Supreme Court of India
Karnataka Rare Earth & Anr vs The Sr.Gelt.,Dep.Of Mines And ... on 23 January, 2004
Author: R Lahoti
Bench: R.C.Lahoti, Ashok Bhan, B.P. Singh

CASE NO.:
Appeal (civil) 3618-3619 of 1999

PETITIONER:
Karnataka Rare Earth & Anr.

RESPONDENT:
The Sr.Gelt.,Dep.of Mines and Geology & Anr.

DATE OF JUDGMENT: 23/01/2004

BENCH:
R.C.LAHOTI,ASHOK BHAN & B.P. SINGH

JUDGMENT:

JUDGMENT R.C. Lahoti, J.

The grant of 203 leases for quarrying granites in government land under Rule 3 of the Karnataka Minor Mineral Concession Rules 1969, contrary to the prohibition contained in Rule 3A, was challenged in the Karnataka High Court in public interest litigation. The writ petitions were allowed by the learned single Judge and all the grants were quashed. Writ appeals were dismissed by a Division Bench of the High Court. The unsuccessful lessees came up to this Court and by judgment dated January 18, 1996 [Alankar Granites Industries & Ors. Vs. P.G.R. Scindia, MLA & Ors., (1996) 7 SCC 416] this Court directed the appeals to be dismissed by holding that the grants of leases were made against the prohibition contained in Rule 3A and were rightly held by the High Court to be invalid.

The appellants before us were holding two quarry leases and were amongst the appellants in this Court in the appeals by special leave referred to hereinabove. On 19.11.1993, by an interim order, the Court directed that the renewals or existing grants in favour of the appellants would continue till the next date of hearing. On 21.11.1993, the Court modified the previous order by extending its operation 'to continue till further orders of the Court'. The appellants brought to the notice of the Court that in spite of the previous interim order the appellants were not issued transport permits with the result that the renewal or grant of leases was of no avail to them as they were not able to remove the minerals quarried by them. In the opinion of the Court such action of the respondents resulted in frustrating the interim orders. It was clarified that the appellants in whose favour interim orders were granted, should be granted transport permits also by the appropriate authority on payment of royalty and complying with the rules. On 18.1.1996, the appeals came to be dismissed as already stated.

According to the appellants they had operated the quarries and transported several granite blocks on the strength of the order passed by this Court. They had paid the prescribed royalty and exported

the granite blocks. The quarrying had taken place during the pendency of the appeals and the export had taken place on 24.1.1996 as the dismissal of the appeals on 18.1.1996 at Delhi did not come to the notice of the appellants or the authorities of the State at Karnataka until after the granite blocks had already been exported. On 14/15.2.1996, the State of Karnataka issued an order calling upon the appellants to pay the price of the granite blocks calculated at the minimum rate per unit volume of minor mineral. The appellants filed writ petitions in the High Court laying challenge to the impugned action of the respondents proposing to recover the price of the granite blocks which were already exported. The writ petitions were dismissed. Feeling aggrieved the appellants have filed these appeals by special leave.

The substance of the plea, forcefully urged by the learned counsel for the appellants and highlighted from very many angles, is that the act of the appellants in quarrying the granite stones and exporting the same was accompanied by payment of royalty and issuance of transport permits by the authorities of the State and though done under the interim orders of this Court was nevertheless a lawful and bona fide act. The mining leases in favour of the appellants ought to be held to be valid, in spite having been invalidated by the High Court, in view of the interim orders passed by this Court. The appellants cannot be held liable for payment of price of the granite blocks. The demand of price of the granite blocks is a demand in the nature of penalty and hence cannot be sustained. Reliance is placed by the learned counsel on the decision of this Court in Hindustan Steel Vs. State of Orissa, (1970) 1 SCR 753 and Consolidated Coffee Vs. Agricultural Income Tax Office, (2001) 1 SCC 278.

Having heard Shri K.V. Vishwanathan, the learned counsel for the appellants and Shri Sanjay R. Hegde, the learned counsel for the State of Karnataka, we are satisfied that no fault can be found with the view taken by the High Court and the appeals are devoid of any merit and hence liable to be dismissed.

Section 21 of the Mines and Minerals (Development & Regulation) Act 1957 (hereinafter 'MMDR Act', for short) reads as under:-

"21. Penalties.__ (1) Whoever contravenes the provisions of sub-section (1) or sub-section (1A) of section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty-five thousand rupees, or with both.

(2) Any rule made under any provision of this 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, and in the case of a continuing contravention, with an additional fine which may extend to five hundred rupees for every day during which such contravention continues after conviction for the first such contravention.

(3) Where any person trespasses into any land in contravention of the provisions of sub- section (1) of section 4, such trespasser may be served with an order of eviction by the State Government or any authority authorised in this behalf by that Government and the State Government or such authorised authority may, if necessary, obtain the help of the police to evict the trespasser from the

land.

(4) Whenever any person raises, transports or causes to be raised or transported, without any lawful authority, any mineral from any land, and, for that purpose, uses any tool, equipment, vehicle or any other thing, such mineral tool, equipment, vehicle or any other thing shall be liable to be seized by an officer or authority specially empowered in this behalf.

(4A) Any mineral, tool, equipment, vehicle or any other thing seized under sub-section (4), shall be liable to be confiscated by an order of the court competent to take cognizance of the offence under sub-section (1) and shall be disposed of in accordance with the directions of such court.

(5) 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, for the period during which the land was occupied by such person without any lawful authority.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), an offence under sub-section (1) shall be cognizable."

The submission of Shri Vishwanathan is that the impugned demand by the State of Karnataka has been raised by reference to sub-Section (5) of Section 21 above-quoted which is nothing but a levy of penalty. The applicability of the provision is not attracted unless the extraction and export of the minor mineral by the appellants can be said to be 'without any lawful authority', which it is not, in the facts and circumstances of the case, as already noticed, submitted Shri Vishwanathan.

In our opinion, the demand by the State of Karnataka of the price of the mineral cannot be said to be levy of penalty or a penal action. The marginal note of the Section __ 'Penalties', creates a wrong impression. A reading of Section 21 shows that it deals with a variety of situations. Sub-Sections (1), (2), (4), (4A) and (6) are in the realm of criminal law. Sub-Section (3) empowers the State Government or any authority authorized in this behalf to summarily evict a trespasser. Sub-Section (5) empowers the State Government to recover rent, royalty or tax from the person who has raised the mineral from any land without any lawful authority and also empowers the State Government to recover the price thereof where such mineral has already been disposed of inasmuch as the same would not be available for seizure and confiscation. The provision as to recovery of price is in the nature of recovering the compensation and not penalty so also the power of the State Government to recover rent, royalty or tax in respect of any mineral raised without any lawful authority can also not be called a penal action. The underlying principle of sub-Section (5) is that a person acting without any lawful authority must not find himself placed in a position more advantageous than a person raising minerals with lawful authority.

The correct principles of law applicable to the facts of the present case emanating from equity, and statutorily embodied in sub- Section (5) of Section 21 abovesaid, are to be found dealt with extensively in a recent decision of this Court in South Eastern Coalfields Ltd. Vs. State of M.P. & Ors.

(2003) 8 SCC 648.

It is true that by the interim orders passed by this Court the appellants were allowed during the pendency of the earlier appeals to operate under the mining leases, whether freshly granted or renewed and to effectuate the interim orders the authorities were also directed to issue transport permits. Admittedly, the transport permits were obtained by the appellants after the dismissal of their appeals. The appellants claim that both the parties were ignorant of the dismissal of the appeals when the transport permits were issued and the granite blocks were exported. It is difficult to accept the plea of the appellants that the dismissal of the appeals was not in their knowledge inasmuch as the judgments must have been pronounced in an open Court and their counsel at Delhi must have gathered the knowledge thereof. In any case the appellants cannot be heard taking shelter behind there own convenient ignorance. In our opinion, whether they had the knowledge of the judgment or not and whether the transport permits were obtained by the appellants before the dismissal of the appeals during which the interim orders were in operation or after the dismissal of the appeals when the interim orders had ceased to operate would not make any difference. For the purposes of the law it is enough that the appellants have enjoyed the benefit under the interim orders of the Court which have stood vacated with the dismissal of their appeals. It is also noteworthy that this Court had not, in the earlier appeals, directed the judgment of the High Court to remain stayed in its entirety and this is an additional fact or which tells adversely on the appellants.

In South Eastern Coalfields Ltd. (supra), this Court dealt with the effect on the rights of the parties who have acted bona fide, protected by interim orders of the Court and incurred rights and obligations while the interim orders stood vacated or reversed at the end. The Court referred to the doctrine of actus curiae neminem gravabit and held that the doctrine was not confined in its application only to such acts of the Court which were erroneous; the doctrine is applicable to all such acts as to which it can be held that the Court would not have so acted had it been correctly apprised of the facts and the law. It is the principle of restitution which is attracted. When on account of an act of the party, persuading the Court to pass an order, which at the end is held as not sustainable, has resulted in one party gaining advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the Court and the act of such party, then the successful party finally held entitled to a relief, assessable in terms of money at the end of the litigation, is entitled to be compensated in the same manner in which the parties would have been if the interim order of the Court would not have been passed. The successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the Court, or (b) to make restitution for what it has lost.

In the facts of this case, in spite of the judgment of the High Court, if the appellants would not have persuaded this Court to pass the interim orders, they would not have been entitled to operate the mining leases and to raise and remove and dispose of the minerals extracted. But for the interim orders passed by this Court, there is no difference between the appellants and any person raising, without any lawful authority, any mineral from any land, attracting applicability of sub-Section (5) of Section 21. As the appellants have lost from the Court they cannot be allowed to retain the benefit earned by them under the interim orders of the Court. The High Court has rightly held the

appellants liable to be placed in the same position in which they would have been if this Court would not have protected them by issuing interim orders. All that the State Government is demanding from the appellants is the price of the minor minerals. Rent, royalty or tax has already been recovered by the State Government and, therefore, there is no demand under that Head. No penal proceedings, much less any criminal proceedings, have been initiated against the appellants. It is absolutely incorrect to contend that the appellants are being asked to pay any penalty or are being subjected to any penal action. It is not the case of the appellants that they are being asked to pay a price more than what they have realised from the exports or that the price appointed by the respondent State is in any manner arbitrary or unreasonable.

Is sub-section (5) of Section 21 a penal enactment? Can the demand of mineral or its price thereunder be called a penal action or levy of penalty?

A penal statute or penal law is a law that defines an offence and prescribes its corresponding fine, penalty or punishment. (Blacks Law Dictionary, Seventh Edition, p.1421). Penalty is a liability composed as a punishment on the party committing the breach. The very use of the term 'penal' is suggestive of punishment and may also include any extraordinary liability to which the law subjects a wrong-doer in favour of the person wronged, not limited to the damages suffered. (See, The Law Lexicon, P. Ramanatha Aiyar, Second Edition, p.1431).

In support of the submission that the demand for the price of mineral raised and exported is in the nature of penalty, the learned counsel for the appellants has relied on the marginal note of Section

21. According to Justice G.P. Singh on Principles of Statutory Interpretation (Eighth Edition, 2001, at p.147) though the opinion is not uniform but the weight of authority is in favour of the view that the marginal note appended to a Section cannot be used for construing the Section. There is no justification for restricting the Section by the marginal note nor does the marginal note control the meaning of the body of the Section if the language employed therein is clear and spells out its own meaning. In Director of Public Prosecutions Vs. Schildkamp, (1969) 3 All ER 1640, Lord Reid opined that a side note is a poor guide to the scope of a section for it can do no more than indicate the main subject with which the section deals and Lord Upjohn opined that a side note being a brief pricis of the section forms a most unsure guide to the construction of the enacting section and very rarely it might throw some light on the intentions of Parliament just as a punctuation mark.

We are clearly of the opinion that the marginal note 'penalties' cannot be pressed into service for giving such colour to the meaning of sub-Section (5) as it cannot have in law. The recovery of price of the mineral is intended to compensate the State for the loss of the mineral owned by it and caused by a person who has been held to be not entitled in law to raise the same. There is no element of penalty involved and the recovery of price is not a penal action. It is just compensatory.

The Court while dismissing the appeals filed by the appellants in the year 1996, which dismissal vacated the interim orders, could have also relieved the appellants of the consequences logically and necessarily flowing from the dismissal of the appeals by taking into consideration the equity of relieving against hardship or could also have done so in exercise of its jurisdiction conferred by

Article 142 of the Constitution. So was done in Samatha Vs. State of A.P. & Ors, (1997) 8 SCC 191, 277 para 131. This Court having directed the State Government to ensure further mining operations by industrialists concerned in the scheduled area, restrained the lessees of mining leases not to break fresh mines, but in the meanwhile allowed them to remove the minerals already extracted and stocked in the reserved forest area within four months' time from the date of judgment.

Neither the appellants prayed for such relief nor the Court has passed any such order. What this Court had not done, could not obviously have been done by the High Court in exercise of its writ jurisdiction in view of the earlier judgment of this Court having achieved a finality.

The two decisions relied on by the learned counsel for the appellants are not applicable to the facts of the present cases. Hindustan Steel (supra) is a case under the Orissa Sales Tax Act, 1947. The appellant company was engaged in construction activity. During the course of such activity the company supplied building materials to the contractor for construction and adjusted the value of the goods supplied at the rates specified in the tender. The Court held such transaction of supply of building materials to be a sale and, therefore, the company a 'dealer' covered by the Act. However, the persons incharge of the affairs of the company had not registered the company as dealer in the honest and genuine belief that the company was not a dealer. The Court held that the liability to pay penalty did not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out the statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party obliged has either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. In spite of a minimum penalty prescribed the authority competent to impose the penalty may refuse to impose penalty if the breach complained of was a technical or venial breach or flew from a bona fide though mistaken belief. In Consolidated Coffee (supra), the court was dealing with Section 42(1) of Karnataka Agricultural Income Tax Act, 1957. A default by assessee in making payment of tax attracted a penalty equivalent to one and a one-half percent of the tax remaining unpaid for the first three months and two and one-half percent of such tax for each month subsequent thereto. There was also a provision for payment of interest on delayed payment of tax. This Court held that interest is compensatory while penalty is penal, i.e. punishing in character. Where delay in payment of tax was attributable to the order of stay passed by the Court, it was held that the order of stay placed the demand for the tax in abeyance and, therefore, during the period of stay the assessee cannot be said to be in default and hence no penalty can be imposed on the assessee on the stay being vacated. However, still the Court held that a late payment surcharge/interest is necessarily compensatory in character and a penalty is a punishment.

At the end, the learned counsel for the appellants submitted that the appellants may be allowed the liberty of making a representation to the State Government for some relief at least in the calculation of the amount of price. Needless to say that the appellants are always at liberty to do and we express no opinion thereon.

The appeals are dismissed though without any order as to the costs.