

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR
WRIT PETITION NO. 3075 OF 2021

Prafulla S/o Ram Lanjewar
Aged – 61 years, Occ. Business,
R/o. MIG Colony, Wanjari Nagar, Nagpur

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.. Petitioner

Versus

1. The State of Maharashtra through it's
Principal Secretary, Department of
Industries, Energy and Labour
Mantralaya, Mumbai

2. The Director, Directorate of Geology &
Mining, Government of Maharashtra,
Shivaji Nagar, Nagpur

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.. Respondents

Mr. A. J. Gilda, Advocate for petitioner.
Mr. N. R. Patil, A.G.P. for respondents.

**CORAM : SUNIL B. SHUKRE AND
ANIL S. KILOR, JJ.**

DATED : 11/10/2021

ORAL JUDGMENT (Per Sunil B. Shukre, J.)

Heard Mr. A. J. Gilda, learned counsel for the
petitioner and Mr. N. R. Patil, learned AGP for respondents.

(2) Rule. Rule made returnable forthwith. Heard
finally by consent of the learned counsel appearing for the parties.

(3) The petitioner, a holder of lease for mining Manganese Ore available in a parcel of land admeasuring 30.82 acres situated at Hiwara, Tahsil Bhandara, District Bhandara since the year 1971, faced an order passed on 31/03/2021 by respondent No.2 declaring that his mining lease had lapsed on account of failure to commence the mining operations within a stipulated period of two years from the date of the execution of the mining lease. The mining lease was executed in favour of the petitioner on 25/02/2011, initially for a period of three years and lateron, by the order passed by respondent No.2 on 29/06/2018, it was extended till 18/11/2021. But, before the expiry of the lease period, an order recording lapsing of the lease was passed on 31/03/2021. Realizing the serious consequences of the order dated 31/03/2021, the petitioner filed an application dated 08/04/2021, seeking revival of the mining lease and as it was not decided by the respondents, the petitioner approached this Court in Writ Petition No.2487 of 2021 seeking issuance of a necessary direction to decide it within certain time. This Court by the order passed on 16/07/2021, directed the respondents to decide the application within three weeks from the date of the order. Now, a decision has been rendered by the respondent No.2 but, the decision, if

perused carefully, would appear to be no decision in the eye of law. This could be gauged from the solitary reason stated in the order dated 30/07/2021, which is followed by order dated 13/08/2021, impugned herein. The reason given is that the provisions of Rule 20(7) of the Minerals (Other than Atomic & Hydrocarbon Energy Minerals) Concession Rules, 2016 (for short **“Rules of 2016”**) have turned ineffective after amendments introduced to Section 4A(4) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short **“Act, 1957”**) by Notification dated 28th March, 2021 issued by Ministry of Law and Justice.

(4) The reason so stated in the impugned order is questioned for its correctness and approach by the learned counsel for the petitioner. He contends that if the reason for refusing to decide the application filed by the petitioner seeking revival of mining lease is accepted, the petitioner would have nowhere to go and the provision of Rule 20 of Rules of 2016 would be rendered nugatory. Mr.N.R.Patil, learned AGP, however, supports the impugned order stating that since the “mining operations” or the “production and dispatch” activity on the mine under lease was not commenced by the petitioner within stipulated period of time, the lease has been rightly said to be lapsed

and now there is no question of revival of the same, especially when the application has been filed for its revival after lapsing of the lease.

(5) The rival arguments would necessitate consideration of the unamended Section 4A(4) of the Act, 1957, the amendments introduced to it by the Notification dated 28th March, 2021 and also the provisions of Rule 20(7) of the Rules of 2016. The relevant portion of the unamended Section 4A(4) reads thus :-

“Section 4-A Termination of prospecting licenses or mining leases. -

(1)

(2)

(3).....

(4) Where the holder of a mining lease fails to undertake mining operations for a period of [two years] after the date of execution of the lease or, having commenced mining operations, has discontinued the same for a period of [two years], the lease shall lapse on the expiry of the period of [two years] from the date of execution of the lease or, as the case may be, discontinuance of the mining operations;”

The relevant portion of the amendments introduced to Section 4-A(4) of the Act, 1957 is reproduced as below :-

“In Section 4A of the principal Act, in sub-section (4), -

(i) for the words “mining operations” wherever they occur, the words “production and dispatch” shall be substituted; ”

Rule 20(7) of the Rules of 2016, reads thus :-

“20. Lapsing of the mining lease. -

(1) to (6)

(7) The State Government may, on an application made by the holder of a mining lease submitted within a period of six months from the date of its lapse and on being satisfied about the adequacy and genuineness of the reasons for non-commencement of mining operations or discontinuance thereof was beyond the control of the holder of the mining lease, revive the mining lease within a period of three months from the date of receiving the application from such prospective or retrospective date as it thinks fit but not earlier than the date of lapse of the mining lease :”

(6) It would be clear from the amendments introduced to Section 4A(4) of the Act, 1957 that the words “mining operations” have been substituted by the words “production and dispatch” wherever they occurred. The question is whether or not such substitution would result in obliterating or changing altogether the concept of “mining operations”, which was in force till the amendments were introduced. In our opinion, it would not.

(7) The expression “mining operations” has been defined in Section 3(d) of the Act, 1957 as any operations taken for the purpose of winning any mineral. The expression “winning any mineral” is not defined in the Act, 1957. But, understood in common parlance, it would include such activities as excavation, removal, loading, production, consumption, dispatch of ore or minerals etc., thereby connoting a broader sense. Now, by the amendments introduced to Section 4A(4), instead of “mining operations” the words “production and dispatch” are brought into vogue. The words “production” and “dispatch” both have also been defined in the amendments introduced to the Act, 1957 vide Notification dated 28th March, 2021. The word “production” has been defined to mean the winning or raising of a mineral within a lease area for the purpose of processing of dispatch and the word “dispatch” has been assigned a specific meaning of the removal of mineral or mineral productions from the lease area.

(8) These, definitions, in our opinion, are sufficient indicators of the fact that what was hitherto a broader concept of “mining operations”, has now been narrowed down, for the purposes

of Section 4A(4) or to be precise for deciding the issue of lapsing of lease, to particular activities from out of several activities covered by the expression “mining operations” and indicated in earlier paragraph. These particular or restricted activities are (i) winning or raising of mineral for the purpose of process or dispatch and (ii) removal of minerals or mineral products including the consumption of minerals and mineral products. These activities of mining operations now only would have to be considered for the purpose of determining, as provided under Section 4A(4) of the Act, 1957, as to whether or not, the lease has lapsed on the expiry of the period of two years from the date of execution of the lease or as the case may be discontinuance of the mining operations, restricted in their sense to the activities of production and dispatch. With such amendments having been brought into force w.e.f. 28th March, 2021, the words “mining operations” used in Section 4A(4) of the Act, 1957 now would have be understood only in the context of the activities of “production and dispatch” and this would make it clear that by the new amendments, the basic idea of mining operations as originally used in Section 4A(4) of the Act, 1957 has not been discarded or changed altogether but, has been assigned a restricted meaning.

(9) Now, if we consider the provisions made in Rule 20(7) of the Rules of 2016, we would find that the words “mining operations”, wherever they occur, have not been substituted or touched upon in any manner by the amendments notified on 28th March, 2021. Then, a question would arise, just because the words “mining operations” occurring in Rule 20(7) have not been amended, so as to bring them in harmony with the amended provision of Section 4A(4) of the Act, 1957, would it be right to say that provisions of Rule 20(7) have been rendered ineffective ? This question needs to be answered by us as the impugned order says that due to amendments, provisions of Rule 20(7) have become ineffective and therefore, it further says, no action can be taken under rule 20(7), and hence the revival application is rejected.

(10) In our opinion, the answer can be given by examining the possibility of harmoniously constructing the provisions made in Rule 20(7) of the Rules of 2016 with the amended provisions of Section 4A(4) of the Act, 1957. These two provisions, as they stand on statute book, have become incongruent owing to amendments made to one of them and not having been made to other of them,

though that was necessary, as provisions made in Rule 20(7) are in the nature of a remedy to the consequence of lapsing spoken about in the substantive provision, which is, Section 4A(4). While the substantive provision is amended, the remedial or procedural is not. This mismatch calls for an interpretative effort from this Court to reconcile the two incompatibles to an extent permissible in law. Otherwise, there is a fear of turning the provision of Rule 20 into a dead letter of law leaving the mining lease holders with no way to go for obtaining revival of their leases. This is where the salutary principle of harmonious construction of a statutes would come into play and in our opinion, it is possible to apply, nay necessary to apply it here.

(11) In order to have clarity on the rule of harmonious construction, we would like to refer to two cases decided by the Apex Court.

(12) In the case of **Jagdish Singh vs. Lt. Governor, Delhi and others**, (1997) 4 SCC 435, it is held by the Supreme Court that in understanding the import of statutory provisions, every effort must be made to construe the different provisions in such a manner as each provision will have its play and if there is any conflict between them,

harmonious construction should be lent. The relevant observations of the Apex Court appear in paragraph 7 of this Judgment and they are extracted as below :-

“7. It is a cardinal principal of construction of a statute or the statutory rule that efforts should be made in construing the different provisions, so that, each provision will have its play and in the event of any conflict a harmonious construction should be given. Further a statute or a rule made thereunder should be read as a whole and one provision should be construed with reference to the other provision so as to make the rule consistent and any construction which would bring any inconsistency or repugnancy between one provision and the other should be avoided. One rule cannot be used to defeat another rule in the same rules unless it is impossible to effect harmonisation between them. The well-known principle of harmonious construction is that effect should be given to all the provisions, and therefore, this Court has held in several cases that a construction that reduces one of the provisions to a “dead letter” is not a harmonious construction as one part is being destroyed and consequently court should avoid such a construction.”

(13) In the case of **Gudur Kishan Rao and others vs. Sutirtha Bhattacharya and others**, (1998) 4 SCC 189, the Supreme Court held that where Rules and Regulations are framed for dealing with different aspects of the conditions of service of the employees, the courts would attempt to make a harmonious construction and try to save the provisions and not strike them down and where it is not possible to harmonise the provisions then, the courts will have no

other option than to set aside the offending rule or the notification. The relevant observations of the Apex Court appearing in paragraph 8, for the sake of convenience, are reproduced as under :-

“8. So far as the second question posed by us is concerned it is not doubt a cardinal principle of construction that when Rules and Regulations have been framed dealing with different aspects of the conditions of service of the employees the courts would attempt to make a harmonious construction and try to save the provisions and not to strike down the same. But where it is not possible even with doing some amount of violence to the language used in the notification to give a harmonious construction, then necessarily the court will have no other option than to set aside a notification if the said notification contravenes any provisions of the Act or the Rule or is otherwise constitutionally invalid.”

(14) Let us now, consider what we have found to be the effect of the amendments, as that would clear the doubt if rule of harmonious construction can be pressed into service here for reconciling the two incongruents or not. We have already found that effect of amendments is that it does not change or obliterate the concept of “mining operations” used earlier in Section 4A(4) but, it has resulted into narrowing down the concept of “mining operations” to limited activities, such as “production and dispatch”. Such being the effect of amendments, no violence would be caused to language of Rule 20(7) if the provisions made thereunder are understood by

harmonising them with those in amended Section 4A(4). In other words, this is a fit case where the imbroglio arising from two apparent mismatches can be resolved through principle of harmonious construction.

(15) So, by applying principle of harmonious construction, the words “mining operations” used in Rule 20(7) of the Rules of 2016 would have to be read down in a manner as to assign them a meaning which is in consonance with the words “production and dispatch” introduced by the latest amendments to Section 4A(4) of the Act, 1957 and if this is done, we would say at the cost of repetition, that the original provision of Rule 20(7) would not be effaced, having regard to the effect of the amendments, discussed earlier. Therefore, we hold that the words “mining operations” wherever occurring in Rule 20(7) must be understood as conveying a meaning of “production and dispatch”, as brought into practice by the latest amendments carried out to Section 4A(4) of the Act, 1957. Consequently, we also hold that by the new amendments introduced to Section 4A(4) of the Act, 1957, the provisions of the Rule 20(7) of the Rules of 2016 have not been rendered ineffective or meaningless and that they are capable of being enforced by reading down the words

“mining operations” used therein into words “production and dispatch”.

(16) In view of above, we find that the solitary ground taken in the impugned orders dated 30/07/2021 and 13/08/2021, for rejecting the lease revival application of the petitioner is illegal as the approach adopted therein to reach a conclusion is in ignorance of the settled principles of law as discussed hereinabove and as such the impugned orders deserve to be quashed and set aside.

- i. Accordingly, we allow the petition.
- ii. The impugned orders dated 30/07/2021 and 13/08/2021, are hereby quashed and set aside.
- iii. The matter is remanded back to the respondents and they are directed to decide the application dated 08/04/2021, which has been filed within six months from the date of recording of the mine lapsing order on 31/03/2021, in accordance with law, as expeditiously as possible and in any case within a period of **four weeks** from the date of the order.

Rule accordingly. No costs.

[ANIL S. KILOR]

[SUNIL B. SUKRE]