SUPREME COURT OF INDIA

M/S. A-ONE GRANITES

Vs.

STATE OF U.P. & ORS.

16/02/2001

(G.B. Pattanaik & B.N. Agrawal)

Appeal (civil) 6459 of 1998

JUDGMENT

B.N.AGRAWAL,J.

This appeal by special leave is directed against the judgment dated 6.11.1998 of the Allahabad High Court rendered in a writ application filed by respondent no. 4 whereby the same has been allowed and order dated 24.9.1997 passed by the State Government sanctioning mining lease of granite sized dimensional stone in favour of the appellant for a period of 15 years in relation to 10 acres of land comprising of Plot No. 1 situate in Baghwa Mahoba and that dated 4.10.1997 passed by the District Magistrate, Mahoba, showing inability to decide the application filed on 4.7.1995 by respondent no. 4 for grant of mining lease in view of the aforesaid order of the State Government sanctioning mining lease in favour of the appellant have been quashed and a direction has been given to the District Magistrate to follow rule 72 of the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the Rules) and dispose of the aforesaid application filed by the respondent no. 4 on 4.7.1995.

The short facts giving rise to this appeal are that respondent no. 4 applied for grant of mining lease in plot no. 1, Baghwa Mahoba measuring 10 acres and on 17.8.1977 the same was granted in his favour under Chapter II of the Rules for a period of 10 years w.e.f. September 17, 1977. On the expiry of the said period, respondent no. 4 once again applied for re-grant of the lease which was granted this time for a period of five years, which period expired on 1.5.1992. In the year 1992 a declaration was made under rule 23 of the Rules which is in Chapter IV declaring the area of Bhagwa Mahoba for grant of lease by way of auction or by tender or by auction-cum-tender and thereby the provisions contained in Chapters II, III and VI of the Rules were made inapplicable to the said area. In view of the aforesaid declaration, mining lease was granted by auction in favour of respondent no. 4 on 22.5.1992 in relation to the aforesaid area of 10 acres for mining of minerals, viz., Khanda, Gitty and Boulder for a period of three years. On 30.3.1995 the respondent District Magistrate issued a notification under rule 24 of the Rules withdrawing along with other areas the area which was subject matter of lease granted in favour of respondent No. 4 from Chapter IV w.e.f. 1.4.1995 and making provisions of Chapters II, III and VI of the Rules applicable to the area in question. In the meantime, on 27.8.1994 the Rules were amended by virtue of 20th amendment inserting therein rules 72 to 79. Under rule 72 a procedure was provided for giving 30 days notice for re- grant of mining lease which rule was amended on 11.2.1995 by 21st amendment. Under the amended rule 72 for re-grant of mining lease, apart from 30 days notice, seven working days time

for receipt of applications is required to be given and the said rule in effect and substance does not relate to mining leases granted under Chapter IV.

After amendment of the said rule, the respondent- District Magistrate issued a notice dated 31.3.1995 under rule 72 of the Rules calling for applications for grant of mining leases after 30 days from the date of the issuance of notice, i.e., 2-5-1995 in relation to the area which was subject matter of lease of respondent no. 4 along with other areas. Pursuant to the said notice, respondent no. 4 applied for grant of lease in his favour and before completion of period of seven days from the date specified, i.e., 2.5.1995 an order was passed by the District Magistrate on 6.5.1995 sanctioning lease in his favour. As pursuant to the said order no lease deed was executed, the same necessitated respondent no. 4 to file a writ application on 24.5.1995 before the Allahabad High Court being C.W.P. No. 15290/95 for directing the authority concerned to execute a lease deed in his favour. After the filing of the said writ application, the State Government on 29.5.1995 cancelled the said notice dated 31.3.1995 issued by the District Magistrate on the ground that according to the policy decision of the State Government certain guidelines were provided for grant of granite lease. Thereafter, the District Magistrate issued fresh notice on 30.5.1995 under rule 72 of the Rules inviting applications for grant of mining lease which was challenged by respondent no. 4 in a separate writ application filed before the Allahabad High Court being C.W.P. No.16886/95. In view of the said notice, on 4-7-1995 respondent no. 4 applied afresh for grant of lease in his favour. Both the writ applications were heard and dismissed by the High Court on 24.4.1996 holding that the notice dated 31.3.1995 was invalid, being contrary to rule 72 of the Rules as the period of seven days was not specified therein and, therefore, there was no illegality in cancellation of the said notice and issuance of fresh one on 30.5.1995. Challenging the said order respondent no. 4 filed two Special Leave Petitions in which leave was granted and the Civil Appeals were disposed of by a common judgment rendered on 9.4.1997 whereby the appeals were dismissed, but it was observed that the High Court was not justified in declaring that the notice dated 31.3.1995 was invalid as in the opinion of this Court the said notice was in accordance with the provisions of rule 72 of the Rules, but cancellation of the same and issuance of fresh notice on 30-5-1995 was justified as the lease was sanctioned on 6.5.1995, i.e., before the expiry of the period of seven days. This Court while disposing of the said appeals granted liberty to issue a fresh notice for grant of lease in accordance with law.

Though according to the observation of this Court referred to above the District Magistrate was required to issue a fresh notice, but respondent no. 4 was insisting that decision should be taken upon his application filed on 4.7.1995 pursuant to notice dated 30.5.1995 and as he did not take any step the said respondent filed an appeal on 30-4-1997 before the Divisional Commissioner under rule 77 of the Rules making a prayer therein for directing the District Magistrate to dispose of his aforesaid application dated 4.7.1995 for grant of mining lease on merit. During the pendency of the said appeal, the District Magistrate on 20.8.1997 issued a fresh notice under rule 72 of the Rules inviting applications for grant of mining lease. The said notice was challenged by respondent no. 4 by way of an application filed in the said appeal before the Divisional Commissioner. On 11.9.1997 the Divisional Commissioner decided the appeal and directed the District Magistrate to decide the aforesaid application filed on 4.7.1995 by respondent no. 4.

Against the said order one Anil Kumar Shukla filed a revision before the State Government which is still pending. Thereafter, on 24.9.1997 the State Government sanctioned a mining lease of granite sized dimensional stone in relation to the area in question in favour of the appellant for a period of 15 years without following the procedure prescribed under rule 72 of the Rules. In accordance with the aforesaid order of the Divisional Commissioner passed on 11.9.1997 when respondent no. 4

moved the District Magistrate for considering his application dated 4.7.1995 for grant of mining lease, by order dated 4.10.1997 he expressed inability to decide the application on merit in view of the lease granted on 24.9.1997 by the State Government in favour of the appellant. Respondent no. 4 challenged the aforesaid order dated 24.9.1997 passed by the State Government and order dated 4.10.1997 passed by the District Magistrate by filing a writ petition before the Allahabad High Court being C.M.W.P. No. 34381 of 1997. One A.K. Tripathi also filed two writ petitions. All the three writ petitions were heard and disposed of by the High Court on 6.11.1998. The writ applications filed by A.K. Tripathi were dismissed on the ground that he did not file any application pursuant to the notice. So far as the writ application filed by the respondent No. 4 is concerned, the same was allowed, order dated 24.9.1997 passed by the State Government and that dated 4.10.1997 passed by the District Magistrate were quashed and the District Magistrate was directed to take a decision upon the application dated 4.7.1995 filed by the respondent no. 4 in accordance with law as the lease was sanctioned on 24.9.1997 by the State Government in favour of the appellant without following the procedure prescribed under rule 72 of the Rules. Challenging the aforesaid decision of the High Court, the appellant filed Special Leave Petition before this Court in which leave to appeal having been granted, the present appeal is placed before us.

Mr. Govind Das and Mr. G.L. Sanghi, learned Senior Counsel, appearing on behalf of the appellant, in support of the appeal submitted that rule 72 of the Rules had no application for sanctioning lease in favour of the appellant by the State Government under its order dated 24.9.1997 as earlier lease in relation to the area in question was granted under Chapter IV and not under Chapter II inasmuch as under rule 72, as amended by the 21st amendment, only that area becomes available for re-grant which was held under a mining lease under Chapter II or was reserved under Section 17A of the Mines and Minerals (Development and Regulation) Act, 1957 and not the area which was held under mining lease under Chapter IV, like the present one. It was further submitted that in view of the observation of this Court on the earlier occasion, the District Magistrate was required to issue a fresh notice under rule 72 of the Rules and, therefore, the High Court was not justified in directing him to consider application dated 4.7.1995 filed by respondent no. 4 for grant of lease.

Mr. Gaurab Banerjee, learned counsel appearing on behalf of the State Government, supported the stand of the appellant.

Mr. Shanti Bhushan, learned Senior Counsel, appearing on behalf of respondent no. 4, submitted that the question regarding applicability of rule 72 is no longer res integra as this question is concluded by the decision of this Court in the earlier appeals, as aforesaid. Alternatively, he submitted that rule 72 was applicable in a case of re-grant of mining lease irrespective of the fact that mining lease was granted previously either under Chapter II or Chapter IV. He further submitted that the High Court was quite justified in giving a direction to consider application dated 4.7.1995 filed by respondent no. 4 as according to the earlier decision of this Court there was no illegality in the notice pursuant to which the said application was filed by respondent no. 4.

The first question which falls for consideration of this Court is as to whether the question regarding applicability of rule 72 of the Rules in relation to the present lease is concluded by the earlier decision of this Court rendered in Prem Nath Sharma vs. State of U.P. & Anr., (1997) 4 SCC 552. From a bare perusal of the said judgment of this Court it would be clear that the question as to whether rule 72 was applicable or not was never canvassed before this Court and the only question which was considered was whether there was violation of the said rule.

This question was considered by the Court of Appeal in Lancaster Motor Co. (London) Ltd. vs.

Bremith Ltd., (1941) 1 KB 675, and it was laid down that when no consideration was given to the question, the decision cannot be said to be binding and precedents sub silentio and without arguments are of no moment. Following the said decision, this Court in the case of Municipal Corporation of Delhi vs. Gurnam Kaur, 1989 (1) SCC 101 observed thus:-

In Gerard v. Worth of Paris Ltd.(k), (1936) 2 All ER 905 (CA), the only point argued was on the question of priority of the claimants debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd., (1941) 1 KB 675, the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided without argument, without reference to the crucial words of the rule, and without any citation of authority, it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed.

In State of U.P. & Anr. vs. Synthetics and Chemicals Ltd. & Anr., (1991) 4 SCC 139, reiterating the same view, this Court laid down that such a decision cannot be deemed to be a law declared to have binding effect as is contemplated by Article 141 of the Constitution of India and observed thus:

A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141.

In the case of Arnit Das vs. State of Bihar, 2000 (5) SCC 488, while examining the binding effect of such a decision, this Court observed thus:-

A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

Thus we have no difficulty in holding that as the question regarding applicability of rule 72 of the Rules having not been even referred to, much less considered by this Court in the earlier appeals, it cannot be said that the point is concluded by the same and no longer res integra and accordingly this Court is called upon to decide the same.

By virtue of Entry 54 of Union List to the Seventh Schedule of the Constitution of India, the Parliament enacted the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the Act) to provide for the development and regulation of mines and minerals under the control of the Union. Section 15 of the Act provides that the State Government may make rules for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for purposes connected therewith. In exercise of powers conferred under the aforesaid section, the Government of Uttar Pradesh made rules called The Uttar Pradesh Minor Minerals (Concession) Rules, 1963 which were published in the U.P. Gazette on 14.9.1963. Expression Minor Minerals was defined under rule 2(7) of the Rules which reads thus:-

`Minor minerals means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government has declared from time to time or may declare, by notification in the official Gazette, to be a minor mineral, under clause (e) of Section 3 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957). Chapter III provides for payment of royalty and dead rent. Under rule 21 of the Rules, which is under Chapter III, a holder of mining lease is required to pay royalty in respect of any mineral removed by him from the leased area at the rates for the time being specified in the First Schedule appended to the Rules. On 25.11.1993 an amendment was made whereby granite sized dimensional stone was incorporated in item (5) of the Schedule as (v). Conditions of mining leases have been enumerated in Chapter V and Chapter VI prescribes procedure for grant of mining permit. In the original Rules there were 71 rules. Thereafter on 27.8.1994 by 20th amendment rules 72 to 79 were inserted in Chapter VIII of the Rules out of which rule 72 may be referred to which reads thus:-

R.72.- Availability of area for regrant to be notified.- (1) If any area, which was held under a mining lease or reserved under section 17-A of the Act becomes available for regrant the District Officer shall notify the availability of the area through a notice inviting applications for grant of mineral concessions specifying a date, which shall not be earlier than thirty days from the date of notice and giving description of such area and a copy of such notice shall be displayed on the notice board of his office and shall also be sent to the Tehsildar of such area and the Director.

(2). An application for grant of mining lease or mining permit for such area which is already held under a lease or notified under sub-rule (1) of rule 23 or reserved under section 17-A of the Act and whose availability has not been notified under sub-rule (1) shall be premature and shall not be considered and the application fee thereon if paid shall be refunded. Subsequently, on 11.2.1995 by 21st amendment rule 72 was amended and substituted as follows:-

R.72.- Availability of area for regrant on mining lease to be notified.-

(1) If any area, which was held under a mining lease under Chapter II or on reserved under section 17-A of the Act, becomes available for regrant, the District Officer shall notify the availability of the area through a notice on mining lease inviting for applications for grant of mining lease specifying a date, which shall not be earlier than thirty days from the date of notice and giving description of such area and a copy of such notice shall be displayed on the notice board of his office and shall also be sent to the Tehsildar of such area and the Director.

(2) The applications for grant of mining lease under sub-rule 1, shall be received within seven working days from the date specified in the notice referred to in the said sub-rule. If, however, the number of applications received for any area is less than three, the District Officer may further extend the period for seven more working days and if even thereafter, the number of applications remain less than three, the district officer shall notify the availability of the area afresh in accordance with the said sub-rule.

(3) An application for grant of mining lease for such area which is already held under a lease or notified under sub-rule 1 of rule 23 or reserved under section 17-A of the Act and whose availability has not been notified under sub-rule 1 shall be deemed to be premature and shall not be considered and the application fee thereon if paid shall be refunded.

Under the Rules, mining operation in respect of any minor mineral can be undertaken only in accordance with the terms and conditions of a mining lease or mining permit granted under the

Rules. Such a lease could be granted under Chapter II, which prescribes the procedure and rule 9 provides for a preferential right when two or more persons apply for a mining lease in respect of the same land. The mining lease could also be granted under Chapter IV by way of auction/tender/auction-cum-tender when State Government by special or general order declare that the area in question could be leased out by auction or by tender or by auction-cum-tender, as provided in rule 23. The procedure for grant of lease by auction is provided under rule 27. Rule 24 empowers the State Government to withdraw any area which had been declared under sub-rule (1) of rule 23 and once the area is withdrawn under rule 24, then the procedure prescribed in Chapter II for grant of mining lease becomes applicable. Thus the procedure provided under Chapter II of the Rules being the normal procedure, Chapter IV is an exception to the same. It may be useful to quote rules 23 and 24 hereunder which are under Chapter IV:-

R.23.- Declaration of area for auction/ tender/auction-cum-tender/lease:-

(1) The State Government may by general or special order, declare the area or areas which may be leased out by auction or by tender or by auction-cum-tender.

(2) Subject to direction issued by the State Government from time to time in this behalf no area or areas shall be leased out by auction or by tender or by auction-cum-tender for more than five years at a time: Provided that the period in respect of in siturock type mineral deposit shall be five years and in respect of river bed mineral deposit shall be one year at a time.

(3) On the declaration of the area or areas under sub-rule (1) the provisions of Chapters II, III and VI of these rules shall not apply to the area or areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter.

(4) The District Officer shall get the area or areas declared under sub-rule (1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorised by him before the date fixed for auction or tender or auction-cum-tender, as the case may be.

R.24.- Withdrawal of area from auction or tender or auction-cum-tender:- The State Government may by declaration withdraw any area or areas declared under sub-rule (1) of rule 23 or part thereof from any system of lease referred to there and from the date of withdrawal specified in the declaration which shall not be the date during the subsistence of a lease granted under this Chapter, the provisions of Chapter II, III and VI of these rules shall become applicable to such area or areas.

By 20th amendment whereby rule 72 was incorporated in the Rules certain restrictions were put to the effect that if any area which was held under a mining lease or reserved under Section 17A of the Act became available for re-grant, the District Officer was required to notify its availability through a notice inviting applications for grant specifying a date which shall not be earlier than 30 days from the date of the notice and the said notice was required to be displayed on the notice board of the District Office and was also required to be sent to Tehsildar of such area and the Director. According to the aforesaid rule, if an area was held under mining lease either under Chapter II or under Chapter IV, the procedure prescribed in rule 72 was applicable. By 21st amendment, rule 72 was substituted which prescribes the procedure of notifying the availability of the area through a notice, inviting for applications for grant of mining lease, specifying the date when the said area which was held under a mining lease under Chapter II or reserved under Section 17-A of the Act becomes available for re-grant on mining lease. Further amendment was made that the applications

for grant of mining lease were required to be received within 7 working days from the date specified in the notice referred to in sub-rule (1) of rule 72.

The language used in rule 72(1) on a literal meaning being given, would undoubtedly support the contention of Mr. Das and Mr. Sanghi, appearing for the appellant that this procedure would not apply when the area in question had been held under a lease not under Chapter II but under Chapter IV. But such an interpretation should be avoided inasmuch as the very purpose for which rule 72 has been engrafted in the Rules will totally get frustrated. The object of having such provision is transparency in the matter of granting mining lease and restrict any under-hand dealing with the minerals by the permit granting authority. The object of notifying the availability through a notice by the District Officer is to bring it to the notice of the public at large, so that an interested applicant can make an application and such application could be considered on its own merit, when more than one applications are received in respect of the same area. The lease under Chapter II of the Rules could be granted for a period not exceeding ten years, as provided in sub-rule (1) of Rule 12 and under sub-rule (2) of Rule 12, if the State Government is of the opinion that it would be necessary in the interest of mineral development, it may grant the lease for any period exceeding ten years but not exceeding fifteen years. The Rules also contemplate renewal of such lease. Rule 19(2) empowers the State Government to determine any lease on the grounds indicated thereunder, after giving the lessee a reasonable opportunity of stating his case. The area which was being operated upon on the basis of a lease obtained under Chapter II when becomes available for re-grant if the prescribed procedure under rule 72 is not followed, then it may lead to favourtism and bias, ultimately resulting in corruption of the permit granting authority. It is to prevent such abuse, the Legislature have brought into the Rules, the procedure prescribed under rule 72, the duty of notifying the availability of the area by the District Officer. In case of auction lease, it is not necessary, since the procedure prescribed for grant of auction lease in rule 27 itself indicates that the District Officer or the Committee authorised is duty bound to at least give a notice 30 days before the date of auction in the manner indicated under the Rules by providing the date, time and place of auction and if for any reason, the auction is not completed on the notified date, then a fresh auction could be held after giving a shorter notice of at least seven days. Thus the procedure followed for grant of lease by auction as provided under rule 27 or tender as provided under rule 27(A) or auction-cum-tender, as provided under rule 27(B) is itself sufficient notice to the public to enable them to participate in the auction/ tender/auction-cum-tender and question of any clandestine dealing in such case would not arise. But in a case when the area was held under auction/tender/auction-cum-tender under Chapter IV and the State Government withdraws the area from the said procedure, whereafter provisions of Chapter II, the normal procedure for granting lease becomes applicable as in the case in hand, then if Rule 72 is interpreted in the manner, as contended by the learned counsel for the appellant, then it would frustrate the purpose of transparency and open-ness engrafted in rule 72 and such an interpretation will be against the legislative intent. It is a cardinal principle of construction that the courts must adopt a construction which would suppress the mischief and advance the remedy. In other words, the court must adopt a purposive interpretation of the provisions under consideration. So construed, it is difficult for us to accept the contention of Mr. Das appearing for the appellant that rule 72 has no application to the case in hand merely because the area in question had been held by the previous lessee for some period under auction/tender basis under Chapter IV, particularly when on 30th of March, 1995 the District Magistrate withdrew the area held under auction/tender system to the normal procedure of grant of mining lease under Chapter II w.e.f. 01.4.1995.

Thus, we are of the opinion that rule 72 shall have application in the case in hand and the High Court has not committed any error in quashing the order passed by the State Government

sanctioning mining lease in favour of the appellant without following the procedure prescribed under rule 72 of the Rules.

The last question which falls for consideration is whether the High Court was justified in giving a direction to the District Magistrate to consider the application dated 4.7.1995 filed by the respondent no. 4 for grant of mining lease. It is true that on the earlier occasion this Court found that the notice was valid, but the order for grant of mining lease being contrary to rule 72, was held to be invalid. In the operative portion of the judgment it was specifically directed that the respondents will be at liberty to issue a fresh notice for the grant of lease in accordance with law and keeping in view the observations contained herein, which would obviously mean that a fresh notice for grant of lease was required to be issued in accordance with rule 72 of the Rules. As this Court observed for issuance of fresh notice, we do not find any reason as to how the application filed on 4.7.1995 by respondent No. 4 pursuant to notice dated 30.5.1995 could be considered. If a fresh notice is issued, all concerned persons including the appellant and respondent no. 4 can apply for the grant.

This being the position, we are of the view that the High Court was not justified in quashing the order of the District Magistrate dated 4.10.1997 and giving a direction to him to consider application dated 4.7.95 filed by respondent no. 4. In our view, the authorities are now required to issue fresh notice in terms of rule 72 of the Rules and consider the applications for grant of lease filed pursuant thereto in accordance with law and no application filed earlier either pursuant to previous notices or otherwise shall be considered.

In the result, the appeal is allowed in part. While upholding that portion of the judgment of the High Court whereby lease sanctioned in favour of the appellant was quashed, we set aside other part of the judgment, directing consideration of e application dated 4.7.1995 of the respondent No. 4 and application, if any filed, by the appellant pursuant to the impugned judgment. There will be no order as to costs.