
(2009) 01 MP CK 0051
In the Madhya Pradesh High Court

Orient Paper and Industries Ltd. and Another	APPELLANT
Vs	
State of M.P. and Others	RESPONDENT

Date of Decision : 27-01-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 262, 265, 299

Citation : AIR 2009 MP 143

Hon'ble Judges : R.S. Jha, J;Dipak Misra, J

Bench : Division Bench

Judgement

Dipak Misra, J.—The controversy raised and the basic relief sought in these two writ petitions being inextricably connected, they were heard analogously and are disposed of by a singular order. As the edifice and substratum in W. P. No. 6950/2002 is pyramided on the bedrock of the challenge and assail to the M. P. Irrigation Rules, 1974 (for short "the 1974 Rules") in W. P. No. 6302/2000, it is apt to adumbrate the facts in W. P. No. 6302/2000 for getting a clear and necessitous picture frescoed for adjudication.

2. The petitioner, M/s. Orient Paper Mills Ltd., has a paper mill at Amlai in District Shahdol. It is a factory within the meaning of the Factories Act, 1948. Amlai village formed a part of erstwhile Vindhya Pradesh which was merged in the State of M. P. on 1-1-1956. The State of M. P. in its policy of 1961 had given promise and assurance inviting industrialists from all over the country to participate in the process of industrialisation. The emphasis as laid on the facts as per the Policy benefits of concession including free water from Sone river was given to the petitioner. Being encouraged by the promise of the policy-decision, the petitioner applied for permission to draw water for the Mill and the workers colony from the said river and permission was granted on 10-6-1964 on the condition that the petitioner-company should construct three regulators cum bunds on the river at its own cost and draw water and carry the same to Amlai. As the said conditions were in the larger public interest, the same were accepted by the petitioner. It is contended that the petitioner has been complying with the

conditions and in the regular course of things, it is spending huge sum to sustain the conditions.

3. As set forth, the M. P. Irrigation Act, 1931 (for brevity "the Act") was in force as on 10-6-1964. Permission to draw water from the Sone river was given by the respondent No. 1 to the petitioner-company. The provisions of the said Act do not deal with the situation where a person is required to erect his own mechanism for drawing water from a natural source and carry the same on its own cost to its destination. Section 40 of the Act which deals with supply of water for industrial, urban and other purposes did not cover the case of the petitioner inasmuch as the said provision applies only in case covered under-Section 37 of the Act and because of this reason, the petitioner-company was required to sign an agreement on 2-9-1970 to provide legal basis to the conditions mentioned in the order dated 10-6-1964. Under the conditions of the aforesaid agreement. Clause X empowers the respondent-State to recover "water-rate" from the petitioner also in case it decides in future to recover water rate for such supply of water from streams, nalas and rivers to industries to be lifted at their own cost. It is contended that if Clause X is construed in its proper perspective in the light of the scheme of the agreement, it does not authorise the State of M. P. to go back on its assurance and promise and recover water rate whenever it chooses to do so. It is general in its application to the industries which may be set up in the future. Assuming that it applies to the petitioner company, it would operate only in the event alternate arrangements have to be made under Clause VII and there is reference to supply of water from streams, nalas and rivers from which alternative arrangements may be made. That apart, "water rate" which is defined u/s 16 of the 1931 Act is recovered only for irrigation purposes as canal revenue and hence, could not possibly be recoverable from the petitioner. The 1931 Act concerns with irrigation, canals and supply of water from such canals for the purposes enumerated in Section 37 at the rates mentioned in that Section and the charges mentioned in Section 40. Sections 30 and 40 which occur in Chapter V spell out supplies from canals and the Act does not deal with supplies directly from natural sources of water such as rivers. It is put forth that the agreement for free water from the river Sone is not traceable to the Act of 1931. It has its source in the executive power of the State in pursuance of the policy decisions designed to attract industries to backward areas and the said agreement is a contract under Article 299 of the Constitution of India and is still In force.

4. It is contended the charge is imposed under Rule 71-A of the 1974 Rules. The water in a river, or a flowing water does not belong to any one including the Government and everyone has rights over it. The vesting of river water in the Government only means the vesting of the rights of water. Vesting of river beds results in the State holding them in trust for the public. It is further urged that rates, charges and cesses are leviable where the Government puts up irrigational works and canals at its expense and wants a return from the beneficiaries of irrigation canals. In the absence of any cost incurred by the Government in the

bunds and works made and maintained by the Company, there is no basis or authority in law to levy and recover water charges or rates or cesses or tax under Rule 71-A. It is the further stand of the petitioner that Section 40 is inapplicable to supplies from rivers as it speaks plainly of supply from canals made by the Company. Section 26, as pleaded, does not speak of supplies at all but speaks of vesting and that too for the purpose of the few succeeding Sections and the Easements Act, 1882. It has no bearing in the interpretation of Section 40 of the Act and the validity of Rule 71-A. It is declaratory in nature and in any event, it does not confer ownership on the State particularly on those which are interstate rivers. It is the further stand of the petitioner that Article 262 of the Constitution and the Inter-State River Water Disputes Act, 1956 refer to and deal with distribution and control of water of inter-State river. Entry 17, List-II is made subject to Entry 56 of List-I whereunder the River Boards Act, 1956 has been enacted. Section 13(a)(i) and (ii) and Section 15 deal with the Board's power with respect to schemes for optimum utilization of water resources and for irrigation, water supply or drainage. The State may use and regulate use of water of inter-State river but it cannot claim power to treat the water thereof as its property and levy charges when it has spent nothing for supply of water to the Company.

5. It is contended that Rule 71-A of the Rules runs counter to Section 40. The provisions made under Form 7-A which stipulates provisions for local fund cess or any other tax is ultra vires the Act, which does not authorise imposition of such cess or tax. Entry 17, List-II is not taxing power and there is no entry providing for a tax on water supplies or water. The State does not render any services to the petitioner which has constructed and continuously maintains the entire supply works on its own expenses. It is contended that Rule 71-A is also violative of Section 92 of the Act as the procedure prescribed under the said provisions has not been complied with. It is put forth that the rule making authority cannot travel beyond the Act inasmuch as it cannot impose any tax by way of a rule as that is the basic function of the Legislature and such a power cannot be delegated to the rule making authority. The rule in question aims at imposing water tax in the garb of water charges despite the fact that nothing is supplied by the Government nor has it made any investment in the process. It is highlighted that Section 40 of the Act does not authorise or permit imposition of tax, or fee or charge and hence, such imposition of so-called water rules under subordinate legislation is beyond the legislative competence of the State. The State Government has no competence to levy such a charge and that is violative of Article 265 of the Constitution. The imposition of the impugned tax without previous publication as required u/s 40 of the Act is a forcible extraction of money and that is violative of Article 300A of the Constitution. It is also highlighted that the Rule has been made retrospective whereas such action is impermissible within the sweep of the Act.

6. In view of the aforesaid averments, reliefs have been sought to declare Rule 71-A of the Rules as ultra vires, to quash the notification dated 9-9-2008 as

contained in Annexure P-1 to the writ petition and to quash the demand notices issued against the petitioner.

7. A return has been filed contending, inter alia, that the stand put forth by the petitioner is misconceived and untenable inasmuch as the amendment has been brought into force in exercise of powers conferred under Sections 40, 92 and 93 Of the 1931 Act. Emphasis has been laid on Section 40 which provides for supply of water for industrial/urban and other purposes and also provides for charges that can be levied as per the agreement between the State Government and the company/firm, private person or local body and fixed in accordance with the rules. It is put forth that Section 40 empowers the State Government to frame rules for imposing/levying charges for consumption of water for industrial purposes. Section 91 empowers the State Government to make rules for which the provisions are made in the Act. As the Act specifically empowers the State Government to make rules for carrying into the effect the provisions of this Act, the contention put forth by the petitioner has no legs to stand upon. It is the further stand in the return that the petitioner itself had applied for permission to the State Government to construct regulators cum bunds on the river Sone for drawing water for industrial purpose. The petitioner had undertaken the construction of regulators cum bunds for its own benefit and profit. The case of the petitioner, as pleaded, is squarely covered u/s 40 of the Act and the condition for supply of water for industrial use can be imposed by the State Government. Clause 10 of the agreement entered into by the petitioner and the State Government specifically provides that the State Government shall have the rights to recover the water rate in future for supply of water from streams, canals and rivers, even though the industry lifts the water at its own cost. The stand that the petitioner had not been informed of the rate fixed by the respondents in relation to the agreement is contrary to the material on record. By way of amendment, the rates have been fixed by the State Government for consumption of water by an industrial unit and hence, no fault can be found with it. It is put forth that any rule framed pursuant to the powers vested vide Section 92 shall be effective only after its publication and, therefore, the contention that no rule u/s 40 has ever been proposed or published earlier, therefore, violates Section 92 and the impugned notification is void, is misconceived. It is asserted that when the right is vested in the State Government, there is no impediment to recover water rate used by the petitioner even though the same is lifted at its own costs. In support of the notification dated 9-8-2000, it is contended that it is in conformity with the provisions of Section 40 of the Act and does not play foul with Article 14 of the Constitution. It is averred that the petitioner was granted per -mission to draw water from river Sone subject to payment of water rate that may be fixed in future and on that ground, the petitioner cannot put forth a claim that the charge is not leviable.

8. A rejoinder has been filed by the petitioner that if the stand and stance of the respondents is accepted, water charges should be leviable as per the agreement between the State Government and the company. Reference has been made to

Clause 10 of the agreement. Emphasis has been laid on the aspect that if dispute and difference arises between the parties in respect of the agreement, it shall be referred to arbitration. The payment of wafer charges has been criticized on the ground that it has been imposed in an arbitrary manner without following the terms and conditions of the agreement. It is also reiterated that the agreement cannot be superseded by introducing Rule 71-A in the Rules.

9. Be it noted, after amendments were incorporated, an additional return was filed by the respondents stating, inter alia, that Ban Sagar project was erected and constituted and there was an agreement with the answering respondents whereby it was provided that 2 M. A. F. (Million Acre Feet) water should be utilized by the State of Madhya Pradesh. It was also provided that 1.0 MAF of the Bansagar will be used for the purpose of irrigation by State of M. P. and further 2.25 MAF water has been allotted to State of M. P. in the downstream of Bansagar Project for the purpose of irrigation. Thus, there is definite quantity of water allotted to State of M. P. and any quantity of water used in Madhya Pradesh by the State or any other agency gives ample power to the State of Madhya Pradesh for levy of water charges. A copy of the agreement relating to Bansagar Project has been brought on record as Annexure-R-1. It is also the stand in the additional return that the challenge of ownership of water by the petitioner which is used in the industries is absolutely misconceived inasmuch as the respondent-State has full ownership and control over water used from the Upper and Downstream of Sone river and merely because the river flows across the State territories, that too inter-State, does not bar answering respondents from recovering the water charges as required under law. It is put forth that the dispute in that regard has been decided by the Allotment Committee as per Annexure-R-2. It is also urged that there is no restriction under Article 265 of the Constitution to impose such water rates.

10. It is worth nothing that an additional reply has been filed by the respondents contending, inter alia, that Rule 71-A has been upheld in the case of Century Textiles Industry Limited v. State of M.P. W.P. No. 1516/99 decided on 30-4-2002. It is urged that Clause 10 of the agreement between the parties confers power on the State Government to recover water rates in case the State Government decides in future and the State Government made amendment in the 1974 Rules. Rule, 71-A(2) provides that the agreement shall be executed in Form 7A. Form 7-A requires the user to execute an agreement in Form 7A before the use of water. Rule 74 has been amended as per Annexure-RA-2 and deemed to have brought into force with effect from 6-6-1998. Section 92(6) confers power on the State Government to make rules by giving retrospective effect to the rules. Emphasis has been laid on Sub-clause (2) of Form 7A which requires the company to draw water from river at the rates fixed by the Water Resources Department. The note appended to Clause 2 provides the rates which are going to apply and must be shown to the company and not the other rates. It is put forth that Sections 45 to 68 of Chapter VI, if properly considered, would go a long way to show even in cases where agreements have been executed between

the State and the permanent holders of land to whom supply of water has been made for irrigation purpose or not, there can be a levy or charge. An agreement between the three States, viz., State of M. P., State of U. P. and State of Bihar has been brought on record to show the allotment of quantity of water. Various other facts have been enumerated justifying the imposition of water tax which need not be stated in detail.

11. We have heard Mr. Raju Ramchandran, Mr. V.S. Shrotri, learned senior counsel, along with Mr. Rajneesh Gupta and Mr. Rishad Ahmed, Advocates for the petitioner, and Mr. V.K. Shukla, learned Dy. Advocate General for the State.

12. Mr. Raju Ramchandran, learned Counsel for the petitioner, has raised the following contentions:

(a) Rule 71-A of the Rules is ultra vires the various provisions of Section 40 of 1931 Act, and, therefore, the levy of water charges with reference to Rule 71-A is without any authority of law.

(b) Section 37 deals with supply of water from a canal for various purpose including industrial purposes and the said provision provides for levy of water charges for all other purposes, except industrial purposes. The provision for levy of water charges for industrial use is contained in Section 40 and it has to be construed that Sections 37 and 40 are part of the same scheme and hence, construction has to be placed in a comprehensive manner to mean that the provisions relate to supply of water from a canal.

(c) If the statement of objects and reasons of the Act is read in proper perspective, it would be amply clear that the entire focus and purpose of the Act was to deal with irrigation through canals and not with drawing water from natural sources at the cost of a citizen or a company.

(d) When a particular section is an integral part of a larger statutory scheme, its true meaning and import should be ascertained having regard to the entirety of the said authority and, therefore, the judgment in Century Textile & Industries Ltd. (supra) which has not interpreted the scheme of the enactment in this manner requires reconsideration.

(e) Section 40 is a part of the same scheme of Section 37 and the absence of mention of supply of water from canal is not accidental and inconsequential. In fact, making of specific reference in Section 40 to supply from a canal could have been thought of by the legislature as superfluous, or as a surplusage, Section 40 figures in the same chapter as Section 37. The charging section must clearly, unambiguously and unequivocally indicate the intention to charge a particular item and that requirement is not fulfilled in the present case. The rule runs counter to the enactment and thereby the imposition is impermissible.

(f) Both Sections 37 and 40 deal with making of rules for providing supply of water from canal and not industrial sources and hence, the said provisions are not attracted.

(g) From 7-A which is a part of Rule 71 -A is invalid because Section 40, if at all, authorises charges only on supply of water and not on "deemed" supply of water and further such a levy of deemed supply is arbitrary and unreasonable and violative of Article 14 of the Constitution. Section 40 does not authorize imposition of charges in the absence of actual supply and, therefore, cannot be deemed supply in the absence of such provisions in the Act.

(h) The imposition of charges for water not actually supplied is arbitrary and unreasonable and, therefore, violative of Article 14 of the Constitution.

(i) The stand of the State that water kept reserved for the petitioner could have been supplied to other applicants is without any basis because such other applicants could have not been charged in the absence of authority u/s 40.

(j) The agreement of 1970 entered into between the petitioner and the State is bound to continue till it is lawfully changed and the said agreement does not stand superseded by Rule 71-A.

(k) Before any water charges are claimed, certain conditions, namely, (i) there must be decision of the Government that there are industries similar to the petitioner drawing water from an inter-state river, based on an agreement and that all of them need to be charged; (ii) there must be an agreement with the petitioner about the quantum of water charges as provided in Section 40 and in case of disagreement, a settlement by arbitration should be taken recourse to as provided for in the agreement; and (iii) A rule providing for water charge as per the agreement must be made as per the procedure laid down in the Act, are required to be fulfilled and none of these requirements have been fulfilled in the present case and hence, the arrangement with the petitioner remains unchanged.

12A. Mr. V.K. Shukla, learned Dy. Advocate General for the State, resisting the aforesaid submissions, has contended as under:

(i) Once the controversy has been put to rest in Century Textile and Industries Ltd. (supra), the same cannot be raised again by another party by advancing certain other conditions.

(ii) Rule 71-A is the consonance with the provisions of the 1931 Act and hence, the Rule Making Authority has not travelled beyond the provisions of the Act and, therefore, the Rule is valid.

(iii) The submission that Sections 37 and 40 come within one scheme and hence, Section 40 cannot be the charging Section is unacceptable as the same confers power on the Rule Making Authority to levy water charges.

(iv) The stand that Sections 37 and 40 are not attracted inasmuch as both the rules relate to supply of water from canal and not from industrial sources which is the case at hand, does not deserve acceptance.

(v) The contention that Form 7A which is a part of Rule 71-A imposes charges on deemed supply of water which is impermissible under the provisions of the Act

and, therefore, the said Rule has to be declared as ultra vires does not withstand scrutiny. The State has made provisions for reservoir and has kept it available for industries and the same is not in consonance with the provisions of the Act if the relevant provisions are appreciated with studied scrutiny.

13. First, we shall address ourselves to the aspect that when once this Court has held the provisions to be intra vires whether the same can be again agitated. In this context, Mr. Raju Ramchandran, learned senior counsel, has drawn our attention to the decision rendered in *Atam Prakash Vs. State of Haryana and Others*, . In the aforesaid case the Apex Court under Article 32 of the Constitution was dealing with the constitutional validity of Section 15 of the Punjab Preemption Act, 1913. The constitutional validity of Section 15(1) (a) of the Act was earlier challenged on the ground that it offended the fundamental rights guaranteed by Article 19(1)(f) of the Constitution of India and it was held by the Constitution Bench in *Ram Sarup Vs. Munshi and Others*, that there was no infringement of Article 19(f) and the provision was valid.

14. In view of the aforesaid, we are of the considered opinion that there can be re-scrutiny of the provisions on the grounds urged.

15. Section 3 of the Act defines "canal" which is as under:

(a) all canals, channels and reservoirs including submerging tanks, tubewells, drainage works, and lift irrigation works constructed, maintained or controlled by the State Government for the supply or storage of water for irrigation.

(b) all works, roads, embankments, structures, supply and escape channels connected with or constructed for the purpose of facilitating the construction or maintenance of such canals, channels or reservoirs;

(c) all uncompleted works which, when completed, will fall within Clause (a) or (b); and

(d) all land acquired or set apart for any of the above, but does not include a watercourse.

16. Section 4 deals with water course. Section 4-A defines field channel. Section 5 defines canal system. Sections 15 and 16 provide for "canal revenue" and "water rate". The said provisions read as under:

15. Canal revenue.- "Canal revenue" includes irrigation cess levied under Chapter VI-B and all sums, payable to the Government for the use of right to use of, or waste of water from a canal.

16. Water rate.-- A water rate is the amount of canal revenue payable for the use of water or for the right to use water for irrigation for a single crop on one acre of land.

17. Chapter II of the Act deals with Canal Officials and their charges and powers. Chapter-III deals with rights in water. Section 26 of the Act stipulates the right of

the Government in water. The said provision is reproduced below:

26. Rights of the Government in water.--

All rights in the water of any river, natural stream or natural drainage channel, natural lake or other natural collection of water shall vest in the Government, except to the extent to which rights may have been acquired in water affected by a notification published u/s 27 prior to the publication of such notification.

18. Chapter IV deals with construction and maintenance of Canals. Chapter V deals with supply of water from canals and charges therefor. Section 37 which deals with the purpose for which water may be supplied is quoted below:

37. Purpose for which water may be supplied. (1) Water may be supplied from a canal--

(a) under an irrigation agreement, in accordance with the provisions of Chapter VI,

(b) on demand, for the irrigation of specified areas,

(c) to supplement a village tank,

(d) for industrial, urban or other purposes not connected with agriculture.

(e) for the irrigation of a compulsorily assessed area:

(2) Charges for the supply of water under Clause (a), (b), (c) or (e) of Sub-section (1) shall be paid at such rates as may be fixed by the State Government in accordance with rules made under this Act.

19. Section 40 deals with the supply of water for industrial, urban or other purposes. It reads as under:

40. Supply of water for industrial, urban or other purposes.- The conditions for the supply of water for industrial, urban or other purposes not connected with agriculture and the charges therefor, shall be as agreed upon between the State Government and the company, firm, private person or local body concerned and fixed in accordance with rules made under this Act.

20. Submission of Mr. Ramchandran, learned senior counsel, is that Sections 37 and 40 come in the same chapter and it has to be treated as a part of the same scheme and Section 40 cannot be regarded as the charging Section. To bolster the said submission, he has commended us to the decision rendered in Member-secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution Vs. Andhra Pradesh Rayons Ltd. and Others, and Commissioner of Wealth Tax, Gujarat-III, Ahmedabad Vs. Ellis Bridge Gymkhana, . Additionally, it is contended by him that Section 37 deals with water from an irrigation canal and provides for purpose for which it may be supplied and Sections 37(2) and 40 deal with water charges for such supply of water from canal and not from natural sources. This Court in Century Textiles & Industries Ltd. (supra) after referring to

the decisions rendered in Commissioner of Income Tax, Bombay Vs. Ahmedbhai Umarbhai and Co., Bombay, , Frick India Ltd. v. Union of India and Ors. AIR 1990 SC 689 and Grasim Industries Ltd. Vs. Collector of Customs, Bombay, , held as under:

17. We have referred to the aforesaid decisions only to show that intendment of the law makers is to be understood and the heading of a section or chapter may at times serve as a guide to understand the intention of the Legislature but when the language of the Section is unambiguous and clear and the scheme of the Act does make it further clear, we are not to take aid from the heading.

Thereafter, this Court adverted to the facet whether water lifted by the petitioner is covered by any of the provisions of the Act. In that context, this Court referred to Section 92 of the Act and Rule 71 which was framed u/s 40 of the Act in the year 1978. This Court also referred to Rule 71-A to appreciate the entire gamut of the Rules. After so referring, it has been held in paragraph 20 as under:

20. Now coming back from where we had left, whether such a Rule would come within the purview of Section 40. In Section 37 there is a mention of supply of water from canals and charges therefor, for industrial, urban or other purposes not connected with agriculture. Sub-section (2) which deals with charges for the supply of water does not speak of items mentioned under Clause (d) Sub-section (1). Section 40 categorically and unequivocally provides for supply of water for industrial, urban or other purposes not connected with agriculture and the charges therefor. There is also a mention that the charge shall be as agreed upon between the State Government and the company. Thus, what has been left out in Section 37 clearly stipulates supply of water from canals whereas Section 40 is absolutely silent qua canal. Thus, this is a different canvass and it has to be read in cohesion with Section 26 of the Act which enshrines that all rights in the water of any river and natural stream vest in the State Government. Certain exceptions have been carved out u/s 27 of the Act with which we are presently concerned with. Thus, we do not experience any difficulty to come to the conclusion that water can be supplied from the river or natural stream for any industrial, urban or other purposes not connected with agriculture and charges thereof can be agreed upon between the State Government and the company or the Firm, private person or local body concerned and it can be fixed in accordance with rules made under this Act. The submission of Mr. Aradhe that Section 40 has to be read narrowly only to include the supply from a canal does not have any substance and we are not impressed by the aforesaid submission. We are convinced that Section 40 in its generic en-compassment would include the supply from river subject to the rules. Thus, the contention that Rule 71-A which provides the rate for industrial sources is inconsistent with the Act and runs counter to the provisions of the Act or beyond the; limit of the rule making power or is in transgression of the statute, is sans substance and we unhesitatingly repel the same.

21. Be it noted, the said order was assailed before the Supreme Court but their

Lordships declined to interfere on the ground that it was barred by limitation of 137 days.

22. Submission of Mr. Ramchandran learned senior counsel, is that Section 40 cannot be regarded as the charging section. On a reading of Sections 26, 37 and 40, we are of the considered opinion that the view expressed in Century Textiles & Industries Ltd. (supra) does not require reconsideration solely on the ground that no charge can be levied by the State Government when the water is lifted from the industrial sources as the said provisions have been appositely interpreted.

23. At this Juncture, it is apropos to note with profit that though pleadings were put forth with regard to the ownership of the State Government as regards the industrial sources to fix the water rate in the inter-State river, yet the said argument was not canvassed and nothing has been mentioned in the written note in that regard and rightly so, in view of the agreement arrived at between three States, namely, State of U. P., State of Bihar and State of Madhya Pradesh. Therefore, we do not intend to advert to the same.

24. The next plank of submission which has been assiduously urged by Mr. Ramchandran, learned senior counsel, is that Rule 71-A stipulates for an agreement in Form 7A prior to make use of water. Our attention has been drawn to the note appended to Clause 2 of the Form-7A, the agreement form for supply of water to industrial/power plants which stipulates that accepting the circumstances or there being short supply as specified in Clause 15, the company shall, in any event, pay water charges for at least 90% of the total quantity of water allowed to be drawn, though the actual quantity of water drawn by the company is less than 90% of the quantity of water allowed to be drawn under Clause (1). The submission of Mr. Ramchandran is that in the absence of "deemed" supply of water in the parent statute, it could not have been so imposed in the rule. To buttress his submission, he has commended us to the decision rendered in Municipal Corporation of Greater Bombay Vs. Nagpal Printing Mills and Anr, . To appreciate the aforesaid submission, it is apposite to refer to Rule 71-A. The said Rule reads as under:

71A. (1) Water may be supplied with the prior permission of the State Government for any industrial purpose to the Private Government organization at the rates not less than the rates specified in Column (3) of table below:

TABLE (1) (2) (3) 1. From Government sources Rs. 1.00 per Cum 2. From natural/created own sources 30 paise per cum. 3. Regained of Water after 07 Paise per use from Government Unit (KWH) sources (e.g. Hydel Power generated Project) 4. Regained of water after use 02 paise per Unit from Natural/Created own (KWH) sources (e.g. Hydel Power generated Project) (2) An agreement shall be executed in form 7-A prior to make use of water.

(3) After form 7, the following form shall be inserted, namely.

25. Clause 2 which deals with "deemed supply" has already been referred to hereinabove. The submission of Mr. Raju Ramchandran, learned senior counsel, is that if the supply of water seems to have its permissibility under the Rules, it has to be actually supplied and the rate has to be charged for actual supply and not for deemed supply. In this context, we may scan the anatomy of Section 40. Section 40 commences with the words "Conditions for supply of water for industrial, urban or other purposes". It further stipulates that charges are to be agreed between the State Government and the company and fixed in accordance with the rules made under the Act. Thus, the power has been conferred by the legislature on the State Government to enter into an agreement on the terms as agreed upon and fixed in accordance with the rules made under this Act. Thus, the said provision is of wide amplitude giving enough roof to the Rule Making Authority. The conditions are to be fixed under the Rules. Section 92(c) authorizes the State Government to make Rules for the purpose of carrying into effect the provisions of this Act. Learned senior counsel for the petitioner submitted that the section does not provide for deemed supply. It is contended by him that similar provisions have been stipulated under the Indian Electricity Act, 1910. In essence, the submission of learned senior counsel is that in the absence of such terms in the section, such postulating cannot be engrafted into the rules. As has been indicated earlier, learned senior counsel has drawn inspiration from the decision rendered in *M/s. Nagpal Printing Mills (supra)*. In the said case, the Apex Court was dealing with the provisions contained in Sections 169(1), 276, 277 and 461 of the Bombay Municipal Corporation Act, 1888. We have carefully perused the provisions of Bombay Municipal Corporation Act, 1888. Their Lordships have scrutinized the anatomy of the provisions and held as under:

8. The High Court held that the rule was framed, in terms, in exercise of the powers given by Sections 169 and 276. Section 169 specifically empowers the Standing Committee to make rules to charge for the supply of water and by such rules to determine the water charges "based on a measurement or estimated measurement of the quantity of water supplied." The High Court has emphasised the past tense of the word "supply", which is important and refers to something already done. We are in agreement with the High Courts view that it empowers the Corporation to levy charge only in respect of water that has in fact been supplied to and consumed by the consumer and it is to be levied on the basis of measurement or estimated measurement. This has been conferred by the terms of Section 277 of the Act. It is only that supply which can be measured. Where the measuring device has failed to record the correct consumption, it may be estimated. But that must be on sound guidelines otherwise it would be arbitrary and mere ipse dixit of the authorities concerned. The bye-laws made in 1968 here empower the Commissioner to fix a quota. But no guideline is indicated. That is bad and unwarranted.

10. Therefore, there being no methodology in Rule III (d)(i) of the Water Charges Rules for measuring the actual water supply, that rule is beyond the

powers of the Corporation. The High Court was, therefore, right in striking down the Rule III(d)(i) of the said Rules as effective from 1st April, 1976. If there is no supply, the question of measurement cannot arise by estimate or otherwise.

26. The said decision was rendered in the context of the provisions contained in the Bombay Municipal Corporation Act. The provisions therein empower the Corporation to levy charges only in respect of water that has in fact been supplied to and consumed by the consumer and it has to be levied on the basis of measurement or estimated measurement. But, in the instant case, the section authorizes the State Government to impose conditions by making rules. The rules have imposed conditions by prescribing the form of agreement. The condition provides for payment of at least 20% of the quantum. The stand in the return is that a reservoir is made available for such industrial units. Thus, it is difficult to accede to the submission of the learned senior counsel for the petitioner that the Rule travels beyond the statutory provisions or is in transgression of the enactment.

27. In this context we may fruitfully refer to the decision rendered in Shri Sudarshan Mineral Co. Ltd. Bhilwara Vs. Union of India (UOI) and Another, wherein it has been held as under:

5. As is well settled the power to make rules for regulating the grant of prospecting licences and mining leases in respect of minerals and for purposes connected therewith is to be found in Sub-section (1) of Section 13. Sub-section (2) merely illustrates the nature of the power. It does not restrict the general power under Sub-section (1). Even under Clause (g) of Sub-section (2) in particular the Rules may provide the terms on which and the conditions subject to which any mining lease may be granted or renewed. Sub-rule (1) of Rule 27 requires every mining lease to be subjected to the conditions enumerated in Clauses (a) to (n) and such conditions have got to be incorporated in every mining lease. The conditions enumerated in Clauses (a) to (b) of Sub-rule (2) are optional and a mining lease may contain such other conditions as the State Government may deem necessary in regard to them. Rule 27(1){c) reads as follows:

The lessee shall pay for every year, except the first of the lease, such yearly dead rent within the limits specified in Schedule IV as may be fixed from time to time by the State Government and if the lease permits the working of more than one mineral in the same area, the State Government may charge separate dead rent in respect of each mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each mineral whichever be higher in amount but not both.

There is no element of uncertainty in the rule either in regard to, the grant of fresh lease or in respect of the renewal. The yearly dead rent to be fixed from time to time by the State Government cannot exceed the limit specified in Chapter IV. The maximum limit is therefore, certain. To provide for payment of

dead rent at a" specified rate subject to variation within the limit specified in Schedule IV, is a term which cannot be said to be void on account of uncertainty, nor is it beyond the rule making power conferred on the Central Government u/s 13 of the Act. The fourth and fifth points urged on behalf of the "appellant therefore fail.

28. In this context, we may state with profit that the rule making powers are not always exhaustive and cannot be read as restrictive under all circumstances. There cannot be any dispute that rules must yield to the provisions of the Act and cannot go beyond what is contemplated under the statute. A Division Bench of this Court on *Sharma and Co. v. State of M.P.* 1981 MPLJ 423 speaking through G.P. Singh, C.J., while interpreting the terms "among other matters" expressed the view as under:

It is true that in Clause (h) of Section 62 (2) five matters are specifically enumerated but the enumeration of these matters does not take away the general power conferred on the Government to prescribe the terms and conditions not covered by these five enumerated matters. The words "among other matters" which precede the enumeration of five matters in Clause (h) clearly postulated that the enumeration is not exhaustive and the general power of prescribing the Division Bench of this Court in *State of Madhya Pradesh Vs. Firm Gappulal and Others*, and we respectfully agree with it.

29. In the case at hand if Sections 40 and 92(c) of the Act are understood in proper perspective, it is clear that the term used is "condition" in Section 40 and power has been conferred on the State Government to fix the same by rule. Hence, it cannot be meant to carry out the rule making power. On the contrary, it empowers the State Government to make rules inasmuch as the conditions can be fixed under the Rules. The term and condition is of wide import. There is no restriction or constriction on the Rules by parent statute. On the contrary, it gives wide open room to the Government to frame the Rules. The provision, if we understand appositely, does not restrict the rule making power, but on the contrary, it empowers the State Government to make rules laying down conditions. When a form of agreement is postulated by way of a statutory rule which provides a quota, it cannot be said that the said agreement runs counter to the terms of the statute or transgresses the provision. In view of the aforesaid it is difficult to accept the submission of the learned senior counsel that the rule goes beyond the statutory provision.

30. Another limb of challenge is to the deemed provision submitting that it is arbitrary inasmuch as it fixes 90% of the deemed supply. In the return filed in W. P. No. 6950/2002, it is submitted that when allotting a specified quantity in favour of a company. The others are deprived of using the water and a sort of monopoly in the matter of use of water is created in favour of the allottee of water. It is also put forth that if the company feels that it does not require the allotted quantity of water, it may apply for reducing the same to bring it at par with the actual need of the quantity sought to be used by the company. As

pleaded, water cannot be allowed to go waste and others cannot be deprived of the use of water without charging for the same. In the course of hearing, it is submitted that water is kept in a reservoir to be allotted to the petitioner company as there is an agreement. If the company does not avail the same, it is its fault. In our considered opinion this being the position, we cannot accept the submission of the learned senior counsel that such a clause in the form of agreement offends Article 14 of the Constitution.

31. At this stage, it is apt to refer to a prayer made in W. P. No. 6950/2002. It is prayed therein to charge water rate on the basis of actual consumption of the water in case it is held that the Government has authority to charge the water rate from the petitioner. A return has been filed that water rate has been charged on actual rates on certain occasions and thereafter, by mistake, in some cases 100% was charged and, therefore, it was rectified to 90%. But, subsequently realizing the same, revised bill charging 90% of the total quantity of water allowed to be drawn by the Company was made. The revised bill has been brought on record as Annexure-R-2. As we have held that water rate may be imposed and 90% can be realized, no relief can be granted to the petitioner in the said petition also.

32. In our foregoing analysis, we do not find any merit in the writ petitions and accordingly, the same stand dismissed without any order as to costs.