

## **DELHI HIGH COURT**

Assam Sillimanite Ltd.

Vs.

Union of India, (Delhi)

Civil Writ Petn. No. 1283 of 1972.

(V. S. Deshpande and B. C. Misra, JJ.)

29.11.1976

### **ORDER**

#### **V. S. Deshpande and B. C. Misra, JJ.**

1. The constitutionality of the Assam Sillimanite Limited (Acquisition and Transfer of Refractory Plant) Act, 1976 (hereinafter called the 'Act') has been challenged by the Assam Sillimanite Limited, a company registered under the Companies Act, 1956, the Refractory Plant of which has been acquired by the Central Government. The only grounds of challenge argued by Shri M. C. Bhandare, learned counsel for the petitioners, related to the construction of the Constitution and are as follows:-

(1) That the amount of rupees one crore seven lakhs and seventeen thousand which is made payable to the company by the Central Government under Section 9 of the Act and the other amounts payable under it and Section 10 of the Act is arbitrary, unreasonable and illusory thus violating Article 31 (2) of the Constitution as it stands after the Constitution (Twenty-fifth Amendment) Act, 1971, and

(2) That its constitutionality is not immune from attack in view of Article 31-C 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.

Whether the Act contravenes Article 31 (2)?

2. Section 2 (a) of the Constitution (Twenty-fifth Amendment) Act, 1971 which substituted the new Clause (2) in place of the former one in Article 31 was itself

challenged as being an impermissible amendment of the Constitution in *Kesavananda Bharati v. State of Kerala*, heard by thirteen Judges of the Supreme Court whose judgments are reported in (1973) Supp SCR 1. While the validity of the said amendment was upheld by the Full Court, the learned Judges differed in their reasons for this conclusion. The views of the learned Judges may be classified as below:-

(a) On the one hand, a minority of six learned Judges, namely, Sikri, C. J., Shelat and Grover, JJ. Hegde and Mukherjea, JJ. and Reddy, J. upheld the amendment on their own view of the meaning of the word 'amount' used in it. At one extreme was the view expressed by Reddy, J. that where what is given in lieu of acquisition of property is illusory, arbitrary or cannot be regarded as compensation and bears no reasonable relation to the property acquired, the Court can go into it (and invalidate the concerned law) and the position has not in any way been affected by the amendment by merely substituting the word 'amount' for 'compensation'. The other five learned Judges constituting the minority recognized that after the amendment, a law acquiring property for a public purpose need not provide for the payment of a just equivalent or an adequate compensation. Nevertheless, the amount which is made payable to the owner of the property which is acquired must not be arbitrary or illusory and must have a reasonable relationship with the value of the property acquired.

(b) The majority of the other seven learned Judges have upheld the validity of the amendment without making their decision conditional on any particular meaning to be attached to the word 'amount'. Three of the learned Judges, namely, Ray, J., Mathew, J. and Dwivedi, J. completely ruled out judicial review of a law fixing the amount payable for the acquisition of property on the ground that the judgment of the Legislature enacting the law was not reviewable. Khanna, J. held the amendment valid whatever may be the connotation of the word 'amount'. Palekar, J. also held that an amendment cannot become invalid because it authorises the legislature to fix an 'amount' instead of fixing the 'compensation' for the acquisition of property. The amendment has negated the interpretation put by the Supreme Court on the concept of 'compensation'. Beg, J. agreed with Ray, Palekar, Mathew and Dwivedi, JJ. Chandrachud J. also held that the amount payable under the law providing for the acquisition of property may not bear reasonable relationship with the value of the property and yet may be valid. But to say that an amount

does not bear reasonable relationship with the market value is a different thing than to say that there is no relationship at all whatsoever to the value of the property. In the latter case the payment becomes illusory and may come within the ambit of permissible challenge. Palekar, J. also observed that the question whether a particular law fixes an amount which is illusory would depend upon the law when made and is tested on the basis of Clause (2) of Article 31. The possibility of abuse of a power given by an amendment of the Constitution is not, however, determinative of the validity of the legislation.

3. Shri Bhandare argued that six of the learned Judges, namely, Sikri, C. J., Shelat and Grover, JJ., Hegde and Mukherjea, JJ. and Reddy J., have held that a law fixing an amount for the acquisition of property would be unconstitutional if the amount does not bear a reasonable relationship with the value of the property acquired or is arbitrary or illusory. According to his submission, only four of the learned Judges, namely, Ray, Mathew, Beg and Dwivedi, JJ., ruled out judicial review of such a law. Palekar and Khanna, JJ. did not express any opinion and Chandrachud, J. held that the amount must not be illusory. He, therefore, argued that a comparative majority among the learned Judges, namely, six of the learned Judges, required that the amount payable for the acquisition of property must have a reasonable relationship with the value of the property acquired if the law is to be regarded as constitutional in the context of Article 31 (2).

4. The question as to what was precisely decided by the largest ever Bench of the Supreme Court in Kesavananda's case AIR 1973 3C 1461 as to the meaning of the word 'amount' in the amended Article 31 (2) of the Constitution is becoming increasingly important. After the majority decision in *Rustom Cavasjee Cooper v. Union of India*, invalidated the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1969 on the ground that the principles for the determination of compensation laid down therein were not in accordance with the pre-1971 Article 31 (2). Parliament passed Act 5 of 1970 for the same purpose dispensing with principles and merely fixing the amount payable as compensation and thereby avoiding judicial review of the relevancy of any principles on which the compensation could be determined. By the Constitution (Twenty-fifth Amendment) Act, 1971 the word 'compensation' was itself substituted by the word 'amount'. Parliament has preferred the fixation of actual amounts or rates at which the amount is payable for acquisition of

property perhaps because this would be more immune from judicial scrutiny rather than laying down the principles the relevancy of which was found to be more open to judicial review. For instance, in the General Insurance Business (Nationalisation) Act, 1972 the amounts payable to the various companies have been fixed in the Schedule to the said Act. Similarly, in the Urban Land (Ceiling and Regulation) Act, 1976, Section 11 fixes the different rates for the payment of amount per square meter for different categories of vacant land acquired. The question, therefore, as to what meaning should be put on the word 'amount' and how far the fixation of such amount for acquisition of property in a law can be the subject of judicial review has an importance beyond the dimensions of the statute challenged in this case.

5. We do not think that it can be said that Palekar and Khanna, JJ., did not express any opinion on this question. When Khanna, J. held that the amendment is valid whatever connotation is given to the word 'amount', the learned Judge clearly implied that the constitutionality of the law cannot be challenged under Article 31 (2) by raising any argument as to what the amount fixed there under has to be. Similarly, when Palekar J. said that the amendment cannot, be invalid because the Constitution authorizes the Legislature to fix an amount instead of compensation, the learned Judge also implied that it is for the Legislature to fix the amount. The learned Judge treated the question as hypothetical as to whether a law would be void if the amount fixed by it is illusory. Chandrachud, J. however, said that the law would be unconstitutional if the amount fixed is illusory.

6. It is well known that when authority is wanting, courts decide a case or a point on principle. It is because the question of the validity of Section 2 (a) of the Constitution (Twenty-fifth Amendment) Act was one of first impression not covered by authority that the learned Judges of the Supreme Court in Kesavananda's case AIR 1973 Supreme Court 1461 have sought the help of principles to decide the question. The classical view that the ratio of a judgment is the principle of law which the judge declares in his judgment to justify and explain his decision is generally based on observations such as the one by Sir George Jessel given below:-

"The only thing in a Judge's decision binding as an authority upon a subsequent Judge is the principle upon which the case was decided."

(*Osborne v. Rowlett*<sup>2</sup> and C. K. Allen; Law in the Making, Chapter IV).

But Kesavananda's case as such cannot be said to have been decided on any one principle. We must, therefore, find out not the principle which decided the case but the principle which decided the precise question before us, namely, the meaning of the word 'amount' in Article 31 (2). This would be the ratio decided of the decision on this particular question and not of the case as a whole. How should the ratio decidendi on this point be ascertained in the face of such a variety of opinions expressed? The practice of construing the decisions of Courts of Appeals in England is helpful. The practice is that when a decision is based on various grounds, some wide and others narrow, the common ratio decidendi is to be found in the highest common factor or factors which can be deduced from the narrower grounds which are common to the various judgments leaving out the wider grounds which are not so common. That alone would have binding force as the ratio decidendi of the Court (*Hillyer v. St. Bartholomew's Hospital*,<sup>3</sup> , and *Hambrook v. Stokes Bros.*<sup>4</sup> Professor A. L. Good-hard (whose study on the subject reproduced in an American publication has been referred to with approval by Beg, J., in *Mysore State Road Transport Corporation v. Mysore State Transport Appellate Tribunal*, AIR 1974 Supreme Court 1940, paragraph 29) has also expressed the view that there should always be a presumption against laying down of broad principles of law in favor of principles which are sufficient to dispose of a question or a case (Essays in Jurisprudence and the Common Law. p. 21). Following this practice, it may be said that seven of the learned Judges, namely Sikri, C. J., Shekit and Grover, JJ., Hegde and Mukherjea. JJ., Reddy J. and Chandrachud J., actually held that if the amount fixed by the Legislature as payable for the acquisition of property is illusory, then the law could be challenged as being violative of Article 31 (2) according to the meaning placed by these learned Judges on the word 'amount' used in that article. Palekar, J., referred to the possibility of such a law being challenged on such a ground. The highest common factor in the ratios decidendi of the various judgments, therefore, is that a law can be challenged as being contrary to Article 31 (2) only if the amount payable under it is illusory.

7. The meaning of the word 'illusion' in the Concise Oxford Dictionary is given as deception or a delusion or a sensuous perception of an external object involving a false belief. We talk of an optical illusion meaning thereby that what we think we see does not exist in reality. An illusory amount made payable for

the acquisition of property is, therefore, no amount at all and Article 31 (2) is violated because the Legislature would be deemed not to have fixed any amount in reality while purporting to do so.

8. About the first contention, therefore, the only thing that survives for consideration is firstly to understand the meaning in which the word 'illusory' is used in the governing ratio of the Kesavananda's case AIR 1973 Supreme Court 1461 which is binding on us and secondly whether the amount made payable to the petitioners by the impugned Act is 'illusory' in that sense.

9. The pleading of the petitioners in paragraph 14A of the amended writ petition is that the Refractory Plant which was acquired was worth rupees four crores and twenty-nine lakhs at the time of the acquisition. The repeated use of the word 'price' by the petitioners in paragraph 14A would show that the petitioners are referring to the market value of the Plant on the date of the acquisition. For this claim, support is sought by the petitioners in the report of an independent valuer approved by the Government of India who estimated the value of the Plant in December 1970 to be rupees two crores and eighty-six lakhs. Since then the prices are said to have arisen by at least one-and-half times so that the value of the Plant at the time of the acquisition is estimated to be rupees four crores and twenty-nine lakhs. The amount made payable to the petitioners for the acquisition of the Plant in Section 9 (1) of the Act is only rupees one crore seven lakhs and seventeen thousand. Some other amounts are added to this by the other provisions of Sections 9 and 10.

10. While the Central Government have denied the valuation of the Plant pleaded by the petitioners, they have not disclosed any basis or principles as to how the amount of rupees one crore seven lakhs and seventeen thousand has been made payable for the acquisition of the property. It is merely stated that this amount exceeds the valuation of the Plant which was acquired. It was argued by Shri Bhandare that the very fact that the Legislature has not disclosed how the amount has been arrived at is sufficient to show that it was fixed arbitrarily and that it was an unreasonable amount. Or in other words, it did not bear any reasonable relationship with the value of the property. But it cannot be said that these criteria can be supported on the basis of the highest common factor of the ratio decidendi of the majority decision in Kesavananda's case AIR 1973 Supreme Court 1461. The highest common factor found by us is that according to the majority opinion only a law which fixes an amount which is

illusory can be declared unconstitutional. The question, therefore, is whether the amount fixed by the impugned statute can be said to be illusory.

11. The word 'illusory' has been used, on the one hand, by six learned Judges (Sikri, C. J., Shelat and Grover, JJ., Hegde and Mukherjea, JJ. and Reddy J.) who held that the amount fixed for the acquisition of property must not only be not illusory but also must have a reasonable relationship to the value of the property and must not be unreasonable. On the other hand it was used by Palekar, J. hypothetically and by Chandrachud, J. only in the sense that the amount so fixed need not have any reasonable relationship with the value of the property but must have some relationship with it. As six of the learned Judges were in favour of a reasonable relationship of the amount with the value of the property acquired, while the other six learned Judges unconditionally upheld the validity of the amendment, the balance was swung by Chandrachud, J. alone. In *Rajnarain Singh v. Chairman, Patna Administration Committee*, , an analysis of the rationes decidendi of the seven learned Judges who gave opinions in the Delhi Laws case AIR 1951 Supreme Court 332 was made by Bose, J. and the governing rationes were found by the learned Judge at pages 300 and 302 by relying on the views of "Mukherjea and Bose JJ., who swung the balance". The meaning of 'illusory' which is binding on us, therefore, is the meaning given to the word by Chandrachud, J. Since the concept of reasonableness is excluded by Chandrachud, J., all that can be said is that the amount should bear some relationship to the value of the property acquired but this relationship need not be a reasonable relationship. The use of the word 'illusory' by Chandrachud, J., therefore, seems to mean that the amount must not be entirely a delusion or unreal. Assuming for the sake of argument that the valuation of the property on the date of the acquisition was rupees four crores and twenty-nine lakhs as pleaded by the petitioners, can it be said that the amount of rupees one crore seven lakhs and seventeen thousand payable to the petitioners under the impugned legislation was illusory? The amount so payable is about one-fourth of the value of the property acquired. Suppose, the impugned legislation had said that the particular property is to be acquired only by paying an amount which would be one-fourth of its market value. This would have a definite relationship to the value of the property inasmuch as the amount would be about one-fourth of the market value. It may not, however, be an adequate relationship inasmuch as it is far too low as compared to the market value. Can it, however, be said that this amount is illusory, that is to say, no payment at all or so unreal

as to be only and delusion but not a reality? 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 31 (2) of the Constitution, therefore, fails.

Does the Act implement the policy of Article 39 (b) and is therefore, protected by Article 31-C?

12. Article 39 (b) is contained in Part IV, namely, the Directive Principles of State Policy. Article 37 expressly says that the provisions contained in Part IV shall not be enforceable by any Court, The reason is that these are broad principles of State policy which is to be formulated in regard to the people as a whole or a section of the people and not in regard to any individual. In that respect, they are analogous to the Preamble of the Constitution which is also applicable to the people as a whole and not to an individual. They are to be contrasted with fundamental rights which are essentially conferred on the individual. As was pointed out in *M/s. Mahavir Metal Works P. Ltd. v. Union of India*,<sup>6</sup> *the argument of the petitioner in the Kesavananda's case*<sup>7</sup> was that the language of Article 31-C including that of Clauses (b) and (c) of Article 39 was so wide that a law made thereunder could abrogate all fundamental rights protected by Articles 14, 19 and 31. The argument of the Solicitor-General for the respondents, on the other hand, pointed out that 'the law enacted under it will operate on 'material resources' etc. The legislative effort would generally involve (i) nationalization of material resources of the community and (ii) imposition of control on the production, supply and distribution of the products of key industries and essential commodities. It, therefore, impinges on a particular kind of economic system only.' The argument of the petitioner appealed to the minority of the learned Judges who held Section 3 of the Amending Act enacting Article 31C as unconstitutional. According to the majority of the learned Judges who held the first part of Art, 31C as constitutional, a law which has a reasonable nexus to the implementation of the Clauses (b) and (c) of Article 39 would be protected by Article 31C against challenges based on Articles 14, 19 and 31. This decision of the majority was

*thus helped and not hindered by the argument which had appealed to the minority, namely, that even a tenuous connection between the impugned legislation and Clauses (b) and (c) of Article 39 would be sufficient to enable such a law to withstand challenges based on Articles 14, 19 and 31 and sufficient to secure their protection by Article 31C. The language of Article 39 (b), the policy underlying which is sought to be implemented by the impugned legislation has, therefore, to be construed widely inasmuch as it only lays down principles which are always widely worded and not specific enforceable rights which have to be moral precisely worded.*

*13. The key words of Article 39 (b) are 'the material resources of the community'. Shri Bhandare submitted firstly that 'material resources' would mean the natural resources or the raw-materials as distinguished from plant and machinery. He said, for instance, the mineral sillimanite was a material resource but the Refractory Plant was not. We think, the wide language of Article 39 (b) cannot be so restricted. To us, resources may include material resources or human resources, the contrast being between matter and man. In economics, land and capital are the material and labour and management are the human factors of production. Economic activity is use of resources - whether natural or acquired, i. e., land or capital - both being retracts. 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. In this connection, we may refer to an encyclopedia called 'The Wealth of India' published by the Publications and Information Directorate of the Council of Scientific and Industrial Research. It runs into twenty volumes. The first eleven volumes deal with industrial products. The words 'material resources' in our view have the same meaning as the word 'wealth' in this context. They both denote the total non-human resources or the wealth of the country. On this view, the Refractory Plant would be included in the phrase 'material resources'.*

*14. Shri Bhandare then submitted that it is only the material resources 'of the community', that is to say, belonging to the community as a whole which would be covered by Article 39 (b). He argued that the property of an individual cannot be nationalised thereunder. In this connection, he said that the Refractory Plant is owned by thousands of shareholders. Their properties could*

*not be acquired to implement the policy of Article 39 (b). This argument ignores that nationalisation is included in the basic objects of Article 39 (b). If the material resources are already vested in the community, then it would be unnecessary to make a law to distribute the ownership and control of such resources to subserve the common good. What is vested in the community as a whole is already available to subserve the common good of the people as a whole. It is only because the resources are not vested in the community as a whole but are held by certain individuals that they have to be acquired by the community so as to sub serve the common good. It is, therefore, essentially the material resources which are owned and controlled by the individuals as contrasted with the community which have to be so distributed as to subserve the common good.*

*15. Shri Bhandare then said that the word 'distributed' is not applicable to the vesting of the material resources in the community by making a law to acquire the property of individuals. 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. This use of the word 'distribution' recalls the concept of 'distributive justice' first propounded by Aristotle. There cannot be any doubt that, according to Article 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. It may be recalled that the management of the petitioner-company was taken over by the Central Government under Section 18AA of the Industries (Development and Regulation) Act. A transfer of the resources from the ownership and control of persons whose management thereof was regarded as bad to the State would be strictly within the policy of Article 39 (b). Since the object of the impugned legislation has a nexus to the policy underlying Article 39 (b), the impugned legislation is protected by*

*Article 31C from attack on the ground that it violates Article 31 (2). The declaration made in Section 30 of the legislation, therefore, rings true.*

*16. For the above reasons, the writ petition is dismissed with no order as to costs.*

*Petition dismissed.*

Cases Referred.

1. AIR 1970 Supreme Court 564,
2. , (1880) 13 Ch D 774 at p. 795
3. (1909) 2 KB 820
4. (1925) 1 KB 141).
- 5.(1955) 1 SCR 290
6. ILR (1974) 1 Delhi 617 at p. 627,
7. AIR 1973 Supreme Court 1461