SUPREME COURT OF INDIA

Kangra Valley State Co., Ltd.

Vs.

State of Punjab

(C.A.Vaidialingam, J.M. Shelat and V Bhargava JJ.)

19.12.1969

JUDGMENT

J.M. SHELAT, J.

1. The question arising in this appeal, is whether the appellant-company's application bearing the date September 20, 1961 for renewal of a mining lease was time barred and therefore not a valid application.

2. The company is a public limited company having its registered office in New Delhi and is engaged in quarrying slate and marketing the same. The company had secured a perpetual lease dated March 22, 1879 of certain lands in villages Majra and Manhatti in District Gurgaon. The Controller of Mining Leases under powers reserved under Section 16 of the Mines & Minerals (Regulations & Development) Act, 67 of 1957 (hereinafter called the Act) read with Rule 6 of the Mining Leases (Modification of Terms) Amendment Rules, 1960 modified the said lease reducing its period so as to expire on March 22, 1962. In consequence of certain correspondence which took place between the company and the Director of Industries, Punjab, the company's secretary met that official on September 12, 1961 when he was advised that the company should apply for renewal of lease in Form J if it so desired. Consequently, it was said that the company made an application bearing the date September 20, 1961 which was received by the Director of Indus-tries on October 9, 1961. The company thereafter applied for and obtained on November 10, 1961 a certificate of approval under Section 5 of the Act. The Director of Industries, however, rejected the said application on, two grounds (1) that it was beyond the time prescribed under Rule 28 of the Mining Concession Rules, 1960, and (2) that it was not a valid application under Form J as it was not accompanied by a copy of the certificate, of approval. The company thereupon filed a revision application under Rule 54 of the said rules to the Central Government. The Central Government by

its ordch dated December 14, 1962 rejected it on the ground that it saw no valid ground for interfering with the decision of the, Government of Punjab Ag'-grieved by the said orders, the company filed a writ petition in the High Court of Punjab challenging the validity, of the said two orders. In the petition the company, averred that the said application for renewal, though received by the Director of Industries on October 9, 1961, was "sent by the petitioner on 20-9-1961". The petition also averred that the company had obtained the certificate of approval as required by Section 5 of the Act and though it did not accompany the said , application it was obtained before the Director passed his said order and, therefore, the certificate was within the knowledge of the State Government. In the petition the company challenged the said orders on the grounds that there was no valid ground to hold the said application to be time-barred, that there was no provision in the Act or the rules requiring the company to be in possession of the certificate of approval at the time of the said application, that the company had obtained that certificate and that fact was known to the Director, and lastly, that the order of the Central Government not being a speaking order was invalid.

3. The learned Single Judge of the High Court, who heard the writ petition, held that though the said application was rejected on two grounds, one of them was demonstratively untenable the authority having recognised that the company had obtained the certificate of approval under Section 5(1) of the Act. He further held that the Director of Industries having relied upon two grounds for rejection, one of which was untenable, it was difficult to say which of the two grounds was considered sufficient by the Central Government to uphold the rejection in view of its order not containing any reasons whatsoever. The learned Judge relying upon the decision in Harinagar Sugar Mills Ltd. v. Jhunjhunwala that the order of the Central Government not being a speaking order was invalid. A Letters Patent appeal against the said order was heard by a Division Bench of the High Court. The Division Bench held that as the said application was dismissed on two grounds, namely, of limitation and the failure to obtain the certificate of approval by the time the said application was made, even if the ground as to the certificate was not available, the other ground of limitation was available and therefore the Central Government was entitled to hold that that being sufficient it would not interfere with the order of the State Government. The Division Bench held that the decision in Dhirajlal v. C.I.T. A.L.R. 1955 S.C. 271 relied on by the learned Single Judge was not relevant as by reason of some irrelevant evidence having been considered by the authority in that case it became impossible to appreciate which evidence, relevant or irrelevant, was found sufficient by it. Since in this case there were two grounds which were distinct in themselves and were the basis of rejection, if the ground of non-possession of certificate was not tenable, the other ground of limitation was sufficient for upholding the order of rejection. The learned Single Judge, therefore, was not correct in allowing the writ petition on the ground that it was not possible to ascertain on which of the two grounds the revision application was rejected. The Division Bench then held that "no challenge appears to have been raised in the writ petition on factual, position regarding limitation", and therefore, the rejection was sustainable on the ground of limitation. As to the order of the Central Government not being a speaking order, the Division Bench distinguished Harinagar's case on the ground that, the impugned order was an appellate order, and not a revision order. Relying on Syed Yakoob v. Radhakrishnan the Division Bench held that the order need not be a speaking order where it is a revisional order and one of affirmance. The appellant company challenges in this appeal by special leave the order of the Division Bench which allowed the appeal and dismissed its writ petition.

4. Mr. Gupte for the company raised three contentions (1) that the order of the Central Government not being a speaking order was invalid, (2) that Rule 28 of the said rules does not prescribe any time

limit within which an application for renewal has to be made and even if it does it is only directory and not mandatory, and (3) that the rules do not require that a certificate/of approval should, accompany the application for renewal.

5. On the first contention Mr. Gupte relied on Harinagar Sugar Mills Ltd. v. Jhunjhunwala , Shivji Nathubhai v. The Union of India and Prag Das Umar Vaishva v. The. Union of India C.A. No. 657 of 1967 Dated August 17, 1967. Assuming that the order of the Central Government was not a valid order by reason of reasons hot having been recorded therein, the question that we should address ourselves is whether under Article 136 of the Constitution we should interfere with the said order even if we find, that application for. renewal was time-barred.

Rule 28, as it stood at the material time, was as follows (1) Applications for renewal of a mining lease shall be made to the State Government in Form J at least six months before the expiry of the lease.

(6) If an application for the first renewal of a mining lease made within the time referred to in Sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of six months or ending with the dale of receipt of the orders of the State Government thereon, which ever is shorter.

Form J in the form for an application for renewal, item (v) whereof requires the applicant to give the number and date of the certificate of approval and also, that he should annex a copy of it to the application. The first question is what, is the meaning of the word 'made' in Rule 28(1). The company's contention was that there is a distinction between the word 'made' and the word 'received', and that if it can satisfy that the application was made in time it would be enough compliance of Rule 28(1), no matter when it was received by the State Government. The Director of Industries, therefore, was not correct in holding that as the application was received by him on October 9, 1961. it was not a valid one.

6. Assuming that the word 'made' in Rule 28(1) means sent to the State Government the question still is whether the application was made within time? In para 8 of the writ petition filed by the company it was no doubt stated that though, the State Government received the application on October 9, 1961 it was sent by the company on September 20, 1961. In the grounds challenging the validity of the orders of the two governments no ground, however, was taken that as the application was made on September 20, 1961 it was within time even if it was received on October 9, 1961. It is significant that though the writ petition was verified by the company's secretary who ought to have personal knowledge whether the application was sent on September 20, 1961 or not, he did not swear to this fact as being within his personal knowledge. The verification, on the contrary, was couched in ambiguous language, namely, "true to the best of deponent's knowledge and belief". In the affidavit in reply by the Government the allegation that the application was sent on September 20, 1961 was not admitted. In its rejoinder' the company repeated that the application was sent on September 20, 1961. Therefore, in spite of the date of sending the application being put in issue, no attempt was made by the company to show from its despatch book or any other record or otherwise that it was actually despatched on the date alleged. No argument even was advanced before the High Court that as it was made on September 20, 1961 it was within time, and therefore, the Director of Industries was wrong in dismissing it as time-barred. No attempt was even made to show whether it was sent by personal delivery or despatched by post. Since it was . sent from New Delhi to Chandigarh, presumably it was sent by post, but no evidence was produced to show when it was

despatched. The mere fact; therefore, that the application bore the date September 20, 1961 cannot mean that it was made on that day and was, therefore, within time. We hold, therefore that the application was not made within the prescribed time and was time-barred.

7. The contention of Mr. Gupte, however, was that Rule 28 is not mandatory but is only directory, and therefore, even if the application was time-barred, the Director of Industries ought to have considered it on merits. The rule uses the word "shall" but it is well settled that the use of that word is not conclusive of the provision in which it is used as being mandatory. We shall, therefore, have to examine the object or purpose of the rule and consider other provisions in the Act and the Rules to ascertain whether it was intended to be mandatory.

8. The Act was passed inter alia for the regulation of mines and development of minerals under the control of the Union of India. It was passed under Entry 54 of List I in the VIIth Schedule to the Constitution which carves out for the Union of India the power to make laws relating to mines and minerals from out of the power of the State Legislatures under Entry 23 of List II. Section 2 of the Act, therefore, contains the requisite declaration 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. Section 18 of the Act expressly enacts that it shall be the duty of the Central Government to take all steps as may be necessary for the conservation and development of minerals and for that purpose make such rules as it thinks fit. Since the development of mines and minerals way to by regulated and controlled by the Central Government, Section 4 lays down a ban against any one undertaking any prospecting or mining operations except under a licence or a lease. The anxiety of Parliament while enacting the Act was to see that conservation and development of mines and minerals should be in a proper and regular manner. It is, therefore, that Section 5 provides that no prospecting licence or mining lease should be granted by a State Government unless the applicant holds a certificate of approval from that Government. . With the mandate ,which the Central Government received from the Act, the Central Government made elaborate rules to ensure that development of mines and exploitation of minerals proceeded along regulated lines and there was no procrastination in the development. This is the trend expressed in clear language throughout the rules. Rule 15, for instance, provides that a deed granting a prospecting licence shall be executed within 90 days of the communication of the order, of the State Government granting such a licence. If no such deed, is executed within the aforesaid time due to the fault of the applicant the State Government is authorised, to revoke, it Rule 22 provides for an application for a mining lease and its renewal. For the latter, it provides that it shall be made at least six months (now extended to 12 months under the amended rule) before the expiry of the lease. Rule 23 provides for the acknowledgment by the authority in the prescribed form of the receipt of the application for grant or renewal of a lease. Rule 24 provides time limit for disposal of the application made under Rule 22. Clause 3 of Rule 24 provides that if an application is not disposed of within the prescribed time it shall be deemed to have been refused. This provision was obviously made to ensure disposal within the time and to prevent an applicant having to wait indefinitely till his application was disposed of by the State Government and to enable him to make a revision application under Rule 54.

9. It is clear that the object of these rules laying down time limits for making applications, acknowledging their receipts and disposal thereof was to see that the development of mines and exploitation of minerals took place both in a regulated manner and without any undue delay. Rule 28 with which we are immediately concerned not only lays down the time within which a renewal application is to be made but also provides, that if it is not disposed of before, the expiry of the lease

the period of the lease shall be deemed to have been extended for a further period of six months or ending with the date of the receipt of the orders of the State Government thereon whichever is shorter The object of providing time limit for the renewal application was that sufficient time before the expiry of lease was available to the State Government to decide whether the renewal should be grafted or not, for, if the renewal was not granted the land in question would be available for re-grant and the State Government would have to declare that the land was so available for re-grant, invite applications for the grant of the lease and follow the procedure laid down in the Act and the Rules therefore. It is obvious that if the time of six months prescribed in rules 22 and 28 was not available to the State Government it would not be possible for it to decide within time and to fallow the procedure for granting a fresh lease to someone else. The result would be that mining operations would be delayed in that particular land and to that extent the object of the Act and the duty imposed by Section 18 on the Central Government would be delayed or defeated. Considering the scheme and the object of the Act and the rules it is not possible to agree with Mr. Gupte that Rule 28 was not intended to be mandatory and is only directory.

10. Mr. Gupte next contended that Rule 28 laying down the period of limitation for renewal application was ultra vires Section 13(2) of the Act, as the time limit prescribed in the rule does not fall under any of the matters set out in that sub-section. Assuming that it is so, Sub-section 1 authorises the Central Government to make rules for regulating the grant of mining leases and the Central Government in pursuance of that power can make rules including the one laying down the time within which a renewal application should be made. A grant of renewal of a lease is granting a mining lease, and therefore, fixing time within which an application for it should be made would be regulating the grant of a lease. A similar contention was considered in King Emperor v. Sibnath Banerjee 72 I.A. 241 at 258 in connection with Rule 25 of the Defence of India Rules made under Section 2 of the Defence of India Act, 1939, as amended in 1940, and the Privy Council held that though the rule did not fall under any of the matters enumerated in Sub-section 2 of Section 2, the rule was competent as it would be one which could be made under the generality of powers contained in Sub-section 1 of Section 2. Their Lordships held that the function of Sub-section 2 was merely an illustrative one considering that the rule making power was conferred by Sub-section 1 and the rules referred to in the opening sentence of Sub-section 2 were the rules which were authorised by and made under Sub-section 1. Therefore, the provisions of Sub-section 2 were not restrictive of Sub-section 1 and that indeed was expressly stated by the words "without prejudice to the generality of the powers conferred by Sub-section 1", The general language of Sub-section 1, "there fore, amply justified the terms of Rule 26 and avoided the contention that it was not justified under Sub-section 2. These observations were followed with approval in State of Kerala v. Shri M. Appukutty(1) where the vires of Rule l7 of the Madras General Sales Tax Rules made under Section 19 of the Madras General Sales fex Act; 9 of 1939 were challenged and the challenge was rejected. The argument, therefore, that Rule 28, was invalid by reason of its not falling under any one of the matters set out in Section 13(2) is without substance.

11. In the view that we take that Rule 28 is a valid rule and that it is mandatory, the application was clearly beyond the time appointed under the rule, the company having failed to establish that it was made, as it alleged, on September 20, 1961. In that view it would not be necessary for us to go into the questions whether the order of the Central Government not being a speaking order was bad or whether the application by the company was not a valid one inasmuch as the company was not possessed a certificate of approval at the date when the application was made and its copy was not annexed thereto as required by Form J. Assuming that the application was a valid one and that the requirement of annexing the copy of the certificate of approval was not mandatory and assuming

further that the order of the Central. Government was not a valid one, the only thing that we could be asked to do would be to send back the matter to the Central Government directing it to pass a proper order. But in the view that we have taken of Rule 28 and consequently of the application for renewal being time-barred, the Central Government can only reject once again the revision application adding in its order that the Director was right in rejecting the application as it was time-barred. Such an order of remand would serve no useful purpose so far as the appellant company is concerned. That being so, it is not worth our while to interfere under Article 136 with the order of the Central Government and ask that Government to pass a fresh order.

12. In the result the appeal must fail and is dismissed with costs.