

(1998) 08 MAD CK 0107
In the Madras High Court

V. Karnal Durai

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 21-08-1998

Acts Referred:

Citation : (1999) 1 MLJ 542

Hon'ble Judges : K. Sampath, J

Bench : Division Bench

Judgement

K. Sampath, J.—The point in the present writ petition relates to the retrospective operation of the Rules framed under the Tamil Nadu Minor Mineral Concession Rules, 1959 (hereinafter referred to as the Rules).

2. As regards retrospective operation of any statute or rule, it has been stated in Halsbury's Laws of England (Fourth Edition) Volume 44 page 570 as follows:

The general rule is that all statutes, other than those which are merely declaratory or which relate only to matters of procedure or of evidence, are prima facie prospective, and retrospective effect is not to be given to them unless, by express words or necessary implication, it appears that this was the intention of the legislature.

At page 574 it is stated as follows:

The presumption against retrospection does not apply to legislation concerned merely with matters of procedure or of evidence; on the contrary, provisions of that nature are to be construed as retrospective unless there is a clear indication that such was not the intention of Parliament.

3. In Maxwell on "The Interpretation of Statutes" Twelfth Edition page 215 at 222 it is stated as follows:

The presumption against retrospective construction has no application to enactments which affect only the procedure and practice of the courts. No person

has a vested right in any course of procedure, but only the right of prosecution or defence in the manner prescribed for the time being, by or for the court in which he sues, and if an Act of Parliament alters that mode of procedure he can only proceed, according to the altered mode. "Alterations in the form of procedure are always retrospective, unless there is some good reason or other why they should not be.

4. In *K. Eapen Chako v. The Provident Investment (P). Ltd.* AIR 1976 S.C. 2610. The Supreme Court observed as follows:

A statute has to be looked into for the general scope and purview of the statute and at the remedy sought to be applied. In that connection the former state of the law is to be considered and also the legislative changes contemplated by the statute. Words not requiring retrospective operation so as to effect an existing statutory provision, prejudicially ought not to be so constructed. It is a well-recognised rule that statute should be interpreted if possible so as to respect vested rights, where the effect would be to alter a transaction already entered into, where it would be to make that valid which was previously invalid, to make an instrument which had no effect at all, and from enactments merely affect procedure and do not extend to rights of action. (See: *Re Joseph and Co. Ltd.* (1875) 1 Ch. D. 48). If the Legislature forms a new procedure alterations in the form of procedure are retrospective unless there is some good reason or other why they should not be. In other words, if a statute deals merely with the procedure in an action, and does not affect the rights of the parties it would be held to apply *prima facie* to all actions, pending as well as future.

5. The prayer in the writ petition is for a certiorarified mandamus calling for the records of the first respondent State of Tamil Nadu represented by the Secretary, Industries Department relating to the order passed in G.O.D.No. 107, Industries (MMC (I) Department, dated 4.5.1998, confirming the order of the second respondent passed in proceedings No. 6021/B-3/95, dated 27.3.1996 insofar as it restricts the period of lease upto 31.3.1998, quash the same and direct the respondents to permit the petitioner to quarry sand from S.F.No. 721/1B and 2B over an extent of 3.24.0 hectares in Vaippar Village, Vilathikulam, Taluk for a full period of three years on the following allegations: The petitioner's offer in his tender specifying the amount of Rs. 1,75,000 per year for lease of sand quarry in river poromboke in the lands already referred to, was rejected by the District Revenue Officer being in charge of the District Collector by exercising the powers under Rule 8(6)(ii) of the Rules on 22.3.1995. A statutory appeal under Rule 36(e)(2) of the Rules was preferred before the Commissioner of Geology and Mining, the second respondent herein. The second respondent by his order dated 27.3.1996 set aside the order of the third respondent and directed him to grant lease for the rest of the period upto 31.3.1998, which was less than the three years period advertised for which the petitioner had given his tender. Aggrieved, the petitioner presented a second appeal before the first respondent in person on 24.4.1996.

In the meantime, without prejudice to his right to get the full period of lease for three years the petitioner executed the lease deed on 17.6.1996 and commenced quarrying operation from the said date. The first respondent not having disposed of the second appeal preferred by the petitioner for a considerably long period, the petitioner filed Writ Petition No. 4639 of 1998 for relief. By order dated 31.3.1998, this Court directed the first respondent to dispose of the appeal within four weeks from the date of production of the copy of the order. The petitioner was required to appear before the Deputy Secretary to Government, Industries Department, on 27.4.1998. The petitioner as well as his Advocate appeared on that day and presented the case. Thereafter, by order dated 4.5.1998 the Secretary to Government rejected the appeal erroneously and without properly appreciating the case. The Deputy Secretary who heard the matter did not pass the order. Aggrieved, the present writ petition has been filed.

6. A counter has been filed and among other things, it is contended that the petitioner is not entitled for lease beyond 31.3.1998 as it is against the provisions of Rule 8(a)(ii) of the Rules as it previously existed at the time the petitioner submitted his tender. The petitioner also had executed the lease deed on 17.6.1996 without protest. As per the notification the petitioner would not be entitled to have a lease granted beyond 31.3.1998. As per the then Rules if the lease deed could not be executed before the first date of April in the financial year of the lease period, due to administrative delay the leases would be entitled for proportionate reduction in the annual lease amount in the first year of the period. This has been scrupulously followed in the instant case. Having executed the agreement for lease, only upto 31.3.1998, the petitioner cannot claim extension as of right.

7. Admittedly Rules were amended to the following effect:

In Clause (a), (i) to Rule (8) including the provisos the following Sub-clause shall be substituted, viz.,

The date of commencement of the period of a quarrying lease under this rule shall be the date on which the lease deed is executed.

There is no dispute that this amendment came into effect on 19.12.1996 during the pendency of the second appeal before the first respondent. The first respondent passed orders only after direction by this Court in W.P.No. 4639 of 1998 on 27.4.1998.

8. Mr. V.T. Gopalan, learned senior counsel for the petitioner, made the following submissions:

The person who passed orders in the appeal was the Secretary to Government, while the person who heard the appeal of the petitioner was the Deputy Secretary to Government and this was in violation of the fundamental principles of natural justice as has been laid down by the Supreme Court in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation

and Another, . The learned senior counsel further submitted that the Rules as on the date of the disposal of the appeal alone should have been followed and the lease should have been executed for a period of three years. The learned senior counsel relied on the judgment of the Federal Court in AIR 1941 5 (Federal Court) . The learned senior counsel also relied on three judgments of Govindarajan, J. in identical matters.

9. In Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, . The Supreme Court observed that,

It was a fundamental principle of natural justice that the authority empowered to decide a matter must have no bias in it and another, no less fundamental, was that where the Act provided for a personal hearing, the authority that heard the matter must also decide it.

According to the learned Senior Counsel, the matter was heard by the Deputy Secretary and orders were passed by the Secretary. This is against established legal norms. There has been violation and the order is liable to be set aside.

10. However, having regard to the fact that the amended Rules will have retrospective operation, it is not necessary to set aside the order of the first respondent on the first ground.

11. In AIR 1941 5 (Federal Court) , the Federal Court held that,

In the exercise of its appellate jurisdiction the Federal Court has power not only to correct any error in the judgment under review but to make such disposition of the case as justice requires. And in determining what justice does require, the court is bound to consider any change either in fact or in law, which has supervened since the judgment was entered.

12. In Amarjit Kaur Vs. Pritam Singh and Others, relied on by the learned senior counsel the earlier judgment of the Federal Court has been referred to and approved and the Supreme Court referred to the judgment in Krishnamachariar v. Mangammal ILR (1902) Mad. 91 to the effect that the hearing of an appeal is under the processual law of this country in the nature of a rehearing, and that it is on the theory of an appeal being in the nature of a rehearing that the courts in this country have in numerous cases recognised that in moulding the relief to be granted in a case on appeal, the Court of Appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against.

13. Govindarajan, J. in W.R.No. 6952 of 1997 and W.P.No. 4134 of 1979 etc. batch following the decision in Sambandam and Another Vs. Guru Chandrasekaran and Others, and other decisions observed as follows:

In view of the settled principle, the authorities have to apply the law which is existing on the date of the grant of lease. The lease was granted in this case on 14.7.1997. On this date the existing rules, as set out earlier is in force. If that is

so, the respondent cannot apply the provisions which is not in existence. It is mentioned that the fixation of the lease period is from the first day of the first financial year. The existing rule specifically mentions that the date of commencement of the period over which the quarrying lease is granted shall be the date on which the lease deed is executed.

The learned judge directed the respondent to execute the lease deed fixing the three year period of lease from the date of execution of the lease in respect of the lands in question in that case.

14. Even at the beginning of the order the rules relating to retrospective operation of statute have been adverted to.

15. In view of the established legal position there is no escape from the conclusion that the lease deed executed restricting the period only upto 31.3.1998 is clearly erroneous.

16. Consequently, the writ petitioner is entitled to succeed and the impugned order is quashed and a direction will issue to the third respondent to execute a lease deed in favour of the writ petitioner for a period of three years from the date of the lease deed was executed, viz., 17.6.1996. In other words, the lease will be valid for a period of three years from 17.6.1996. Suitable documents will have to be executed as between the petitioner and the third respondent. The writ petition is allowed in the manner indicated above. There will be no order as to costs.

17. In view of the order passed in the main writ petition, no further orders are necessary in W.M.P.Nos. 11698 of 1998 and 11699 of 1998.