

Ambalal Manibhai Patel

Vs

State of Gujarat

Civil Appeal No. 1729 of 1986

(V. D. Tulzapurkar, D. P. Madon JJ)

05.03.1986

ORDER

1. The above petition for special leave to appeal was heard along with Writ Petitions Nos. 1656 of 1981 etc. - D. K. Trivedi & Sons v. State of Gujarat (1986 Supp SCC 20) and Civil Appeals Nos. 706 of 1981 etc. - Ambalal Manibhai Patel v. State of Gujarat. All those writ petitions and civil appeals were disposed of by a Judgment delivered by us today. In view of our said Judgment leave to appeal is granted in the above petition and printing and preparation of the appeal record are dispensed with.

2. The appellant had filed in the Gujarat High Court a writ petition under Article 226 of the Constitution being Special Civil Application No. 138 of 1978, challenging the validity of the notification dated April 6, 1976, issued by the Government of Gujarat in the exercise of the power under Section 15(1) of the Mines and Minerals (Regulation and Development) Act, 1957, whereby the Government of Gujarat made the Gujarat Minor Mineral (Second Amendment) Rules, 1976, enhancing the rate of dead rent payable by the holders of quarry leases. The appellant's writ petition was dismissed by a learned Single Judge of the High Court. Thereupon, the appellant filed a Letters Patent appeal against the said order of dismissal being Letters Patent Appeal No. 62 of 1978. While the said Letters Patent appeal was pending, the Government of Gujarat issued a notification dated March 26, 1979, whereby it made the Gujarat Minor Minerals (Amendment) Rules, 1979, reducing the rates of royalty in respect of all minor minerals to a uniform rate of ten paise per metric tonne and enhancing the rates of dead rent. Several writ petitions were filed in the High Court challenging the validity of the said notification dated March 26, 1979, so far as the enhancement of the dead rent was concerned. The appellant's Letters Patent appeal as also those writ petitions were heard and disposed of by a common judgment reported as Sonbai Pethalji v. State of Gujarat (1980 XXI (2) Guj LR 530) holding both the said notification dated April 6, 1976, and March 26, 1979, to be ultra vires Section 15 of the said Act, and Article 19(1)(g) of the Constitution. Thereupon the Government of Gujarat issued a Circular dated February 12, 1981, directing that in view of the said judgment of the High Court royalty would continue to be charged at the rates specified in the notification dated October 29, 1975. We have in our aforesaid Judgment reversed the said decision of the Gujarat High Court in Sonbai case (1980 XXI (2) Guj LR 530). In that Judgment we have upheld the validity of the notification dated March 26, 1979, but have held that the notification dated April 6, 1976 is bad in law but on a wholly different ground, namely, that it violates the prohibition contained in the proviso to Section 15(3) of the said Act.

3. In the present appeal, the contention of the appellant is that what was challenged before the High Court in Sonbai case (1980 XXI (2) Guj LR 530) was the enhancement of dead rent made by the said notification dated March 26, 1979, and the High Court, therefore, could not quash the said

notification in its entirety, that is to say, it could not quash the said notification in its entirety, that is to say, it could not quash also that part of the said notification which reduced the rates of royalty. The appellant has also challenged the validity of the said Circular dated February 12, 1981, issued by the Government of Gujarat.

4. As we have in our aforesaid Judgment upheld the validity of the said notification dated March 26, 1979, and further held that the directions contained in the said Circular dated February 12, 1981, are invalid and inoperative, the present appeal requires to be allowed.

5. We, accordingly, allow the appeal and restrain the State of Gujarat and its officers from acting upon the directions contained in the said Circular dated February 12, 1981, and further direct the State of Gujarat to collect royalty and dead rent in accordance with the provisions of the notification dated March 26, 1979, for the period commencing from April 1, 1979, and ending on June (sic) 1981, namely, the period during which the rates prescribed by the said notification were in force. There will be the same directions with respect to the payment or refund, as the case may be, as given in our aforesaid Judgment.

6. The parties will bear and pay their own costs of this appeal.

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