
(1993) 08 OHC CK 0034
In the Orissa High Court
Case No : O.J.C. No. 488 of 1991

Ramesh Chandra Sahoo

APPELLANT

Vs

State of Orissa and Another

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

General Clauses Act, 1897 — Section 6
Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
Orissa General Clauses Act, 1937 — Section 7
Orissa Minor Minerals Concession Rules, 1990 — Rule 13, 33

Citation : AIR 1994 Ori 187

Hon'ble Judges : B.L. Hansaria, C.J.; R.K. Patra, J

Bench : Division Bench

Advocate : D.N. Misra, D. Misra, R.N. Naik, A. Deo, B.S. Tripathy and P. Panda, for the Appellant; S.K. Das, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Patra, J.—A short question that arises for determination in this case is whether royalty is imposable after coming into force of the Orissa Minor Minerals Concession Rules, 1990 by invoking Rule 33 thereof in respect of an existing lease granted under the Orissa Minor Minerals Concession Rules, 1983.

2. The Tahsildar, Dhankanal opposite party No. 2 granted two long term leases (Padmanava Stone Quarries Nos. 1 and 2) to the petitioner vide long term lease cases Nos 6 and 7 of 1990-91 under the Orissa Minor Minerals Concession Rules, 1983 (hereinafter referred to as "the 1983 Rules"). Pursuant to such grant the petitioner started operating the quarries in question although no formal lease deeds have been executed. When the matter stood thus, the 1983 Rules came to be repealed and replaced by Orissa Minor Minerals Concession Rules, 1990 (hereinafter referred to as "the 1990 Rules") by specifying rates of royalty payable in respect of minor minerals in Schedule I, following the enforcement of the 1990 Rules with effect from 19-8-1990, the petitioner was served with two notices dated 11-1-1991 as per Annexures 7 and 8 calling upon him to deposit

the differential royalty which were calculated as per the 1990 Rules in respect of both the quarries. These two notices are the subject matter of challenge in this petition under Articles 226 and 227 of the Constitution of India.

3. The point involved in this case has recently been decided by this Court in *Debasis Singh Samant Vs. The State of Orissa and Another*, It has been held therein that by virtue of Rule 33 of the 1990 Rules which provides that anything done, any action taken or orders passed under the repealed rules shall be deemed to have been done under the 1990 Rules, lease granted under the repealed rules shall be deemed to be a lease under the 1990 Rules and royalty could be levied on minor minerals extracted from the leased area in respect of an existing lease at the rates stipulated in Schedule I of the 1990 Rules.

4. The aforesaid decision is directly against the petitioner, Shri Mishra has submitted that the word "deemed" which creates a legal fiction is to be limited to the purpose for which it was created and should not be extended to its logical end and invited our attention to the cases of *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , *Commissioner of Income Tax, Bombay City I, Bombay v. Amarchand N. Shroff* AIR 1963 SC 1443, *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, , *H. Shiva Rao and Another Vs. Cecilia Pereira and Others*, , *M.C. Mehta and another Vs. Union of India and others*, , *Mithilesh Kumar and Another Vs. Prem Behari Khare, and Hakim Ali and another Vs. The Board of Revenue, U.P. and others*, . It may be noted here that in none of the cases cited on behalf of the petitioner, the meaning and purport of the specific word "deemed" came up for consideration except in the first three cases where there are observations saying that legal fictions are created only for some definite purpose.

5. Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act, 1937 (Section 7 of the Orissa General Clauses Act) follow unless a different intention appears. But when there is repeal of an enactment followed by a fresh legislation on the same subject the Court would have to look at the provisions of the new Act whether they indicate different intention. In *State of Punjab v. Mohar Singh Pratap Singh* AIR 1955 SC 84 : (1955 CLJ 254), the Supreme Court observed as follows at page 88 :

"Whether there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless as the section itself says, a different intention appears. In the case of a simple repeal there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by a fresh legislation on the same subject we would undoubtedly have to look to the provisions of the new Act, but only for the purpose of determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6 General

Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would have application in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law.....".

These observations have been quoted with approval by a Constitution Bench in *Indira Sohanlal Vs. Custodian of Evacuee Property, Delhi and Others*, .

6. At this stage it is profitable to read Rule 23 of the 1990 Rules :

"33. Repeal and savings.-- The Orissa Minor Mineral; Concession Rules, 1983 are hereby repealed.

Notwithstanding such repeal anything done, any action taken or orders passed under the rules so repealed shall be deemed to have been done, taken or passed under these rules, and shall be brought into conformity with the provisions of these rules within three months from such commencement or such further time as the Government may specify in this behalf." (Emphasis ours)

Perusal of Rule 33 shows that while repealing the 1983 Rules it saves the acts, actions or orders passed under the repealed rules by declaring that they shall be deemed to have been done, taken or passed under the 1990 Rules. As the repeal of 1983 Rules was followed by a fresh set of rules on the same subject, we have to look at the new provisions what they indicate different intention. While making this exercise the words "shall be deemed" in the second clause of Rule 33 cannot be lost sight of. The word "deemed", as has been observed by Lord Radcliffe in *St Aubyn v. Attorney General*, 1952 AC 15 . 53, is used a great deal in modern legislation in different senses. At times, it is used to impose for the purposes of a statute an artificial construction of a word or phrase that would not otherwise prevail. Sometimes it is used to put beyond doubt a particular construction that might otherwise be uncertain. Sometimes it is used to give a comprehensive description that includes what is obvious, what is uncertain and what is in the ordinary sense impossible.

7. A Bench of this Court presided over by the Hon'ble Chief Justice in *Umerkote Regional Co-operative Society v. The Transport Commissioner* (1992) 7 CLT 629 had occasion to consider the expression "shall be deemed" occurring in Sub-section (3) of Section 10 of the Motor Vehicles Taxation Act, 1975. Relying on the observations made in *Ex Parte Welton*, *In re : Levy*, 1881 (17) Ch D 746 and in *East end Dwelling Co. Ltd. v. Finsbury Borough Council* 1952 AC 109 the Court has held that in absence of prior intimation of temporary discontinuance of use of vehicle incurs the liability of tax under the Act as if the vehicle has been used or kept for use. Lord Justice James had observed in *Ex Parte Salton*, *In re, Levy* 1881 (17) Ch D 746 as follows :

"When a statute enacts that something shall be deemed to have been done, which, in fact and truth was not done, the Court is entitled and bound to

ascertain for what purpose and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion."

Lord Asquith, in *East end Dwellings Co. Ltd. v. Finsbury Borough Council*, 1952 AC 109 had expressed his opinions as follows :

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and instances, which, if the putative state of affairs had in fact existed, most inevitably have followed from or accompanied it..... The statute says that you must imagine a certain slate of affairs; it does not say that having done so, you must cause or permit or imagine to boggle when it comes to the inevitable corollaries of that state of affairs."

8. In *Consolidated Coffee Board v. Coffee Board*, Bangalore AIR 1980 SC 1468 : (1980 Tax LR 1723) the purpose of the word "deemed" occurring in Section 5(3) of the Central Sales Tax Act, 1956 came up for consideration, The question was whether a legal fiction is created by the use of the word "deemed". The Court after noticing that the same word "deemed" has been used by the legislature in Section 5(1) and Sections 3 and 4 of Chapter II of the Central Sales Tax Act was of the view that no legal fiction is created by the use of the word "deemed" in Section 5(3) of the Act.

9. In the present case, the second clause of Rule 33 after declaring that any act, action or orders taken, done or passed under the 1983 rules shall be deemed to have been done, taken or passed under the 1990 Rules further enjoins by saying "and shall be brought in conformity with the provisions" (Empahsis laid) of the 1990 Rules. The word "and" has not been used without any purpose. It has to be given its due weight. The word "and" joins two parts of the second clause of Rule 33. The second part is not independent of the first part. If a plain reading of Rule 33 is made, there can be no doubt about the intention of the rule itself which besides creating a legal fiction in respect of any act, action or orders, taken, done or passed under the repealed rule, further requires that they shall have to be brought in conformity with the provisions of the 1990 Rules. Had the rule making authority intended to exclude the applicability of the rates of the 1990 Rules to the existing leases made under the repealed Rules, the same could have been indicated. In absence of any such exclusion, the full meaning of Rule 33 has to be given.

10. Shri Mishra has contended that the expression "shall be brought in conformity with the provisions" of 1990 Rules may be available in respect of cases like the applicant's claiming priority (Rule 6(6) of the 1990 Rules corresponding to Rule 9 of the 1993 Rules), period of lease and fee payable on the application for renewal of lease (Rule 9 of the 1990 Rules corresponding to Rule 14 of the 1983 Rules), distance of carrying on quarrying operation (Rule 14 of the 1990 Rules corresponding to Rule 20(7) of the 1983 Rules). According to

the learned counsel the second part of Rule 33 only required matters like these to be brought in conformity with what have been provided in the corresponding new rule. We are unable to accept this submission, as this is an additional requirement of the rule which is evident by the use of the word "and"; it is not the only requirement.

11. Shri Mishra has sought to reinforce his submission by referring to what finds place in the proviso to Rule 33 (ii) of the 1990 Rules. Let us first note that provision :

"3. Liability for payment of Royalty, Deed Rent etc.-

(i) xxxxx

(ii) Royalty shall be leviable on minor minerals extracted from the lessed area at the rates specified in Schedule I :

Provided that the rates specified in Schedule I may be revised by Government from time to time by an amendment made to the said schedule, but no such enhancement shall be made before the expiry of three years from the date when the rates were last fixed,

(iii) xxxxx"

Learned counsel submits by referring to the proviso that enhancement of royalty in respect of the petitioner's leases is not permissible before the expiry of three years from the date when the rates were last fixed. It is contended that although the proviso permits amendment of the rates specified in Schedule I of the 1990 Rules which is "generalistic" (to quote his own words) in its sweep, enhancement of the rates is "individualistic" (Shri Mishra's own expression); and so, the enhancement of royalty as mentioned in the impugned notices cannot be allowed to sustain.

12. The 1990 Rules are prospective save as mentioned in Rule 33. There is no dispute at the bar that there has been upward revision in the rate of royalty as specified in Schedule I of the 1990 Rules compared to the 1983 Rules in respect of the minor minerals extracted from the leased area. Rule 13 enjoining levy of royalty on minor minerals as per the rates specified in Schedule I. The proviso to Sub-rule (ii) of Rule 13 authorises the Government to revise the rates specified in Schedule I from time to time by making necessary amendment to the Schedule. The revision of rates may be upward or down-ward. Limitation has, however, been imposed by saying that in case of upward revision of rate, it cannot be levied before the expiry of three years from the dates when the rates were last fixed. The rates of royalty specified in Schedule I have universal application; so also the enhancement of rates. We cannot regard the enhancement about which the proviso has mentioned as "individualistic" as urged by Shri Mishra this too is "generalistic" to use Shri Mishra's word.

13. Shri Mishra also submits that we should interpret the rules to avoid hardship

and complications, as observed by the Supreme Court in B.N. Shankarappa Vs. Uthanur Srinivas and others, . The observation made by the apex Court in the aforesaid case was in a particular context. It was contended before the Supreme Court that dnce the power of changing or specifying the Mandal Headquarters is exercised as provided in Section 4 of Karnataka Zilla Parishads, Taluk Panchayat etc. Act, 1983, it gets exhausted and at a latter stage, the same power cannot be invoked to change the headquarters. This argument was repelled by saying that such a view would create a vacuum and even when a genuine need for specifying any other headquarters arises the authority will not be able to exercise power for want of specific provision in the Act and that may lead to unavoidable hardship and complications. What was stated there has no application or relevance for the case at hand.

14. None of the contentions advanced by Shri Mishra can be regarded to have introduced any infirmity in the impugned order. No other point is urged on behalf of the petitioner. The writ petition is, therefore, dismissed.

Hansaria, C.J.

15. I agree.