

(2017) 04 BOM CK 0267
In the Bombay High Court
Case No : 730 and 792 of 2011

Vishal Vinayak Bandekar

APPELLANT

Vs

The Revision Authority, & Anr.

RESPONDENT

Date of Decision : 27-04-2017

Acts Referred:

Constitution of India, Article 226, Article 226(2), Article 226(1), Article 226(1A) - Power of High Courts to Issue certain writs - Power of High Cour

Citation : (2017) 04 BOM CK 0267

Hon'ble Judges : M. S. Sonak

Bench : SINGLE BENCH

Advocate : S. G. Dessai, A. V. Pavitran, Mahesh Amonkar, A. Razaq, Neha Kholkar

Judgement

1. Heard Mr. S. G. Dessai, the learned Senior Advocate with Mr. Pavitran for the petitioner in both the petitions, Ms. A. Razaq, Government Advocate for respondent no.2 in W.P.No.730/2011, Ms. Neha Kholkar, Additional Government Advocate for respondent no.2 in W.P.No.792/2011 and Shri Mahesh Amonkar, Central Government Standing Counsel for respondent no.1 in both the petitions.
2. In both the petitions, rule. With the consent and at the request of the learned Counsel for the parties, rule is made returnable forthwith.
3. The learned Counsel for the parties agree that substantially common issues of law and fact arise and, therefore, it will be appropriate if these petitions are disposed of with the common judgment and order. However, for the sake of convenience, brief reference shall be made to the facts and dates in W.P.No.792/2011.
4. The challenge in both these petitions, is to the orders made by the State Government rejecting the petitioner's applications for renewal of mining leases and the orders made by the Central Government rejecting the Revision Petition

instituted by the petitioner as against the orders made by the State Government.

5. At the outset, Ms. Razaq and Ms. Kholkar relying upon the decision of the Hon'ble Supreme Court in the case of Madan Gopal Rungta Vs. Secretary, Government of Orissa; AIR 1962 SC 1513 objected to the entertainment of the present petitions on the ground that the orders made by the Central Government cannot be challenged before this Court, since the office of the Central Government cannot be said to be situated within the territories, over which this Court exercises territorial jurisdiction. They point out that even the facts in the case before the Supreme Court are virtually identical to the facts in the present case to the extent that in the case before the Supreme Court, the challenge was to the order made by the Central Government in exercise of revisional jurisdiction in relation to renewal of mining leases.

6. In Madan Gopal Rungta (supra), reliance is placed on the earlier decision of the Hon'ble Supreme Court in the case of Election Commission, India Vs. Saka Venkata Subba Rao; AIR 1953 SC 210, in which same view has been taken.

7. Mr. S. G. Dessai, the learned Senior Advocate for the petitioner, however, submits that the decisions in the case of Madan Gopal Rungta (supra) and Saka Venkata Subba Rao (supra), no longer represent the correct position in law. He points out that by the 15th and 42nd amendment to the Constitution of India, the provisions of Article 226 were amended, precisely to overcome the effect of the said two decisions as also certain other decisions, which had taken the same view. Mr. Dessai submits that after the constitutional amendments, the High Court is empowered to exercise jurisdiction in relation to the territories within which the cause of action wholly or in part arises, notwithstanding that the seat of such Government or Authority or the residence of such person are not within those territories. Mr. Dessai places reliance upon the provisions contained in Article 226(2) of the Constitution of India, in support of his submissions.

8. The decisions in the case of Madan Gopal Rungta (supra) and Saka Venkata Subba Rao (supra) were rendered in the context of the provisions of Article 226 prior to 15th and 42nd amendment to the Constitution of India. The decision in Madan Gopal Rungta (supra) was delivered on 15/03/1962. The statement of Objects and Reasons to the Constitution (15th Amendment), which came into force on 28/12/1962, makes specific reference to the difficulties arising on account of the circumstance that the seat of the Central Government being in New Delhi and Punjab High Court alone having jurisdiction in respect of such seat, and proceeds to introduce Article 226(1A) in the Constitution, which makes it clear that the power of the High Court conferred by clause (1) of Article 226 to issue directions, orders or writs to any Government, Authority or person, may also be exercised by any High Court exercising jurisdiction in relation to the territories, in which the cause of action, wholly or in part, arises for the exercise of such powers, notwithstanding the seat of State Government or authority or the residence of such person is not within those territories. By the Constitution (42nd) Amendment, which came into force with effect from 07/09/1976 such

provision was retained, but numbered as clause (2) of Article 226 of the Constitution of India.

9. Presently, Article 226 of the Constitution of India reads thus :-

"226. Power of High Courts to issue certain writs-

(1) Notwithstanding anything in Article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibitions, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard,

makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme court by clause (2) of Article 32."

[Emphasis supplied]

10. The aforesaid change in position has been noticed by the Hon''ble Supreme Court in Oil and Natural Gas Commission Vs. Utpal Kumar Basu; 1994((4) SCC 711 and Navinchandra Majithia Vs. State of Maharashtra; 2000(7) SCC 640.

11. In Utpal Kumar Basu (supra), the Hon''ble Supreme Court at paragraph nos.5

and 10 has observed thus :

"5.Clause (1) of Article 226 begins with a non obstante clause- notwithstanding anything in Article 32- and provides that every High Court shall have power "throughout the territories in relation to which it exercises jurisdiction", to issue to any person or authority, including in appropriate cases, any Government, "within those territories" directions, orders or writs, for the enforcement of any of the rights conferred by Part III or for any other purpose. Under clause (2) of Article 226 the High Court may exercise its power conferred by clause (1) if the cause of action, wholly or in part, had arisen within the territory over which it exercises jurisdiction, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. On a plain reading of the aforesaid two clauses of Article 226 of the Constitution it becomes clear that a High Court can exercise the power to issue directions, orders or writs for the enforcement of any of the fundamental rights conferred by Part III of the Constitution or for any other purpose if the cause of action, wholly or in part, had arisen within the territories in relation to which it exercises jurisdiction, notwithstanding that the seat of the Government or authority or the residence of the person against whom the direction, order or writ is issued is not within the said territories. In order to confer jurisdiction on the High Court of Calcutta, NICCO must show that at least a part of the cause of action had arisen within the territorial jurisdiction of that Court. That is at best its case in the writ petition.

10. The submission of the learned counsel for NICCO was that clause (2) was introduced in Article 226 of the Constitution to enlarge the scope of the writ jurisdiction of the High Court. The Supreme Court in *Saka Venkata Subba Rao* case while interpreting Article 226 as it then stood observed as under:

"The rule that cause of action attracts Jurisdiction in suits is based on statutory enactment and cannot apply to writs issuable under Article 226 which makes no reference to any cause of action or where it arises but insists on the presence of the person or authority "within the territories" in relation to which the High Court exercises jurisdiction."

Thus, this Court ruled that in the absence of a specific provision in Article 226 on the lines of the Code of Civil Procedure, the High Court cannot exercise jurisdiction on the plea that the whole or part of the cause of action had arisen within its jurisdiction. This view was followed in subsequent cases. The consequence was that only the High Court of Punjab could exercise jurisdiction under Article 226 of the Constitution against the Union of India and other bodies located in Delhi. To remedy this situation, clause (1-A) was inserted by the 15th Amendment Act, 1963, to confer on the High Courts jurisdiction to entertain a petition under Article 226 against the Union of India or any other body or authority located in Delhi if the cause of action has arisen, wholly or in part, within its Jurisdiction. Clause (1- A) was later renumbered as clause (2) of Article 226. Therefore, the learned counsel for NICCO is right that this amendment was

introduced to supersede the view taken by this Court in the aforesaid case. But as stated earlier, on a plain reading of clause (2) of Article 226, it is clear that the power conferred by clause (1) can be exercised by the High Court provided the cause of action, wholly or in part, had arisen within its territorial limits."

[Emphasis supplied]

12. In *Navinchandra Majithia* (supra), the Hon'ble Supreme Court speaking through Thomas J., who concurred with Mohapatra J. at paragraphs 34 to 37 has observed thus :-

"34. When the Constitution was framed, Article 226, as it originally stood therein provided that

"every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, orders or writs..."

Some of the decisions rendered by different High Courts during the earlier years of the post- Constitution period have given a wider perspective regarding the jurisdiction of the High Court and pointed out that a High Court can exercise powers under Article 226 even in respect of tribunals or authorities situated outside the territorial limits of its jurisdiction if such tribunal or authority exercises powers in such a manner as to affect the fundamental rights of persons residing or carrying on business within the jurisdiction of such High Court [vide *K. S. Rashid Ahmed v. Income Tax Investigation Commission*; AIR 1951 Punj 74, *M. K. Ranganathan V. Madras Electric Tramways (1904) Ltd*; AIR 1952 Mad 659, *Aswini Kumar Sinha v. Dy. Collector of Central Excise and Land Customs*; AIR 1952 Ass 91]. It was Subba Rao, J. (as the learned Chief Justice then was) who observed in *M. K. Ranganathan* case supra that :

"If a tribunal or authority exercises jurisdiction within the territories affecting such rights it may reasonably be construed that the authority or the tribunal functioned within the territorial jurisdiction of the High Court and, therefore, is amenable to its jurisdiction."

35. But a Constitution Bench of this Court has held in *Election Commission, India v. Saka Venkata Subba Rao* AIR 1953 SC 210 thus :

"The power of the High Court to issue writs under Article 226 of the Constitution is subject to the two-fold limitation that such writs cannot run beyond the territories subject to its jurisdiction and the person or authority to whom the High Court is empowered to issue writs must be amenable to the jurisdiction of the High Court either by residence or location within the territories subject to its jurisdiction." "

36. It was the said decision of the Constitution Bench which necessitated the Parliament to bring the Fifteenth Amendment to the Constitution by which Clause

(1-A) was added to Article 226. That clause was subsequently renumbered as Clause (2) by the Constitution Forty Second Amendment. Now Clause (2) of Article 226 reads thus:

"226. (2) The power conferred by Clause (1) to issue directions, orders or writs to any Government authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

37. The object of the amendment by inserting Clause (2) in the Article was to supersede the decision of the Supreme Court in *Election Commission v. Saka Venkata Subba Rao* (Supra) and to restore the view held by the High Courts in the decisions cited above. Thus the power conferred on the High Courts under Article 226 could as well be exercised by any High Court exercising jurisdiction in relation to the territories within which "the cause of action, wholly or in part, arises" and it is no matter that the seat of the authority concerned is outside the territorial limits of the jurisdiction of that High Court. The amendment is thus aimed at widening the width of the area for reaching the writs issued by different High Courts."

[Emphasis supplied]

13. In the light of the aforesaid legal position arising after the Constitution 15th Amendment with effect from 28/12/1962, it is quite clear that the High Court is entitled to exercise powers conferred by clause (1) of Article 226 in relation to the territories, in which cause of action wholly or in part arises, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories. It is pertinent to note that in this case, there is no dispute that substantial portion of the cause of action has arisen within the State of Goa. Properties over which the renewal of mining lease was applied for are situated in the State of Goa. It is the State Government, which had declined renewal of the mining lease. Accordingly, the objections to territorial jurisdiction based upon the rulings in the cases of *Madan Gopal Rungta* and *Saka Venkata Subba Rao* (Supra), cannot be upheld.

14. Turning to the facts, there is no dispute that the predecessor-in-title of the petitioner was a concessionaire in respect of the mines in question i.e. under T.C. No.71/1953 and 108/1953. These concessions were granted by the erstwhile Portuguese Regime under Decree No.20/09/1906. With effect from 23/05/1987, Goa, Daman and Diu Mining Concessions (Abolition and Declaration of Mining Leases) Act, 1987 (Act of 1987) enacted by the Parliament, came into force. In terms of the Act of 1987, mining concessions were declared as mining leases under the Mines and Minerals (Development and Regulations), Act, 1957 (Act of 1957). Section no.5(1) of the Act of 1987 provided that the concession holder shall be deemed to be mining lessee and such lease shall be deemed to have

been extended upto the period of six months from the date the Act of 1987 receives assent. Section 5(2) of the Act of 1987 also provided that on the expiry of 6 months" period, if the lessee so desires, the lessee can renew the mining lease to the maximum period for which such lease can be renewed under the 1987 Act.

15. The petitioner applied for renewal somewhere on 22/11/1988, which renewal was rejected by the State Government on 16/01/1990 on the ground that the renewal application was not accompanied by an approved mining plan. At the relevant point of time, rule 22(3)(e) of Mineral Concession Rules, 1960 (MCR, 1960) required the approved mining plan to be annexed to the mining renewal application. The petitioner instituted Revision Applications before the Central Government, which came to be rejected by an order dated 29/01/1998.

16. The petitioner contends that with effect from 27/09/1994, rule 22(3)(e) of MCR, 1960 was omitted from the rule book and consequently, it is his case that the requirement of approved mining plan to accompany the mining renewal application was no longer applicable. It is also the case of the petitioner that the challenge to the Act of 1987 was pending, initially before this Court and thereafter, before the Hon"ble Supreme Court and since there was some interim order in operation, the petitioner did not deem it appropriate to immediately challenge the orders dated 16/01/1990 made by the State Government and 29/01/1998 made by the Central Government. The petitioner points out that despite the aforesaid orders, the State government, raised demands towards dead rent, which demands were satisfied by the petitioner.

17. The petitioner, thereafter, applied for second renewal on 17/09/2007, which renewal application was rejected by the State Government by an order dated 09/02/2010 mainly on the ground that the first renewal application having been rejected, there was no question of considering the second renewal application. The petitioner instituted Revision Petitions before the Central Government, which came to be dismissed by order dated 21/10/2010. Hence, the present petition.

18. If the memos of the Revision Petitions in both the cases, are perused, it is apparent that several contentions were raised by the petitioner in support of his alleged entitlement for renewal of mining leases. However, if the impugned orders are perused, it appears that the Revisional Authority has not even adverted to such contentions, leave alone considered the same. The impugned orders made by the Central Government virtually repeated the reasons stated by the State Government for rejection of the renewal applications. The petitioner's contention with regard to change in the legal position based upon omission of rule 22(3)(e) of MCR, 1960, has not been considered. So also, the effect of the Act of 1987 upon the position of the petitioner's leases, has not been considered. Minimum that was expected by the Revisional Authority was to at least consider such contentions raised by the petitioner whilst disposing of the Revision Applications.

19. Ms. Razaq and Ms. Kholkar, however, submits that since in both the petitions, the petitioner's first renewal applications had been rejected and since such rejection has attained finality, there was no question of considering the petitioner's second renewal applications.

20. At this stage, it is not necessary to go into the aforesaid issue since even this issue can be once again examined by the Central Government along with the other contentions raised by the petitioner. Mr. Dessai submits that the impact of other contentions upon this aspect is required to be considered and the Central Government has failed to consider the same. At this stage, it is not for this Court to decide upon the rival contentions because, in this case, from the perusal of the impugned orders, it does appear that the Central Government has not even adverted to such contentions or at least considered the same, in the first instance. On this short ground, the impugned orders made by the Central Government are liable to be set aside and the matter remanded to the Central Government for fresh consideration of Revision Applications of the petitioner's, in accordance with law and on their own merits.

21. Accordingly, rule is made absolute in the two petitions, to the extent that the impugned orders made by the Central Government are set aside and the matters are remanded to the Central Government for consideration of the petitioner's Revision Applications in accordance with law and on their own merits.

22. It is clarified that this Court has not adverted to the merits of the matter and, therefore, all the contentions of the concerned parties, including the contentions of Ms. Razaq and Ms. Kholkar, are expressly left open for the determination by the Revisional Authority again, on their own merits and in accordance with law.

23. In the circumstances of the present case, there shall be no orders as to costs.