

(1966) 07 PAT CK 0005
In the Patna High Court
Case No : Misc. Judicial Case No. 513 of 1963

Sailendra Nath Chandra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 12-07-1966

Acts Referred:

Constitution of India, 1950 — Article 31A
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 16(1), 16(2), 18, 26(1)
Mines and Minerals (Regulation and Development) Act, 1948 — Section 7(2)
Mining Lease (Modification of Terms) Rules, 1956 — Rule 10(2), 9

Citation : AIR 1967 Patna 68

Hon'ble Judges : H. Mahapatra, J;A.B.N. Sinha, J

Bench : Division Bench

Advocate : G.C. Mukherji and S. Mustafi, for the Appellant; Lalnarain Sinha, K.B. Nr. Singh and S. Sarwar Ali, for the Respondent

Final Decision : Dismissed

Judgement

Mahapatra, J.—The petitioner took four mineral leases from the ex-proprietor including one dated the 27th February, 1941, in respect of fireclay, and other minerals in mauza Debiana in the district of Dhanbad for a period of 31 years on a dead rent of 25 rupees and royalty (commission) of Re. 0-1-6 per ton or four annas a Gadda. The estate in which this village was situate vested in the State of Bihar on the 1st January, 1956, under the Bihar Land Reforms" Act, whereafter the lessor's rights vested completely in the State Government.

2. The Controller of Mining Leases for India, Opposite Party 3, by his order dated the 22nd February, 1961, after holding an inquiry under the Mining Leases (Medication of Terms) Rules, 1958 (as amended up to 1960), modified the terms of the petitioners lease by reducing the period of lease to twenty one years with effect from the 27th February, 1941 and enhancing the dead rent to Rs. 7.50 per acre per annum for fireclay. He also directed that a new clause shall be deemed to have been inserted in the lease and form part thereof to the effect that except

for the modification made by him under that order, the lease shall be subject to the rules made or deemed to have been made under Sections 13 and 18 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957). He also observed in his order, by way of clarification, that royalty shall be payable by the lessee in accordance with Section 9 of the Act 67 of 1957 in place of the rate provided in the deed of lease. The order of modification of the terms of the lease was to take effect immediately.

3. Since the petitioner-lessee did not pay the dues according to the modified terms, a certificate under the Public Demands Recovery Act was filed against him before the Certificate Officer, Dhanbad, in case No. 62/M/61-62 for recovery of the Government dues. The petitioner felt aggrieved both by the order of modification in regard to the period of lease and the rate of dead rent and the certificate proceedings; and came to this court with an application under Articles 226 and 227 of the Constitution with a prayer for issue of a writ of certiorari or any appropriate order or direction quashing the order passed by the Controller of Mining Leases dated the 22nd February, 1961, and the orders passed by the Certificate Officer, Dhanbad dated the 17th June, 1963. The State of Bihar and the Certificate Officer were impleaded as opposite Party 1 and 2; and the Secretary to the Ministry of Steel and Mines (Union of India) as opposite party 4 and the District Mining Officer, Dhanbad, as opposite party 5 to the writ application.

4. Learned counsel for the petitioner raised three arguments in his support. His first point is that the controller could not have reduced the period of lease or enhanced the rates of the payment stipulated in the original deeds without providing for compensation payable to the petitioner. The provisions under Rules 10(2)(ii) of the Mining Leases (Modification of Terms) Rules, 1956 (to be referred to hereafter as the Rules) providing that no compensation shall be payable in respect of the reduction of the period of the lease or any modification in the amount of royalty, are ultra vires the Mines and Minerals (Regulation and Development) Act 1948 (Act 53 of 1948, to be referred as the 194S Act) and also the later Act 67 of 1957 (to be referred hereafter as the 1957 Act). He conceded that the Central Government had powers to modify the mining leases granted before the 25th October, 1949 so as to bring them in conformity with the provisions of the 1957 Act and the rules made under Sections 13 and 18 thereof; but any modification in regard to the period of lease or the rates of payment that would affect the lessee adversely could he made only on providing compensation to be paid to the lessee by the party who benefits by such modifications.

5. Learned counsel mainly relied upon Clause (b) of Sub-section (2) of Section 7 of the Mines and Minerals (Regulation and Development) Act, 1948. Sub-section (1) of that section provided that the Central Government may, by notification in the Official Gazette, make rules for the purpose of modifying or altering the terms and conditions of any mining lease granted prior to the commencement of the Act (the 25th October, 1949) so as to bring such lease in conformity with the

rules made under Sections 5 and 6. Sub-section (2) provided that

"The rules made under Sub-section (1) shall provide-

(b) for the payment of compensation by the party who would be benefited by the proposed modification or alteration to the party whose rights under the existing lease would thereby be adversely affected;

... ..

He argued that by the reduction of the period of the lease and enhancement of the rates of payment the State Government was benefited and the lessee was adversely affected and, therefore, the latter should have been allowed compensation from the former. Mining Leases (Modification of Terms) Rules, 1956, were made by the Central Government in exercise of the powers conferred on it by Section 7 of the 1948 Act. Those rules came into force with effect from the 15th September, 1956. The provisions under Rule 9 were on the lines of Clause (b) of Sub-section (2) of Section 7 of the 1948 Act, providing for payment of compensation; but the principles and manner of determining compensation were provided under Rule 10; and in Sub-rule 2(ii) it was said-

"No compensation shall be payable in respect of the reduction of the period of the lease or any modification in the amount of royalty." This, learned counsel pressed, was in conflict with Rule 9 as well as Section 7(2)(b) of the 1948 Act and should be struck down as void. This argument overlooks more than one important features in regard to the relevant legislation and proceeds on a profound misconception.

6. The 1948 Act (Act 53 of 1948) was an Act to provide for the regulation of mines and oilfields and for the development of minerals and it came into effect from the 25th day of October, 1949; but the 1957 Act (Act 67 of 1957, the Mines and Minerals (Regulation and Development) Act, 1957) was enacted and came into force with effect from the 1st June, 1958 with a view to providing for the regulation of the mines and the development of minerals under the control of the Union. Oilfields were not covered by this Act. By that time item 54 in List I Union List of the Constitution provided

"Regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest."

In Section 2 of the 1957 Act, the Parliament declared that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. Sections 13 and 18 of the Act conferred powers on the Central Government to make rules for regulating the grant of mining leases and for the conservation and development of Minerals in India. In Section 16, the Parliament provided that all mining leases granted before the 25th day of October, 1949, shall be brought into conformity with the provisions of the Act and the rules made under Sections

13 and 18. In Sub-section (2) of that section the Central Government was authorised to make rules by notification in the Official Gazette for the purpose of giving effect to the provisions of Sub-section (1) find in particular to provide,

"(b) for the payment of compensation to the lessee in respect of the reduction of any area covered by the existing mining lease."

Thus it is to be seen that what had been provided in the 1948 Act u/s 7(2)(b) (already stated) was replaced in the later Act by shrinking the rule-making power to payment of compensation only for the reduction of the area covered by the existing mining lease. It is true that both the Acts of 1948 and 1957 remained in the field; but the rules that had been framed or purported to have been framed u/s 7 of the 1948 Act were adopted as rules made under the 1957 Act. Section 29 of the later Act said-

"All rules made or purporting to have been made under the Mines and Minerals (Regulation and Development) Act, 1948, shall, in so far as they relate to matters for which provision is made in this Act and are not inconsistent therewith, be deemed to have been made under this Act as if this Act had been in force on the date on which such rules were made and shall continue in force unless and until they are superseded by any rules made under this Act."

By notification dated the 1st June, 1958, and in exercise of the powers conferred by subsection (2) of Section 16 of the 1957 Act, the Central Government amended rule 9 (of the rules made under the 1948 Act in 1956) as follows :

"9. Whereas the area of an existing mining lease is reduced, there shall be paid to the lessee, compensation, the amount of which shall be determined in the manner and in accordance with the principles set out in Rule 10 : "

" By another amendment of the same date and by the same notification, in Rule 2(a) it was provided-

" "Act" means the Mines and Minerals (Regulation and Development) Act, 1957 (67 of 1957)."

Thus on the same day (the 1st June, 1958) when the 1957 Act was brought into force the relevant rules referred to above were in force and read within the meaning of the provisions u/s 29 of the Act, they were to be deemed as rules made under the 1957 Act. Thus the rule making powers in regard to the payment of compensation to the lessee or about the modification of terms of the existing lease u/s 16(2)(b) and Rules 9 and 10(2)(ii) were absolutely consistent with each other on and from the 1st June, 1958, when the 1957 Act and the amendment to rules came into force.

7. Whatever scope for an argument could be available about the inconsistency with Clause (ii) of Sub-rule (2) of Rule 10 of the Mining Leases Rules, 1956, as it existed prior to the 1957 Act with the provisions u/s 7 of the 1948 Act or/and Rule 9 before its amendment on the 1st June, 1958, that has now become

irrelevant after the 1957 Act came into force and the rules of 1956 were amended and were deemed to have been made under the 1957 Act. There is another deeming provision; in Section 29 to the effect that the 1957 Act is to be deemed to have been in force in 1956 when the Rules u/s 7 of the 1948 Act were made or purported to have been made.

8. No doubt, that was an imaginary state of affairs which was to be treated as real but when such a provision is made in an enactment it has to be taken so. Dealing with a deeming provision of a like nature in Section 53 of the Town and Country Planning Act, 1947, Lord Asquith of Bishopstone, in the case of *East End Dwellings Co., Ltd. v. Finsbury Borough Council* 1952 AC 109 at p. 132 observed :

"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 incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The line of reasoning was also adopted by our Supreme Court in the case of *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, . Viewed in that light, the provision in R. 10(2)(ii) to the effect that no compensation shall be payable in respect of the reduction of the period of the lease or any modification of the amount of royalty has to be checked with Section 16(2)(b) of the 1957 Act and the amended Rule 9 and not with Section 7 of the 1948 Act or Rule 9 as it had stood before the amendment. In that case, no inconsistency can be seen. The petitioner cannot claim any right to compensation on account of the modification of the period of the lease or the rates of payment under the provisions of the 1957 Act or the rules deemed to have been made thereunder.

9. The next argument of learned counsel about the right to compensation because the petitioner was adversely affected in respect of his property rights in the leasehold is not also substantiated. He feebly argued that the 1957 Act should have provided for payment of compensation to the lessee on account of any adverse modification in the terms of his lease. But absence of such provision does not bring the enactment to any grief as the provision under Article 31A(1) (e) of the Constitution lends protection against that.

10. Learned counsel challenged the rule [Rule 10(2)(ii)] on another ground. He said that Section 16(2)(c) of the 1957 Act authorised the Central Government to make rules providing for the principles on which, the manner in which and the authority by which, the compensation to the lessee shall be determined. Rule 10 was made for that purpose; but in making such a rule the authority had to remember that in Clause (b) of Sub-section (2) of Section 16 of the Act there was nothing to say that no compensation was payable to the lessee in respect of things other than the reduction of any area covered by the existing mining lease.

To say that compensation should be paid for reduction of an area is not to prevent payment of compensation for other adverse modification in the terms of the existing lease. While providing for the principles and the manner about the determination of the amount of compensation, the rule making authority was not entitled to say that no compensation for reduction of the period of lease or enhancing any rates of payment shall be made.

Rule 10, no doubt, lays down the principles which should guide the officer concerned in determining the amount of compensation. It also speaks about the manner in which it shall be done. In the impugned part of that rule what has been indicated is only that the authorised officer (Controller of Mines) shall not take into account in the matter of compensation, anything other than the reduction in area. Drafting of legal provision is done both in positive and negative forms. If the same thing is expressed in a negative manner, no fault can be found with that. The Central Government in providing the impugned part in Rule 10 did not say anything which was contrary to what the current Act provided. Even if that part in Rule 10 was not there, the petitioner could not have pressed his claim for compensation for anything other than reduction in area, according to the provisions in the 1957 Act.

11. Referring to the proviso given in Subsection (1) of Section 16 of the 1957 Act, learned counsel contended that the modification by the Central Government or its authorised Officer could only be done in the interest of mineral development and for the reasons to be recorded; but in the present case, he continued, the reduction of the period of lease or the enhancement of payment was neither in the interest of mineral development nor such reasons were recorded in the order under challenge. This is again a completely misconceived argument. Sub-section (1) of Section 16 authorises modifications of the existing mining leases so as to bring them into conformity with the provisions of the 1957 Act and the rules made under Sections 13 and 18 of that Act, that is, the Mineral Concession Rules. The proviso to that sub-section is applicable to a case where the Central Government wants to allow a lessee a total area in excess of ten square miles. It is only in that case that the interest of mineral development and recording of the reasons become relevant. As far as the present case is concerned, that proviso has no application.

12. Another point made in the argument challenging the impugned order on the ground that it was made not by the Central Government but by the Controller of Mines has no substance. Section 26(1) authorises the Central Government to direct that any power exercisable by it under the Act may be exercisable also by such officer or authority subordinate to the Central Government or such State Government or such Officer or authority subordinate to a State Government as may be specified in the notification in the Official Gazette. The Central Government authorised the Controller of Mining Leases, to exercise the powers on its behalf.

13. Lastly, learned counsel urged that under clause 9 of the original lease the

petitioner had the option to surrender the lease by giving a three months' notice to the lessor subject only to payment of all moneys due for commission (royalty etc.). He accordingly offered to surrender the lease when the proceedings for modification of the terms of the lease were going on before the Controller of Mining Leases at Ranchi in 1960. Further, the petitioner gave a notice of surrender to the District Mining Officer, Dhanbad on the 27th March, 1963 (Annexure D). In that view, it was urged that the surrender should have been accepted by the State of Bihar and no demand for dead rent could have been made from him. It appears from the order recorded by the Controller of Mining Leases for India that the lessee petitioner stated during the proceedings that if the dead rent was to be fixed at a higher rate he should be given the option to surrender the lease and he was informed that the question was between him and the State Government and the Controller of Mining Leases had no power to accept the surrender.

I cannot see how it could be argued if the facts were so as stated in that order that the petitioner had offered to surrender. What he contended before the Controller was that he should have the option to surrender if the result of the orders passed by the Controller would be against him. This was certainly not surrender according to Clause 9 of the original lease. Coming to the notice of surrender dated the 27th March, 1961, which was subsequent to the order of modification of the terms of the lease, it has to be observed that by that time, the petitioner's lease had already been made subject to the rules made or deemed to have been made under Sections 13 and 18 of the 1957 Act as directed in the impugned order of the Controller of Mining Leases dated the 22nd February, 1961. One of those rules provided that the lessee could surrender if he deposited in advance the dead rent for twelve calendar months at the modified rate. This was pointed out to the petitioner by the District Mining Officer in his letter dated the 6th July, 1961 Annexure F, The petitioner did not comply with that provision, and, therefore, it cannot be said that there was any valid surrender of lease by the petitioner.

14. Learned counsel attempted to make some point of the fact that a cheque for Rupees 154.92 given by the petitioner along with his letter dated the 25th April, 1961, Annexure E, in connection with his offer of surrender had been cashed by the State Government and the District Mining Officer informed the petitioner that that cheque had been cashed and it had been credited to the account of the petitioner against the dues of rent for the period from 1-11-56 to 2-12-61, which came to Rs. 205.72, vide Annexure F. Encashment of cheque did not amount to acceptance of surrender of lease, particularly for the reason that there was no valid offer of surrender as pointed out before.

15. The petitioner also challenged the reduction of the period of lease to 21 years and urged that Section 8 of the Act requires that the period for which a mining lease other than coal may be granted, shall not exceed twenty years. The modification of an existing lease was to be in conformity with that. The

Controller, it was argued, could not have made that period at 21 years. The proviso to Section 16(1) authorised the Central Government to modify the period of an existing lease to a period exceeding that specified in Sub-section (1) of Section 8. Reasons were given by the Controller in his order why in the present case the period was kept at 21 years instead of 20 years. If the petitioner wanted to challenge those reasons it was open to him to move the Central Government to revise that as provided u/s 130 of the Act. It cannot be said that the Controller had no powers to make the period at 21 years.

16. About the enhancement of the dead rent, learned counsel referred to Section 9 which lays down that the holder of an existing mining lease shall pay royalty at the rate for the time being specified in the second schedule in respect of any particular mineral. The Controller did not revise the rate of royalty in the present case in discord with the rate given in the second schedule. He modified the dead rent and fixed it at Rs. 7.50 per acre per annum. Schedule IV of the Mineral Concession Rules, 1960, lays down the rates of dead rent; and under item 6 in that schedule, which covers fireclay the prescribed rate is between the minimum and the maximum of Rs. 12.50 and 25.00 per hectare. One hectare is equal to 2.471 acres (See Chambers's Twentieth Century Dictionary). The Controller fixed the dead rent at Rs. 7.50 per acre per annum which is not in conflict with the minimum and the maximum given in schedule IV of the Mineral Concession Rules.

17. I thus find that none of the points raised could be accepted. The rule is, therefore, discharged. The petitioner is directed to pay Rs. 100 as costs of this application to the opposite party 1, the State of Bihar,

A. B. N. Sinha, J.

18. I agree.