
(1994) 12 SC CK 0084

In the Supreme Court Of India

Case No : Civil Appeal No. 811 Of 1987

State of Haryana

APPELLANT

Vs

Kangra Valley Slate Co. Ltd. and Others

RESPONDENT

Date of Decision : 07-12-1994

Acts Referred:

Citation : (1995) 1 SCC 756 Supp

Hon'ble Judges : Sujata V. Manohar, J; S. C. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal by special leave is directed against the judgment of the Delhi High Court dated March 13, 1975 in C.W.P. No. 350 of 1975.

2. The facts, briefly stated, are as follows :

On February 9, 1962, the then State of Punjab invited application for grant of mining lease with respect to an area of 671 bighas of land in villages Majra and Manethi in Tehsil Rewari of District Gurgaon. In response to the said invitation Diwan Singh Sehi, deceased respondent No. 4, filed an application for grant of mining lease for a part of this area of March 12, 1962. Kangra Valley Slate Co. Ltd., respondent No. 1, also filed an application for a similar grant on March 20, 1962. Since the State Government did not dispose of these applications within the stipulated period of nine months as required by the Mineral Concession Rules, 1960 (hereinafter referred to as the Rules", the said application were deemed to be refused. Both the applicants filed revisions before the Central Government against the said deemed refusal. By order dated June 25, 1965 the Central Government directed the State Government to consider the application of the applicants. Originally the time granted for such consideration was till August 31, 1965, but it was last extended till July 31, 1969. In the meantime, there was re-organisation of the State of Punjab and new States of Punjab, Haryana and Himachal Pradesh were constituted. The area in question fell in the territory of

the State of Haryana. By order dated July 19, 1969 the State of Haryana informed both the applicants that their applications for grant of mining lease have been rejected because the area in question was being re-notified for the grant of lease. This led to a second set of revision petitions by both the applicants before the Central Government wherein the Central Government passed the order dated February 24, 1970 directing the State Government to reconsider the applications of both the applicants and decide them on their merits. Thereafter, the State Government passed an order dated November 4, 1971 whereby the said applications were dismissed for the reason that in exercise of its executive powers under Article 298 of the Constitution the State Government has decided to exploit the area itself. Both the applicants filed the third set of revisions before the Central Government against the said order. The said revisions were disposed of by the Central Government by two separate orders dated March 20, 1972 and April 19, 1972. Both the orders were identical in nature and by the said orders, the Central Government held that the State Government did not have the power to make a declaration under Article 298 of the Constitution after a notification had been issued throwing open the area for grant or re-grant. The Central Government also observed that among the two rival contestants, respondent No. 4 had to be preferred under Section 11(2) of the Mines and Mineral (Regulation and Development) Act, 1957 (hereinafter referred to as "the Act") provided he is otherwise qualified.

3. Feeling aggrieved by the said orders of the Central Government respondent No. 1 filed a Writ Petition (C. W. No. 434 of 1972) in the Delhi High Court. The said Writ Petition was disposed of by the High Court by judgment dated March 8 1973. (reported in ILR (1973) 1 Delhi 923). The High Court rejected the challenge to the validity of Section 11 (2) of the Act but it upheld the contention urged on behalf of respondent No. 1 that the date of application could not afford the basis for preferential right under Section 11(2) of the Act and that the claim of respondent No. 1 should also have been considered by the Central Government. The High Court, therefore, quashed the order dated April 19, 1972 and issued a mandamus to the Central Government to hear the matter again and determine whether respondent No. 1 is justified in claiming the right under sub; sections (1) and (4) of Section 11 of the Act. It may be mentioned that in quashing the order dated April 19, 1972 only the High Court proceeded on the erroneous impression that both the revision petitions had been disposed of by the Central Government by orders dated April 19, 1972 and for that reason no specific direction was given regarding quashing of the order dated March 20, 1972. Both the applicants and the Central Government have proceeded on the basis that both the orders dated March 20, 1972 and April 19, 1972 passed by the Central Government on the revision petitions filed by respondents Nos. 1 and 4 have been quashed by the High Court.

4. The matter was thereafter considered by the Central Government and by order dated October 1, 1974 the Central Government took the view that the question of determination of inter se claims of the two applicants could arise only if the

area in respect of which the applications have been made is available for grant. After taking note of the fact that the State Government has made it clear that they are interested in exploiting the area themselves either directly or on agency basis through the Haryana State Industrial Corporation the Central Government observed that the State Government has the power to carry on trade or business as prescribed by Article 298 of the Constitution as amended by the Constitution (Seventh Amendment) Act, 1956, and a private individual cannot question the right of the Government to deal with mineral resources in the State in the manner they deem fit in the public interest. On that view the Central Government dismissed the revisions of both the applicants on the ground that the areas in question are no longer available for grant. It was, however, observed that should there be a change in the policy of the State Government and they abandon their plan of exploitation of the minerals in public sector or by themselves and decide to invite applications for mining lease, it would be deemed that both these petitions are resuscitated and their claims will have to be considered on merits. The said order of the Central Government was assailed by respondent No. 1 in C. W. No. 350 of 1975 which has given rise to this appeal.

5. By the impugned judgment the High Court has allowed the said Writ Petition and has set aside the, order dated October 1, 1974 mainly on the ground that the earlier order dated April 19, 1972 passed by the Central Government, holding that once a notification making the area available for grant was issued the State Government could not make a declaration reserving the area for exploitation by itself operates as *res judicata* and it was not permissible for the Central Government, in the absence of any fresh material, to take a contrary view. The High Court rejected the contention urged on behalf of the appellant-State that the earlier order of the Central Government having been quashed in C. W. No. 434 of 1972 was non-existent and there was no bar to the Central Government acceding to the plea of the State Government that it would itself work the area. The High Court was of the view that by the earlier judgment in C. W. 434 of 1972. (reported in ILR (1973) 1 Delhi 923, a mandamus was issued in specific terms and entitled the Central Government to determine the rights of the two applicants in terms of the mandamus. Feeling aggrieved by the said judgment of the High Court, the State of Haryana has filed this appeal.

6. The learned counsel for the appellant-State has urged that the High Court was in error in holding that the order dated April 19, 1972 passed by the Central Government operates as *resjudicata* so as to preclude the Central Government from passing the order dated October 1, 1974 holding that it was permissible for the State Government to declare the area for exploitation by itself under Article 298 of the Constitution, the learned counsel has submitted that since the order dated April 19, 1972 had been quashed by the High Court by its order dated March 8, 1973 the said order was no longer operative and, therefore, the question of *res judicata* could not arise at all and that the matter had to be considered by the Central Government fresh and that the Central Government after such consideration had passed the order dated October 1, 1974.

7. On behalf of respondent No. 4, the learned counsel has invited our attention to the reliefs which were sought in the earlier writ petition No. CW 434 of 1972 and has pointed out that the relief sought in the said writ petition was only for quashing of that part of the order contained in Para 7 of the final orders dated April 19, 1972 and March 20, 1972 based on the priority right contemplated by Section 11(2), of the Act. It is no doubt true that one of the reliefs that was sought in the said writ petition was as regards quashing of a part of Para 7 of the said orders relating to priority right under Section 11 (2), of the Act. But while allowing the writ petition by its order dated March 8, 1973, the High Court did not confine its direction to the quashing of the part of Para 7 of the impugned orders but has quashed the said orders in their entirety. After the said orders have been quashed in their entirety it cannot be said that the said orders continue to operate so as to preclude the Central Government from taking a view different from that taken by it in those orders. In the circumstances, we are unable to uphold the view of the High Court that in view of the principle of res judicata the Central Government, while passing the order dated October 1, 1974, could not have taken a view different from that taken by it. in the earlier orders dated March 20. 1972 and April 19, 1972 with regard to the right of the appellant-State to declare that the area in question had been reserved for exploitation by itself under Article 298 of the Constitution.

8. Shri Dhruva Mehta, the learned counsel appearing for respondent No. 1, has tried to put the matter in a different light. He has urged that apart from the principle of res judicata, the principle of estoppel is attracted in the present case and that the Central Government, having held that the State Government had no right to reject the applications for mining lease after making the areas available for grant and having defended the said order in the writ petition in the High Court was estopped from taking a different stand when the matter was remanded to it. We are unable to appreciate this contention. The Central Government was functioning in a judicial capacity while exercising its revisional powers when it passed the orders dated March 20, 1972 and April 19, 1972 as well as the subsequent order dated October 1, 1974. The only legal hurdle on the exercise of the said revisional power could be the principle of res judicata which was not available. The principle of estoppel cannot be invoked to impose a limitation on the exercise of revisional power of the Central Government.

9. In the result, the appeal is. allowed, the judgment of the High Court under appeal is set aside and the writ petition filed by respondent No. 1 is dismissed.

10. No costs.