careful and detailed consideration of the terms of the agreement as well as all the relevant aspects of the case to the conclusion that the defendant company is liable to pay royalty on the minimum quantity of 50,000 tons in respect of each year in which the production of salt was less than 50,000 tons after excluding the quantity required for consumption in their own factory. For the years during which the production exceeded the stipulated minimum of 50,000 tons, the Trial Court held that royalty was chargeable only on the quantity of salt sold and delivered by the company and not on the total quantity manufactured by it. In this view it passed a decree in the plaintiff's favour for a sum of Rs. 2,66,462-0-9 and dismissed the suit in respect of the remaining part of the plaintiff's claim.

While the matter was pending in the Trial Court, the bifurcation of the State of Bombay had taken place and the area in question became the part of the territory of the State of Gujarat and the State of Gujarat had been substituted as plaintiff in the suit. A

Both the defendant company as well as the State of Gujarat filed appeals in the High Court questioning the correctness of the aforesaid judgment and the decree of the learned Civil Judge. First Appeal No. 981 of 1960 was appeal filed by the defendant company and First Appeal No.270 of 1961 was State's appeal. Both these appeals were heard together by the Division Bench of the High Court and they were disposed of under the judgment now impugned before us. B C

The High Court on a consideration of clauses (2), (3) and (5) of the agreement was of opinion that even though clause (5) dealt with a particular contingency namely, the failure of the defendant company to manufacture minimum quantity of salt as specified in clause (3), it was "introduced by way of abundant caution and not by way of limiting the ambit and scape of the operative part of the agreement namely, clause 2." In the view of the High Court, clause (5) could not be regarded as controlling clause (2) and the liability of the defendant company to pay royalty to Government rested solely upon the terms of clause (2). In this view the High Court held that merely on account of the fact that the defendant company had during certain years failed to manufacture the minimum quantity of salt stipulated in clause (3), it could not be saddled with liability for payment of royalty during those years since under clause (2) royalty was to be paid only on the quantity of salt actually sold and delivered. The Division Bench of the High Court concerned with the Trial Court in the view taken by it that under clause (2) the charge to royalty would get attracted not by mere manufacture alone but only at the point of sale and delivery of the salt to the purchasers. On the basis of the foregoing conclusions reached by it, the High Court set aside the decree passed by the learned Civil Judge and dismissed a suit except regarding an amount of Rs. 16,631 which had been admitted by the defendant company to be payable by it to the plaintiff. Aggrieved by the said decision of the High Court, the State of Gujarat has preferred these two appeals before this Court. D E F G H

A After hearing arguments on both sides and scrutinising the terms of the agreement dated January 4, 1950, we have unhesitatingly come to the conclusion that the High Court was not right ininterfering with the decree passed by the learned Civil Judge.

Since the points raised in the appeals turn on the interpretation to be placed on the clauses (2) to (5), we shall reproduce B those clauses in full.

They read-

"2. The company shall pay a royalty to the Government at the rate of 0-2-3 per Bengal maund on the total quantity C of salt sold by them every year. The amount of royalty under this clause shall be paid by the company as and when delivery is given by the company to the purchaser, and for the purposes of ascertaining the royalty chargeable under this clause the company shall produce the sale notes, delivery notes and such other D documents or records as may be required by an Officer authorised by Government in this behalf.

3. The company shall manufacture at least 50,000 tons of salt in addition to the quantity required for consumption in their works. However, if it become impossible E to produce the minimun quantity of salt required to be broduced by this clause on account of natural circumstances beyond the control of the company Government may relax this requirement to such extent as may be deemed fit by Government in view of such F circumstances.

4. The company shall make all efforts to raise the production of salt above the minimum specified in clause 3 above.

G 5. In case company fails to manufacture the minimum quantity of salt as specified in clause (3) above and Government do not think it fit to relax the requirements of the said clause in accordance with the provisions mentioned therein, then notwithstanding anything contained in clause 2 above the company shall

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pay the minimum royalty equivalent to an amount chargeable on the minimum quantity to be manufactured in accordance with clause (3) of this agreement."

We do not find possible to agree with the High Court that clause (3) was only 'introduced by way of abundant caution' and that clause (5) does not create any liability for payment of a minimum royalty. On a combined reading of clauses (2) to (5), it appears to us to be clear that while clause (2) was intended to operate and govern the rights and liabilities of the parties in respect of payment of royalty during years when the company maintained its normal scale of production, clauses (3) and (5) had been deliberately inserted with the object and purpose of ensuring that even in respect of lean years when the production of salt by the company fell short of the stipulated minimum of 50,000 tons after excluding the quantity required for the consumption in the company's own factory, the Government was to be paid a minimum guaranteed royalty equivalent to the amount chargeable on 50,000 tons of salt which is stipulated as the minimum quantity to be manufactured under clause (3). The interpretation put on clause (2) by the High Court has the result of completely rendering clauses (3) and (5) otiose and such interpretation does not commend itself to us. We do not also find it possible to agree with the view expressed by the High Court that the liability for payment of royalty emanated only from clause (2). No doubt clause (2) is the principal clause providing for the payment of royalty but it was to be operative in respect of years when the production of salt by the company fell within the normal limits, that is above the stipulated minimum. Clause (5) is a special provision for payment of a minimum guaranteed royalty in respect of periods when the production of salt by the company fell short of the quantity stipulated in clause (3). Hence there is no conflict between clauses (2) and (5); on the contrary, they supplement each other. We are, therefore, constrained to hold that the High Court was in error in its conclusion that in respect of years when the company failed to produce the minimum quantity of salt stipulated in clause (3), it was under no liability at all to pay any royalty to the Government under clause (5). The Trial Court was, in our opinion, perfectly right in granting a decree to the plaintiff for the amount of royalty payable in respect of the short fall in production during the years 1950-53.

There remains only the further question, whether under the

A terms of clause (2), the royalty payable thereunder is to be computed on the total amount of salt manufactured by the company or on the quantity sold and delivered. In our opinion, the terms of the clause are absolutely clear and provide for levy and collection of royalty only when the salt is sold and delivered by the company to the purchasers. This obviously means that royalty can be B charged only on the quantity actually sold and delivered by the company and not on the total quantity manufactured by it during the particular year. The concurrent findings recorded on this point by the High Court and the learned Civil Judge do not, therefore, call for any interference.

C In the result, we allow these appeals, set aside the judgment of the High Court and restore the judgment and decree of the learned Civil Judge subject to the modification that the rate of interest payable to the plaintiff on the decree amount shall be 12 per cent from the date of the Trial Court. The costs incurred by the D appellant in this Court in these appeals will be paid by the respondent. The appellant will also get its full costs from the respondent in the High Court in First Appeal No.981 of 1960. The defendant company will bear its own costs in the Trial Court as well as in the High Court. The plaintiff will get proportionate costs in the Trial Court while the defendant will bear its own costs.

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S.R. *Appeals allowed.*

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