

State of Rajasthan

Vs

Hari Shankar Rajendra Pal

Civil Appeal No. 21 of 1963

(CJI P. B. Gajendragadkar, V. Ramaswami – I, Raghuvar Dayal JJ)

19.03.1965

JUDGMENT

RAGHUBAR DAYAL, J.

This appeal, on certificate granted by the Rajasthan High Court, raises the question of the applicability of the provisions of Chapter IV and thereby of r. 30 of the Rajasthan Minor Mineral Concession Rules, 1955, hereinafter called the rules, to the grants of mining leases under the provisions of Chapter V of the rules.

The facts leading to this appeal are briefly these. The respondent obtained the mining lease for extracting sand-stone from the mines in certain area from the Government of Rajasthan in 1956. The lease was granted as a result of auction. The period of the lease was from April 1, 1956 to July 31, 1959. The respondent applied for extension of the period upto two years in view of the mandatory nature of the main provision of r. 30 and simultaneously also applied for the renewal of the lease for a further period in accordance with the provisions of the proviso to r. 30. The first prayer was refused and the State Government extended the period of the lease at first by six months and later by another two months. The respondent thereafter filed a writ petition under Art. 226 of the Constitution in the High Court and prayed for issue of a writ of mandamus directing the striking down of the order of the Government renewing the lease for 8 months and directing the State of Rajasthan further to extend the lease in the first instance for two years from July 30, 1959 to bring it in conformity with the period of lease specified in r. 30 and to renew, after the expiry of such extended period, for a further period of 5 years under r. 30 of the rules. The State of Rajasthan appellant, contested the petition on the ground that the provisions of chapter IV of the rules did not apply to the grant of mining leases by auction or tender provided for by Chapter V of the rules and that in any case the initial period short of 5 years must be deemed to have been at the desire of the respondent and that any further extensions of the period of the lease under the proviso was in the discretion of the Government and consequently, the respondent could not claim to have the period of the lease extended for a period of 5 years.

The High Court held that the provisions of Chapter IV of the rules were applicable as far as possible to the grant of mining leases by auction under Chapter V that though the State Government had to give a lease for 5 years in view of r. 30, yet the shorter period of the lease in favour of the respondent must, in the circumstances, be deemed to have been at his request and that the respondent was entitled to an extensions of the lease by a further period of 5 years in accordance with the provisions of the proviso. It therefore directed the State Government to renew the lease for a period of 5 years from the expiry of the original lease with option of further renewal, if so desired, by another period of 5 years subject to the conditions mentioned in r. 30. It is against this order that

this appeal has been filed.

Two questions are raised for the appellant in this Court. The first is that the provisions of Chapter IV of the rules do not govern the grant of mining leases by auction under the provisions of Chapter V of the rules. The other is that the proviso to r. 30 gives discretion to the State Government to extend the period of the lease for any period not exceeding 5 years that it is not mandatory that the State Government must extend the lease by a period of 5 years as held by the High Court. We are of opinion that the High Court has come to a right conclusion on these two points.

Section 5 of the Mines and Minerals (Regulation and Development) Act, 1948 (Act LIII of 1948) empowered the Central Government to make rules, by notification in the official Gazette, for regulating the grant of mining leases or for prohibiting the grant of such leases in respect of any mineral in any area. In the exercise of its power the Central Government framed the Mineral Concession Rules, 1949, hereinafter referred to as the Central rules. Clause (ii) of r. 3 of the Central rules defined 'minor mineral' to mean 'building stone' etc., which admittedly included sand-stone. Rule 4 stated that the rules would not apply to minor minerals the extraction of which would be regulated by such rules as the State Government might prescribe. The State of Rajasthan made the rules in 1955 in the exercise of the powers conferred by r. 4 of the Central rules.

Chapter IV of the rules deals with grant of mining leases and consists of rr. 19 to 32. Chapter V deals with grant of mining leases and royalty collection contracts by auction or by inviting tenders or by other methods and consists of rr. 33 to 42. Apart from the heading of Chapter IV being in general terms and so applicable to the grant of all mining leases by whatever process, a comparison of the provisions of rules in Chapter IV and those in Chapter V shows that all the incidents of a grant of a mining lease contemplated and provided for in Chapter IV are not provided for by Chapter V. This leads to the irresistible conclusion that matters not provided for by rules in Chapter V with regard to mining leases will be covered by provisions relating to those matters in Chapter IV, as these provisions deal with the essential incidents affecting grant of mining lease.

We may therefore go through the provisions of Chapter IV to have a comprehensive view of what the rules provide and to see whether all of them are such that the Legislature could have intended their not applying to leases granted under Chapter V or whether they, by their nature, can apply to leases granted under Chapter IV only. Rule 19 deals with restrictions on grant of mining leases. There is no corresponding rule in Chapter V. It is inconceivable that the restrictions mentioned in r. 19 be not applicable to the grant of mining leases by auction or tender or any other method. The matters of substance are the contents of the lease, the persons to whom the minerals about which leases can be granted and not the procedure to be followed in granting the lease. Chapter IV deals with the grant of mining leases on applications for such a grant. Chapter V mainly deal with grant of mining leases by auction or by inviting tenders or by other methods. It is clear that the procedure to be followed for the grant of leases if left to the discretion of the Government though, ordinarily, in the absence of general or special orders, the procedure laid down in Chapter IV is to be followed. Sub-r. (3) of r. 33 provides that leases by public auction or tender under sub-r. (1) shall be given only in such a case as the Government may, by general or special order, direct and r. 42 gives discretion to Government to adopt any other method for leasing out minor mineral deposits in the interest of industry and development of the deposit. The restriction laid down by r. 19 are that no mining lease is to be granted in respect of any minor mineral notified by Government in that behalf, that no mining lease for the notified mineral will be granted to a person unless he holds a valid certificate of approval and that no mining lease shall be granted to an individual person unless he be a citizen of India except with the prior approval of Government. These restrictions are of a general

nature and salutary in effect and the Legislature, in our view, could not have made them inapplicable to the grant of mining leases under the rule in Chapter V.

Rules 20 to 23 applicable to applications for grant of mining leases. They mention the person to whom an application is to be made, the fee which is to accompany such application, what the application should contain and how priority is to be given if there be more than one application in respect of the same land. These rules cannot, by their nature, apply to the grant of mining leases by auction or tender or by any other method.

Rule 24 provides for the Register of Mining Leases. Most of the particulars to be noted in this Register relate to the grant of mining leases on application but some of the particulars could be entered with respect to the mining leases granted by following the other procedure and therefore its provisions can partially apply to the mining leases granted under Chapter V. Rule 25 will also usually apply to applications only, as in the case of granting a mining lease otherwise, the Government would have ordinarily already decided the area for which the lease is to be given. Rule 26 lays down a restriction on the length and breadth of an area to be leased, but gives discretion to the Government to relax the provisions of the rule. This rule is of general application, subject to the discretion in the Government to relax its provisions and there is no reason why it would have been made inapplicable to mining leases granted under Chapter V. Rule 27 provides that the boundaries of the area covered by a mining lease shall run vertically down below the surface towards the centre of the earth. Such a specification of the boundaries of the area is very essential in connection with mining leases and the rule about it must apply to all mining leases granted under Chapter V.

Rule 28 deals with deposit of security and applies to applicants for mining leases and not to those who are to get leases under Chapter V. There is a specific provision for security under r. 37(iv), in Chapter V.

Rule 29 deals with transfer of mining leases and provides that a lessee with the previous sanction of the Government and subject to certain conditions could transfer his lease or any right or interest therein. There is no corresponding rule in Chapter V. This indicates that r. 29 will apply to the transfer of mining leases granted under Chapter V. There is no good reason why such a lessee be deprived of his right to transfer or be free from any restriction laid down in r. 29. Rule 30 deals with the period of lease and is the rule which is to be considered by us.

Rule 31 lays down the conditions subject to which the mining lease is granted. This rule has 24 clauses dealing with various matters. It is clear from r. 41 in Chapter V dealing with the execution of lease that the terms and conditions mentioned in r. 31 would be included in the lease executed by the lessee to whom a mining lease is granted under Chapter V. Of course, r. 41 provides that such terms and conditions would be so modified as might be necessary by reason of the provisions of rr. 33 and 34.

Sub-r. (2) of r. 33 provides that in cases of grant of mining leases by auction or by inviting tenders, the annual dead-rent of the lease would be determined in the auction or by tender as the case may be and may exceed the rate given in the Second Schedule to the rules. Rule 34 deals with payment of royalty through the contractor for royalty collection. These provisions of rr. 33(2) and 34 would require modification in conditions (3) and (4) of r. 31.

It has been urged that the specific mention of r. 31 in r. 41 indicates that the other rules in Chapter IV are not applicable to the grant of mining leases under Chapter V. We do not agree and are of

opinion that the specific mention of r. 31 is made in r. 41 in view of the fact that it was to apply with suitable modifications. Rules in Chapter IV which apply as they stand do require no specific mention for their applicability to the grant of mining leases under Chapter V.

Rule 32 deals with the currency of the lease and provides that the currency of the lease shall be from the date of communication to the party unless otherwise stated, that the lessee shall have no right to continue work or to accumulate stock on or after the date of termination of the lease however unless otherwise sanctioned by Government and that all accumulated stock and immovable property left in the leased out area after the date of expiry of the lease shall be deemed to be Government property. The provisions of this rule are essential to define the currency of the mining lease granted under Chapter V and to the rights of the lessee and the State in regard to continuing the work after the date of termination of the lease or to the matter lying in the leased out area after the expiry of the lease. There is no corresponding rule in Chapter V. Rule 32 must be deemed to apply to the leases granted under Chapter V.

It would thus appear that the provisions of rr. 19, 26, 27, 29 and 32, by their nature, must apply to the leases granted under Chapter V as they are expressed in general terms and can apply to all mining leases. If they were not intended to apply to mining leases granted under Chapter V, the legislature would have made an express provision about it and would have also made some suitable corresponding provisions for the leases granted under Chapter V.

We are therefore of opinion that the contention that the rules under Chapter IV do not apply to mining leases granted under Chapter V is not sound and that the High Court rightly held that they do apply so far as applicable to mining leases granted under Chapter V.

Rule 30 deals with the period of lease. This rule will apply to leases granted under Chapter V both because the rules under Chapter IV apply to such leases and because there is no corresponding rule in Chapter V. Reference has been made to rr. 38 and 39 in Chapter V which deal with certain payments if the period of lease is not more than 1 year or is more than one year respectively. The fixing of the period of the lease is an essential term of the lease. Rule 32 in Chapter IV provides when the lease is to commence. The lease should also provide the time when it should terminate. That can be done either by setting down the actual date or by expressing the period of the lease. Rules 38 and 39 provide for different matters. They apply when the period of the lease is already fixed under the terms of the lease and in accordance with the rules.

The next matter to be considered is the construction of r. 30 which reads :

"Period of lease - A mining lease may be granted for a period of 5 years unless the applicant himself desires a shorter period;

Provided that the period may be extended by the Government for another period not exceeding 5 years with option to the lessee of renewal for another equivalent period, in case the lessee guarantees investments in machinery, equipments and the like, at least to the tune of 20 times the value of annual dead-rent within 3 years from the grant of such extension. The value of the machinery, equipment and the like shall be determined by the Government. Where the lease is so renewed, the dead rent and the surface rent shall be fixed by the Government within the limits given in the Second Schedule to these rules, and shall in no case exceed twice the original dead rent and surface rent respectively, and the royalty shall be charged at the rates in force at the

time of renewal".

It is urged for the appellant that the State Government has discretion to fix the initial period of the lease as well as to fix the period of the extension of the lease after the expiry of the initial period. The High Court did not agree with this submission of the State and, we think, rightly.

The word 'may' in the main provision of the rule must mean 'shall' and make the provision mandatory. This is obvious from the last portion of the provision. If the State Government had discretion to fix any period of the lease, the last portion of the provision would be redundant. The Government could fix the period of the leases at any period shorter than five years. But the provision requires the fixing of a period shorter than 5 years only when the applicant desires a shorter period. The period of the lease therefore can be shorter than five years only when the applicant desires and not when the Government desires. Government must fix the period of the lease at 5 years in the absence of any expression of desire by the applicant for taking the lease for a shorter period.

The word 'may' in the proviso in regard to the extension of the period by Government should also be construed as 'shall', so as to make it incumbent on Government to extend the period of the lease if the lessee desires extension. Of course no question for the extension of the lease can arise if the lessee himself does not wish to have the lease for a further period. It is on account of this option existing in the lessee that the word 'may' has been used in this context. The lessee has been given a further option to have the lease extended by another five years but such an option is to be respected only if he gives the guarantee referred to in the proviso. If he is not prepared to give such a guarantee, he cannot exercise the option for the extension of the lease and the lease must automatically expire at the end of the first extended period.

The first extension has to be for five years. Government has no option in that regard as well. This appears from what is provided in connection with the option of the lessee for a second extension. The second extension, at his opinion, is to be for a period equivalent to the period of the first extension. The guarantee to be given is to the effect that the lessee would invest in machinery etc., at least to the tune of 20 times the value of the annual dead-rent within 3 years from the grant of such extension. There is no point in taking a guarantee to make certain investments within three years if the second extended period of the lease is of a shorter duration as it can be if Government has a discretion in granting extension for a period shorter than 5 years. If the first extension be for less than three years the second extension cannot be for a longer period. If the expression 'such extension' refers to the extension on the exercise of the option of the lessee at the end of the first extension, it would be a preferable construction of the proviso to hold that the Government is bound to extend the period of the lease for five years at the expiry of the initial period of the lease and that the lease will have the option for renewal of the lease for another five years in case he guarantees the requisite investment as mentioned in the proviso. Another way of looking at the provision - and a better way - is that the expression 'such extension' refers to the first extension which the Government grants at the expiry of the initial term of the lease. This means that at the time of granting the first extension the lessee has to choose whether he should also ask for the option for a second extension. The option would then be an integral part the agreement about the first extension. This is also indicated for the language of the proviso linking the period of extension with the option for renewal of the lease for an equivalent period. If no option as such is given at the time and is not a term of the lease, the lessee may not be able to ask for a second extension at the end of the first extended period of the lease. When he secures the exercise of such an option as a term of the lease, he has to guarantee that within the first three years of the extended period of the lease he will make

the heavy investment mentioned in the proviso with the resultant confidence that he will have undisturbed lessee rights for a period of 10 years for the expiry of the initial term of the lease. Whichever construction be put, with respect to the time when the term about option is to be settled between the parties, it must follow that the period of the first extension must be five years and not less.

We are further of opinion that the High Court is right in holding that the respondent's taking the lease for a period upto July 31, 1959 must amount to his expressing a desire for having a lease for that period. If he did not so desire, he need not have bid and taken the lease for the period for which it was to be given by auction.

It has been argued for the State that the High Court granted relief to the respondent in excess of what he had prayed, inasmuch as the High Court had directed the Government to renew the respondent's first lease for a period of 5 years with option to further renewal if so desired for another period of 5 years subject to the condition mentioned in r. 30 when the respondent had not prayed for any direction with respect to the option for a second extension of the lease. The contention is not sound. The relief claimed after the expiry of the period of the first lease, which according to the respondent, was also to be extended by two years, reads :

"and then, after the expiry of the period of five years the lease be renewed for a period of five years under Rule 30 of Rajasthan Minor Mineral Concession Rules, 195".

The renewal was to be under r. 30. Rule 30 itself requires extension of the lease with option in the lessee for obtaining another extension for an equivalent period. This option must be a term of the lease and therefore must be incorporated in the lease at the time when the first extension is granted. The prayer therefore should be deemed to include a prayer for an extension of 5 years with necessary option. Even if the prayer was not so made, the High Court was competent to make the direction in accordance with the requirements of the proviso to r. 30. The direction for renewal is, in our view, in full accordance with what the proviso requires.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

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