M/S. Shrikrishnadas Tikara

Vs

State Government of Madhya Pradesh and Others

Civil Appeal No. 667 of 1976

(V. R. Krishna Iyer, Jaswant Singh JJ)

22.03.1977

JUDGMENT

KRISHNA IYER, J. –

1. This appeal, by special leave, raises only a few points of law, although the stakes, counsel states, are substantial.

2. The appellant had a mining lease stretching over a period of 20 years from the respondent State of Madhya Pradesh. The grant of such licences is governed by the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act) and the rules framed thereunder. In particular we are concerned with Rule 27(5) framed by the Central Government in exercise of its powers under Section 13.

3. Right at the outset we may reproduce the relevant rule :

> Rule 27(5) : If the lessee makes default in payment of royalty as required by Section 9 or commits a breach of any of the conditions other than those referred to in sub-para (4), the State Government shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the State Government may, without prejudice to any proceeding that may be taken against him, determine the lease and forfeit the whole or part of the security deposit.

The admitted case of the parties is that certain breaches of the conditions which the appellant was bound to comply with had been committed. Consequently, a notice was issued to the appellant by the Collector of District Satna (under power delegated to him by the State Government which is the appropriate authority to take action when breaches are committed). This notice, dated October 15, 1973, itemised three breaches. The said communication stated :

> You have committed following breaches of the rules of the Mineral Concession Rules, 1960 in relation to the aforesaid mining lease :
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> (i) Against royalty for the period half-year ending June, 1973, Rs. 6062.75 paise not deposited;
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> (ii) Against surface rent for the period half-year ending June, 1973 Rs. 13.38 paise

not deposited. So deposit the aforesaid amount together with interest at the rate of 9% from September 16, 1973 and produce the challan;

(iii) Failure to instal the weighing machine.

The rule earlier quoted gives the lessee a period of 60 days to remedy the breaches complained of and it is the admitted case that the lessee did not do so. But a few months later, by letter dated March 22, 1974 the appellant replied by pleading that he had deposited the royalty and the surface rent, although out of time. Virtually it was a plea of 'guilty' because the reply stated 'It has been our endeavour to meet the commitments, but we regret the breach having been occurred due to conditions stated. Regarding weighing machine, we feel the same is beyond our means in the present circumstances and finances we have. The prayer was that the breach be condoned as a special case. Although the Collector has the power to issue the notice contemplated by the rule, the State Government has to take the decision regarding cancellation or otherwise. The government, however, passed an order, dated May 21, 1974 cancelling the contract and forfeiting the security deposit, in exercise of its powers under Rule 27(5) of the Mineral Concession Rules (for short, the Rules) set out earlier. This, in one sense, determined the lease but a little complication, which has formed the foundation of an argument, was created by the Collector concerned issuing a notice dated May 22, 1974 (a day after the State Government had cancelled the lease) complaining of the commission of breaches of the rules by the appellant and directing him to rectify the aforesaid breaches within 60 days from the receipt of the notice on pain of the contract being cancelled and the security amount being forfeited in the event of default. In substance, the breaches were the non-payment of royalty for the period subsequent to that covered by the former notice and the non-installation of the weighing machine at the mine. The notice would up with the statement : 'You should also appear along with complete record, pit pass etc., on June 3, 1974 for hearing in the office'.

4. When the appellant received the communication of the cancellation of his lease, he filed a revision to the Central Government as provided by the rules. After setting out the grounds the appellant pointed out that even if there were breaches of conditions, there was a discretionary power in the State Government not to cancel the license and the circumstances of the case justified such a course.

5. The appellant had, meanwhile, received the second notice from the Collector and so, whether warranted by the rules or not, he presented additional submissions specifically referring to the second show cause notice. The Central Government called for comments from the State Government and, presumably, from the other side. Eventually, the revisory authority, in exercise of its powers under Rules 55, dismissed the revision application. Thereupon a writ petition was filed in the High Court wherein the present appellant urged a case of waiver of the first notice on account of the issuance of the second notice. It was also contended that the lessee had not been given a reasonable opportunity to explain why his lease should not be cancelled. The High Court dismissed the writ petition and, in the appeal that has followed, Counsel has substantially repeated what has quite often been urged before the High Court but with the addition that there was no application of the mind by the State Government and that the Central Government had, in disposing of the revision, mixed up the breaches set out in the two notices, although the revision was only against the order passed by reason of the first notice. This, counsel contended, amounted to importation of extraneous considerations and vitiated the order of the Central Government.

6. We are distances away from any inclination to upset the judgment of the High Court. The plea of

waiver has no merit. Cases were cited before us - Indian and alien, and books were relied on laying down well-established propositions. On the facts, the doctrine of waiver cannot be attracted to the present case. The State Government cancelled the licence on May 21, thereby the lease came to an end. Obviously, without knowledge of this termination of the lease, the Collector sent the second notice dated May 22, covering a subsequent period but not beyond the date of the cancellation of the lease. There was no intentional abandonment which is essential for 'waiver'. Indeed, the Collector could not have had even knowledge of the cancellation of the lease by the State Government. Moreover, once the lease had been cancelled, it was beyond the Collector's powers by any act of his to bring the lease back to life.

7. The plea of waiver when it is pressed against the government has an uphill journey to make for success. Dealing with the plea of estoppel against the State, this Court recently held in Excise Commissioner v. Ram Kumar (1976) Suppl SCR 532 : (1976) SCC 540 : 1976 SCC (Tax) 360), 'It is now well-settled by a catena of decisions that there can be no question of estoppel against the government in the exercise of its legislative, sovereign or executive powers'. Generally a State is not subject to an estoppel to the same extent as an individual or a private corporation. Otherwise, it might be rendered helpless to assert its powers in government. Therefore as a general rule the doctrine of estoppel will not be applied against the State in its governmental, public or sovereign capacity (American Jurisprudence, II Edn. paragraph 123, p. 783). It is enough for our purposes in the present case to say that there is no case made out of intentional relinquishment of a known right by the State Government. Absent such voluntary and intentional abandonment of a non-existing advantage or benefit, waiver cannot be postulated. In this view, we reject the plea of waiver.

8. Nor are we impressed with the contention that natural justice has been breached. Here is a case where, admittedly, the conditions of the contract had been broken and the obligations under the rules had been violated. The reply to the show cause notice has set out all that need be set out. The facts are simple. The explanation is non-exculpatory. The only plea is for condonation. The lessee having been heard, natural justice has been complied with. The fact in the second notice by the Collector a personal hearing was offered, does not mean that the failure personally to hear the petitioner was a contravention of the cannon of natural justice in the first case. It is well-established that the principles of natural justice cannot be petrified or fitted into rigid moulds. They are flexible and turn on the facts and circumstances of each case. Has there been any unfair deal by the authority ? Has the party affected been hit below the belt ? Has he had a just opportunity to state his plea ? Having regard to the features of the present case, we are hardly satisfied that the order is bad on this score.

9. The last plea of non-application of the mind or taking into consideration of materials in the second notice has not been urged in this form, or perhaps at all, before the High Court. Even otherwise, there is no merit in it. The reference to the matters referred to in the second notice was made because of the additional submissions made by the appellant himself wherein he had adverted to the second show cause notice from the State Government. Moreover, no prejudice has been suffered by the appellant, on a fair reading of the Central Government's order. The breach is admitted. The plea is one for excuse, and the discretion has been exercised. It is not within the normal province of the court to demolish discretionary exercise of power in the absence of special vitiating features. There are none here. We conclude by dismissing the appeal. However, we feel that the consequences are serious, especially in the context of the comparatively less serious breaches. It is but appropriate, therefore, that even though we affirm the orders of the State Government, the Central Government and the High Court, we leave it open to the appellant to move the State Government for a reconsideration of the case, if it so chooses. We keep the door ajar although it is within the discretion of the State Government to close it against reconsideration.

10. In the circumstances of the case, the parties will bear their costs of the appeal in this Court.

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