

Assam Sillimanite Ltd.

Vs

Union of India and Others

Civil Appeal No.408 of 1978

(Kuldip Singh, Smt. Fathima Beevi JJ)

10.12.1991

JUDGEMENT

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FATHIMA BEEVI, J.:-

1. Assam Sillimanite Limited is a public limited company mainly carrying on the business of mining and export of Natural Khasi Sillimanite. The Company in pursuance of the condition in the lease deed dated 10-4-1963 established a Refractory Plant for manufacturing sillimanite corundum and other associate minerals at Ramgarh in the State of Bihar. The initial investment was Rs. 1.75 crores. The Refractory Plant went into operation in the year 1964 and was closed down in July 1972.

2. The Undertaking was take over by the Central Government under Section 18AA of the Industries (Development & Regulation) Act for a period of three years which was extended for a further period of one year with effect from 1-11-1972. Later, by the Assam Sillimanite Limited (Acquisition & Transfer of Refractory Plant) Act, 1976 (in short 'the Act'), the plant was acquired by the Government. The Act received assent of the President on February 11, 1976.

3. The Act provides for the acquisition and transfer of the right, title and interest of the Assam Sillimanite Limited in respect of its Refractory Plant and-for matters connected therewith or incidental thereto. The Preamble of the Act reads:-

"WHEREAS it is urgently necessary to augment the supplies of refractories to meet the essential requirements of the iron and steel industry;

.....

AND WHEREAS special type of refractories, including high alumina refractories, needed by the iron and steel industry may be manufactured at the Refractory Plant of the Assam Sillimanite Limited and such manufacture will enable the country to progressively reduce the import of such special type of refractories;

.....

AND WHEREAS for the purpose of augmenting the supplies of refractories to meet the essential requirements of the iron and steel industry, it is necessary to acquire the right, title and interest of the Assam Sillimanite Limited in respect of its Refractory

Plant;

Be it enacted by Parliament in the Twenty-sixth year of the Republic of India as follows."

4. Sections 3, 9 and 10 relevant for the purpose of the present case are as follows :-

"3. Refractory Plant to vest in the Central Government.- On the appointed day, the Refractory Plant shall, by virtue of this Act, stand transferred to, and the right, title and interest of the Company in relation to its Refractory Plant shall vest absolutely in, the Central Government."

"9. Amount to be paid for transfer and vesting of Refractory Plant-

(1) The Company shall be given by the Central Government in cash and in the manner specified in Chapter VI, an amount of one crore seven lakhs and seventeen thousand rupees for the transfer to, and vesting in, it, under Section 3 of the Refractory Plant.

(2) The amount payable under sub-section (1) shall carry simple interest at the rate of four per cent. per annum for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the Central Government to the Commissioner.

(3) For the removal of doubts; it is hereby declared that the liabilities of the Company in relation to the Refractory Plant, other than those referred to in sub-section (2) of Section. 8, shall be met. from the amount referred to in sub-section (1), in accordance with the rights and interests of the creditors of the Company.

"10. Payment of other amount.- (1) In All addition to the amounts specified in Section 9, there shall also be given to the Company, in cash, by the Central Government an amount computed at the rate of rupees two thousand and five hundred per mensem for the deprivation of the Company of the management of its Refractory Plant during the period commencing on the 2nd day of November, 1972, and ending on the appointed day.

(2) In addition to the amount referred to in sub-section (1), there shall be given by the Central Government, in cash, to the Company, simple interest at the rate of four per cent. per annum on the amount computed at the rate specified in sub-section (1), for the period commencing on the appointed day and ending on the date on which payment of such amount is made by the Central Government to the Commissioner."

5. Section 30 contains the declaration as to the policy of the State thus

"30. Declaration as to the policy of the State. - It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clause (b) of Article 39 of the Constitution."

6. The constitutional validity of the Act was challenged by the Assam Sillimanite Company Limited (for short the Company) in a writ petition filed before the Delhi High Court. By the impugned

judgment dated 29-11-1976, a Division Bench of the High Court dismissed the writ petition. This appeal by special leave is directed against the aforesaid judgment (reported in AIR 1977 Delhi 193).

7. Before the High Court, the appellant challenged the validity of the Act mainly on these grounds:-

(a) The Central Government could not pass, an order under Section 18AA of the Act without furnishing of the materials collected against the company and affording them an opportunity to explain the circumstances sought to be relied upon against the Company. The action is mala fide inasmuch as for the same plant the Government has been negotiating with the Company to purchase for the benefit of Bokoro Steels Limited and Hindustan Steels Limited.

(b) The Acquisition of plant under the Act is mala fide and is nothing but colourable exercise of jurisdiction. The Act has been passed when the matter relating to taking over of the management was sub judice.

(c) The amount of price payable under the Act is only illusory. The respondents have not taken into consideration the assets and liabilities of the plant while fixing the amount of compensation. The Company had ploughed all the resources in the Plant and will never be able to clear its liabilities incurred for the setting up of the plant which was put as a condition attached to the mining lease for sillimanite and the lease has also been prematurely and illegally terminated.

(d) The fixation or the determination amount is based on no norm or principle relevant for the purpose of arriving at the amount payable or in respect of the property acquired or requisitioned. The amount so fixed has no reasonable relationship with the value of the property. The amount has been fixed arbitrarily and, as stated, is illusory. The amount so fixed is a fraud on the power, denying the petitioner his fundamental right under Art. 31(2) of the Constitution.

8. The appellant prayed for a writ in the nature of certiorari quashing the Act and a writ in the nature of mandamus directing the respondents to refix the amount of price payable taking into consideration the assets and liabilities, potentialities and the present market value.

9. The High Court formulated the following two questions for consideration :-

1. Whether the amount of Rs. 1,97,17,000/- which is made payable to the Company by the Central Government under Section 9 of the Act and the other amounts payable under Section 10 of the Act is arbitrary, unreasonable and illusory and violating Article 31 (2) of the Constitution as it stands after the Constitution (Twentyfifth Amendment) Act, 1971?

2. Whether its constitutionality is not immune from attack in view of Article 31C because in reality it does not give effect to the policy of the State towards securing the principles specified in clause (b) of Article 39 despite the declaration to that effect contained in Section 30 of the Act?

10. Applying the ratio of the majority judgment in *Kesavananda Bharati v. State of Kerala*, 1973 Supp SCR 1 : (AIR 1973 SC 1461), that law can be challenged as being contrary to Article 31 (2) of the Constitution only if the amount payable under it is illusory and that the amount should bear

some relation to the value of the property-acquired though the relationship need not be reasonable, the High Court embarked upon the issue whether the amount fixed in the Act is not illusory but also has a reasonable relationship to the value of the property and is not unreasonable. The High Court said:-

"In our view, the amount can be said to be inadequate or small but it cannot be said that it has no relationship to the value of the property acquired. It cannot, therefore, be said to be illusory in the sense in which the word 'illusion' is defined in the Concise Oxford Dictionary or in the sense in which the word 'amount' has been used by Chandrachud, J. The attack on the constitutionality of the impugned law on the ground that it contravenes the concept of 'amount' in Article A (2) of the Constitution, therefore, fails." '

11. On the question whether the Act implemented the policy of Article 39 (b) and Is, therefore, protected by Article 31C, the High Court held that the object of the impugned legislation has a nexus to the policy underlying Article 39(b) and the Act is protected by Article 31 C from attack on the ground that it violates Article 31 (2).

12. In interpreting the key words of Article 39 (b) "the material resources of the community... distributed", the High Court said..-

"There is no reason why the material resources should include only the minerals but not the capital equipment by which raw materials are turned into industrial products or even the industrial products themselves particularly if they are capital goods.....

The words 'material resources' in our view have the same meaning as the word 'wealth' in this context. They both denote the total nonhuman resources of the wealth of the country. On this view, the Refractory Plant would be included in the phrase 'material resources'.

.....

In our view, the distribution here does not mean partitioning the property into various shares. What it means is that instead of being held by a company or a few individuals it should be held by the people as a whole so that the ownership and control is not held by a few but is held by the community as a whole. The distribution of the resources would then be more broadly based. In short, the vesting of such resources in the community leads to more economic equality because the resources would then be controlled and owned by the State or the community on behalf of the people as a whole rather than by some individuals."

With this perspective the Court concluded:-

"There cannot be any doubt that according to Art. 39(b), common good would be better served when the resources are owned and/or controlled by the community rather than when they are owned and controlled by a few individuals. This is more so when the management of these resources was regarded as bad by the Central Government.

.....

Since the object of the impugned legislation has a nexus to the policy underlying Art. 39(b), the impugned legislation is protected by Article 31C from attack on the ground that it violates Art. 31(2). The declaration made in S.30 of the legislation, therefore, rings true."

13. The judgment of the High Court is challenged before us contending that the ratio of the decision in Kesavananda Bharati's case (AIR 1973 SC 1461) (supra) has not been properly appreciated or applied by the High Court. According to the appellant, if the amount given in lieu of acquisition of property is illusory, arbitrary or cannot be regarded as compensation and bears no relationship with the property acquired, the Court could still strike down the law. On the facts in the present case, it is contended that the amount fixed is only illusory as after paying the liabilities the appellant will not only get nothing but would continue to be under liabilities and the fixation or determination of the amount is based on no norms or principles relevant. The appellant stated that a manufacturing plant cannot be said to be a material resource. The further contention is that the provisions of the Act are violative of the appellant's fundamental right guaranteed under Articles 14, 19(1)(f) and 31 of the Constitution, the Act makes hostile discrimination between persons similarly situated, it deprives the appellant of their property without the authority of a valid law and has been passed without following the provisions of Article 31 of the Constitution. They stated that the Act is confiscatory in nature and formal compliance with the conditions under Article 31 (2) is not sufficient to negate the protection of the guarantees contained in Articles 14 and 19(1)(f) The law spoken to in Article 31 (2) has to be a valid law which is within the competence of the legislature and does not impair the guarantee of other fundamental rights contained in Part III of the Constitution.

14. Shri P. C. Jain, learned counsel for the appellants, elaborated his arguments on the question whether the Act can claim protection under Article 31 C of the Constitution. The counsel highlighted the submission that in the circumstances of the case, the protection of Article 31 C is not available to the impugned legislation as it does not actually further the Directive Principles in Article 39(b) or (e) but, on the other hand, produces results contrary to them. Merely because Section 30 of the impugned Act contains a declaration that it is for giving effect to the policy of the State towards securing the principles specified in Article 39(b) of the Constitution, the Act would not be sheltered under the umbrella of Article 31C, it is maintained.

15. Article 39(b) in Part IV of the Constitution declares the policy to be followed by the State thus:-

"39. The State shall, in particular, direct its policy towards securing-

(a)

(b) that the ownership and control of the material resources of the community are so distributed as best to subserve the common good;"

16. The purpose of the Directive Principles is to fix certain social and economic goals for immediate attainment by bringing about a non-violent social revolution. Through such a social revolution the Constitution seeks to fulfil the basic needs of the common man and to change the structure of our society. It aims at making the Indian masses free in the positive sense and to achieve the Welfare State contemplated.

17. Articles 19(1)(f) and 31 guaranteeing right to property had been deleted from the Chapter of

Fundamental Rights by the Constitution (Fortyfourth Amendment) Act, 1978 and a new provision Article 300A had been inserted. Since the deletion of Article 31(2) by the Fortyfourth Amendment Act is not retrospective, the validity of any law made prior to 20-8-1979 shall be open to challenge on the ground of violation of Articles 19 (1)(f) and 31(2). Clause (2) of Article 31 was substituted by the Constitution (Twentyfifth) (Amendment Act, 1971 with effect from 20-4-1972. Article 31C was also inserted under the same amendment. The impugned Act is, therefore, governed by the provisions of the Constitution as they stood after the Twentyfifth Amendment and prior to Fortysecond and Fortyfourth Amendment Acts.

18. Article 31(1) provided that no person shall be deprived of his property save by authority of law. Amended clause (2) of Article 31 provided thus:-

"31 (2). No property shall be compulsorily acquired or requisitioned save for a public purpose and save by authority of a law which provides for acquisition or requisitioning of the property for an amount which may be fixed by such law or which may be determined in accordance with such principles and given in such manner as may be specified in such law and no such law shall be called in question in any court on the ground that the amount so fixed or determined is not adequate or that the whole or any part of such amount is to be given otherwise than in cash;
....."

19. Article 31C introduced by the Constitution (Twentyfifth) Amendment Act reads:-

"31C. Saving of laws giving effect to certain directive principles.- Not with standing anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in clause (b) or clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31 and no law containing a declaration that it is for giving effect to such policy shall be called in question in any Court on the ground that it does not give effect to such policy:

Provided that where such law is made by the Legislature of a State the provisions of this Article shall not apply thereto unless such law, having been reserved for the consideration of the President, has received his assent."

20. The question whether the substitution of the word 'amount' had withdrawn from Article 31 (2), the element of compensation for expropriation altogether and the scope for Judicial review relating thereto was considered in Kesavananda Bharti, (AIR 1973 SC 1461) (supra). The majority. agreed that the word 'amount' indicated that the law must provide for the payment of some amount in lieu of the expropriation. The Court could still invalidate the law as unconstitutional if it provided no amount or some amount which was illusory. The view of Chandrachud, J. (as he then was) which prevailed as the majority opinion is this (at p. 2051 of AIR).-

"The substitution of the neutral expression "amount" for "compensation" still binds the legislature to give to the owner a sum of money in cash or otherwise There is, however, intrinsic evidence in Art. 31(2) that it does not empower the State to confiscate or expropriate property. The obligation to pay an "amount" does not cannote the power not to pay any amount at all

mean that the amount fixed or determined to be paid cannot be illusory. The amount fixed for being paid to the owner is wholly beyond the pale of challenge that it is inadequate The principles evolved for determining the amount cannot be questioned on the ground that application of those principles the amount determined to be paid is inadequate, in the sense that it bears no reasonable relationship with the market value of the property. Thus the question whether the amount or the principles are within the permissible constitutional limits must be determined without regard to the consideration whether they bear a reasonable relationship with the market value of the property..... But to say that the amount does not bear reasonable relationship with the market value is different thing from saying that it bears no relationship at all. None whatsoever. In the latter case, the payment becomes illusory and may come within the ambit of permissible challenge."

21. The amended clause (2) of Art. 31 was thus upheld limiting the ambit of judicial review to the illusory nature of the amount fixed and the arbitrariness of the principle laid down for determination of the amount.

22. In *State of Karnataka v. Ranganatha Reddy*, (1977) 4 SCC 471 : (AIR 1978 SC 215), on a review of *Kesavananda Bharti* case (AIR 1973 SC 1461), the majority of the Judges concluded that the inadequacy of the amount cannot be a ground for challenge of the constitutionality of the law under Art. 31(2), but the Court could still strike down a law of acquisition or requisition if it provided for something which was arbitrary or illusory. The proposition that the compensation fixed by the law is not justiciable on the ground of its inadequacy has been affirmed in the subsequent decisions *vide Waman Rao v. Union of India*, AIR 1981 SC 271, *Sanjeev Coke Manufacturing Company v. Bharat Coking Coal Ltd.*, (1983) SCC 147: (AIR 1983 SC 239), *State of Tamil Nadu v. Abu Kavur Bai*, (1984) 1 SCC 515: (AIR 1984 SC 326) and *Tinsukhia Electric Supply Company Ltd. v. state of Assam* (1989) 3 SCC 709 : (AIR1990 SC 123).

23. Article 31 (2) by virtue of the Constitution (Twentyfifth) Amendment has knocked down the word 'compensation' and has substituted the word 'amount' which gives ample discretion to the State to fix a reasonable amount if the property of an individual is, taken over for public purpose. As a result of the amendment, it is now clear that the quantum of compensation provided by the law of acquisition cannot be subjected to judicial review on the ground that it is lower than the value of the property or that the Potential value of the property has not been included. It can no longer be contended that the very word 'compensation' as it existed in the original clause obliged the State to pay full and fair equivalent of the property taken.

24. As observed by Krishna Iyer, J. in *Bhim Singhji v. Union of India*, AIR 1981 SC 234 at p. 239 various amendments to Art. 31 culminating in the present provision which provides for the payment of "amount" disclose a determined approach by Parliament in exercise of its constituent power to ensure that full compensation or even fair compensation cannot be claimed as a fundamental right by the private owner and that short of paying 'farthing for a fortune' the question of compensation is out of the bounds for the Court to investigate. The amount fixed for being paid under the impugned law of acquisition is wholly beyond the pale of challenge on the ground that it is inadequate.

25. As concluded by Chandrachud, J. in *Kesavananda Bharti* (AIR 1973 SC 1461) (supra), though the Court has no power to invalidate a law described in Art. 31(2) on the ground that the amount fixed or determined for compulsory acquisition is not adequate, such a law can be questioned if the amount fixed is illusory or the principles stated for determining the amount are wholly irrelevant for

fixing or if the power of compulsory acquisition is exercised for a collateral purpose or the law offends other principles Constitution or the law is in the nature a fraud on the Constitution.

26. However, in a case where Art. 31C is attracted, the Court cannot interfere even if no compensation has been provided or what has been provided for is illusory. When Art. 31 C is attracted, the challenge on the basis of the alleged illusory nature of the amount does not survive at all. The purpose of Art. 31C is, amongst others, to exclude Art. 31, as it then stood. Article 31C was inserted by the Constitution (Twenty-fifth) Amendment Act, 1971 with the object of getting over the difficulties placed in the way of giving effect to the Directive Principles in Part IV, by judicial decisions. As it originally stood, it shielded from any challenge, law enacted for implementing the directives in clauses (b) and (c) of Article 39 on the ground of violation of Arts. 14, 19 and 31.

27. Not with standing the declaration of the Legislature that any particular Act has been made to implement the directives specified in Art. 39, it would be open to the Court to ignore such declaration and to examine the constitutionality of the same. The declaration cannot be relied on as a cloak to protect the law bearing no relationship with the objectives mentioned in Art. 39.

28. The extent and scope of judicial review of Legislation where there is a declaration under Art. 31 C of the Constitution which enjoins that no law containing a declaration that it is for giving effect to such a policy shall be called in question in any Court on the plea that it does not give effect to such a policy has been considered in *Kesavananda Bharti* AIR 1973 SC 1461) (supra). On an analysis of the majority judgment therein Sabvasachi Mukharji, J. (as he then was) observed in *Tinsukhia Electric Supply Company* case (AIR 1990 SC 123) (supra) that the declaration in Art. 31C does not exclude the jurisdiction of the Court to determine whether the law is for giving effect to the policy of the State towards securing the principles specified in Art. 39(b) and (c). Mathew, J. had observed in *Kesavananda Bharti* (supra) that in order to decide whether a law gives effect to the policy of the State towards securing the directive principles specified in Art. 39(b) or (c), a Court will have to examine the pith and substance, the true nature and character of the law as also its design and the subjectmatter dealt with by it together with its object and scope. If a law passed ostensibly to give effect to the policy of the State is, in truth and substance, one for accomplishing an unauthorised object, the Court would be entitled to tear the veil created by the declaration and decide according to the real nature of the law.

29. It is, therefore, necessary not with standing the declaration contained in S. 30 of the Act, to consider whether there is a nexus between the Act and the policy of the State declared in Art. 39(b) or (c). The test to determine whether the law is enacted for giving effect to a directive is to determine whether there is real and rational connection between the law and the Directive Principle.

30. We shall therefore examine the provisions of the Act for the purpose of satisfying whether the Act furthers the policy stated in clause (b) of Art. 39 as declared in the Act. The State under clause (b) of Art. 39 is required to direct its policy towards securing that the ownership and the control of material resources of the community are so distributed as best to subserve the common good. The purpose sought to be achieved by the enactment is the augmentation of the supplies of refractories to meet the essential requirements of the iron and steel industry. It cannot be disputed that iron and steel industry is crucial in the development process. With the expansion of iron and steel industries, the requirement of the necessary ingredients are bound to grow and the plants for manufacture of such ingredients have necessarily to be harnessed to meet such requirements. The key words 'material resources of the community and distribution occurring in clause (2) 6 Art. 39 have been interpreted in the earlier decisions of this Court.

31. In *State of Karnataka v. Ranganatha Reddy* (1977 (4) SCC 471: (AIR 1978 SC 215) (supra), the Karnataka Contract Carriages Acquisition Act, 1976 for nationalisation of contract carriages in the State was challenged on the ground that there is no real and substantial nexus between the purpose of the acquisition and securing the principles specified in Art. 39. The Court said at page 515 (of SCC) : (at p. 250 of AIR) thus:-

"And material resources of the community in the context of re-ordering the national economy embraces all the national wealth, not merely natural resources, all the private and public sources of meeting material needs, not merely public possessions. Every thing of value or use in the material world is material resource and the individual being a member of the community his resources are part of those of the community nationalisation of transport as a distributive process for the good of the community."

32. In *State of Tamil Nadu v. Abu Kavur Bai* (AIR 1984 SC 326) (supra), it was held that material resources as enshrined in Art. 39(b) are wide enough to cover not only natural or physical resources but also movable or immovable properties, such as the vehicles, tools, implements and the workshop etc. It was also held that the nationalisation of the transport would undoubtedly be a distribution for the common good of the people and would be clearly covered by clause (b) of Art. 39.

33. In *Sanjeev Coke Manufacturing Company* (AIR 1983 SC 239) (supra), the constitutional validity of Coking Coal Mines (Nationalisation) Act, 1972 and the Coal Mines (Taking Over of Management) Act, 1973 was under challenge. The Court said that when Art. 39(b) refers to material resources of the community, it does not refer only to resources owned by the community as a whole but it refers also to resources owned by individual members of the community. The Court also held that the expression 'material resources of the community' is not confined to natural resources; it is not confined to resources owned by the public; it means and includes all resources, natural and man-made, public and private-owned.

34. Therefore, all things which are capable of producing wealth for the community would be material resources. The conservation of the essential ingredients necessary for the crucial iron and steel industry by nationalisation is only in implementation of the policy declared in clause (b) of Art. 39.

35. In the recent decision of this Court in *Tinsukhia Electric Supply Company* (AIR 1990 SC 123) (supra), the Tinsukhia Electric Supply Undertaking (Acquisition) Act, 1973 was challenged as unconstitutional. The contention that the Act was entitled to the protection under Art. 31 C was upheld pointing out that electric energy generated by the supplier companies constitute material resources of the community within the scope and meaning of Art. 39(b) and having regard to the true nature and purpose of the legislation the objects of the legislation have a direct and reasonable nexus with the objective of distributing the material resources so as to subserve the common good.

36. The Act is declared to have been enacted for giving effect to the policy of the State towards securing principles specified in clause (b) of Art. 39. The Preamble of the Act of 1976 refers to the necessity to augment the supply of refractories to meet the essential requirements of the iron and steel industry. It further states that special type of refractories including high alumina refractories needed by the iron and steel industry may be manufactured at the Refractory Plant of Assam Sillimanite Limited and such manufacture will enable the country to progressively reduce the import

of such special type of refractories. The Act purports to have been enacted for acquiring the plant for the purpose of augmenting the supplies of refractories to meet the essential requirements of the iron and steel industry.

37. We are, therefore, of the view that the plant as well as the manufactured refractories constitute material resources of the community and the take over of the plant to augment the supplies of refractories to meet the essential requirements of the iron and steel industry in public interest ensures distribution as best to subserve the common good. The impugned Act which is intended to augment the production and supply of refractories to meet the essential requirements of the crucial iron and steel industry is a measure towards implementation of the policy contained in clause (b) of Art. 39. There is, therefore, direct and rational nexus between the objective of the enactment and the principles contained in that Art. 39(b). The Act in this view is entitled to the protection under Art. 31C.

38. An argument has been advanced on behalf of the appellant company that if the compensation is not only illusory but producing negative result, then the protection of Art. 31 C is not available to the impugned legislation. We find no merit in this argument. When Art. 31C is attracted, the argument in regard to the alleged illusory nature of the amount does not survive at all for consideration. If once the conditions mentioned in Art. 31C are fulfilled by the law, no question of compensation arises because the said article expressly excludes not only Arts. 14 and 19 but also 31. When Art. 31C comes in, Article 31 goes out.

39. For the foregoing reasons, the appeal must fail. The appeal is dismissed but with no order as to costs. Appeal dismissed.

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