
(1995) 01 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3113 of 1987

Brijendra Kumar Agarwal

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Mineral Concession Rules, 1960 — Rule 22

Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 13, 5

Citation : (1995) 40 MPLJ 710 : (1995) MPLJ 710

Hon'ble Judges : U.L. Bhat, C.J.; R.S. Garg, J

Bench : Division Bench

Advocate : I. Nair, M.L. Jaiswal, S.S. Jha, for the Appellant;

Final Decision : Dismissed

Judgement

U.L. Bhat, C.J.

Common questions arise for consideration in these writ petitions and therefore, they are being disposed of by a common order.

We will briefly refer to the facts in M. P. No. 3113 of 1987. The petitioner on 13-10-1982 submitted an application to the State Government for grant of mining lease for extraction of ochre and white-clay in 10.374 hectares of land. The application was submitted u/s 10 of the Mines and Minerals (Regulation and Development) Act, 1957 (for short, "the Act") and Rule 22 of the Mineral Concession Rules, 1960 framed by the Central Government u/s 13 of the Act. The Act was amended by Central Act No. 37 of 1986 which came into force with effect from 10-2-1987. Consequently the Rules were also amended and the amendments were brought into force with effect from 10-2-1987. On 1-10-1983, the State Government rejected the application. The petitioner filed a representation before the Central Government which set aside the order of the State Government and directed it to consider the application afresh in accordance with law. This order was passed on 4-2-1986. On 27-6-1986, the

State Government wrote to the petitioner requiring him to produce environmental clearance certificate. By letter dated 28-7-1986 the petitioner was required to deposit Rs. 2,000/- which he did. A local inspection was also arranged to be held. By Annexure-J letter dated 3-9-1987 and letter Annexure-K dated 11-9-1987, the State Government required the petitioner to conform to the requirements of the amended provisions of the Act introduced by the Central Act No. 37 of 1986 and the amended rules. This was evidently based on Annexure-L letter dated 9-5-1987 of the Central Government to the State Government indicating that all pending applications have to be disposed of only in terms of the amended provisions of the Act and the Rules. The petitioner prays that Annexures-J, K and L may be quashed and it may be declared that the amendments incorporated in the Act and the Rules have no retrospective effect and the petitioner's application cannot be dealt with under the amended provisions. Returns have been filed on behalf of the respondents 1 to 3.

The facts of the other petitions are more or less similar. The contentions raised in the returns are also more or less similar. The only contention urged by the learned counsel for the petitioners is that the amendments to the Act and the Rules were not made expressly retrospective and there is nothing in the provisions to indicate the intention to give them retrospective effect and, therefore, the applications pending on the date of amendment should be disposed of under the law in force prior to the amendment.

We now refer to the relevant provisions of the Act and the rules as they originally stood. Section 4 of the Act prohibits prospecting or mining operations to be under licence or lease except under and in accordance with the terms and conditions of a prospective licence, or an ordinary licence as the case may be granted under the Act and the Rules. No such licence shall be granted otherwise than in accordance with the provisions of the Act and the Rules. Section 5 prescribes restriction on grant of prospecting licence or mining leases. No such licence shall be granted by the State Government to any person unless he holds a certificate of approval in the prescribed form from the State Government, produces Income Tax clearance certificate in the prescribed form and satisfies such other conditions as may be prescribed. No prospecting licence or mining lease shall be granted in respect of any mineral specified in the First Schedule or to any person who is not an Indian national except with the previous approval of the Central Government. Section 7 of the Act deals with period for which prospecting licence may be granted or renewed. Section 10 of the Act relates to application for prospecting or mining lease and the disposal of the same. Section 11 deals with preferential right of certain person. Prospecting licensee shall have a preferential right for obtaining a mining lease. Rule 4 of the Rules deals with certificate of approval and its renewal. It is followed by other rules dealing with the approval. Rule 9 of the Rules deals with application for prospecting licence and its renewal. Succeeding rules relate to the procedure. Rule 22 and the succeeding rules deal with applications for grant of mining leases and their disposal.

We will now refer to the relevant amended provisions of the Act and the Rules. The scheme of Section 4 has been retained substantially though it is made inapplicable to prospecting operations undertaken by certain public sector bodies. It also enables the State Government to undertake prospecting or mining operations with respect to minerals specified in First Schedule. Section 5 has been amended introducing certain more restrictions in the matter of grant of mining lease. The State Government cannot grant mining lease unless the area for which the lease has been applied for has been prospected earlier and the existence of mineral contents therein has been established and there is a mining plan duly approved by the Central Government for the development of mineral deposits in the area concerned. Section 8 states that period for which a mining lease is granted shall not exceed twenty years and there can be renewal for two periods, each not exceeding ten years. Section 10 deals with applications for prospecting licence. Section 11 deals with preferential right of certain persons. The broad scheme of preference has been substantially retained. So far as the controversy in the present case is concerned, there is no substantial change in the rules.

The petitioners are affected by the new restrictions and conditions introduced by the amendments and therefore contend that they are not governed by the new amendments and their applications should be disposed of in the light of provisions of the original Act and the original rules. Learned counsel for the petitioners relied on a few decisions of the Supreme Court. The earliest is one in *Sri Vijayalakshmi Rice Mills, New Contractors Co. and Others Vs. State of Andhra Pradesh*, In this case, rice which was governed by statutory Price Control Order was supplied by Mills to the Government before the rules were amended and the price was also collected. Subsequently the rates were enhanced. It is held that the sale had taken place and title had passed before revision of rates and the revised rates would not apply in regard to rice already sold. Reliance is placed on *A.A. Calton Vs. Director of Education and Another*, in that case, during the pendency of the selection process for the post of Principal of a College, the relevant Act was amended without giving it retrospective effect. It was held that the amendment would not affect the pending selection process. Another decision relied on is the one in *Commissioner of Income Tax Vs. Shah Sadiq and Sons*, In this case, it was held that the right to carry forward loss is a vested right which could not be taken away unless the amendment has been given retrospectivity specifically or by necessary implications. These decisions turn on a particular process which was pending consideration at the relevant time and do not deal with mere procedural aspects. On the other hand, every one of these decisions deals with amendment in regard to substantive law affecting vested right of the aggrieved persons.

Learned Central Government Standing Counsel has referred us to a few decisions. In *Rai Bahadur Seth Shreeram Durgaprasad Vs. Director of Enforcement*, the Court considered the effect of amendment introduced to Foreign Exchange Regulations Act, 1947 on certain previous actions. It was held

that proceedings could be initiated for adjudication under the amended law even in regard to a violation which took place prior to the amendments since the provision has retrospective operation. In *Gurbachan Singh Vs. Satpal Singh and others*, it was held that Section 113A of the Evidence Act which lays down a presumption, being only a matter of procedure of evidence would be retrospective in operation. The Court referred to the following passages in Halsbury's Laws of England (Fourth Edition), Vol. 44 pages 570 and 574 respectively :

"The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature..."

"The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament."

The decision in *State of Tamil Nadu Vs. Hind Stone and Others*, is almost on point.

The rules under consideration in the case *State of Tamil Nadu Vs. Hind Stone and Others*, were Tamilnadu Minor Mineral Concession Rules, 1959. Rule 8C was introduced by notification issued on 2-12-1977. It prescribed the procedure and the forum. Application of the respondent in the case was pending even before incorporation of Rule 8C. It was contended that the disposal was delayed and the application should be disposed of under the preexisting rule. The Court held as follows :

"While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an application for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in any one an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application."

The decision in *M/s Hind Stone* is applicable to the facts of the present case. The Act and the Rules enabled the petitioners to apply for mining licence. The Act and the Rules prescribed particular procedure for the application and the disposal. The procedure, has been altered by subsequent amendment during the pendency of the applications. The petitioners certainly have a right to file applications before the appropriate authority but they cannot have a right to have the

applications disposed of on the basis of the rules in force at the time of making applications; that is because they have no vested right to the grant of a mining lease. Since there is no such vested right, it must follow that all applications pending on the date on which the amendments came into force, should be disposed of under the amended provisions of the law. The amendments, no doubt, introduced certain additional conditions and restrictions which are intended for public good and due regulation of the mining activity in the light of vital concerns with regard to protection of environment and the like.

In the result, the petitions fail and are dismissed but without costs. Security amount, if any, deposited be refunded to the petitioners.