

SUPREME COURT OF INDIA

Basant Kumar

Vs.

State of Rajasthan

C.A.No.2108 with 2109 of 1996

(S. Rajendra Babu and S. N. Phukan JJ.)

31.08.2001

JUDGEMENT

Rajendra Babu, J.:-

1. The appellant before us filed a writ petition in the High Court of Rajasthan challenging the validity of Rule 21 and Rule 65-A of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred to as 'the Rules'); for quashing the notification dated October 10, 1994 declaring the marble policy of the State Government; and for the relief of directing the grant of lease of minor mineral in respect of certain lands delineated a plots Nos. 2, 3 and 5 in Morwad area and for certain other incidental reliefs. The High Court dismissed the said writ petition in view of its earlier decision in D. B. Civil Writ Petition No. 865 of 1995. Hence these appeals.

2. The facts leading to the writ petition are that the appellant filed an application on 2-12-1993 under Rule 5 of the Rules in the prescribed form before the Mining Engineer, Department of Mines and Geology for grant of mining lease in respect of marble which is a minor mineral for a period of 10 years in respect of delineated plots Nos. 2, 3 and 5. The Mining Engineer forwarded the said application to the Director of Mines and Geology stating that the dead rent of the area applied for by the appellant comes to Rs. 1,25,000/- and the application is to be decided by the State Government. However, the application was not further processed. In those circumstances, he preferred the writ petition as aforesaid.

3. The appellant contended that grant of mining lease in respect of minor mineral is governed by the Rules framed under Section 15 of the *Mines and Minerals (Regulation and Development) Act, 1957* (hereinafter referred to as 'the Act'). Rule 21 provides for grant of mining lease by auction or tender and Rule 65-A provides for grant of mining lease by adopting prescribed procedure different from that given in the Rules. It is in exercise of Rule 65-A of the Rules, the Government has issued the notification, which was under challenge before the High Court. The principal contention raised by the appellant is that the State Government in exercise of its powers under Section 15 of the Act cannot frame rules contrary to the said provision and that by reason of the prohibition contained in the proviso to

Section 15 (3) of the Act the State Government cannot enhance the rate of royalty in respect of any minor mineral more than once during any period of 4 years. In a similar manner, the State Government cannot also enhance the rate of dead rent more than once during any period of 4 years. During any period of 4 years, the State Government can enhance both dead rent and royalty but only once. However, such a period of four years for the purpose of enhancing the rates of dead rent and royalty is to be reckoned from the date of coming into force of the Rules made by the State Government. Strong reliance is placed on the decision of this Court in *D. K. Trivedi and Sons and Ors. v. State of Gujarat and Ors.*¹.

4. The High Court, however, adverted to the scheme of the Act discussed in the decision on which reliance is placed and it is on this basis that the writ petition was disposed of. The High Court in the earlier case held that the Government is empowered to revise the rate of dead rent after every five years from the date of grant of the lease, but that would not exceed the maximum limit specified in Second Schedule to the Act. There is a similar Full Bench decision of the Rajasthan High Court in *Shri Krishna Murari Goayl v. State of Rajasthan and Ors.*, (1999) 2 WLC 1, that in cases falling under Second Schedule, Rule 21 would exclude the standard formulae for arriving at the dead rent and a circular laying down such formulae for giving dead rent at the time of renewal of lease is not arbitrary.

5. The contention put forth before us is that the view taken by the High Court in either of the decisions is not in conformity with the decision in *D. K. Trivedi's* case, and, therefore, it is submitted that interference is called for. Shri Sushil Kumar Jain, learned Addl. Advocate General appearing for the respondents, raised the preliminary point to the effect that the appellant had merely made an application for grant of lease and no lease has been granted. In any event, the application filed by the appellant should be deemed to have been rejected in terms of Clause 9 of the Marble Policy read with Rule 65A of the Rules. Therefore, the stage at which the dead rent has to be fixed in respect of the land to be leased to the appellant for exploitation has not arisen at all and hence at the instance of the appellant, the Rules cannot be declared to be void. Apart from the submission made above, he also supported the two decisions rendered by the High Court of Rajasthan.

6. On the facts arising in this case, we feel that we are not called upon to decide the scope of the relevant rules and particularly at the instance of the appellant who had not been given any lease for the time being. It is only when he gets the lease in respect of land the question of fixing dead rent would arise. In the present case, what has happened is that after the Marble Policy was framed in 1994, all pending application stood rejected and fresh applications had to be made. The application of the appellant, if at all, could only be treated as pending at the time when the marble policy came into force. It is certainly open to the respondents to frame appropriate policy in regard to the minerals in which they can dispose of the rights in relation to the minor mineral. Therefore, our conclusion should be that the stage at which the dead rent has to be fixed in the case of this nature has not arisen and, therefore, we shall not engage ourselves in an academic exercise of finding out whether the relevant rules are in conformity with the view expressed by this Court or not and such an exercise can be undertaken only in a case where it is necessary to do so. We also do not think that any mandamus can be issued to the respondents to process the application filed by the appellant

in the light of the marble policy of the State Government that all applications pending on the date of coming into force of the marble policy stood lapsed. The appropriate course for the appellant is to file fresh application to pursue this matter in accordance with law and it is only thereafter if he finds it necessary the question raised in this case can be agitated in an appropriate manner.

7. Subject to the aforesaid observations, the appeals shall stand dismissed. No costs.
Appeals dismissed.

¹1986 (Supp) SCC 20