

HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on : 19.07.2019

Order Delivered on : 02.08.2019

WPC No. 774 of 2015

- ACC Limited, A Limited Company Registered Under The Companies Act, 1913, Having Its Registered Office At Cement House, 121, Maharshi Karve Road, Mumbai 400020 And Its Manufacturing Unit At Jamul Cement Works, Jamul, District Durg, Chhattisgarh Through Its Director Plant K. K. Rajeev

---- Petitioner

Versus

1. State of Chhattisgarh Through The Secretary, Water Resources Department Mantralaya, Mahanadi Bhawan, Naya Raipur Chhattisgarh
2. Engineer-In-Chief, Water Resources Department, Government of Chhattisgarh Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
3. Chief Engineer, Water Resources Department, Government of Chhattisgarh, Mahanadi Godawari Kachar, Raipur Chhattisgarh
4. Superintending Engineer, Water Resources Department, Government of Chhattisgarh, Shivnath Division, Durg Chhattisgarh
5. The Executive Engineer, Tandula Water Resources Division, Government of Chhattisgarh, Durg Chhattisgarh
6. General Manager, District Industries And Trade Centre Durg Chhattisgarh

---- Respondents

For Petitioner	:	Shri Ashish Shrivastava, Advocate for the Petitioner
For Respondents-State	:	Shri Satish Chandra Verma, Advocate General with Shri Vikram Sharma, Panel Lawyer

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

C.A.V. ORDER

P.R. Ramachandra Menon, Chief Justice

1. Challenge is against the constitutional validity of Rule 71-A and Rule 73(1) of the Chhattisgarh Irrigation Rules, 1974 (for short, 'the Rules, 1974'); besides the prayer to set aside the relevant circulars issued by the State, fixing the extent of liability for satisfaction of water charges and such other incidental proceedings. It is contended that the demand for levy of water

charges in respect of the use of water by the Petitioner, which gets collected on rains in the natural course, in the worked out pits left out in the leased area after mining, is devoid of any power or authority and bad in all respects.

2. This is the second round of litigation. The Petitioner, who is a Cement Manufacturing Company, has obtained a Mining Lease from the Respondent-State, terms and conditions of which have been put in writing as borne by Annexure-P/5 dated 12.06.1963. The tenure of the lease, originally fixed for 'twenty' years, was being extended from time to time and the mining operation still continues. It is stated that, by the passage of time, on extraction of mineral from the leased area, rainwater gets collected in the mined-out pits and the said water is being used by the Petitioner for various activities including in connection with the manufacturing process and such other purposes. It is stated that there was no objection from any corner in this regard for nearly five decades.
3. The hiccup started when the 5th Respondent, Executive Engineer of the Water Resources Division of the State wrote to the General Manager of the Industries Department of the State on 06.02.2013 that the Petitioner-Company was extracting water quite illegally from the mined-out pits in the leased land and was liable to pay water charges. It was pursuant to the further steps, that Annexure-P/4 demand notice was issued on 06.02.2013, demanding to satisfy a total sum of Rs.1,89,12,368/- towards water charges in respect of the manufacturing activities and a further sum of Rs.1,55,39,922/- in respect of the Captive Power Plant situated within the premises, which was set-up to help the manufacturing process. On

receipt of the said demand notice, the Petitioner-Company informed the 5th Respondent that the Petitioner was not liable to pay any such charges and required the 5th Respondent to let the Petitioner know as to power and authority under which the water charge was sought to be realized. The 5th Respondent furnished copies of two Notifications dated 21.03.2006 (Annexure-P/2) and 31.05.2010 (Annexure-P/3) issued under the Chhattisgarh Irrigation Act, 1931 (for short, 'the Irrigation Act, 1931') (with reference to Sections 37 and 40 of the Irrigation Act, 1931) and asserted that the Petitioner-Company was bound to pay the water charges.

4. The rate of water charges in respect of natural sources or own sources was originally stipulated to be Rs.0.90 per cu.m., which subsequently came to be enhanced to Rs.2.00 per cu.m. Contending that Sections 37 and 40 of the Irrigation Act, 1931 would not apply in the case of the Petitioner, primarily, for the reason that the enactment was only in connection with the activity for 'Irrigation' and not for 'Industry' and further that the Petitioner was not using any water source situated in the Government or common/public area, but from the natural/ self-created sources (rain water collected in the mined-out pits in the leased land), the Petitioner moved this Court challenging the course and proceedings pursued by the 5th Respondent, by filing WPC No. 519 of 2013.
5. The denial of opportunity of hearing before raising the demand was considered by the learned Single Judge and the writ petition was disposed off, directing the matter to be reconsidered by way of 'post decisional hearing', with liberty to the Petitioner to file a fresh

representation, more so, since the demand notice was issued only in the year 2013. The Petitioner preferred a representation disputing the liability and non-applicability of the provisions of the Irrigation Act, 1931 and the Notifications. The Petitioner also moved this Court against the verdict passed by the learned Single Judge providing only 'post decisional hearing', by filing WA No. 340 of 2014, where an interim order was passed on 29.10.2014 to the effect that no coercive steps shall be pursued by the Authority until further orders. The matter was contested by the State with specific reference to the mandate of Sections 26, 37, 40 and other provisions under the Irrigation Act, 1931; besides referring to Rule 71-A and 73(1) of the Rules, 1974 and the relevant Notifications issued in this regard. In the above circumstance, it was observed by this Court on 26.02.2015, that the Petitioner had to challenge the above Rules, if at all the prayer was to be sustained, and it was accordingly, that the Petitioner has turned up again by filing the present Writ Petition (C) No.774 of 2015. It is also to be mentioned here, that the representation preferred by the Petitioner before the State came to be rejected as per Annexure-P/10 proceeding on 23.08.2014 and hence the said order has also been subjected to challenge in this writ petition. This Court is given to understand that WA No. 304 of 2014 preferred earlier was disposed off on 07.07.2015, without prejudice to the right of the Petitioner to pursue this writ petition.

6. A return dated 24.06.2015 has been filed by the Respondent/State with specific reference to the mandate of the relevant provisions in the Irrigation Act, 1931 and in particular, Sections 37 and 40; besides

referring to the general provisions regarding the Rules under Section 92 and the specific rule making power under Section 93. The State has also made a reference to Rules 71-A and 73(1) of the Rules, 1974. It is asserted that a conjoint reading of the said Sections, Rules and the Notifications would make it clear that the State is having ample power for framing the Rules and that the challenge against the validity of the Rules is rather unfounded. A specific reference is made to Section 26 of the Irrigation Act, 1931, which makes it clear that all rights in the water in any river, natural stream / natural lake or other natural collection of water shall vest in the Government and that there is absolutely no basis for the contentions raised by the Petitioner that the water in the mined-out pits situated in the leased property (being a self-created source) would not be governed by the provisions of the Act/ Rules/ Notifications. The Respondent-State has also pointed out that the Petitioner-Company was admittedly using water from the said natural sources situated in the leased out property, without entering into any agreement with the State and hence the use was 'unauthorized', attracting the higher rate as envisaged under Rule 73 of the Rules, 1974 (thrice the volumetric rate). As the demand contained in Annexure-P/4 notice was not satisfied, a further demand notice was issued on 11.04.2014, which has not been subjected to challenge in the instant writ petition. It is further pointed out that the Petitioner has nowhere demonstrated, as to how the Rules under challenge are ultra vires to the Constitution or the Act.

7. The Petitioner has filed a rejoinder, virtually reproducing the contentions raised in the writ petition and asserting that the provisions of the

Act/Rules/Notifications are not attracted in the case of appropriation of water from 'self-created source' and that the course sought to be pursued by the State/Respondent is without any authority of law and hence requires to be interdicted. The State has filed an additional return, with an application to receive the same. The action on the part of the State is sought to be justified also with reference to the provisions in the Chhattisgarh Regulation of Water Act, 1949 (for short, 'the Regulation Act, 1949'), which was stated as enacted to regulate the appropriation of water by an Industry or Local Authority for industrial or other purposes. Specific reference is made to Section 2(b) of the Regulation Act, 1949, that defines the term "natural source of supply" which means a river or a stream flowing in natural channels or a spring and any lake or other natural collection of still water. Section 3 of the Regulation Act, 1949 asserts the rights of the Government in the water of any natural resource, notwithstanding anything contained in the Indian Easements Act or the Indian Limitation Act or any custom to the contrary. Specific reference is made to the Section 4 of the Regulation Act, 1949, which imposes a restriction on appropriation of water by an industrial concern. It is pointed out that, for using natural supply of water, the industry concerned is under obligation to seek permission of the State Government and proceedings in respect of such application are enumerated under Section 6 of the Regulation Act, 1949.

8. The power of the Government to impose penalty, if at all there is any breach of the Regulation Act, 1949 is given under Section 10 of the said Act. It is accordingly pointed out that a conjoint reading of Section 26 of

the Irrigation Act, 1931, along with Section 3 of the Regulation Act, 1949, would make it clear that the Government has absolute right over the water which gets collected in the mined-out pits in the leased area and that the Petitioner is liable to satisfy the water charges and penalty, in view of the mandate under the relevant provisions of law, including Sections 37, 40, 92 and 93 of the Irrigation Act, 1931 and Rules 71-A and 73(1) of the Rules, 1974 and also Notifications issued in this regard, including the last one dated 24.02.2016, at the enhanced rate as specified in Annexure-R/3. This led to filing of additional rejoinder by the Petitioner, to the effect that the State has now taken a somersault, seeking to shift from its original stand (placing reliance of the provisions of the Irrigation Act, 1931) to the Regulation Act, 1949 and hence that the proceedings already issued are *per se* wrong and illegal in all respects, as the demand notices were issued only under the Irrigation Act, 1931 and not under the Regulation Act, 1949.

9. I.A. No.3 of 2019 dated 12.05.2019 has been filed by the Respondent-State seeking acceptance of some additional documents. As per Annexure-R/4, dated 24.11.2018, the State/ Department has sought information from the Petitioner regarding the sources of water and the quantity consumed by the Petitioner, besides the particulars of the Mining Lease Agreement. In response to the said letter, the Petitioner submitted Annexure-R/5 reply on the same date i.e. 24.11.2018, expressing the readiness to provide information, but only after discussing the matter with the lawyer and the legal department. Since no reply was forthcoming, two reminders dated 30.03.2019 and 09.05.2019 were sent to the

Petitioner, copies of which have been produced as Annexure-R/6 and it is added that the Petitioner is intentionally avoiding to furnish the information sought for, particularly, as to how the Petitioner has illegally constructed the pond and the slope in such a manner, that the water comes and gets collected in the pond / mined-out pits. It is also pointed out that, to extract water from the pit, the Petitioner has also set up a 'pump-house' without any authority or legal sanction from the Government. Photographs of the premises/installations are produced as Annexure-R/7.

10. Mr. Ashish Shrivastava, the learned counsel for the Petitioner, addressed the Court in terms of the pleadings and prayers raised, mainly contending that the provisions of the Irrigation Act, 1931 are not applicable to the case in hand, since the said Act is only for the activities in connection with the 'Irrigation' and not for any 'Industry'. The next limb of the submission is that, the Petitioner is not using water from any Government or common public area, but from a natural source / self-created source; on accumulation of rain water in the mined-out pits situated in the leased property. It is further contended that the Rules framed by the State (which are subjected to challenge) are not in conformity with the provisions of the Act and so far as the Act does not enable the State Government to impose any charge over the water collected and used from the natural source/ self-created source, attempt to make such instance to be subjected to water charges by framing the Rules does not actually come within the Rule making power of the State and hence it is ultra vires to the Constitution and also the Act. The learned counsel

further submits that the amounts now sought to be collected, though styled as 'water charges', it infact amounts to a tax; for which no authority is vested upon the State, for want of proper legislation to realize tax in the said circumstance. Hence, it is stated as liable to be interdicted, in view of the law declared by the Apex Court in ***Jindal Stainless Ltd. Vs. State of Haryana***¹ which was followed by the Supreme Court in ***Tata Iron and Steel Company Limited and Another Vs. State of Bihar and Others***². Reliance is also sought to be placed on the verdict passed by a Division Bench of the Rajasthan High Court, at Jaipur, in D.B. Special Appeal Writ No. 211 of 2006. The learned counsel further submits that Section 39 of the Irrigation Act, 1931 is under Chapter V, which carries the heading "The supply of water from canals and charges therefor" and hence stands on a different pedestal.

11. The prime contention is that the term 'Canal' is defined under Section 3 of the Irrigation Act, 1931, which does not take in any natural source and hence the action pursued does not come within purview of the statutory provisions. The next contention is that, though five different instances as '(a) to (e)' are mentioned under Section 37(1) of the Irrigation Act, 1931. Sub-section (2) of Section 37 of Irrigation Act, 1931 providing for the rates of charges for supply of water deals with only in respect of the Clauses (a), (b) (c) and (e) of sub-Section (1), virtually leaving out (d) which relates to the supply of water for industrial/ urban /other purposes not connected with the agriculture. The last submission is that, the rate of water charges now sought to be realized from the Petitioner is 'thrice'

¹ (2017) 12 SCC 1

² (2018) 12 SCC 107

the normal rate, being imposed as a matter of 'penalty' in terms of Rule 73 of the Rules, 1974; which is quite onerous and no power is vested with the State to impose such penalty under the Irrigation Act, 1931. Rule 73 (1) is stated as beyond the Rule making power; adding that the course of action, if any, which can be pursued by the State is only in terms of Section 92(5) of the Irrigation Act, 1931 i.e. for prosecution and to impose punishment by way of imprisonment or fine as specified therein. It is also stated that, if at all Section 40 of the Irrigation Act, 1931 is to be applied to realize the water charges, it shall only be on the basis of an 'agreement'; whereas there is no agreement in the instant case. The learned counsel further submits that the Rules cannot travel beyond the Act and the circumstances, when and how the Rules would become ultra vires have been explained by the Apex Court in ***Union of India and Others Vs. S. Srinivas***³ (paragraph 21).

12. Mr. Satish Chandra Verma, learned Advocate General representing the State/ Department, submits that the idea and understanding of the Petitioner is wrong and misconceived. It is pointed out that the Constitutional validity of the relevant Rules sought to be challenged in the instant case, was the subject matter for consideration before the High Court of Madhya Pradesh, in relation to the provisions of the Madhya Pradesh Irrigation Act, 1931. The State of Chhattisgarh has been carved out from the State of Madhya Pradesh and the same situation was existing throughout the State. On formation of the new State, the above enactment was adopted in this State as well, re-naming it as Chhattisgarh

³ (2012) 7 SCC 683

Irrigation Act, 1931. The provisions of the Irrigation Act, 1931 and the provisions in the Rules, 1974 remained to be the same. Exactly similar contentions as now raised with reference to the heading of Chapter V, definition of term “Canal”, the Rule making power of the State, the dispute or liability to satisfy the water charges in respect of the water taken out from a natural source / self-created source etc. were raised in that case as well. After considering all the relevant provisions, the authenticity of the statute was upheld by a Division Bench of Madhya Pradesh High Court as per the decision rendered in ***Orient Paper Industries Ltd. & Anr. Vs. State of M.P. & Ors***⁴. This being the position, it is contended that no interference is warranted under this head; more so when the Petitioner has not demonstrated as to how and in what manner the provisions are ultra vires. The learned Advocate General also pointed out that there is no change in the stand or any inconsistency is brought out. Reference to the provisions of the Regulation Act, 1949 was made in the additional return (particularly, with reference to Sections 2(b) and 3 of the said Act) only to assert the right of the Government over the water taken from natural sources. The above provisions are to be taken as supplemental to the provisions of the Irrigation Act, 1931; which only reiterates the power and authority of the State Government with reference to the course of action involved.

13. It is pointed out that the above provisions of the two different statutes complement each other and there is no conflict in between. Reference is also made to the terms of Annexure-P/5, Lease Deed dated 12.06.1963

⁴ AIR 2009 MP 143

(tenure of which has been renewed from time to time), whereby it has been categorically stated that the Petitioner Lessee will be bound to pay the water charges to the Government and that water can be appropriated only with the prior permission of the Collector, indicating that any action to the contrary will be unauthorized. The learned Advocate General submits that the dictum in **TISCO case** (supra) [placing reliance on **Jindal's case** (supra)] is only to the effect that the fee / cess sought to be collected virtually would fall in the definition of tax and that no tax could be realized contrary to the Constitutional mandate i.e. without any authority of law. It was with reference to the fact that the High Court of Patna had not specifically considered whether the provisions of the Bengal Irrigation Act, 1876, Bihar Public Irrigation and Drainage Works Act, 1947 or the Bihar Irrigation Act, 1997 would be the authority to realize the fee/tax and in view of the absence of any finding that there was a statutory backing to support the demand, that the judgment was set aside and the matter was remitted to the High Court for taking a decision; which is not the situation in the instant case. The course of action being pursued by the State is based on the specific power and authority under the Act; the relevant Rules framed in this regard and the Notifications issued.

14. Coming to the challenge as to validity of the Rules, stating that it is not in conformity with the provisions of the Act and the Constitution of India, it is to be noted that the vires of the very same Rules and the relevant provisions under the Act were challenged before the High Court of Madhya Pradesh in **Century Textiles Industry Limited Vs. State of**

M.P. (W.P. No. 1516/99 decided on 30.04.2002). The Bench dealt with the matter elaborately with regard to the power of the State to prescribe the rates for realizing water charges as provided under Rule 71 of the Rules, 1974 with reference to the mandate of Section 37, Section 40 and also Section 92 of the M.P. Irrigation Act, 1931 (for short, 'the Act') and it was held that, it was well within the power and competence of the State as provided under the enactment; more so when Section 40 of the Act provides for water supply for industrial, urban or other purposes, with liberty to realize the charges as agreed between the State and the beneficiary and fixed in accordance with the Rules made under the Act. Similar contention, as raised in the present petition, that there is no power under Section 37 of the Act to realize fees / charges in respect of water appropriated or supplied by/to industrial concern from the natural source for conspicuous absence/ omission of sub-section 1(d) of Section 37 of the Act in Section 37(2) was also raised as a point and this was considered elaborately and it was held that the contention was devoid of any merit; more so in view of Section 26 of the Act; which enshrines that all rights in the water of any river, natural stream, natural lake or such other natural collection of water shall vest in the State Government adding that, what has been left out in Section 37 (2) is taken care of by Section 40, read in cognition with Section 26. The submission made on behalf of the beneficiary Company that Section 40 had to be read narrowly, only to include the supply from a 'Canal', by virtue of the 'heading' of the Chapter V ('The supply of water from canals and charges therefor'), as putforth in the present case as well, was held as not having

any substance and that the Bench was convinced that Section 40 in its generic encompassment would include supply from industrial source as well and Rule 71-A provided for prescribing the rates. It was accordingly held that the contention, that Rule 71-A which provided the rates for industrial source was inconsistent with the Act and runs counter to the provisions of the Act or exceeds the limit of the rule making power or is in transgression of the Statute, was sans substance and the plea was repelled. The Bench also made it clear, after referring to the decision rendered by the Apex Court in ***The Commissioner of Income Tax Vs. Ahmedbhai Umarbhai & Co.***⁵, ***Frick India Ltd. Vs. Union of India***⁶ and ***Grasim Industries Ltd. Vs. Collector of Customs, Bombay***⁷, that the intendment of the law makers was to be understood in interpreting the provision and that the 'heading' of the Section or Chapter may, at times, serves as a tool to understand intention of the legislature, but when the language of the provision is unambiguous and the scheme of the Act does make it further clear that there is no necessity to take in aid from the heading, it shall be understood accordingly; thus, holding that the contention that Section 37 will be applicable only if water is taken up from a 'Canal' was superfluous.

15. The Constitutional validity of the Rules was put to challenge again before the very same High Court and it was examined as per decision rendered in ***Orient Paper and Industries Ltd.*** (supra). The contention raised by the State was that the validity of the Rules has already been upheld by the Court in ***Century Textile Industry Limited*** (supra). It was contended

⁵ AIR 1950 SC 134

⁶ AIR 1990 SC 689

⁷ AIR 2002 SC 1706

by the Petitioner-Company that in view of the law declared by the Apex Court in ***Atma Prakash Vs. State of Haryana***⁸ it was possible to have a re-scrutiny of the provisions. It was accordingly, that the matter was considered again by the Bench, referring to the various provisions in the Act and the Rules, besides referring to the precedents cited from both the sides. The sum and substance of the contentions raised from the part of the Petitioner-Company have been given in paragraph 12, which are reproduced below, to understand the scope of similar challenge as raised in the present case.

“12. Mr. Raju Ramchandran, learned counsel for the petitioner, has raised the following contentions:—

(a) Rule 71-A of the Rules is ultra vires the various provisions of Section 40 of 1931 Act, and, therefore, the levy of water charges with reference to Rule 71-A is without any authority of law.

(b) Section 37 deals with supply of water from a canal for various purpose including industrial purposes and the said provision provides for levy of water charges for all other purposes, except industrial purposes. The provision for levy of water charges for industrial use is contained in Section 40 and it has to be construed that Sections 37 and 40 are part of the same scheme and hence, construction has to be placed in a comprehensive manner to mean that the provisions relate to supply of-water from a canal.

(c) If the statement of objects and reasons of the Act is read in proper perspective, it would be amply clear that the entire focus and purpose of the Act was to deal with irrigation through canals and not with drawing water from natural sources at the cost of a citizen or a company.

(d) When a particular section is an integral part of a larger statutory scheme, its true meaning and import should be ascertained having regard to the entirety of the said authority and, therefore, the judgment in *Century Textile & Industries Ltd.* (supra) which has not

⁸ (1986) 2 SCC 249

interpreted the scheme of the enactment in this manner requires reconsideration.

(e) Section 40 is a part of the same scheme of Section 37 and the absence of mention of supply of water from canal is not accidental and inconsequential. In fact, making of specific reference in Section 40 to supply from a canal could have been thought of by the legislature as superfluous, or as a surplusage, Section 40 figures in the same chapter as Section 37. The charging section must clearly, unambiguously and unequivocally indicate the intention to charge 'a particular item and that requirement is not fulfilled in the present case. The rule runs counter to the enactment and thereby the imposition is impermissible

(f) Both Sections 37 and 40 deal with making of rules for providing supply of water from canal and not industrial sources and hence, the said provisions are not attracted.

(g) From 7-A which is a part of Rule 71 -A is invalid because Section 40, if at all, authorises charges only on supply of water and not on "deemed" supply of water and further such a levy of deemed supply is arbitrary and unreasonable and violative of Article 14 of the Constitution. Section 40 does not authorize imposition of charges in the absence of actual supply and, therefore, cannot be deemed supply in the absence of such provisions in the Act.

(h) The imposition of charges for water not actually supplied is arbitrary and unreasonable and, therefore, violative of Article 14 of the Constitution.

(i) The stand of the State that water kept reserved for the petitioner could have been supplied to other applicants is without any basis because such other applicants could have not been charged in the absence of authority under Section 40.

(j) The agreement of 1970 entered into between the petitioner and the State is bound to continue till it is lawfully changed and the said agreement does not stand superseded by Rule 71 -A.

(k) Before any water charges are claimed, certain conditions, namely, (i) there must be decision of the Government that there are industries similar to the petitioner drawing water from an inter-state river, based on an agreement and that all of them need to be charged; (ii) there must be an agreement with the petitioner about the quantum of water charges as provided in Section 40 and in case of disagreement, a

settlement by arbitration should be taken recourse to as provided for in the agreement; and (iii) A rule providing for water charge as per the agreement must be made as per the procedure laid down in the Act, are required to be fulfilled and none of these requirements have been fulfilled in the present case and hence, the arrangement with the petitioner remains unchanged.

16. The reply given by the State has been adverted to in paragraph 12A, which is to the following effect :

“12A. Mr. V.K. Shukla, learned Dy. Advocate General for the State, resisting the aforesaid submissions, has contended as under:—

(i) Once the controversy has been put to rest in *Century Textile and Industries Ltd.* (supra), the same cannot be raised again by another party by advancing certain other conditions.

(ii) Rule 71-A is in consonance with the provisions of the 1931 Act and hence, the Rule Making Authority has not travelled beyond the provisions of the Act and, therefore, the Rule is valid.

(iii) The submission that Sections 37 and 40 come within one scheme and hence, Section 40 cannot be the charging Section is unacceptable as the same confers power on the Rule Making Authority to levy water charges.

(iv) The stand that Sections 37 and 40 are not attracted inasmuch as both the rules relate to supply of water from canal and not from industrial sources which is the case at hand, does not deserve acceptance.

(v) The contention that Form 7A which is a part of Rule 71 -A imposes charges on deemed supply of water which is impermissible under the provisions of the Act and, therefore, the said Rule has to be declared as ultra vires does not withstand scrutiny. The State has made provisions for reservoir and has kept it available for industries and the same is not in consonance with the provisions of the Act if the relevant provisions are appreciated with studied scrutiny.”

17. The Bench proceeded further to examine the different provisions under the Statute and in particular, Section 3 defining the term “canal”, Section 4 dealing with “water course”, Section 4-A defining “field channel”,

Section 5 defining “canal system”, Section 15 and 16 providing for “canal revenue” and “water rate”; Chapter II dealing with “Canal Official and their charges and powers”; Chapter III dealing with “Rights to Water” with specific reference to Section 26 which vest the right in any river / natural stream / natural collection of water with a Government; Chapter IV deals with “Construction and Maintenance of Canals”; Chapter V which contained Section 37 and Section 40 referred to above and such other provisions exhaustively. Reference was also made to the discussion made in the previous judgment i.e. ***Century Textile Industry Limited*** (supra). It was held after threadbare analysis of the facts and figures, relevant provisions of law and the precedents, that the Government was having ample power under the relevant provisions of the Act and hence that the Rules framed in this regard were quite in conformity with the provisions of the Act and never ultra vires to the Constitution of India or the Irrigation Act, 1931. Since no other contention (than the challenge raised against the validity of the Rule 73 as to the rate of 'three times' the normal charges in case of unauthorized dues) is projected or argued before this Court, we do not find any reason to disagree with the view already expressed by the Bench in ***Century Textile Industry Limited*** (supra) in ***Orient Paper and Industries Ltd.*** (supra).

18. It will also be worthwhile to refer to some other provisions in the Act dealing with Rule making power of the State, to assess and appreciate the contention raised by the Petitioner seeking to interpret the provisions in a narrow sense and to hold that the State does not have any power to fix or realize the water charges from a natural / self-created source. As

pointed out already, the crux of the submission of the Petitioner is that Section 37(1)(d) of the Act appears in Chapter V of the Act and though it envisages supply of water to 'industrial concern', sub-Section (2) of Section 37 conferring power to realise charges does not take in the said instance [Section 37(1) d] and hence the Rule 71-A is bad; more so when it is in respect of the water supplied from a 'canal' and not otherwise. Sections 26 and 40 of the Irrigation Act, 1931 are relevant in the said context and hence they are extracted below :

“26. Rights of the Government in water.- All rights in the water of any river, natural stream or natural channel, natural lake or other natural collection of water shall vest in the Government, except to the extent to which rights may have been acquired in water affected by a notification published under Section 27 prior to the publication of such notification.

40. Supply of water for industrial, urban or other purposes.- The conditions for the supply of water for industrial, urban or other purposes not connected with agriculture and the charges therefor, shall be agreed upon between the State Government and the company, firm, private person or local body concerned and fixed in accordance with rules made under this Act.”

19. By virtue of the clear mandate under Section 26 of the Irrigation Act, 1931, all rights over the water of any river / natural stream / natural drainage channel / natural lake / other natural collection of water shall vest in the Government. Under Section 40 of the said Act, it is open for the Government to fix conditions for supply of water for any industrial purposes not connected with agriculture and the charges therefor could be realized, as agreed between the parties and fixed in accordance with the Rules made under the Act. There is a contention for the Petitioner that no 'agreement' has been executed to give effect to Section 40 of the

Irrigation Act, 1931 and hence Section 40 cannot be applied. We find it difficult to accept the said proposition. Going by the terms of the lease deed, in particular, Clause – 6 in part II of Annexure-P/5, it has been clearly stipulated that, though it is open for the Lessee to use water from any streams, water courses, springs or other sources in or upon the lease lands and to have it diverted by effecting the appropriate extension or construction as mentioned therein, it shall only be with written permission of the Collector, for appropriation and use. The very same Clause stipulates in unequivocal terms, that the Lessee shall not interfere with the navigation in any navigable stream nor shall divert such stream without the previous written permission of the State Government. When the Lease Deed clearly stipulates that 'appropriation and use' of water from any such sources situated in the leased land could be done only with the written permission of the Collector, the burden is more on the beneficiary / Lessee to show that such permission was applied for and obtained, which admittedly, has not been satisfied in the instant case and there is no such case as well. That apart, the necessity to execute an agreement would arise only if water is sought to be appropriated or used by the Lessee and never before. The natural collection of rain water in the pits formed because of mining was not a situation existing on the date of the execution of the Lease agreement in the year, 1963 and the pits have been formed only as a consequence of the mining operation done by the Lessee which might have taken years or at least considerable time. When the mine pits were formed and water started getting accumulated in the pits and when it was sought to be appropriated or used by the

Lessee, it was for them to have made a request to the District Collector for permission, upon which the District Collector, in terms of the provisions in Annexure-P/5 Lease Deed and in particular, under Section 40 of the Irrigation Act, 1931, would have imposed the conditions in the said agreement in conformity with the Rules framed as above. The undisputed fact reveals that the Lessee did not bring the intent of appropriation / use of water to the notice of the District Collector / Competent Authority and was appropriating /using the water collected in the mine pits situated in the lease land. Since the said appropriation / use was without permission, it goes without saying that, it was quite unauthorized. This being the position, it is not open for the Petitioner / Lessee to take a u-turn and contend that, since there is no 'agreement', the Government cannot enforce Section 40 of the Irrigation Act, 1931, read with Rule 71-A / Rule 73 of the Rules, 1974. This is for the plain reason that, nobody can be given any premium, for the mischief done by himself.

20. With regard to the rule making power of the State, the idea and understanding of the Petitioner/Lessee that it should have been found a place in Section 37 of the Irrigation Act, 1931 itself [under sub-section (2)] to sustain the water charges sought to be realized as per Rule 71-A does not appear to be correct. This is obviously for the reason that the rule making power of the State is very wide. As discernible from the Statute, apart from the general rule making power under Section 92/93 and also sub-section (2) of Section 37 of the Irrigation Act, 1931, such power is vested with the Government under other different circumstances /

instances as well, as noted below :

“37. Purpose for which water may be supplied.- (1)
Water may be supplied from a canal:
 (a) Under an irrigation agreement, in accordance with the provisions of Chapter VI;
 (b) On demand, for the irrigation of specified areas;
 (c) To supplement a village tank ;
 (d) For Industrial urban or other purposes not connected with agriculture;
 (e) for the irrigation of a compulsorily assessed area.
(2) Charges for the supply of water under clause (a), (b), (c) (e) of sub-section (1) shall be paid at such rates as may be fixed by the State Government in accordance with rules made under this Act.”

21. Under Section 23 of the Irrigation Act, 1931 dealing with 'Appeals', sub-section (7) deals with rule making power under the Act providing for appeals from the orders of canal officers and canal subordinates regulating the procedure to be followed in such appeals, and also prescribing periods of limitation therefor.

“23. Appeals.
 xxx xxx xxx
 xxx xxx xxx
 (7) Rules may be made under this Act providing for appeals from the orders of canal officers and canal subordinates regulating the procedure to be followed in such appeals, and prescribing periods of limitation therefor.”

22. Section 40 of the Irrigation Act, 1931 (which appears in the very same Chapter where Section 37 is included Chapter V) deals with the power of the State to prescribe Rules fixing the condition for supply of water for industrial, urban or other purposes not connected with agriculture and the charges therefor to be incorporated as agreed between the parties in the agreement.

“40. Supply or water for industrial, urban or other purposes.- The conditions for the supply of water for industrial, urban or other purposes not connected with agriculture. And the charges there for, shall be as agreed upon between the State Government and the company, firm, private person or local body concerned and fixed in accordance with rules made under this Act.”

23. Section 44 of the Irrigation Act, 1931 coming under the very same Chapter mentions under sub-section (3), that when water is used in an unauthorized manner, otherwise than on cultivated land, liability could be fixed upon the party concerned by the Competent Authority fixing the water charges at bulk rates, to be prescribed from time to time by the State Government and sub-section (7) deals with rule making power regulating the procedure of canal officers in imposing liability and in assessing canal revenue payable under Section 44 of the Irrigation Act, 1931.

“44. Rates for unauthorized use and waste of water

xxx	xxx	xxx
xxx	xxx	xxx

(3) When water is used In an authorized manner otherwise than on cultivated land, the Executive Engineer may make an estimate of the volume of water used, and may determine the persons responsible for such use and the persons who have been benefited thereby. Such water may be charged for al bulk rates to be prescribed from time to time by the State Government, and the charges shall be distributed among the persons responsible and the persons benefited by such use at the discretion of the Executive Engineer.

(7) Rules may be made under this Act regulating the procedure of canal officers in imposing liability for, and in assessing, canal revenue payable under this section.”

24. Section 58 of the Irrigation Act, 1931 under Chapter VI dealing with irrigation agreement also deals with the power to make rules as extracted below :

“58. Powers to make rules.- In addition to any rules for which provision is made in this Chapter, rules may be made under this Act. -

(a) Prescribing the periods and the crops for which Irrigation agreement may be made;

(b) Prescribing the forms of Irrigation agreements, and providing for the inclusion therein of incidents and conditions in addition to but consistent with those contained In this act and (c) regulating the procedure of canal officer in Carrying out their duties under this Chapter”

25. Chapter VI-A of the Act deals with 'Betterment Contribution' and Section 58-K deals with the 'Power to make rules' for the purpose of that Chapter.

“58-K. Power to make Rules. - Rules may be made for the Purpose of carrying out the purposes of this chapter but in the absence of any rules so made the rules framed under Section 63 shall, so far as may apply in this behalf.

26. 'Irrigation cess' is dealt with in Chapter VI-B and Section 63 under the said Chapter, which refers to the rule making power for assessment and collection of the canal revenue.

“63. Power to make rules for assessment and Collection.- Rules may be made under this Act regulating the Procedure of canal officers and canal subordinates in assessing canal revenue and in applying to the revenue officers for collection of arrears of canal revenue and the Procedure of revenue officers in collecting canal revenue.”

27. Chapter VIII deals with 'Construction and maintenance of the water-courses', of which, Section 75 deals with rule making power under the Act to meet the situations envisaged therein.

“75. Powers to make rules.- Rules be made under this Act

(a) prescribing the forms of water-course contracts;

(b) regulating the procedure of canal officers in discharging their duties under this Chapter;

(bb) determining under section 68-B the liability of permanent holders and the manner in which it shall be

discharged;

(c) prescribing the liabilities of permanent holders and occupiers of land under section 69 ; and

(d) prescribing the circumstances in which the assessment in a compulsorily assessed area may be cancelled.”

28. Insofar as Chapter VIII dealing with 'Construction and maintenance of field Channels' is concerned, separate rule making power is conferred upon the State under Section 75-H.

“75-H. Power to make rules. - The Government may make rules to carry out the purposes of this chapter.”

29. Section 91 of the Irrigation Act, 1931 in Chapter IX, dealing with 'Construction and maintenance of private irrigation works', refers to the rule making power of the State with regard to the relevant aspects mentioned therein.

“91. Power to make rules. - In addition to any rules for which provision is made in this Chapter, rules may be made under this Act prescribing:

(a) the conditions on which grants or loans of money may be made under section 76;

(b) the manner in which' the Government may enforce the proper construction and maintenance of grant-in-aid Irrigation works;

(c) the circumstances in which applications under section 78 or 80 may be granted;

(d) the procedure in any Inquiry or proceeding under this chapter.”

30. As mentioned already, Chapter X is with regard to the 'Rules, Offences and Repeals'; which starts with Section 92 dealing with the general provisions regarding rules and Section 93 confers all residual power upon the State Government to make rules in addition to any power specifically

conferred under the Act, so as to give effect to the provisions of the Act.

“92. General provisions regarding rules. - (1) All rules for which provision is made in this Act shall be made by the State Government and shall be consistent with this Act.

(2) A rule may be general for, all canal systems or for all canal systems not expressly exempted from its operation, Or may be special for the whole or any part of one or more canal systems, as the State Government may direct.

(3) Except the rules provided for in Section 21 and 22 [and Chapter VIII-A.] all rules shall be subject to the condition of previous publication.

(4) Deleted.

(5) In making any rule the State Government may direct that a breach thereof shall be punishable with fine which may extend to two hundred and fifty rupees, and where the breach is continuing one with further fine which may extend to ten rupees for every day after the first during which the breach has been persisted in.

(6) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or to anyone of them.

(7) All rules made under this Act shall be laid on the table of the Legislative Assembly.

93. Power to make rules. - In Addition to any power specially conferred by this Act, the State Government may make rules -

(a) prescribing the manner in which Irrigation Panchayats shall be constituted and dissolved, conferring on them further powers and allotting to them further duties, regulating their Procedure and providing for their remuneration;

(a-1) regulating the control and distribution of Irrigation beyond the outlet, prescribing the authority controlling and distributing such Irrigation and providing for all matters connected with such control and distribution Including the levy and recovery of charges for the purpose of remunerating such authority;

(b) prescribing the rates at which diet-money shall be paid to persons required to attend an Inquiry under this Act; and

(c) generally, for the purpose of carrying into effect the provisions of this Act.”

31. A conjoint reading of the above provisions under the Act clearly shows that the rule making power of the State is very wide and never a restricted one as now sought to be interpreted by the Petitioner / Lessee just with reference to sub-section (2) of Section 37 of the Irrigation Act, 1931 and attempting to read it in isolation from Section 40 of the said Act (contained in the very same Chapter where Section 37 appears). This is more so, in view of the vested right of the Government over the water contained in any natural source as envisaged under Section 26 of the said Act.
32. Coming to the challenge raised against Rule 73 of the Rules, 1974, the said provision reads as follows :

“73. (1) The charge for water which has been used in an authorised manner, otherwise than, on cultivated land shall be made at thrice the volumetric rate fixed under Section 37 read with Section 39 or under Section 40 as the case may be.

(2) Charge for water, which has been wasted, shall be made at thrice volumetric rate fixed under Section 37 and in addition, a penalty to the extent of Rs. 250 on the discretion of the canal officer may also be imposed. The canal officer may utilise the whole or the part thereof to compensate the person affected by such waste.”

Here again, the contention of the Petitioner/Lessee is that the charging of water appropriated/used in an unauthorized manner is 'thrice the volumetric rate' amounts to 'penalty' and that there no power to fix any penalty is vested upon the Government, except to proceed under Section 92(5) of the Irrigation Act, 1931. We are not impressed with the

said submission. This is primarily, for the reason that rate of water charges payable is actually taken care of by Rule 71-A of the Rules, 1974. Rule 73 is attracted only if the appropriation of water is unauthorized, virtually necessitating payment at a higher rate, which obviously is intended to prevent the unauthorized use; alerting all concerned, that a higher rate will have to be paid, if the appropriation and use is unauthorized. As mentioned already, sub-section (3) of Section 44 clearly mentions that, when water is used in an unauthorized manner otherwise than on cultivated land, fixation of the rate is to be at 'bulk rates', to be prescribed by the Government from time to time. We have already held with reference to Clause 6 of Part II of Annexure-P/5 'Mining Lease', that though the right to appropriate and use water from the natural source in the property given on lease was provided to the Lessee, it was clearly specified that, it was to be with written permission of the District Collector (which in turn, might have facilitated execution of an Agreement in terms of the Section 40 of the Irrigation Act, 1931). Admittedly, the Petitioner/Lessee had never approached the District Collector, seeking for any such permission, nor has obtained the same and no agreement has been executed. Section 40 clearly mentions the conditions to be incorporated in the agreement, which necessarily has to be in conformity with the Rules. Rule 71-A mentions that the water charges for 'industrial purpose' to the Private/Government Organisation shall not be less than the rates specified in Column No.3 therein, which obviously denotes that such rate can still be higher. This being the position, appropriate conditions could have been fixed in the agreement,

depending upon the facts and circumstances, in conformity with the Rules, as mentioned in Section 40 of the said Act. Since the Petitioner /Lessee, admittedly, has not approached the Collector for seeking permission before appropriation / use of water from the leased property belonging to the Government, the use becomes quite 'unauthorized' and under such circumstance, it is quite open for the State to realize the higher rate of water charge as mentioned in Rule 73 of the Rules, 1974. In other words, the stipulation of the higher rates under Rule 73 is only a "measure of the rate of water charges" in the given context and not a penalty. The contentions to the contrary, including the challenge with regard to the Constitutional validity, stand repelled.

33. It will be advantageous to refer to some other provisions as well in Annexure-P/5 Lease Deed, which infact is an agreement and authorities the State to realize water charges; more so in view of Clause 6 of Part II, insisting to obtain written permission of the District Collector to appropriate or use water collected in the property given on lease. Clause 4 under Part V (dealing with 'Rents and Royalties' reserved by the lease) stipulates that the Lessee shall pay the rent and water rate to the State Government in respect of the all parts of the surface of the land and the water rent shall be paid as specified. Clause (1) of Part XI, again dealing with rent, water rate and royalties mentioned in Part V of this Schedule stipulates that it shall be paid free from any deductions to the State Government in the manner as prescribed. Clause (2) coming under Part IX dealing with the general provisions stipulates that, if the Lessee makes any default in payment of rent, water rate or royalty as required or

commits a breach of the conditions and covenants to the extent as mentioned therein, the Government could realize the same without prejudice to the right of the Government to pursue any proceeding that may be taken against them, determining the lease, also with liberty to forfeit the whole or part of the security deposit.

34. We are aware of the dictum laid down by the Apex Court in **S. Srinivasan** (supra) (paragraph 21) holding that if a rule goes beyond the rule-making power conferred by the Statute, the same has to be declared ultra vires. So also, if a rule supplants any provision for which power has not been conferred, it becomes ultra vires, as held by the Apex Court. The basic test is to determine and consider the source of power which is relatable to the rule and a rule must be in accord with the parent statute, as it cannot travel beyond it. On scrutiny, applying the said principles to the provisions in the given Act and the Rules, it cannot but be held that the rules framed by the State are in conformity with the statutory provisions and never ultra vires to the Act or the Constitution of India.
35. During the course of hearing, the learned counsel for the Petitioner/Lessee sought to place reliance on a verdict passed by a Division Bench of the Rajasthan High Court at Jaipur in D.B. Special Appeal Writ No. 211 of 2006 (judgment dated 01.09.2017). It was a case where the Appellant – Cement Manufacturing Company had entered into an agreement for establishing the factory in the lease area about a century ago. The agreement provided for the right to use water as well, but no provision was inserted in the agreement for realization of any water charges for quite long, although the lease was being extended and

renewed from time to time. An audit objection was raised in 1974 as to necessity to satisfy the water charges, which was disputed by the Lessee. The objection was repelled and a demand notice was issued after about 30 years, correctness of which ultimately came up before the Division Bench as aforesaid. After hearing the rival submissions, the various provisions as contained in the agreement were specifically adverted to by the Bench and it was held that no liability to pay water charges was fixed or agreed between the parties. It was also observed that the Appellant-Company/Lessee, based on the permission given, had constructed a dam in the river in 1923-24 and another dam in 1931 and water was being appropriated and used, based on the sanction given in this regard. It was specifically taken note of in paragraph 11 of the said judgment, that the Appellant-Company/Lessee was satisfying the water charges after 1984, in view of Rule 31 of the Rajasthan Irrigation & Drainage Act, 1954 which is to the following effect :

“31. Water supply to be subjected to rules :- In the absence of a written contract, or so far as any such contract does not extend, every supply of water from an irrigation work shall be deemed to be given at the rates and subject to the conditions prescribed by the rules to be made by the State Government in respect thereof.”

After rendering a factual finding that the agreement did not provide for realization of the water charges for the disputed period, the Bench observed that, for want of enabling provision and that the demand notice was issued after 'thirty' years, it was not liable to be sustained and hence it was set aside.

36. The said decision in no way does support the case projected by the Appellant in the instant case. As we have already noted, the specific provisions in Annexure-P/5 lease agreement clearly stipulates that appropriation or use of water from / collected in the leased land could only be with written permission of the District Collector and that no such application was ever filed or sanction was obtained by the Appellant-Company in this regard. Further, the relevant provisions of the Statute and Rules framed thereunder clearly confer the power and authority upon the State Government to fix and realize the water charges, as declared already. That apart, the Appellant cannot plead ignorance to the liability to satisfy water charges in view of the glaring provisions in Annexure-P/5 lease agreement, necessitating prior approval of the District Collector, to appropriate and use water from the property forming the subject matter of the lease.
37. In the above facts and circumstances, we are of the firm view that the challenge raised by the Appellant-Company in respect of the vires of the Rules and that of Annexure-P/3 Circular stating that the same is beyond the rule-making power of the State as provided under the Statute and in violation of the Constitutional provisions does not hold any water at all. The writ petition fails. It stands dismissed accordingly. All consequential/ incidental reliefs sought for are also declined.

Sd/-
(P.R. Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge