
(1994) 08 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 2275 of 1991

Gunavanth Kumar Jain

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 24-08-1994

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 29
Orissa Minor Minerals Concession Rules, 1990 — Rule 1

Citation : AIR 1995 Ori 65 : (1995) 1 OLR 189

Hon'ble Judges : R.K. Patra, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : G.K. Misra, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

G.B. Patnaik, J.—The levy made under the provisions of the Orissa Minor Mineral Concession Rules, 1990, in respect of a Sairat source of quarrying which had been granted in favour of the petitioner under the Orissa Minor Minerals Concession Rules, 1983, is under challenge in this, writ application on the ground that the petitioner being a lessee under the 1983 Rules, his rights cannot be affected in any manner by introduction of the 1990 Rules and his lease has to be governed by the provisions of the 1983 Rules.

2. There is no dispute that the lease in favour of the petitioner had been granted under the Orissa Minor Minerals Concession Rules, 1983, and during the subsistence of the lease, the 1983 Rules stood repealed and the Orissa Minor Mineral Concession Rules, 1990, came into force. An identical question was raised before this Court in the case of Debasis Singh Samant Vs. The State of Orissa and Another, , and on an analysis of the different provisions of the 1990 Rules, and on consideration of the effect of Rule 33 of the said 1990 Rules, this Court came to the conclusion that levy should be made on minor minerals extracted from the lease area even in respect of an existing lease at the rates

stipulated in Schedule-1 of the 1990 Rules from the date of the Rules have come into force. In other words, levy could be made under 1990 Rules from the date of enforcement of the Rules and for the prior period of levy has to be made under the 1983 Rules. This question again cropped up for consideration in another case of Ramesh Chandra Sahoo Vs. State of Orissa and Another, . A Bench of this Court following the earlier decision and after examining a large number of decisions of the Supreme Court re-affirmed the earlier view and came to hold that the 1990 Rules would govern the existing lease from the date when the said Rules came into force.

3. Mr. Misra appearing for the petitions contends that both the aforesaid Bench decisions of this Court require a reconsideration as the Constitution Bench decision of the Supreme Court in the case of Baijnath Kadio Vs. State of Bihar and Others, , has not been noticed. In Baijnath Kedia's case, the moot question that arose for consideration was whether the State Legislature is competent to enact a legislation in exercise of its power under Entry-23 of the State List encroaching upon the field occupied by the Union List and the law which has already been made and declaration to that effect has been made by the Parliament, and that was answered to the effect that the State Legislature has no such power. Mr. Misra in course of his arguments advanced a contention that in Baijnath Kedia's case it has been observed by the Supreme Court that vested rights cannot be taken away except under authority of law. We have no dispute with the aforesaid proposition. In paragraph-2I of Baijnath Kedia's judgment, their Lordships have indicated :--

"..... The short question is whether the rules could operate on leases in existence prior to their enactment without the authority of a competent legislature."

This is not the question in the present case since so far as the minor minerals are concerned, the Orissa Minor Minerals Concession Rules, 1983 governed the field until it stood repealed by the 1990 Rules. Therefore, the 1990 Rules have been made by a competent authority repealing the earlier Rules and Baijnath Kedia's case has no application to the case in hand. In the aforesaid premises, we see no justification for reconsideration of the earlier two Bench decisions of this Court. Following the two Bench decisions, referred to supra, we held that the 1990 Rules will have application from the date the Rules came into operation. Accordingly, the writ application fails and is dismissed. We make no order as to costs.

R.K. Patra, J.

4. I agree.