
(2020) 12 JH CK 0151
In the Jharkhand High Court
Case No : Writ Petition(C) No. 1407 Of 2020

Krishna Kumar Poddar

APPELLANT

Vs

State Of Jharkhand and Others

RESPONDENT

Date of Decision : 17-12-2020

Acts Referred:

Mines and Mineral (Development and Regulation) Act, 1957 — Section 21(5), 30
Mineral Concession Rules, 1960 — Rule24(a)

Citation : (2020) 12 JH CK 0151

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Devesh Panda, Rajiv Ranjan

Final Decision : Disposed Of

Judgement

1. Heard Mr. Devesh Panda, the learned counsel appearing for the petitioner and Mr. Rajiv Ranjan, the learned Advocate General appearing for the respondent State.
2. This writ petition has been heard through Video Conferencing in view of the guidelines of the High Court taking into account the situation arising due to COVID-19 pandemic.
3. The petitioner has preferred this writ petition for quashing the entire proceedings against the petitioner commencing on demand notice dated 29.11.2017 and culminating in the order dated 26.02.2020 confirming the demand which has been passed in few of a decision taken at a meeting held on 28.01.2020.
4. The learned counsel for the petitioner submitted that the case of the petitioner is fully covered in view of the order passed in W.P.(C) No.7286 of

2017 and prayer was made that similar interim order may kindly be passed in this writ petition and the matter may be referred to the Division Bench.

5. The learned counsel for the Government of Jharkhand opposed that prayer and took time for taking instruction. Thereafter, the matter was again

heard on 04.09.2020, 18.09.2020, 25.09.2020, 09.10.2020, 06.11.2020 and 27.11.2020 and by way of last indulgence further time was allowed to the

Government of Jharkhand to take instruction with regard to the supplementary affidavit filed by the petitioner and the matter was heard on 11.12.2020

. The pleadings were complete and that is why the Court asked to address the Court on merit, but counsel of the petitioner submitted that for interim

relief in terms of W.P.(C) No.7286 of 2017 the matter may kindly be heard today. Accordingly, it was heard for interim order.

6. Mr. Devesh Panda, the learned counsel for the petitioner submitted that preliminary objection raised by the respondent State to the effect that the

interim order passed by the co-ordinate Bench in W.P.(C) No.7286 of 2017 and further order dated 21.02.2018 whereby the matter has been referred

to the Division Bench after formulating certain law points is not tenable. He submitted that the mines of the petitioner is a captive and the consumption

is completely captive. He refers to the check- list and sample copy of Form-C and sample of monthly return filed before the Indian Bureau of Mines

in terms of Form-8 and submitted that in view of these documents, the mines of the petitioner is captive. He submitted that the petitioner is having a

plant of graphite at Village Belchampa namely, Chhotanagpur Graphite Private Limited. The lease is in favour of the petitioner. He submitted that 8

persons are the share holders of that company, who are the family members of the petitioner. He submitted that the petitioner extracts low grade ore

from Murmu Graphite mines and entirely of the ores raised are captively and utilized in the plant since from the outset since 1990. The petitioner is

ready to tender an undertaking that during pendency of this writ petition all transit challan shall be applied for seeking captive consumption of the said

plant of Chhotanagpur Graphite Private Limited at Village Belchampa. He submitted that the case of the petitioner is fully covered in view of the

paragraph no.19 of the order dated 04.01.2018 passed in W.P.(C) No.7286 of 2017 and submitted that the petitioner is also challenging the jurisdiction

of the State and has formulated two other law points. The coordinate Bench has already referred certain law points to the Division Bench by order

dated 21.02.2020 passed in the said order. The similar order may kindly be passed in this case. The similar demand in W.P.(C) No.7286 of 2017

relying on in Common Cause v. Union of India reported in (2017) 9 SCC 499 was challenged as patently being inter alia without jurisdiction in view of

paragraph no.8 of the order dated 04.01.2018 in W.P.(C) No.7286 of 2017. The order dated 04.01.2018 was challenged by the State in L.P.A. No.10

of 2018 which was disposed of in view of the fact that 1/3 rd of the amount has already been deposited by the petitioner namely, M/s Hindalco

Limited. He further submitted that 1/3 rd amount has been replaced as 35 Crores by order dated 21.03.2018 passed in C.M.P.No.49 of 2018. He

submitted that the petitioner is ready to deposit 15.4 % of the demand. On these grounds, he submitted that the writ petition is identical in nature as

indicated above and the similar order passed in W.P.(C) No.7286 of 2017 may kindly be passed in this writ petition and matter may be referred to the

Division Bench.

7. Per contra, Mr. Rajiv Ranjan, the learned Advocate General appearing for the respondent State submitted that the case of the petitioner is entirely

on the different footing and there is no identity to the facts of W.P.(C) No.7286 of 2017 and to the present petition. He submitted that the petitioner is

having the lease in his name whereas he is utilizing them in the firm namely Chhotanagpur Graphite Private Limited at Village Belchampa which is not

permissible under the Act. He submitted that the petitioner is having the lease in his name whereas as disclosed by him he is utilizing it in M/s

Chhotanagpur Graphite Private Limited plant which is not the spirit of the rule. He is exporting the mineral and in that view of the matter his mines is

not captive. The State Government has not approved the lease in question as captive lease and the State government is the final authority for taking

any decision in this regard. He submitted that mere preparing of check list by District Mining Officer in relation to the lease renewal application cannot

be termed as decision taken by the State government. Thus, the Government is opposing the interim relief to the petitioner in terms of order dated

04.01.2018 and 21.08.2018 passed in W.P.(C) No.7286 of 2017. He submitted that three-man committee constituted by the Government has examined

and thereafter data has been issued that too after providing the opportunity of hearing to the petitioner who presented the case in detail, he submitted

that the demand letter is issued pursuant to Common Cause (supra) order of Hon'ble Supreme Court and Government of India order dated 27.09.2017.

He submitted that the case is not identical to W.P.(C) No. 7286 of 2017. He further submitted that in most of the cases almost entire amount has been

directed to be paid without prejudice to their right and contention of the petitioner of those cases. He submitted that even the amounts are being paid in installments as indicated in some of the orders passed by the Court in different cases. He opposed the interim prayer. He further submitted that there

is an alternative remedy under section 30 of the said Act and power of revision by Central Government is there.

8. On the submission of the learned counsels appearing for the parties, the Court has gone through the materials on record. Pursuant to the order of

the Hon'ble Supreme Court in Common Cause (supra), and in view of the amendment in section 21 (5) of the Mines and Mineral (Development and

Regulation) Act, 1957, the demand has been raised. In common cause case (supra), the Hon'ble Supreme Court has already directed which arises out

of the lessee mines and pursuant thereto, the Government of India issued certain direction by letter dated 27.09.2017. However, pursuant to the

application filed for clarification of the judgment dated 02.08.2017, the Hon'ble Supreme Court by order dated 13.12.2017 has observed that if there is

any demand raised by the State of Orissa with regard to non-compliance of consent to operate of mining plant threshold, the mining lease holders are

at liberty to challenge the demand in appropriate forum. The alternative remedy by way of section 30 of the said Act is already there. Thus, prima

facie, it transpires that jurisdiction of the State Government is there. The petitioner is having the lease in his name whereas exploiting the minerals for

M/s Chhotanagpur Graphite Private Limited plant. For individual, Form-J in terms of Rule 24 (a) of Mineral Concession Rules, 1960 is required to be

filled up for application for renewal of mining lease. In Form-J annexed as Annexure S.A./1 of the supplementary affidavit, the petitioner has obtained

lease in the individual capacity. Thus, it needs to be looked into as to whether the lease in the individual capacity can be utilized for any firm or not that

will be taken into consideration in view of the submission of the learned counsel for the parties at the final hearing of the case. The coordinate Bench

has declined to pass the same order in W.P.(C) No.534 of 2018 along with W.P.(C) No.790 of 2018 and W.P.(C) No.798 of 2018 and dismissed the

writ petition.

9. Mr Panda, the learned counsel for the petitioner has tried to distinguish this judgment by way of submitting that the petitioner is having the

environmental clearance wherein those cases, the petitioners were not having the environmental clearance certificate. He submitted that due to this

W.P.(C) No.534 of 2018 & others were dismissed. The alternative remedy is also there under section 30 of Mines and Mineral (Development and

Regulation) Act, 1957. In view of the common cause case (supra), and the Government of India notification dated 27.09.2017, prima facie, it cannot

be said that the Government is not having the jurisdiction and in view of these facts, the Court is coming to the conclusion that the facts of this case

are not identical to the facts of W.P.(C) No.7286 of 2017 and not inclined to refer the matter to the Division Bench. The said judgment is not binding

upon this Court in view of the well settled proposition of law as that order has not attained finality and it is only at the interim stage, a reference in this

regard may be made to ""Laxmi Devi v. State of Bihar"" reported in (2015) 10 SCC 241. Paragraph nos.21 and 22 of the said judgment are quoted

hereinbelow:

21. Since heavy reliance has been placed by the State on Satendra Prasad Jain v. State of U.P.¹³ and Lt. Governor of H.P. v. Avinash Sharma¹⁴, we

must sedulously determine their ratios. This would, therefore, be the apposite time and place for a brief discussion on the contours and connotations of

the term ""ratio decidendi"", which in Latin means ""the reason for deciding"". According to Glanville Williams in Learning the Law, this maxim ""is slightly

ambiguous. It may mean either (1) rule that the Judge who decided the case intended to lay down and apply to the facts; or (2) the rule that a later

court concedes him to have had the power to lay down"". In G.W. Paton's Jurisprudence, ratio decidendi has been conceptualised in a novel manner, in

that these words are ""almost always used in contradistinction to obiter dictum. An obiter dictum, of course, is always something said by a Judge. It is

frequently easier to show that something said in a judgment is obiter and has no binding authority. Clearly something said by a Judge about the law in

his judgment, which is not part of the course of reasoning leading to the decision of some question or issue presented to him for resolution, has no

binding authority however persuasive it may be, and it will be described as an

obiter dictum". Precedents in English Law by Rupert Cross and J.W.

Harris states

--"First, it is necessary to determine all the facts of the case as seen by the Judge; secondly, it is necessary to discover which of those facts were

treated as material by the Judge." Black's Law Dictionary, in a somewhat similar vein to the foregoing, bisects this concept, firstly, as the principle or

rule of law on which a court's decision is founded and secondly, the rule of law on which a latter court thinks that a previous court founded its

decision; a general rule without which a case must have been decided otherwise.

22. A Constitution Bench has also reflected on the true nature of ratio decidendi in *Krishna Kumar v. Union of India*¹⁵ as is discernable from the

following passages: (SCC pp. 226-27, paras 19-20).

19. The doctrine of precedent, that is being bound by a previous decision, is limited to the decision itself and as to what is necessarily involved in it. It

does not mean that this Court is bound by the various reasons given in support of it, especially when they contain 'propositions wider than the case

itself required'. This was what Lord Selborne said in *Caledonian Railway Co. v. Walker's Trustees*¹⁶ and Lord Halsbury in *Quinn v. Leatham*¹⁷. Sir

Frederick Pollock has also said*:

'Judicial authority belongs not to the exact words used in this or that judgment, nor even to all the reasons given, but only to the principles accepted and

applied as necessary grounds of the decision.'

20. In other words, the enunciation of the reason or principle upon which a question before a court has been decided is alone binding as a precedent.

The ratio decidendi is the underlying principle, namely, the general reasons or the general grounds upon which the decision is based on the test or

abstract from the specific peculiarities of the particular case which gives rise to the decision. The ratio decidendi has to be ascertained by an analysis

of the facts of the case and the process of reasoning involving the major premise consisting of a pre-existing rule of law, either statutory or judge-

made, and a minor premise consisting of the material facts of the case under immediate consideration. If it is not clear, it is not the duty of the court to

spell it out with difficulty in order to be bound by it.

10. However, the petitioner is at liberty to deposit the entire demand without

prejudice to his right and contention which will be subject to the result of the writ petition. If the petitioner deposits the entire demand, the Government shall issue the transit challan. However, the amount so deposited by the petitioner is without being prejudiced to the rights and contentions of this petitioner. The deposit of the aforesaid amount shall not be treated as admission of any fact by this petitioner nor the receipt of the amount shall be treated as admission of any fact by the respondents and the deposited amount shall be subject to final decision of this writ petition.

11. The interim prayer is disposed of in the above terms.

12. Accordingly, I.A. Nos. I.A. No.3358 of 2020 and I.A. No.4154 of 2020 are stand disposed of.

W.P.(C) No.1407 of 2020

1. The pleadings are complete in the writ petition.

2. Let the matter appear for admission on 22.01.2021 for hearing on merit.