Amritlal Nathubhai Shah and Others

Vs

Union Government of India and Another

Keshavlal Nathubhai Shah

Vs

Union Government of India and Another

Civil Appeal No. 1554-1564

(CJI A.N. Ray, N.L.Untwalia, P.N. Shinghal JJ)

24.08.1976

JUDGMENT

SHINGHAL, J. -

1. These appeals by certificate are directed against a common judgment of the High Court of Gujarat dated May 4, 1972. We have heard them together and will dispose them off by a common judgment. The facts giving rise to the appeals are similar in essential respects and may be shortly stated.

2. There are large deposits of bauxite in Gujarat State. The State Government issued a notification on December 31, 1963, intimating that the lands in all the talukas of Kutch district and in Kalyanpur taluka of Jamnagar district had been reserved for exploitation of bauxite in the public sector. A similar notification was issued on February 26, 1964, in respect of all areas of Jamnagar and Junagarh districts. Even so, the appellants made applications to the State Government for grant of mining leases for bauxite in the reserved areas. There were no other applications to that effect, but the State Government rejected the applications of the appellants on the ground that, as had been notified, it had reserved the areas for the public sector. The appellants felt aggrieved and applied to the Central Government for revision of the State Government's orders. The revision applications were dismissed after obtaining the comments of the State Government and the orders of rejection were upheld. In doing so, the Central Government referred to the fact that the minerals "vested" in the State Government which was "owner of minerals" and that the State Government had the "inherent right" to reserve any particular area for exploitation in the public sector. It also pointed out that once a notification had been issued by the State Government for the reservation of any particular area, no party could, as of right, claim any mineral concession in the reserved area. While making its orders of rejection, the Central Government explained the circumstances in which mineral leases were granted to Carborundum Universal Limited and the Gujarat Mineral Development Corporation. The appellants felt aggrieved, and challenged the orders of the State Government and the Central Government by writ petitions to the Gujarat High Court. It was urged that the State Government had no authority to reserve any area of land for exploitation of bauxite in the public sector, and that the refusal to grant mining leases to the appellants was based on a ground which was altogether extraneous and irrelevant and could not be supported with reference to the

Mines and Minerals (Regulation and Development) Act, 1957, hereinafter referred to as the Act, and the rules made thereunder. It appears that although the writ petitions were based on that short ground, the controversy in the High Court ranged over a wider field including that relating to the scope of the executive power of the State Government in respect of the impugned reservations. The High Court therefore examined the controversy with reference to Articles 162 and 298 of the Constitution, and the relevant entries in the lists in the Seventh Schedule, but we are not concerned with that aspect of the matter as the arguments before us have been confined to the provisions of the Act and to the Mineral Concession Rules, 1960, hereinafter referred to as the Rules, made thereunder.

3. It may be mentioned that in pursuance of its exclusive power to make laws with respect to the matters enumerated in entry 54 of List I in the Seventh Schedule, Parliament specifically declared in Section 2 of the Act 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. The State Legislature's power under entry 23 of List II was thus taken away, and it is not disputed before us that regulation of mines and mineral development had therefore to be in accordance with the Act and the Rules. The mines and the minerals in question (bauxite) were however in the territory of the State of Gujarat and, as was stated in the orders which were passed by the Central Government on the revision applications of the appellants, the State Government is the "owner of minerals" within its territory, and the minerals "vest" in it. There is nothing in the Act or the Rules to detract from this basic fact. That was why the Central Government stated further in its revisional orders that the State Government had the "inherent right to reserve any particular area for exploitation in the public sector". It is therefore quite clear that, in the absence of any law or contract etc. to the contrary, bauxite, as a mineral, and the mines thereof, vest in the State of Gujarat and no person has any right to exploit it otherwise then in accordance with the provisions of the Act and the Rules. Section 10 of the Act and Chapters II, III and IV of the Rules, deal with the grant of prospecting licences and mining leases in the land in which the minerals vest in the Government of a State. That was why the appellants made their applications to the State Government.

4. Section 4 of the act provides that no person shall undertake any prospecting or mining operation in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under the act and the rules made thereunder, and that no such licence or lease shall be granted "otherwise than in accordance with the provisions of the Act and the rules". But there is nothing in the Act or the Rules to require that the restrictions imposed by Chapters II, III or IV of the rules would be applicable even if the State Government itself wanted to exploit a mineral for, as has been stated, it was its own property. There is therefore no reason why the State Government could not, if it so desired, "reserve" any land for itself, for any purpose, and such reserved land would then not be available for grant of a prospecting licence or a mining lease to any person.

5. Section 10 of the Act in fact provides that in respect of minerals which vest in the State, it is exclusively for the State Government to entertain applications for the grant of prospecting licence or mining lease and to grant or refuse the same. The section is therefore indicative of the power of the State Government to take a decision, one way or the other, in such matters, and it does not require much argument to hold that power included the power to refuse the grant of a licence or a lease on the ground that the land in question was not available for such grant by reason of its having been reserved by the State Government for any purpose.

6. We have gone through sub-section (2) and (4) of section 17 of the Act to which our attention has

been invited by Mr. Sen on behalf of the appellants for the argument that they are the only provisions for specifying the boundaries of the reserved areas, and as they relate to prospecting or mining operations to be undertaken by the Central Government, they are enough to show that the Act does not contemplate or provide for reservation by any other authority or for any other purpose. The argument is however untenable because the aforesaid sub-section of Section 17 do not cover the entire field of the authority of refusing to grant a prospecting licence or a mining lease to anyone else, and not deal with the State Government's authority to reserve any area for itself. As has been stated, the authority to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory, which vest in it. But quite apart from that, we find that Rule 59 of the Rules, which have made under Section 13 of the Act, clearly contemplates such reservation by an order of the State Government. That rule deals with the availability of areas for the grant of a prospecting licence or a mining lease in such cases, and provides as follows :

> 59. Availability of certain areas for grant to be notified - In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose, the State Government shall, as soon as such land become again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in Rule 58.

7. Mr. Sen has conceded that it is a valid rule. It clearly contemplates reservation of land for any purpose, by the State Government, and its consequent non-availability for the grant of a prospecting licence or mining lease during the period it remains under reservation by an order of the State Government. A reading of Rules 58, 59 and 60 makes it quite clear that it is not permissible for any person to apply for a licence or lease in respect of a reserved area until after it becomes available for such grant and the availability is notified by the State Government in the Official Gazette. Rule 60 provides that an application for the grant of a prospecting licence or a mining lease in respect of an area for which no such notification has been issued, inter alia, under Rule 59, for making the area available for grant of a licence or a lease, would be premature, and "shall not be entertained and the fee, if any, paid in respect of any such application shall be refunded". It would therefore follow that as the area which are the subject-matter of the present appeals had been reserved by the State Government for the purpose stated in its notification, and as those lands did not become available for the grant of a prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature. The Central Government was thus justified in rejecting the revision applications which were filed against the orders of rejection passed by the State Government.

8. We have gone through the decisions in State of Orissa v. Union of India (AIR 1972 Ori 68 : ILR 1971 Cut 732) and M/s. Lal and Co. Ltd. v. Union of India (AIR 1975 Pat 44 : 1974 Pat LJR 60), on which reliance has been placed by Mr. Sen. In the former case the High Court of Orissa took the view that reservation of a particular area for being exploited in the public sector by the State could not be said to be a purpose for which it could be reserved under Rule 59. In taking that view the High Court went by the consideration that the subject of the legislation in the Act became an "exclusive subject for legislation by Parliament" and there was no residuary power of working out mines and minerals without observing the conditions prescribed by the Act and the Rules. The High Court therefore went wrong in not appreciating that even though the field of legislation had been covered by the declaration of the Parliament in Section 2 of the Act, that could not justify the inference that the State Government thereby lost its right to the minerals which vested in it as a

property within its territory. The High Court has also erred in taking the view that the State was required to obtain a licence or a lease even though it was itself the owner of the land and there was nothing in the Act or the Rules to show that the provisions for the obtaining of a licence or lease would still be applicable to it.

9. In S. Lal and Co. Ltd. v. Union of India, the High Court noticed the decision in State of Orissa v. Union of India, but it cannot be urged with any justification that the view expressed in it was followed by the Patna High Court. On the other hand, the Patna High Court followed the view which was taken by the Gujarat High Court in the judgment which is the subject-matter of the present appeals and held that the State Government has the power "to reserve certain areas for exploitation by itself or by a statutory corporation or for a company in a public sector". The controversy in that case was, however, examined with reference to the provisions of Article 298 of the Constitution. The two cases cited by Mr. Sen cannot thus be of any avail to the appellants.

10. For the foregoing reasons there is no merit in these appeals and they are dismissed with costs.

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