(1976) 01 PAT CK 0003

In the Patna High Court

Case No : C.W.J.C. No. 226 of 1972

Janak Singh APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 19-01-1976

Acts Referred:

Constitution of India, 1950 — Article 213, 226
Mines Act, 1952 — Section 2(jj)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 3, 3(1), 3(a), 3(e)

Citation : (1977) PLJR 47

Hon'ble Judges : S.N.P. Singh, C.J;S.K. Jha, J

Bench : Division Bench

Advocate : S.R. Ghosal and Devendra Nath, for the Appellant; S.N. Jha, Standing Counsel No. 2 and Mr. B.P. Pandey, Junior Counsel to Standing Counsel No. 2, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Jha, J.—In this application under Articles 226 and 227 of the Constitution of India the sole petitioner has challenged the validity of Annexures 1 series, 2 and 3. The question that falls for determination in this case is a pure question of law involving the interpretation of the proviso to Sub-section (1) of Section 3 of the Bihar Taxation on Passengers and Goods (Carried by Public Service Motor Vehicles) Act, 1961, as it stood at the relevant time. The subject matter of dispute in the present case is the assessment of tax under the aforesaid Act in respect to the levy on goods-transport. The periods in question are from 1.1.68 to 31.3.68, 1.4.68 to 30.6.68 and 1.4.69 to 30.6.69. These are the three quarters with which we are concerned. The petitioner is the owner of a truck. Under Notification No. Lgo 28/61 Leg 1519 dated 1.8.61 the Government of Bihar promulgated an ordinance under Clause (1) of Article 213 of the Constitution and under the provisions of section 37 of the said Ordinance the payment of (Sic) was exempted on any mineral ores carried by any motor vehicle. Subsequently the Act, being Bihar Act 17 of 1961, was passed. The relevant statutory provision with which we are concerned is Section 3(1) which reads thus:--

3. Charge and rate of tax--(1) On and from the date on which this Act is deemed to have come into force under Sub-section (3) of Section 1, there shall be levied and paid to the State Government a tax on all passengers and goods carried by a public service motor vehicle; such tax shall be levied and paid at the rate of twelve and half per centum of the fares and freights payable to the owner of such vehicle:

Provided that with effect from the first day of August, 1961 no tax shall be levied on any mineral or mineral ore carried by such vehicle.

It is worthwhile to mention here that this proviso was subsequently deleted at a time subsequent to the periods with which we are concerned. As already stated, the petitioner being the owner of a truck carrying stone boulders claimed exemption from tax under the Act by virtue of the proviso to Sub-section (1) of Section 3 of the aforesaid Act. The contention of the petitioner before the authorities below, as it is now, was that stone boulders were minerals excepted by the provisions contained in the proviso. The Assistant Superintendent, Commercial Taxes (respondent no. 4), rejected the contention of the petitioner and held that stone boulders were not covered by the terms ''mineral'' used in the proviso. His orders dated 27.9.69 are incorporated in Annexures 1 and 1/1 to the petition. The Appellate Assistant Commissioner of Commercial Taxes, Bhagalpur Division (respondent no. 3) before whom the petitioner preferred appeals, by his order dated 2.7.1970 (Annexure 2) dismissed the petitioner''s claim. So did the Deputy Commissioner of Commercial Taxes, Bhagalpur Division (respondent no. 2) in revision by his order dated 20.12.1971 (Annexure 3).

2. As already stated at the outset, the only point involved is as to whether the petitioner''s case falls within the exemption clause of the proviso to Sub-section (1) of Section 3 of the said Act. In other words, whether the stone boulders which were transported in the petitioner''s vehicle were covered by the expression ''mineral'' used in the proviso. If the answer be in the affirmative, the petitioner is bound to succeed. If, on the contrary, it be held that stone boulders are not covered by the expression ''mineral'' as used in the proviso, learned counsel for the petitioner concedes that he had no case.

3. The Act does not define the term ''mineral''. Learned counsel for the petitioner submitted that as stone boulders were covered by the term ''minor minerals'' as used in the different Mines Acts, they should also form the subject matter of exemption. I have no hesitation in overruling this contention. It is true that the Act does not lay down any definition of the term ''mineral''. But it is also true that the Mines Act, 1952 (Central Act No. 35 of 1952), which was an Act passed to amend and consolidate the law relating to the regulation of labour and safety in mines, defines ''minerals'' in Section 2(jj) of that Act. Section 2(jj) reads thus:

''minerals'' means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulicing, quarrying or by any other operation and includes mineral oils (which includes natural gas and petroleum).

The term "minor minerals" were not to be found in the Mines Act 1952. Subsequently came another Central Act No. 67 of 1957 known as ''The Mines and Minerals (Reputation and Development) Act, 1957. That Act again was passed by the Parliament to provide for the regulation of mines and the development of minerals under the control of the Union. Section 3 of the 1957 Central Act contains the definition clauses. Section 3(a) lays down that ''minerals'' includes all minerals except mineral oils. In contradistinction to the general definition of the term "mineral" in Section 3(a), the term ''miner minerals'' has been defined in Section 3(e) of that Act. It has been laid down in Section 3(e) that ''minor minerals'' means building, stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a minor mineral." It will thus be seen from the history on the subject of regulation and development of mines as passed by the Parliament from time to time that originally the term ''minor minerals'' was not included within the broader expression ''minerals'' nor was it defined in the 1952 Act. The 1957 Central Act, however, made a clear distinction between ''minerals'' for the purposes of the statute and as understood in common vernacular in contradistinction with ''minor minerals'' which were specifically defined in Section 3(e). This being the history of the central legislation on the subject, I cannot feel myself persuaded to hold that the term ''minerals'' in so far as the Central Acts are concerned, includes the expression ''minor minerals'' also. It is in this background that we have to see as to whether the proviso to Section 3(1) of the Act can be made applicable to the cases of minor minerals also. It was conceded at the Bar that, at best, stone boulders could come within the term ''minor minerals'' only. It was, however, urged that since no definition of the term ''minor minerals'' has been given in the Act, we should not construe the proviso as being restricted to the term ''minerals'' and excluding ''minor minerals'' from the embrace of that expression. I do not accept this submission of learned counsel. It is a well settled rule of construction of statute that the words of an Act will be generally understood in the sense which they bore when it was passed. They are to be construed, it has been said, as if we had to read it the day after it was passed, though this does not prevent old words from being applied to things not known or invented at the time of the enactment (Refer to Maxwell on The Interpretation of Statutes, Twelfth Edition, page 85). When the Bihar Legislature passed she Act in 1961, Central Act 67 of 1957 was already on statute book. There is every justification for presuming that when the State Legislature used the term ''minerals'' in the proviso to the Section 3(1) of the Act, it was fully aware of the distinction that has been made by Parliamentary legislation on the subject in the year 1957. It is not necessary for the purpose of deciding this question to advert to the later course that the legislation took for I have already stated earlier that the exemption given in the proviso was altogether deleted by subsequent amendment. But that, as I have already said, is neither here nor there.

4. For the reasons stated above I hold that stone boulders, although it be assumed as learned counsel for the petitioner submits, may be ''miner minerals'', they are certainly not within the purview of the proviso to Section 3(1) of the Act so as to except the petitioner from the liability of the payment of tax under the charging Section of the Act. In the result, I do not find any infirmity in the orders Impugned. This application, therefore, must fail and it is accordingly dismissed. But in the circumstances I shall make no orders as to costs.

S.N.P. Singh, C.J.

I agree.

