THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition Nos.37319 and 38948 of 2017

COMMON ORDER:

These writ petitions are filed challenging the separate orders, dated 29.05.2017, of the 1st respondent passed respectively *vide* proceedings No.21110/R5-1/2016 and 21109/R5-1/2016.

2. I have heard the submissions of *Sri K.G.Krishna Murthy,* learned senior counsel representing Sri K. Rammohan, learned counsel appearing for the petitioners, and of the learned Government Pleader for Mines and Geology appearing for the respondents. I have perused the material record.

3. Since the issue that falls for adjudication in the both the writ petitions is one and as common submissions are made, these writ petitions are being disposed of by this common order.

4. The case of the petitioner and the submissions on its behalf by the learned counsel, in brief, are as follows:

Vide proceedings, dated 12.07.2017, 2nd respondent granted quarry leases for colour granites over respective extents of 2.785 hectares and 2.500 hectares in Sy.No.54/P of Muddannapalli village, for a period of twenty years (12.07.2007 to 11.07.2027), to M/s.Maruthi Granites. The said owner of the leases/lessee could not run the quarries for various reasons. Therefore, the managing partner of the original lessee-M/s.Maruthi Granites, and the petitioner, represented by its managing partner, through Mee Seva, filed joint applications, dated 09.06.2015, under Rule 12(5)(h)(viii) of the A.P. Minor Mineral Concession Rules, 1966, [hereinafter called 'the Rules'] before the 2nd respondent in Form Nos.'R' for transfer of said quarry leases for granites and marbles in favour of the petitioner so far as the unexpired periods of portions of leases. The 2nd respondent received the said applications and all the relevant documents enclosed thereto, on 16.07.2015. Thereafter, the 2nd respondent directed the Royalty Inspector and Surveyor to inspect the mining lease in the presence of transferor and transferee; the 3rd respondent was also directed to submit an inspection report. Accordingly, inspection was conducted on 28.05.2016 and 19.05.2016 and a report was submitted on 28.05.2016 by the Royalty Inspector. The Surveyor also surveyed the land and submitted report on 19.05.2016 by clearly mentioning the physical features of the quarry as on the date of inspection; he also recommended the 2nd respondent to accord permissions for transfers of quarry leases for unexpired periods, that is, up to 11.07.2027, in favour of the petitioner, subject to submission of modification of mining plans as per the working arrangement and subject to satisfaction of terms and conditions and A.P.L.L.C. Rules, 1966, and Granites Conservation and Development Rules, 1999. The modifications of the mining plan as per the working arrangement were submitted to the 2nd respondent. The original lessee/owner of the mining leases gave an affidavit consenting for transfer of the mining leases in favour of the petitioner. All formalities required under the rules and executive instructions have been complied with. Sub-rule 5 (h)(viii) of Rule 12 of the Rules provides for procedure for transfer of mining leases. While so, the 2nd respondent issued show cause notice, dated 21.03.2017. By the said notice, the petitioner was directed to submit explanations as to why the transfer applications shall not be rejected as per the amended provision of Rule 12(5)(h)(viii) of the Rules. The petitioner submitted explanations, dated 11.04.2017, stating that the applications filed for transfer are dated 08.07.2015 and the same were received by the 2nd respondent, on 16.07.2015, and that the Royalty Inspector's reports were received in November, 2016, and that the applications remained pending for a long time. The petitioner in-fact invested money for development of the quarries and made the material worthy of export and is also getting orders. Therefore, the petitioner requested the 2nd respondent to allow the transfers, as a granite factory is under proposal and for that the petitioner purchased land at Palamaneru with proposal for installation of the machine for cutting and polishing. The petitioner also stated to consider the proposals and requests for transfers as otherwise the situation may lead to a lock up and dispute between the transferor and transferee. The action of the 2nd respondent in keeping the applications pending for more than 90 days is contrary to the Rules; he is expected to take a decision in accordance with the Rules existing as on the date of submission of the proposal by the authority. However, the 2nd respondent by the impugned proceedings, dated 29.05.2017, rejected the joint applications for transfers of the leases on the ground that as per G.O.Ms.No.29, Industries, Commerce (Mines-II), dated 15.02.2017, Rule 12(5)(h)(viii) of the Rules has been amended and that the subject quarry leases are not transferable in view of the said amended provision. The said rejection orders, which are impugned, are illegal, improper, unjust, arbitrary and contrary to law. The rejection of the applications submitted, on 16.07.2015, nearly after lapse of two years by keeping the applications in cold storage is erroneous. The said G.O.Ms.No.29 is only prospective in its operation and the amended Rule would not apply to the present case as the amended Rule has no retrospective application. In the absence of anything in the enactment to show that the Rule made will have retrospective operation, no construction can be placed on the amended Rule to give it retrospective operation. If the rejection orders are not set aside and directions as sought for are not given to the 2nd respondent, the transferor and the petitioner suffer serious and irreparable loss.

4.1 In support of the said contentions, learned counsel for the petitioner placed reliance on the decision of the Supreme Court in Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt., Ltd.,[1]

5. Per contra, the learned Government Pleader forcefully contended that the petitioner herein has no *locus standi* to maintain the present writ petitions and that the orders of rejection passed by the 2nd respondent by applying the amended Rule 12 (5) (h) (viii) of the Rules is in accordance with law as there is no dispute that the amended Rule is in force and is holding the field as on the date of rejection of the applications. He further submitted that the judgment of the Constitution Bench of the Supreme Court in COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (1 supra) has no relevance and application as certain observations were only made in the context of imposition of liability on the assessee who had accrued interest prior to the amendment.

5.1 In support of his submissions, the learned Government Pleader placed reliance on the following decisions of the Supreme Court: (i) STATE OF TAMIL NADU v. M/S. HIND STONE AND OTHERS[2]; (ii) ALIGARH MUSLIM UNIVERSITY AND OTHERS v. MANSOOR ALI KHAN[3]; (iii) M.P.RAM MOHAN RAJA v. STATE OF T.N. AND OTHERS[4]; (vi) STATE OF ORISSA & ORS v. MD.ILLIYAS[5]; (v) ISLAMIC ACADEMY OF EDUCATION AND ANOTHER v. STATE OF KARNATAKA AND OTHERS[6]; (vi) STATE OF RAJASTHAN v. MANGILAL PINDWAL[7]; (vii) STATE OF U.P. & ORS v. HIRENDRA PAL SINGH ETC[8]; (viii) BISHUN NARAIN MISRA v. THE STATE OF U.P AND OTHERS[9]; STATE OF TAMIL NADU V.

[1] (2015)1 SCC 1
[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

M/S.HIND STONE AND OTHERS[10]and (ix) K.NAGARAJ AND AOTHERS v. STATE OF ANDHRA PRADESH AND ANOTHER[11].

6. I have given earnest consideration to the facts and submissions.

7. The petitioner contends that the un-amended Rule 12 (5) (h) (viii) of the Rules as on the date of the application would apply and therefore, the rejection order that was passed by wrongly applying the amended Rule retrospectively is illegal. The respondents contend that the amended Rule 12 (5) (h) (viii) is rightly applied while passing the impugned rejection order. In that view of the matter it is necessary to refer to infra, the Rule and the amended Rule.

<u>The un-amended Rule reads as under:</u>

(viii) The licensee or lessee shall not assign, sub-let, transfer or otherwise dispose of the under licence or lease without obtaining the A.P. Minor Mineral Concession Rules, 1966 43 previous sanction in writing of the Director. The transfer application shall be made to the Assistant Director of the District concerned in Form R along with non-refundable application fee of Rs.5,000 (Rupees Five Thousand only). The licence or lease deed shall be executed as per the provision under clause (c):
Provided that such sanction shall be accorded that there is no speculation involved in the transfer of licence or lease:
Provided further that the transferor and the transferee shall not be in arrears of any mineral revenue to the Government.

<u>The amended Rule reads as under:</u>

"(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 non-refundable application fee of

[10] (1981) 2 SCC 205
[11] (1985) 1 SCC 523

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".

8. The short but important question that falls for consideration is –

Whether the 2nd respondent is justified in passing the impugned rejection orders by retrospectively applying the amended Rule 12(5)(h)(viii) of the Rules?

9. POINT:

9.1 It is apt to first note that the learned counsel for the petitioner having placed on record the order, dated 13.11.2017, of a learned single Judge of this Court, in W.P.No.16548 of 2017, contended that the present issue is squarely covered by the afore-said orders of this Court. I have carefully gone through all the decisions and also the earlier order of this Court in W.P.No.16548 of 2017. It is not in dispute that the present issue is directly involved in the *lis* covered by the subject matter of W.P.No.16548 of 2017. However, the learned Government Pleader contended that against the order of the learned Single Judge, a Writ Appeal 1776 of 2017 has been preferred and that in that writ appeal, *status quo* orders are granted and that the learned Single Judge, who passed the said order in the afore-stated writ petition W.P.No.16548 of 2017 did not properly consider the legal position and also the precedents cited; and, he distinctively brought to the notice of the Court the observations in paragraph 12 of the decision of the Supreme Court in State of Orissa (supra) in support of the following proposition laid down in the cited decision:

"According to well settled theory of precedents every decision contains three basic postulates. (i) 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."

He next stated that the decision of the Supreme Court in COMMISSIONER OF INCOME TAX (CENTRAL)-I, NEW DELHI (1 supra) relied upon by the learned counsel for the petitioner is not applicable to the facts of the case by *inter alia* stating that the petitioner has no vested right to the grant or renewal or transfer of leases and that merely on the ground that applications for transfers have been pending he cannot claim a vested right and direct the respondents to deal with such applications in a particular way by applying particular provision and that in the absence of any vested right in the petitioner, the 2nd respondent is justified in dealing with the applications for transfer as per the Rule in force on the date of disposal of the applications. He finally urged that the rejection proceedings impugned are just and correct and that the contention of the learned counsel for the petitioner that the issue involved in the present writ petition is squarely covered by the decision of this Court in the afore-stated writ petition need not be countenanced. He submitted that this

Court need not necessarily agree with the decision of the learned single Judge rendered in the afore-stated writ petition, in the light of his contentions.

9.2 The learned single Judge of this Court who rendered the said order in the aforestated writ petition considered all the submissions of both the sides, in detail, and for reasons recorded in support of the conclusion held that the transfer application of the petitioner therein shall be dealt with as per the Rule in vogue as on the date of the said application without reference to the amended Rule notified vide G.O.Ms.No.29 and gave directions accordingly after setting aside the order impugned of the Director of Mines and Geology. Having gone through the said order of the learned single Judge in the afore-stated writ petition, I find myself in agreement with the said reasoning and conclusions arrived at in the said order. Therefore, while arriving at the conclusions in the instant writ petitions on the self same issue, this Court need not depart from the conclusions in the afore-stated order. In that view of the matter, I find that the contention of the respondents that the view taken by the learned single Judge on the same issue requires reconsideration and that this Court has to reconsider the said issue by expressing disagreement with the said earlier view of the learned Judge is devoid of merit and needs no countenance.

9.3 The view of this Court that the amended Rule in question has no retrospective operation and it cannot be applied retrospectively finds support from the ratio in the latest decision of the Supreme Court in Federation of Indian Mineral Industries v. Union of India (UOI)[12] wherein it was held as follows:

> 21. The power to give retrospective effect to subordinate legislation whether in the form of Rules or Regulations or notifications has been the subject matter of discussion in several decisions rendered by this Court and it is not necessary to deal with all of them - indeed it may not even be possible to do so. It would suffice if the principles laid

[12] 2017(12) SCALE 586

down by some of these decisions cited before us and relevant to our discussion are culled out. These are obviously relatable to the present set of cases and are not intended to lay down the law for all cases of retrospective operation of statutes or subordinate legislation. The relevant principles are:

(i) The Central Government or the State Government (or any other authority) cannot make a subordinate legislation having retrospective effect unless the parent statute, expressly or by necessary implication, authorizes it to do so. (Hukum Chand v. Union of India: (1972) 2 SCC 601 and Mahabir Vegetable Oils (P) Ltd. v. State of Haryana: (2006) 3 SCC 620).

(ii) Delegated legislation is ordinarily prospective in nature and a right or a liability created for the first time cannot be given retrospective effect. (Panchi Devi v. State of Rajasthan: (2009) 2 SCC 589).

(iii) As regards a subordinate legislation concerning a fiscal statute, it would not be proper to hold that in the absence of an express provision a delegated authority can impose a tax or a fee. There is no scope or any room for intendment in respect of a compulsory exaction from a citizen. (Ahmedabad Urban Development Authority v. Sharadkumar Jayantikumar Pasawalla: (1992) 3 SCC 285 and State of Rajasthan v. Basant Agrotech (India) Limited.: (2013) 15 SCC 1).

9.4 Thus, in the decision in Federation of Indian Mineral Industries (12 supra) a binding precedent, the Supreme Court while considering the power to give retrospective effect to subordinate legislation in the form of Rules or regulations or notifications noted the legal position obtaining by referring to various decisions including the decision in Commissioner of Income Tax (1st Supra) relied upon by the petitioner herein and further held as follows:

23. On the facts before us, it is clear that Section 15 of the MMDR Act empowers the State Government to 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. This Section does not specifically or by necessary implication empower the State Government to frame any Rule with retrospective effect. Also, the MMDR Act does not confer any specific power on the State Government to fictionally create the DMF deeming it to be in existence from a date earlier than the date of the notification establishing the DMF. Therefore, it must follow that under the

> provisions of the MMDR Act that we are concerned with, no State Government has the power to frame a Rule with retrospective effect or to create a deeming fiction, either specifically or by necessary intendment.
>
> 24. Similarly, Section 13 of the MMDR Act does not confer any specific power on the Central Government to frame any Rule with retrospective effect. Section 9B(5) and (6) read with Clause (qqa) inserted in Section 13(2) of the MMDR Act enable the Central Government to make Rules to provide for the amount of payment to be made to the DMF established by the State Government Under Section 9B(1) of the MMDR Act. None of these provisions confer any power on the Central Government to require the holder of a mining lease or a prospecting licence-cum-mining lease to contribute to the DMF with retrospective effect. Therefore, even the scope and extent of the Rule making power of the Central Government is limited.

Therefore, for the reasons alike these two writ petitions deserve to be allowed.

9.5 Learned Government Pleader having relied upon the decision in State of Tamil Nadu v. M/s.Hind Stone [10 supra], *inter alia*, contended that the ratio in the said decision squarely applies to the facts of the present case and that, therefore, the petitioner is not entitled to contend that the applications for transfer of leases have to be disposed of on the basis of the Rule in force at the time of making the applications and that the petitioner has no vested rights and hence, the applications for transfers have to be dealt with according to the Rules in force on the date of the disposal of the applications despite the fact that there is a long delay since making of the applications.

9.6 A perusal of the cited decision would disclose the following facts: 'Several persons, who held leases for quarrying black granite belonging to the State Government and whose leases were about to expire, applied to the Government of Tamil Nadu for renewal of their leases; there was long delay in disposal of the said applications by the Government; in the meanwhile there was a change of the rule position; the applications for renewal of leases were rejected by applying the Rule in force on the date of the disposal of the applications despite the fact that there is a long delay since the making of the applications.' The Supreme Court while confirming the said rejections held as follows: - - 'While applications should be dealt with within a reasonable time, that does not clothe 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. 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.' It is to be noted that in the cited case, the applications are for renewal of licence. It is not disputed and the Supreme Court also observed in the cited decision that an application for renewal of a lease is, in essence an application for the grant of a lease for a fresh period, whereas, in the case on hand, the original lessee is having subsisting lease periods and as per the Rule, which is in force, when the applications for transfers are made, such transfers are permissible. Therefore, the instant case is not a case where the applications are for grant of fresh leases. The applications are only for transfers of leases. Hence, in that view of the matter, it can be said that there is a vested right in the case on hand. Even otherwise, applying the amended Rule retrospectively would amount to changing the lease conditions unilaterally to the detriment of the petitioner. Such a course is impermissible in law, in the considered view of this Court. Further, law passed today cannot apply to the events of the past as the lease holder entered into the lease on the belief that he will be entitled to proceed in the matter in accordance with the existing law and obviously arranged his affairs by relying upon the existing law and made plans for realisation of the fruits of the lease. If the amended Rule is retrospectively applied to the present facts of the case, his plans would be upset and the affairs he arranged relying on the existing law would suffer a set back as the application of the amended Rule retrospectively would change the character of the past transaction carried on upon the faith of the then existing law. Therefore, the contention of the learned Government Pleader cannot be countenanced. This view of this Court is fortified by the ratio in the decision of the Supreme Court in Commissioner of Income Tax (Central)-I, New Delhi v. Vatika Township Pvt., Ltd., [1 supra]. Now, it is apposite to extract the following two paragraphs in the said decision as the legal position laid down aptly sums up the relevant legal position.

> 31. 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.
>
> 32. 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.

(Emphasis is by this Court)

In-fact, in the recent decision in Federation of Indian Mineral Industries and others (12 supra), the Supreme Court having referred to the Constitution Bench decision on the subject observed that a much more erudite, general and broad-based discussion on the subject is found in the said Constitution Bench decision. Further, while rendering the decision in Federation of Indian Mineral Industries and others (12 supra), the Supreme Court observed that it is bound by the conclusions arrived at in the Constitution Bench decision and, therefore, it is not at all necessary to repeat the discussion and the conclusions arrived at by the Constitution Bench.

10. In view of the precedential guidance in the decisions of the Supreme Court, these two writ petitions are allowed and the proceedings impugned of the 2nd respondent are set aside and the 2nd respondent is directed to consider the applications for transfer, dated 09.06.2015, afresh as per the un-amended Rule 12(5)(h)(viii) of the A.P. Minor Mineral Concession Rules, 1966, which was in force at the time of the submission of applications, without reference to the amended Rule notified vide G.O.Ms.No.29 and pass apposite orders in strict accordance with procedure established by law within two (02) months from the date of receipt of a copy of this common order and communicate the decision taken thereon to the petitioner within a week thereafter. There shall be no order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

M.Seetharama Murti, J

06.12.2017
Note: Issue CC by 08.12.2017.
[B/o]
Vjl