

(1996) 09 BOM CK 0010

In the Bombay High Court

Case No : First Appeal No"s. 133, 14, 234, 236, 240, 241 and 244 of 1990

Bhauji Lande and Others

APPELLANT

Vs

Western Coal Fields Limited

RESPONDENT

Date of Decision : 12-09-1996

Acts Referred:

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 14, 27, 28, 4, 9
COMPANIES ACT, 1956 — Section 58A, 642
Employees State Insurance Act, 1948 — Section 68, 75, 96
Land Acquisition Act, 1894 — Section 18
Limitation Act, 1963 — Section 5

Citation : (1997) 99 BOMLR 298 : (1997) 2 MhLj 315

Hon'ble Judges : B.U. Wahane, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.U. Wahane, J.—The nine first appeals could be conveniently disposed of by common judgment as common evidence was led by the parties in 102 cases and common judgment is passed by the special learned Tribunal. Two fold questions are raised in these appeals, viz.

(1) Whether the Sub-Rule 5 of Rule 7 of the Coal Bearing Areas (Acquisition and Development) Rules 1957 (Hereinafter referred to as the Rules of 1957) is beyond the competence of the Rule Making Authority of the Central Government provided u/s 27 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as the Act of 1957), as well as beyond the legislative competence of sub-ordinate Legislation?

(2) Whether each appeal is barred by limitation?

2. The appellants/original applicants filed applications u/s 14(2) of the Act of 1957, for determination of the fair compensation. The lands of the appellants and the other owners residing in Tahsil Rajura, District Chandrapur, were acquired by

the Central Government under Notification issued u/s 4 of the Act of 1957, on 27th August, 1981 and the same was published in the Gazette of India on 12/9/1981. The learned Special Tribunal has observed in para 7 of the impugned judgment that one member of the family of the applicant has been given an employment by the non-applicant. Besides this, each applicant was paid additional amount at the rate of Rs. 1,000/- per acre by way of advance. Each applicant claimed Rs. 12,000/- per acre from the respondent-W.C.L. The learned Special Tribunal considering the evidence-oral and documentary - observed that determination of compensation of land at the rate of Rs. 6,000/- per acre in the year 1981 by the Competent Authority, cannot be inadequate, arbitrary and low.

3. As regards the first question, Smt Sirpurkar, the learned Counsel for the appellants, vehemently submitted that admittedly, there is no specific provision provided under the Act of 1957 so as to present an application before the Special Tribunal at Nagpur constituted u/s 14(2) of the Act, 1957. The provisions of Section 27 empowers the Central Government to make rules for carrying out the purpose of the Act. The Central Government framed the Rules of 1957 and issued notification on 12th June, 1957. Rule 7 deals with the procedure to be followed by the Tribunal. Sub-Rule 5 of Rule 7 of the Rules of 1957 prescribes limitation of six weeks to prefer an application to the Tribunal and further by way of proviso, if the application is not presented within six weeks, the period is extended by 30 days after the expiry of the above specified period on being shown sufficient cause for not preferring the application within the specified period. Sub-Rule 5 of Rule 1 reads as under :

7.(5) Any person who has been admitted to be interested and who has accepted the payment of compensation under protest may within six weeks of the date of such acceptance prefer an application to the Tribunal for determining the sufficiency of the amount of compensation.

Provided the Tribunal may entertain an application preferred within thirty days after the expiry of the specified period if it is satisfied that the applicant had sufficient cause for not preferring the application within the specified period.

Smt. Sirpurkar, the learned Counsel for the appellant, vehemently submitted that the Rules cannot over-ride the provisions of the Act. Merely by delegation of the powers under the provisions of Section 27 of the Act, sub-ordinate Legislation cannot over-ride the provisions of the Act and prescribe the limitations which are absent in the Act. The right of judicial review cannot be restricted by framing the Rules. The learned Counsel further submitted that if the period of limitation is not provided in principal Act or the specific limitation is absent in the Act itself, the general law of limitation under the Indian Limitation Act would be attracted and applied. In view of this, according to the learned Counsel for the appellants, the Rules framed as such are ultra-virus. Reliance has been placed on the following citations:

1. AIR 1972 1935 (SC) .

2. Sales Tax Officer, Ponkunnam and Anr. v. K.I. Abraham AIR 1967 SC 1823.

3. The Management of D.T.U. Vs. Shri B.B.L. Hajelay and Another, .

4. Purushottam R. Paradkar v. Union of India and Ors. AIR 1987 Bom. 46.

5. State of Mysore and Ors. v. Mallick Hashim and Co. AIR 1973 SC 1949.

6. Dattatraya Narhar Pitale Vs. Prabhakar Dinkar Gokhale and Another, .

4. Its is well settled that the provisions of the Act are always superior and the Rules that are made in exercise of the power conferred by the Statute cannot be inconsistent with the provisions of the Act and cannot over-ride or take away the right which had been conferred by the provisions of the Statute itself. After all making of Rules is in the nature of sub-ordinate legislation and that cannot have greater force than the provisions of the Statute itself or the effect of over-riding its provisions. Such rules can neither be inconsistent with the Act nor derogatory from the provisions thereof.

In the case of AIR 1972 1935 (SC) the Rules framed u/s 96(1)(b) of the Employees' State Insurance Act, 1948, were held ultravires. The Employees' State Insurance Act, 1948 is a Central Government enactment. Section 96 deals with the power of the State Government to make Rules. Sub-section 1 of Section 96 reads as under:

96(1) : The State Government may, after consultation with the Corporation and subject to the condition of previous publication, make rules not inconsistent with this Act in regard to all or any of the following matters, namely :

(a) the constitution of Employees' Insurance courts, the qualifications of persons who may be appointed judges thereof, and the conditions of service of such judges.

Clause (b) of Sub-section (1) of Section 96 speaks that the State Government is empowered to frame rules as regard the procedure to be followed in the proceedings before such Courts and the execution of the orders made by such Courts. Besides these provisions, Sections 68 and 75(2)(d) were for consideration before the Lordships of the Supreme Court. Admittedly, no provision was made under the Act as regard the period of limitation to place a claim by the employee for the payment of any benefit. As per Rule 17, the bar was imposed upon the employee to approach the Insurance Court within 12 months after the claim has become due. The Rules were framed u/s 96(1)(b) conferring power to make rules for regulating procedure before the Insurance Court after an application has been filed and when it is seized of the matter. Considering these facts and circumstances, Their Lordships observed as follows:

The omission to provide a period of limitation under Sections 68 and 75 while providing for a limitation of claim by an employee for the payment of any benefit under the regulations, shows clearly that the legislature did not intend to fetter the claim u/s 75(2)(d). Where the legislature clearly intends to provide

specifically the period of limitation in respect of claims arising thereunder, it cannot be considered to have left such matters in respect of claims under some similar provisions to be provided for by the rules to be made by the Government under its delegated powers to prescribe the procedure to be followed in proceedings before such Court. What is sought to be conferred u/s 96(i)(b) is the power to make rules for regulating the procedure before the Insurance Court after an application has been filed and when it is seized of the matter. That apart Rule 17 bars the claim itself and extinguishes the right which is not within the pale of procedure. There is no gain-saying the fact that under Rule 17 if an employee does not file an application before the Insurance Court within 12 months after the claim has become due or he is unable to satisfy the Insurance Court that there was a reasonable excuse for him in not doing so, his right to receive payment of any benefit conferred by the Act is lost. Such a provision affects substantive rights and must therefore be dealt with by the legislature itself and is not to be inferred from the rule making power conferred by regulating the procedure unless that is specifically provided for.

It is apparent from the facts of the case before Their Lordships of the Supreme Court that the application was already presented before the Competent Court and the matter was seized. During the pendency of the matter, the Rules were framed. Though the Employees' State Insurance Act is a Central Enactment, Rule Making Powers were entrusted to the State Government. Sub-section (3) is introduced to Section 96 of the Act, substituted by the Act No. 45 of 1984 with effect from 27th January, 1985. Sub-section (3) of Section 96 of the Act reads as under:

96(3) : Every rule made under this section shall be laid as soon as may be after it is made, before each House of the State Legislature where it consists of two Houses, or where such Legislature Consists of one House, before that House.

5. Shri Mehadia, the learned Counsel for the non-applicant-W.C.L. submitted that the Act and the Rules are given recognition by the Parliament in the year 1957. The Act came in force with effect from 12th June, 1957, published in Gazette of India, Extraordinary Part II, Section 3, No. 315 dated 10th June, 1957.

The Rules framed u/s 27 of the Act came into force with effect from 12/6/1957 published in the Gazette of India, Part II Section 3 No. 25 dated 22nd June, 1957. Sub-section (3) of Section 27 of the Act specified that all the Rules made under this section shall be laid before each House of the Parliament. Sub-section (3) of Section 27 reads as under:

27.(3) : All rules made under this section shall be laid for not less than thirty days before each House of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

Though the powers to make the rules are delegated to the Central Government, it will not come in force unless and until the rules are approved by both the

Houses of the Parliament, Shri Mehadia, the learned Counsel for the respondent-W.C.L. has submitted that the rules being approved by the Parliament, it cannot be said by any stretch of imagination that the rules are framed by any subordinate legislation. Reliance is placed on the following cases:

- (1) State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, .
- (2) M.K. Papiiah and Sons Vs. The Excise Commissioner and Another, .
- (3) Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others, .

Shri Mehadia specifically submitted that in the case of State of M.P. Vs. Mahalaxmi Fabric Mills Limited and others, , the cases reported in M.K. Papiiah and Sons Vs. The Excise Commissioner and Another, , and Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others, are referred. The case before their Lordships was under Mines and Minerals (Regulation and Development) Act (7 of 1957). It is observed that Section 9(3) of the Act does not suffer from any excessive delegation of legislative power. Their Lordships in para 15 of the judgment observed:

It must be kept in view that Parliament itself has laid down the rates of royalty in the Und Schedule of the Act. However, the Parliament felt that with passage of time these rates of royalty may have to be suitably modified.

As regards the enhanced rate of royalty, Lordships observed in para 16 as under:

...whatever enhanced rate of royalty is fixed by Notification by the Central Government u/s 9(3), it has got to be filtered through the process of Section 28(1) and if the Parliament finds the proposed hike to be uncalled for it may veto it out.

In the same para the case of N.K. Papiiah and Sons v. Excise Commissioner, (Cited supra) is considered. The Lordships observed as follow:

From the mere fact that it is not certain whether the preamble of the Act gives any guidance for fixing the rate of excise duty, it cannot be said that the legislature has no control over the delegate; that requirement of laying of rules before the legislature is control over delegated legislation. The legislature may also retain its control over its delegate by exercising its power of repeal.

The Parliament has a full control over the delegated legislation. This aspect is dealt in para 17 of the judgment referring to the case of Delhi Cloth & General Mills Co. Ltd. (Cited supra), which reads as follows:

In the case of Delhi Cloth and General Mills Co. Ltd. and Others Vs. Union of India (UOI) and Others, . Anr. Bench of this Court speaking through Desai J. Held that the provisions of Sections 58A and 642 of the Companies Act requiring every rule enacted in exercise of the power conferred by it must be placed before each House of Parliament for a period of 30 days and both Houses have power to

suggest modification in the proposed rules to check any transgression of permissible limits of delegated legislation by the delegate, made the challenge on the ground of excessive delegation unsustainable. In view of this settled legal position it cannot be held that Section 9(3) suffers from any excessive delegation of legislative power. There is full control of Parliament u/s 28 for checking such exercise of the delegate and for correcting the same, if found necessary. The second ground canvassed by Shri Sanghi for challenging the vires of Section 9(3) is also without any substance and stands rejected.

Admittedly, there is no procedure laid down in the Act as regard the limitation for presenting the claim application before the Tribunal. However, how to deal with the application is the procedure to be followed by the Special Tribunal Shri Bhangde, the learned Counsel for the Union of India, rightly pointed out the provisions of Section 27(2)(b) of the Act which lays down the procedure to be followed by the Tribunal in proceedings u/s 14 of the Act. Section 14 of the Act deals with the method of determining the compensation. According to Shri Bhangde, the learned Counsel for the Union of India, "Procedure" includes the law of limitation. A reliance has been placed on the case of Panpoi Dharmal Sansthan Dhotarkherda v. Bhagwant Maroti Dhakulkar and Ors. 1989 Mh.L.J. 710. (Full Bench). The question before Their Lordships was as to whether limitation of six months as prescribed by Sub-section (3) of Sub-section 5 of the Mamlatdar" Section Courts Act would govern the applications filed under Suction 100 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958? Section 102 of the Bombay Tenancy and Agricultural Lands (Vidarbha Region) Act, 1958 deals with the procedure to be followed in the proceedings.

102. In all inquiries and proceedings commenced on the presentation of applications u/s 101 the Tahsildar or the Tribunal shall exercise the same powers as the Mamlatdar"s Court under the Mamlatdar"s Courts Act, 1906, and shall save as provided in Section 36 follow the provisions of the said Act, as if the Tahsildar or Tribunal were a Mamlatdar"s Court under the said Act and the application presented was a plaint presented u/s 7 of the said Act. In regard to matters which are not provided for in the said Act, the Tahsildar or the Tribunal shall follow such procedure as may be prescribed by the State Government. Every decision of the Tahsildar or the Tribunal shall be recorded in the form of an order which shall state the reasons for such decision.

In para 11 of the Judgment, Their Lordships held

Though Section 100 deals with duties and functions to be performed by the Tahsildar, it cannot be forgotten that it deals with power and jurisdiction of the Tahsildar to decide certain matters and the said power is coupled with duty. Section 102 then lays down the procedure to be followed in all inquiries and proceedings commenced on an application filed u/s 101. Statutes of limitation are also regarded as procedural. The object of the statute of limitation is not to create any right but to prescribe the period within which legal proceedings may be instituted for enforcement of rights, which exist under the substantive law. As

observed by the Supreme Court in A.S. Krishnappa Chettiar and Others Vs. Nachiappa Chettiar and Others, , it is a piece of adjectival or procedural law and not of substantive law. A similar view has been taken by the Supreme Court in C. Beepathumma and Others Vs. V.S. Kadambolihaya and Others, , wherein it is observed:

The law of limitation is a procedural law and the provisions existing on the date of the suit apply to it.

Internal evidence is also available in Section 102 itself to indicate that the legislature intended that the limitation prescribed by the Mamlatdar's Courts Act should apply to such application also.

6. Giving conscious thought to the provisions and the law laid down by the Lordships of the Supreme Court, under the provisions of Section 27 of the Act, the Government is entitled to lay down the procedure and as such to impose limitation to present applications for determination of the claims before the Special Tribunals. In case if no limitation is provided to present applications for determination before the Special Tribunals the claimants may approach at any time even at the fag end of their lives or their L. Rs would prefer claim application. Under such situation, there would be no end or finality to the litigation. If, no limitation for presenting claims is construed, it will create chaos. In my humble opinion, absence of provision prescribing limitation, would definitely be derogatory to the principles of natural justice. As such framing rules and thereby providing the specific provision for presenting claims within specific period, cannot be said ultra-vires and subordinate legislation to the Principal Act.

In the instant case, as I have pointed out that the Act and the Rules passed by the Parliament and came into effect from 12/6/1957, the Rules framed and passed by Parliament cannot be considered subordinate legislation having over-riding powers on the provisions of the Act. The Rules frame by the Central Government and passed by the Parliament, have a legal force. Rules prescribe the procedure as to how to entertain the applications for the claims and thereafter to determine the claim by the Special Tribunal. In view of this, I do not find any force in the submissions of Smt. Sirpurkar, the learned Counsel for the appellants. The learned Special Tribunal has rightly observed in para 14 that the applications filed not within the period provided under Rules 7(5) and the provisions of Section 5 of the Limitation Act being excluded, the application for condonation of delay was rightly not entertained.

In case of Officer on Special Duty (Land Acquisition) and Another Vs. Shah Manilal Chandulal and Others, . It is observed while considering the provisions of Section 5 of the Limitation Act and the provisions of Section 18 of the Land Acquisition Act, 1894, that the Collector/Land Acquisition Officer is not a Court when he acts as a statutory authority u/s 18(1). Therefore, Section 5 of the Limitation Act cannot be applied for extension of period of limitation when period of limitation is prescribed under proviso to Sub-section 2 of Section 18.

7. Even on merits, I do not find any substance in the submissions of the learned counsel. The learned Special Tribunal has in paras 7 onwards as to whether the compensation for the lands acquired was inadequate, disproportionate and low, and what should be the fair and adequate amount of compensation for the land in question. The learned Special Tribunal has considered all the sale transactions on which the reliance was placed by the appellants and discussed in para 11 in detail and rightly observed that the determination of the compensation of the lands at the rate of Rs. 6,000/- per acre in the year 1981, was just and proper.

8. In view of the above, I do not find any merit in all the appeals. Consequently all the appeals are dismissed. No order as to costs.