THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.16548 of 2017

O R D E R:

In the present writ petition, challenge is to the order passed by the Director of Mines and Geology, State of Andhra Pradesh/second respondent herein vide proceedings D.Dis.No.7478/R5-1/2016, dated 04.04.2017.

2. Petitioner herein is the company engaged in the business of mining, exploration, extraction, cutting, polishing, importing and exporting of marble, granite, laterite and lime stone rocks. During the year 2008, one M/s.Crystal Granite and Marble Private Limited was granted a mining lease for black granite for a period of 20 years. On the application made by the said M/s.Crystal Granite and Marble Private Limited and the fourth respondent herein, permission was accorded for transferring the said lease in favour of fourth respondent under Rule 12 of the A.P. Minor Mineral Concession Rules, 1966 (hereinafter called 'the Rules') for the unexpired portion of the lease i.e., till 24.11.2028 vide proceedings dated 05.10.2012.

3. On 13.07.2015, petitioner and the fourth respondent submitted a joint application in Form R for transfer of lease in favour of the petitioner herein under Rule 12 (5) (b) (VIII) of the Rules. The said application was acknowledged on the even date, stipulating the time limit for final disposal within 180 days from the requested date. Thereafter, the Assistant Director of Mines and Geology, Chittoor, recommended for transfer of the subject lease in favour of the petitioner herein. The Director of Mines and Geology, by way of the impugned proceedings dated 04.04.2017, rejected the said application submitted by the petitioner and the fourth respondent in the light of sub-Clause (VIII) of Clause (h) of sub-Rule (5) of Rule 12 of the Rules. In

the above background, the present writ petition came to be filed questioning the rejection order dated 04.04.2017.

4. Heard Sri R.N.Hemendranath Reddy, learned counsel for the petitioner and the learned Government Pleader for Mines and Geology for the respondents 1 to 3 and Sri P.Roy Reddy, learned counsel for the fourth respondent apart from perusing the material available before the Court including the written arguments filed by the learned counsel for the fourth respondent.

5. Broadly, there are two contentions raised by the learned counsel for the petitioner in the present writ petition. They are, (1) The Director of Mines and Geology/second respondent herein passed the impugned order dated 04.04.2017 without issuing any show-cause notice and without affording any opportunity to the petitioner herein, and (2) The amended Rule 12 (5) (h) (VIII) of the A.P. Minor Mineral Concession Rules, 1966 cannot be made applicable to the subject application for transfer as the said Rule came to be inserted long after the filing of the application by the petitioner herein and the said Rule cannot be made applicable with retrospective effect.

6. In support of his submissions and contentions, learned counsel for the petitioner takes the support of the Judgment of Hon'ble Apex Court in the case of *COMMISSIIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI v. VATIKA TOWNSHIP PRIVATE LIMITED*[1].

7. On the contrary, it is vehemently contended by the learned Government Pleader so also the learned counsel for the fourth respondent that the petitioner herein has no *locus standi* to maintain the present writ petition and no show-cause notice as contended by the learned counsel for

---

[1] (2015) 1 SCC 1

the petitioner is necessary to the petitioner herein before passing the impugned order. It is also their submission that the order of rejection passed by the second respondent by applying Rule 12 (5) (h) (VIII) of the A.P. Minor Mineral Concession Rules, 1966 is strictly in accordance with law and that there is no dispute that as on the date of rejection of the application the amended Rule already came into existence. It is further contended that the judgment of the Hon'ble Apex Court in *COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (supra 1)* has no relevance and that the Apex Court made certain observations in the context of imposition of liability on the assessee who had accrued interest prior to amendment.

8. In support of their submissions and contentions, the learned Government Pleader and the learned counsel for the fourth respondent place reliance on the judgments of the Hobn'ble Apex Court in *STATE OF TAMIL NADU v. M/S. HIND STONE AND OTHERS*[2], *ALIGARH MUSLIM UNIVERSITY AND OTHERS v. MANSOOR ALI KHAN*[3], *M.P.RAM MOHAN RAJA v. STATE OF T.N. AND OTHERS*[4], *STATE OF ORISSA & ORS v. MD.ILLIYAS*[5], *ISLAMIC ACADEMY OF EDUCATION AND ANOTHER v. STATE OF KARNATAKA AND OTHERS*[6], *STATE OF RAJASTHAN v. MANGILAL PINDWAL*[7], *STATE OF U.P. & ORS V, HIRENDRA PAL SINGH ETC*[8], *BISHUN NARAIN MISRA v. THE STATE OF U.P AND OTHERS*[9] and *K.NAGARAJ AND AOTHERS v. STATE OF ANDHRA PRADESH AND ANOTHER*[10].

---

[2] (1981) 2 SCC 205
[3] (2000) 7 SCC 529
[4] (2007) 9 SCC 78
[5] (2006) 1 SCC 275
[6] (2003) 6 SCC 697
[7] AIR 1996 SC 2181
[8] (2011) 5 SCC 305
[9] AIR 1965 SC 1567
[10] (1985) 1 SCC 523

9. In the light of the pleadings and the above contentions advanced by the learned Advocates, the issues that emerge for consideration of this Court in the present writ petition are as under:

> 1) Whether the order impugned is vitiated by non-adherence to the principles of natural justice?
>
> 2) Whether the second respondent herein is justified in applying Rule 12 (5) (h) (VIII) of the A.P. Minor Mineral Concession Rules, 1966 for rejecting the application for transfer?

Issue No.1:

10. There is absolutely no controversy on the reality that the petitioner herein and the fourth respondent jointly filed an application for transfer of lease in Form 'R' in accordance with the provisions of Rule 12 (5) (b) (VIII) of the A.P. Minor Mineral Concession Rules, 1966. There is absolutely no dispute with regard to the fact that all the statutory requirements have been complied with and there is also no dispute with regard to the fact that the respondents herein acknowledged the said application and fixed the time limit for disposal of the same as 180 days from the requisition i.e., 13.07.2015. There is absolutely no controversy on the reality that the Assistant Director of Mines and Geology vide File No.5902/TQL/2016, dated 18.06.2016, submitted proposal to the second respondent for grant of transfer of quarry lease in favour of the petitioner herein. There is no plausible explanation forthcoming from the respondent authorities as to why they kept the said application pending beyond the time limit prescribed in the acknowledgment dated 13.07.2015. It is also required to be noted that it is a settled and well established proposition of law that any action which has civil consequences must necessarily be preceded by notice and opportunity to the person likely to be effected by such action. In the instant case, in the considered opinion

of this Court, the said principle is followed in breach. Having acknowledged the transfer application filed jointly by the petitioner and the fourth respondent and having recommended for transfer of lease in favour of the petitioner herein, the official respondents cannot be permitted to contend that unilaterally without being preceded by any notice and opportunity of hearing to the petitioner herein the impugned order can be passed rejecting the request of the petitioner. In the definite opinion of this Court, the questioned action on the part of the second respondent is a patent violation of the principles of natural justice. The stand taken by the respondents i.e., a show-cause notice was issued to the fourth respondent, by any stretch of imagination can neither be construed nor it amounts to compliance of principles of natural justice in the case of the petitioner herein. Therefore, the impugned action is in patent violation of the principles of natural justice and Point No.1 is answered accordingly in favour of the petitioner herein.

<u>ISSUE No.2:</u>

11. The submission of application jointly by the petitioner herein and the fourth respondent in Form-R under Rule 12 (5) (b) (VIII) and acknowledgment of the same by the respondent authorities on 13.07.2015 while indicating the time limit for disposal of the same categorically as 180 days are absolutely not in dispute. By virtue of the impugned order, the second respondent Director of Mines and Geology rejected the application in the light of Rule 12 (5) (h) (VIII) of the A.P. Minor Mineral Concession Rules. The State Government inserted the said provision by way of an amendment carried out and published vide G.O.Ms.No.29, Industries and Commerce (Mines-II) Department, dated 15.02.2017. The said amended provision of law reads as under:

"(viii) The prospecting licenses and quarry leases granted for the purpose of non-captive consumption are not transferable.

The prospecting licenses and quarry leases granted for captive consumption to a processing industry are transferable provided that the licensee or lessee shall transfer the lease along with the processing industry.

However, the licensee or lessee shall not assign, sublet, transfer or otherwise dispose of the license or lease that was granted for captive consumption along with processing industry, without obtaining the previous sanction in writing from the Director.

The transfer application shall be made to the Assistant Director of the District concerned in Form R along with nonrefundable application fee of Rs.10,000 (Rupees Ten Thousand only). The license or lease deed shall be executed as per the provision under clause (e):

The permission for transfer of lease along with processing industry shall be accorded on payment of an amount equivalent to ten times of annual dead rent per hectare or the amount equivalent to the dead rent per hectare for the unexpired period of lease, whichever is higher.

Provided further that the transferor and the transferee shall not be in arrears of any mineral revenue to the Government".

12. While referring to the above provision of law, it is the submission of the learned counsel for the petitioner that the said amended provision can be made applicable only prospectively and cannot be made applicable with retrospective effect and that as the application for transfer was submitted much prior to the said notification, the said amended provision has absolutely no application.

13. The contention of the learned Government Pleader and the learned counsel for the fourth respondent is that since the application for transfer was pending consideration as on the date of advent of the said Rule, the

second respondent correctly rejected the application in terms of the said provision of law. Therefore, the impact of the said amended provision on the subject application for transfer is required to be examined by this Court.

14. In order to substantiate his contention as to the non-applicability of the above mentioned amended provision, learned counsel for the petitioner places reliance on the pronouncement of the Hon'ble Apex Court in the case of *COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (Supra 1).*

15. On the other hand, the learned Government Pleader and the learned counsel for the fourth respondent place strong reliance on the judgments of the Hon'ble Apex Court as mentioned above.

16. In the case of *COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (supra 1),* a Constitutional Bench of the Hon'ble'ble Apex Court while dealing with the provisions of Income Tax Act, 1961 laid down general principles with regard to retrospectivity at paragraphs 27, 28, 29, 30, 31 as under:

> "27. A legislation, be it a statutory Act or a statutory Rule or a statutory Notification, may physically consists of words printed on papers. However, conceptually it is a great deal more than an ordinary prose. There is a special peculiarity in the mode of verbal communication by a legislation. A legislation is not just a series of statements, such as one finds in a work of fiction/non fiction or even in a judgment of a court of law. There is a technique required to draft a legislation as well as to understand a legislation. Former technique is known as legislative drafting and latter one is to be found in the various principles of 'Interpretation of Statutes'. Vis-à-vis ordinary prose, a legislation differs in its provenance, lay-out and features as also in the implication as to its meaning that arise by presumptions as to the intent of the maker thereof.

28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre (1870) LR 6 QB 1, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. (1994) 1 AC 486. Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

30. We would also like to point out, for the sake of completeness, that where a benefit is conferred by a legislation, the rule against a retrospective construction is different. If a legislation confers a benefit on some persons but without inflicting a corresponding detriment on some other person or on the public generally, and where to confer such benefit appears to have been the legislators

object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given a retrospective effect. This exactly is the justification to treat procedural provisions as retrospective. In Government of India and Ors. v. Indian Tobacco Association MANU/SC/0502/2005 : (2005) 7 SCC 396, the doctrine of fairness was held to be relevant factor to construe a statute conferring a benefit, in the context of it to be given a retrospective operation. The same doctrine of fairness, to hold that a statute was retrospective in nature, was applied in the case of Vijay v. State of Maharashtra and Ors. MANU/SC/3273/2006 : (2006) 6 SCC 286 It was held that where a law is enacted for the benefit of community as a whole, even in the absence of a provision the statute may be held to be retrospective in nature. However, we are confronted with any such situation here.

31. In such cases, retrospectively is attached to benefit the persons in contradistinction to the provision imposing some burden or liability where the presumption attaches towards prospectively. In the instant case, the proviso added to Section 113 of the Act is not beneficial to the Assessee. On the contrary, it is a provision which is onerous to the Assessee. Therefore, in a case like this, we have to proceed with the normal rule of presumption against retrospective operation. Thus, the rule against retrospective operation is a fundamental rule of law that no statute shall be construed to have a retrospective operation unless such a construction appears very clearly in the terms of the Act, or arises by necessary and distinct implication. Dogmatically framed, the rule is no more than a presumption, and thus could be displaced by out weighing factors."

17. In the case of *STATE OF TAMIL NADU (supra 2),* the Hon'ble Apex Court at paragraph 13, held as under:

"13. Another submission of the learned Counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of G.O. Ms. No, 1312 (2-12 1977) should be dealt with as if Rule 8C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned Counsel that applications for the grant or renewal of leases made long prior to the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8C did not exist."

18. In the case of *ALIGARH MUSLIM UNIVERSITY AND OTHERS (supra 3),* the Apex Court at paragraph No.26, held as under:

"26. It will be sufficient, for the purpose of the case of Mr. Mansoor Ali Khan, to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in S.C. Kapoor v. Jagmohan, namely, that on the admitted or indisputable facts - only one view is possible. In that event, no prejudice can be said to have been caused to Mr. Mansoor Ali Khan though notice has not been issued."

19. In the case of *M.P.RAM MOHAN RAJA (supra 4),* the Hon'ble Apex Court at paragraph 13, held thus:

"13. Now, coming to the merits of the writ petition we find that the rule was already repealed on 27.6.1996 and the ground reality had also changed. So far as grant of mining and mineral lease is concerned, no person has a vested right in it. There is no quarrel on the legal proposition that if certain rights have been decided on the basis of the law which was obtaining at that time, that will not nullify the judicial decision unless the bases are taken out. In the present case, the rule under which the writ petitioner sought direction for consideration of his application has already been repealed within the time frame directed by the High Court. therefore the basis on which the order was passed has been totally knocked out. Rule 39 on the basis of which direction was given was not in existence. therefore, it could not have been possible for the authorities to have acceded to the request of the writ petitioner. More so, no one has a vested right in mineral lease. In this connection it will be more useful to refer to a decision of this Court in State of Tamil Nadu v. Hind Stone and Ors. Their Lordships in the aforesaid case observed as follows:

The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned Counsel that applications for the grant of renewal of leases made long prior to the date of G.O.Ms. No.1312 should be dealt with as if Rule 8- C did not exist."

20. In *STATE OF ORISSA (supra 5),* the Hon'ble Apex Court, at paragraph 12, held as under:

> "12. When the allegation is of cheating or deceiving, whether the alleged act is wilful or not depends upon the circumstances of the concerned case and there cannot be any strait jacket formula. The High Court unfortunately did not discuss the factual aspects and by merely placing reliance on earlier decision of the Court held that pre-requisite conditions were absent. Reliance on the decision without looking into the factual background of the case before it is clearly impermissible. A decision is a precedent on its own facts. Each case presents its own features. It is not everything said by a Judge while giving judgment that constitutes a precedent. The only thing in a Judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. According to the well-settled theory of precedents, every decision contains three basic postulates┬ (i) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct, or perceptible facts; (ii) statements of the principles of law applicable to the legal problems disclosed by the facts; and (iii) judgment based on the combined effect of the above. A decision is an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically flows from the various observations made in the judgment. The enunciation of the reason or principle on which a question before a Court has been decided is alone binding as a precedent. (See: State of Orissa v. Sudhansu Sekhar Misra and Ors. (AIR 1968 SC 647) and Union of India and Ors. v. Dhanwanti Devi and Ors. (1996 (6) SCC 44). A case is a precedent and binding for what it explicitly decides and no more. The words used by Judges in their judgments are not to be read as if they are words in Act of Parliament. In Quinn v. Leathem (1901) AC 495 (H.L.), Earl of Halsbury LC observed that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which are found there are not intended to be exposition of the whole law but governed and qualified by the particular facts of the case in which such expressions are found and a case is only an authority for what it actually decides."

21. In *ISLAMIC ACADEMY OF EDUCATION AND ANOTHER (supra 6),* the Hon'ble Apex Court at Paragraphs 2, 139 and 146, held as under:

> "2. Most of the petitioners/applicants before us are unaided professional educational institutions (both minority and non-minority). On behalf of the petitioners/applicant it was submitted that the answers given to the questions, as set out at the end of the majority Judgment, lay down the true ratio of the Judgment It was submitted mat any observation made in the body of the judgment had to be read in the context of the answers given. We are unable to accept this submission. The answers to the questions, in the majority Judgment in Pai's case, are merely a brief summation of the ratio laid down in the Judgment. The ratio decidendi of a Judgment has to be found out only on reading the entire Judgment. In fact the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from, the judgment, one cannot find out the entire ratio decidendi of the judgment. We, therefore, while giving our clarifications, are deposed to look into other parts of the Judgment other than those portions which may be relied upon.
>
> 139. A judgment, it is trite, is not to be read as a statute. The ratio decidendi of a judgment is its reasoning which can be deciphered only upon reading the same in its entirety. The ratio decidendi of a case or the principles and reasons on which it is based is distinct from the relief finally granted or the manner adopted for its disposal. [See Executive Engineer, Dhenkanal Minor Irrigation Division, Orissa and Ors. v. N.C. Budharaj (Deceased) By. Lrs. and Ors. (2001) 2 SCC 721].
>
> 146. 127. The judgment of this Court in T.M.A. Pai Foundations (supra) will, therefore, have to be construed or to be interpreted on the aforementioned principles, The Court cannot read some sentences from here and there to find out the intent and purport of the decision by not only considering what has been said therein but the text and context in which it was said. For the said purpose

the Court may also consider the constitutional or relevant, statutory provisions vis-a-vis its earlier decisions on which reliance has been placed."

22. In *STATE OF RAJASTHAN (supra 7),* the Hon'ble Apex Court at Paragraph 9, held as under:

> "9. As pointed out by this Court, the process of a substitution of statutory provision consists of two Steps first, the old rule is made to cease to exist and, next, the new rule is brought into existence in its place. [see Koteshwar Vittal Kamath v, K. Rangappa, 1969 (3) SCR 40, at p. 48] In other words, the Substitution of a provision results in repeal of the earlier provision and its replacement by the new provision. As regards repeal of a statute the law is thus stated in Sutherland on Statutory Construction .
>
> > "The effect of the repeal of a statute where neither a saving clause nor a general saving statute exists to prescribed the governing rule for the effect of the repeal, is to destroy the effectiveness of the repealed act in future and to divest the right to proceed under the statute, which, except as to proceedings past and closed, is considered as if it had never existed."

23. In *STATE OF U.P. & ORS B (supra 8),* the Hon'ble Apex Court at Paragraphs 22 to 27, held as under:

> "22. It is a settled legal proposition that whenever an Act is repealed, it must be considered as if it had never existed. The object of repeal is to obliterate the Act from the statutory books, except for certain purposes as provided under Section 6 of the General Clauses Act, 1897. Repeal is not a matter of mere form but is of substance. Therefore, on repeal, the earlier provisions stand obliterated/abrogated/wiped out wholly, i.e., pro tanto repeal (vide:M/s. Dagi Ram Pindi Lall and Anr. v. Trilok Chand Jain and Ors. MANU/SC/0188/1992 : AIR 1992 SC 990; Gajraj Singh etc. v. The State Transport Appellate Tribunal and Ors. etc. MANU/SC/0116/1997 : AIR 1997 SC 412; Property Owners' Association and Ors. etc. etc. v. State of Maharashtra and Ors. MANU/SC/0214/2001 : AIR 2001 SC 1668; and Mohan Raj v. Dimbeswari Saikia and Anr. MANU/SC/8641/2006 : AIR 2007 SC 232).
>
> 23. In M/s. Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association, Madras MANU/SC/0501/1992 : AIR 1992 SC

1439, this Court explained the distinction between quashing of an order and staying the operation of the order observing as under:

While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order. Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law and so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending.

24. Thus, there is a clear distinction between repeal and suspension of the statutory provisions and the material difference between both is that repeal removes the law entirely; when suspended, it still exists and has operation in other respects except wherein it has been suspended. Thus, a repeal puts an end to the law. A suspension holds it in abeyance.

25. This Court in Bhagat Ram Sharma v. Union of India and Ors. MANU/SC/0611/01987 : AIR 1988 SC 740, explained the distinction between repeal and amendment observing that amendment includes abrogation or deletion of a provision in an existing statutes. If the amendment of an existing law is small, the Act prefaces to amend; if it is extensive, it repeals and re-enacts it.

26. In fact, the amended provisions of the L.R. Manual are under challenge before the High Court and the provisions repealed by the Amendment dated 13.8.2008 are not in existence and it will be assumed that the same had never been in existence. The Court while examining the validity of the amended provisions may reach a conclusion that the said provisions are ultra vires and unconstitutional and strike down the same but that may not

automatically revive the provisions which stood repealed by the said amendment.

27. Thus, the High Court erred in issuing directions to the State authorities to proceed, as an interim measure, under a non-existing law. Such an order seems to have been passed only to fill up the vacuum. Generally quashing of a subsequent notification would not affect in revival of an earlier notification in whose place the subsequent notification had been issued, however, the legal effect of an earlier law when the later law enacted in its place is declared invalid, does not depend merely upon the use of the words like substitution; or suppression. It depends upon the totality of circumstances and the context in which they are used. (Vide B.N. Tewari v. Union of India and Ors. MANU/SC/0312/1964 : AIR 1965 SC 1430; Indian Express Newspapers (Bombay) Private Ltd. and Ors. v. Union of India and Ors. AIR 1986 SC 515; West U.P. Sugar Mills Association and Ors. v. State of U.P. and Ors. MANU/SC/0088/2002 : AIR 2002 SC 948; Zile Singh v. State of Haryana and Ors. MANU/SC/0876/2004 : (2004) 8 SCC 1; and State of Kerala and Anr. v. Peoples Union for Civil Liberties, Kerala State Unit and Ors. MANU/SC/1302/2009 : (2009) 8 SCC 46.(See also Ameer-un-Nissa Begum and Ors. v. Mahboob Begum and Ors. MANU/SC/0093/1955 : AIR 1955 SC 352; and India Tobacco Co. Ltd. v. The Commercial Tax Officer, Bhavanipore and Ors. MANU/SC/0353/1974 : AIR 1975 SC 155)."

24. In *BISHUN NARAIN MISRA (supra 9),* the Hon'ble Apex Court, at paragraph 6 held as under:

"6. The next contention on behalf of the appellant is that the rule is retrospective and that no retrospective rule can be made. As we read the rule we do not find any retrospectivity in it. All that the rule provides is that from the date it comes into force the age of retirement would be 55 years. It would therefore apply from that date to all government servants, even though they may have been recruited before May 25, 1961 in the same way as the rule of 1957 which increased the age from 55 years to 58 years applied to all government servants even though they were recruited before 1957. But it is urged that the proviso shows that the rule was applied retrospectively. We have already referred to the proviso which lays down that government servants who had attained the age of 55 years on or before June 17, 1957 and had not attained the age of 58 years on May 25, 1961 would be deemed to have been retained in service after the date of superannuation, namely 55 years. This proviso in our opinion does not make the rule retrospective; it only provides as to how the period of service beyond 55 year should be treated in view of the earlier rule of 1957 which was being changed by the rule of 1961. Further the second order issued on the same day also clearly shows that there was no retrospective operation of the rule for in actual effect no government servant was retired before the date of the new rule, i.e., May 25, 1961 and all of them were continued in service up to December 31, 1961 except those who completed the age of 58 years between May 25, 1961 and December 31, 1961 and were therefore to retire on reaching the age of superannuation according to the old rule. We are, therefore, of opinion that the new rule reducing the age of retirement from 58 years to 55 years cannot be said to be retrospective. The proviso to the new rule and the second notification are only methods to tide over the difficult situation which would arise in the public service if the new rule was applied at once and also to meet any financial objection arising out of the enforcement of the new rule. The new rule therefore, cannot be struck down on the ground that it is retrospective in operation."

25. In *K.NAGARAJ AND OTHERS (supra 10),* the Hon'ble Apex Court at paragraph 37, held as under:

"37. Finally, there is no substance in the contention that the amendment to the Fundamental Rules, whereby the proviso to rule 2 was deleted, is beyond the powers of the rule- making authority or the Legislature. The Fundamental Rules and the amendments thereto are issued by the State Government under the powers delegated to it by the Civil Services (Governors' Provinces) Delegation Rules 1926, the Civil Services (Classification, Control and Appeal) Rules 1930, and under the Proviso to Article 309 of the Constitution. The Fundamental Rules which came in to force with effect from January 1, 1972 were amended earlier by G.O. Ms. No. 128 dated April 29, 1969. By that amendment, a proviso was added to rule 2 which reads thus:

"Provided that the rules shall not be modified or E; replaced to the disadvantage of any person already in service."

By G.O. Ms. No. 48 dated February 17, 1983 this proviso was deleted with retrospective effect from February 23, 1979. The contention of the petitioners is that the proviso which conferred a benefit upon Government servants by protecting their conditions of service, cannot be amended so as to empower the Government to alter those conditions to their prejudice and, in any event, they cannot be amended retrospectively so as to take away rights which had already accrued to them The simple answer to this argument is that the amendment of February 17, 1983 to the Fundamental Rules was made by the Government of Andhra Pradesh in exercise of the powers conferred by the proviso to Article 309 read with Article 313 of the Constitution. It is well-settled that the service rules can be as much amended, as they can be made, under the proviso to Article 309 and that, the power to amend these rules carries with it the power to amend them retrospectively. The power conferred by H the proviso to Article 309 is of a legislative character and is to be distinguished from an ordinary rule making power. The power to legislate is of a plenary nature within the field demarcated by the Constitution and it includes the power to legislate retrospectively. Therefore, the amendment made to the Fundamental Rules in the exercise of power conferred by Article 309, by which the proviso to rule 2 was deleted retrospectively, was a valid exercise of legislative power. The rules and amendments made under the proviso to Article 309 can be altered or repealed by the Legislature but until that is done, the exercise of the power cannot be challenged as lacking in authority. (See B.S. Vaderu v. Union of India;(1) Raj Kumar v. Union of India(2)."

26. As noted above, at the time of acknowledging the transfer application on 13.07.2015, the authorities fixed the time limit for disposal of the same as 180 days. The recommendation made by the Assistant Director of Mines and Geology vide File No.5902/TQL/2016, dated 18.06.2016, in favour of transfer is not in dispute. No plausible reason for keeping the application pending beyond the above time limit till rejection is forthcoming from the respondents, as such, petitioner cannot be penalised. Therefore, this Court

does not find any justification on the part of the respondent authorities in resorting to the impugned action. In view of the law laid down in *COMMISSIIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (supra 1),* the judgments on which the learned Advocates for the respondents have placed reliance would not render any assistance to the respondent herein. In the considered opinion of this Court, in view of the law laid down in *COMMISSIIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (supra 1),* the impugned order cannot be sustained in the eye of law. Accordingly, the amended provision cannot be made applicable to the subject application and consequently the issue No.2 is also answered in favour of the petitioner herein and against the respondents.

27. For the aforesaid reasons, writ petition is allowed, setting aside the impugned order passed by the Director of Mines and Geology, State of Andhra Pradesh/second respondent herein vide proceedings D.Dis.No.7478/R5-1/2016, dated 04.04.2017 and consequently the official respondents herein are directed to consider the application for transfer dated 13.07.2015 in accordance with the Rules in vogue as on the date of the said application and without reference to the amended Rule 12 (5) (h) (viii) of the A.P. Minor Mineral Concession Rules 1966 notified vide G.O.Ms.No.29, Industries and Commerce (Mines-II) Department, dated 15.02.2017 and pass appropriate orders, within a period of two months from the date of receipt of a copy of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 13.11.2017
grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.16548 of 2017

Dated: 13th November, 2017

grk