

Gorelal Dubey vs State Of Madhya Pradesh And Others (And ... on 4 December, 1975

Equivalent citations: 1976 AIR 1125, 1976 SCR (2) 876, AIR 1976 SUPREME COURT 1125, 1976 2 SCC 911, 1976 JABLJ 547, 1976 2 SCR 876, 32 FACLR 82, 1976 UJ (SC) 103

Author: N.L. Untwalia

Bench: N.L. Untwalia, Kuttily Kurien Mathew, P.K. Goswami

PETITIONER:

GORELAL DUBEY

Vs.

RESPONDENT:

STATE OF MADHYA PRADESH AND OTHERS (And Vice-Versa)

DATE OF JUDGMENT 04/12/1975

BENCH:

UNTWALIA, N.L.

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UNTWALIA, N.L.

MATHEW, KUTTYIL KURIEN

GOSWAMI, P.K.

CITATION:

1976 AIR 1125

1976 SCR (2) 876

1976 SCC (2) 911

ACT:

Mineral Concession Rules (Central) 1960-The Madhya Pradesh Mineral Rules, 1961, made under section 15 of the Mines and Minerals (Regulation and Development) Act, (Central Act 67) 1957-Section 3(a) and 3(e)-Power to grant a quarry lease for limestone as a minor mineral under the 1961 Rules or a mining lease for limestone as a minor mineral under the Central Rules 1961 with the State Government-Notifications under section 3(e) of the Act by Central Government, one dated 1-6-1958 declaring "limestone used for lime burning and another" dated 20-9-1961 amending it, substituting the words "limestone used in kilns for manufacture of lime used as building material"-Totality of facts given in the application for a quarry lease describing "limestone for burning purposes" and "minor minerals" decides whether the application is for "major mineral" or

"minor minerals"-Treating such an application as "for a major mineral" is wrong when two applications are there, one for "quarry lease" and another for "mining lease" in respect of one and the same area, the grant of lease depends on the quality of limestone available and after considering such applications together.

HEADNOTE:

In respect of an area of 8.36 acres of land containing limestone in the village Bistara, Jabalpur District, there were two applications before the State Government (Respondent in C.A. 785/71 & Appellant in C.A. 1781/75) empowered to grant prospecting licence or a mining lease for a major mineral under the Mineral Concessions Rules, 1960 or a "quarry lease" under the Madhya Pradesh Mineral Rules, 1961, for a minor mineral as defined in section 3(e) of the Mines and Minerals (Regulation and Development) Act, 1957-one by "GD", (the appellant in C.A. 785/71 and respondent in C.A. 1781/75) dated 7-5-1965 for a quarry lease for "limestone for burning purposes, minor minerals intended" and another by "RC" dated 2-6-1965 for a mining lease for "a major mineral". The "quarry lease" was granted to "GD" on 1-11-1965 and the lease deed was executed on 10-11-1965 with a special clause 18A therein.

In revision by "RC" against the order granting quarry lease to GD the Central Government by its order dated 14-12-1967, holding that in substance the application of "GD" was an application for "major mineral" and, there fore. the grant of the "quarry lease" to the appellant was not competent, directed the respondent State to consider the application of "RD" for the grant of mining lease.

As the writ petition No. 3/68 assailing the said order, filed by "GD" in the M.P. High Court was dismissed on 2-9-1970, GD obtained a special leave (CA 785/71), but the stay was refused, resulting in his lease running in operation only for a period of about 5 years and "RD" carrying on its operation of mining limestone as a major mineral.

During the pendency of the lease in favour of "GD" the rate of royalty was enhanced by the State Government and "GD" filed another writ petition (MP No. 328/1968) in the High Court on 23-7-1968. As the MP 3/68 Was dismissed on 2-9-1970, "GD" amended the application suitable in MP 328/68 with the words "in view of the decision of the High Court, he was liable to pay royalty at a rate which were chargeable as a major mineral". The High Court allowed the writ petition, remanded the matter of qualification of the amount of royalty due from "GD". After the remand, the State Government determined the royalty at Rs. 16,722/-. The said demand was again

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challenged by "GD" for the third time by way of a writ

petition No. MP 390/72 contending that if royalty was charged from him on the basis of a major mineral, then he had paid Rs. 36,000/- and odd more. The writ was allowed in 25-3-1974 during the course of the hearing of CA 785/71 in the Supreme Court and the appeal by special leave (CA 1781/75) obtained by the respondent State against the order dated 25-3-1974 was heard with CA 785/71.

Allowing CA 785/71 on merits, following the decision in Rukmani Bai Gupta v. The State Government of Madhya Pradesh, Bhopal and others, [1975] (3) S.C.R. 72 and allowing CA 1781/75 with permission to the appellant to withdraw the writ petitions No MP 328/68 and MP 390/72, the Court:

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HELD: (1) The facts of the instant case, being almost identical as Smt. Rukmani Bai Gupta's case, with the only difference that in column 6 of his application the present appellant had merely stated "minor minerals" reading the said expression with the expression "limestone for burning purposes" mentioned in paragraph 1, the same result follows. Therefore, the application of the appellant was for a minor mineral and the lease granted to him was for the same. After the adverse decision of the High Court, he was ill-advised to take the stand that he was liable to pay royalty on the amount of limestone quarried by him out as "a major mineral", that the amount of royalty which is chargeable upon it as "a major mineral" is lower than one chargeable upon it as a "minor mineral". [881-CE]

Smt. Rukmani Bai Gupta v. The State Government of Madhya Pradesh, Bhopal and others. [1975] (3) S.C.R. 72, followed.

HELD FURTHER: (2) The distinctive points between the 1958 and 1961 notifications are as under:

(a) Limestone for lime burning was a 'minor mineral' under the 1958 notification irrespective of the process of burning or the quality of the lime it produced. [882-C]

(b) After the 1961 notification only that type of limestone would be a "minor mineral" which is capable or being used for burning in kilns for producing has quality of lime which can ordinarily and generally be used as a building material. [882-D]

(c) The lessees' responsibility ceases when the limestone quarried by him is used for burning kilns producing the building material quality of lime. It would be beyond his control to see that the lime so produced was actually used as a building material.

(3) The question of grant of a lease for quarrying or mining the limestone will have to be decided by the State Government on the basis of the quality of the limestone in a particular area. If a major portion in the area is such that can be used as a "minor mineral" then a lease in accordance with the State Rules will have to be granted and a special clause like clause 18 may be provided therein if per chance some quality of limestone quarried in the demised area is

found to be of high grade. Similarly if the major portion is found to be of high grade limestone, then a mining lease for mining limestone as a major mineral in accordance with the Central Rules will have to be granted. A special clause may be incorporated in such a lease also. In either event the lease will be liable to be cancelled if the lessee commits any breach of the terms of the lease including the one as to the purpose of using the limestone as a major or a minor mineral.[882-EH]

(4) In situations like the instant case where there were two applicants-one wanting the lease of limestone as a minor mineral and the other who wanted it as a major mineral, it was not open to the State Government to merely ignore the application for major mineral and grant lease to the appellant; nor was it appropriate for the Central Government to direct the State Government to consider the application for major mineral. The proper course in such a situation is to direct the State Government to consider both the applications, determine the question as to whether the quality of the limestone contained in the area in question is such that a lease to quarry it as a minor mineral should
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be granted and then it should proceed to grant the leave. In the instant case the proper course which ought to have been followed has neither been followed nor has been directed to be followed by the Central Government. [883-AD]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 785 of 1971 and 1781 of 1975.

Appeal by Special Leave from the judgment and orders dated the 2nd September, 1970 and 25th March, 1974 of the Madhya Pradesh High Court in Misc. Petition Nos. 3/68 and 390/72 respectively.

V. M. Tarkunde and K. J. John of M/s. J. B. Dadachanji & Co. for the appellant (In CA 785/71) Ram Panjwani, Dy. Adv. Gen. (M.P.) with H. S. Parihar for respondent no. 1 (In CA 785/71 & appellant in CA. 1781/75).

S. P. Nayar for respondent No. 2 (In CA. 785/71) G. L. Sanghi, A. K. Sanghi, C. K. Ratnaparkhi and A. G. Ratnaparkhi for respondent No. 3 (in CA 785/71) M/s. Balakrishnan and Ghatate, for respondents in CA 1781/75.

The Judgment of the Court was delivered by UNTWALIA, J.-These two appeals by special leave have been heard together as they originate from a common dispute between the parties. They are being disposed off by a common judgment and order.

To provide for the regulation of mines and the development of minerals under the control of the Union of India The Mines and Minerals (Regulation and Development) Act, 1957, Central Act 67 of 1957-hereinafter referred to as the Act, was passed. In section 3 of the Act clause (a) says: "minerals" includes all minerals except mineral oils." Clause (e) provides:

"minor minerals" means building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declared to be a minor mineral,"

For the sake of convenience and to distinguish minor minerals from minerals, the minerals are generally called major minerals and will be described as such hereinafter in this judgment. Provisions of sections 4 to 13 are applicable to the grant of any prospecting licence or a mining lease for a major mineral. In exercise of the power under section 13, the Central Government made the Mineral Concession Rules, 1960-hereinafter called the Central Rules. The State Government was authorised by section 15 of the Act to make Rules for regulating the grant of prospecting licences (now quarry leases) and mining leases in respect of minor minerals. The Government of Madhya Pradesh in exercise of the said power made the Madhya Pradesh Minor Mineral Rules, 1961-hereinafter called the State Rules. In clause (iii) of Rule 2 'quarry lease' was stated to mean a mining lease for minor minerals.

Limestone is found in abundance in the State of Madhya Pradesh. The Central Government issued a notification dated the 1st June, 1958 in exercise of the powers conferred on them by clause (e) of section 3 of the Act declaring "limestone used for lime burning" as a minor mineral. By a subsequent notification dated the 20th September, 1961 the description of the limestone as a minor mineral was changed and only "limestone used in kilns for manufacture of lime used as building material" was declared as a minor mineral. The power to grant a quarry lease for limestone as a minor mineral or a mining lease for limestone as a major mineral rested in the State Government-the former under the State Rules and the latter under the Central Rules. Applicants had to apply to the State Government in the respective forms prescribed in the two Rules.

Gorelal Dubey-the appellant in Civil Appeal No 785 of 1971 made an application on May 7, 1965 to the State Government for a quarry lease for "limestone for burning purpose" for a term of 10 years mentioning in paragraph 3 of the application "minor minerals" against the 6th column "Minor minerals or minerals which the applicant intends to mine." The land in respect of which the application was made by the appellant measured 8.36 acres and is situated in village Bistara, District Jabalpur. The firm, Ram Chander Badri Prasad Gaur, respondent no. 3 filed an application before the State Government on June 2, 1965 under the Central Rules in respect of the same area asking the Government to grant a mining lease to it for mining limestone as a major mineral. By their order dated November 10 1965 a quarry lease was granted by the State Government to the appellant and a Lease Deed was executed on November 10, 1965 including special clause 18A therein. Respondent no. 3 filed an application in revision before the Central Government. They allowed the revision by their order dated December 14, 1967 holding therein that in substance the application for a lease filed by the appellant was an application for major mineral and lease granted was also not

for minor mineral, hence the grant of the lease to the appellant was not competent. The Central Government, therefore, directed the State Government to consider the application of respondent no. 3 for grant of mining lease for limestone over an area of 8.36 acres in village Bistara.

The appellant filed a writ petition (M.P. No. 3/1968) in the Madhya Pradesh High Court to challenge the order of the Central Government. The High Court dismissed the writ application by order dated September 2, 1970 affirming the view of the Central Government that in substance and in effect the application for and grant of lease to the appellant by the State Government was for a major mineral and not a minor mineral. Since the other two points urged before the High Court were not pressed in argument before us, we need not make any reference to them. The appellant came to this Court against the order of the High Court. Special leave to appeal was granted but stay was refused. The result was that the appellant's lease could remain in operation for a period of about 5 years and for the last 5 years, respondent no. 3 who was granted a mining lease pursuant to the order of the Central Government has been carrying on its operation of mining limestone as a major mineral.

During the pendency of the lease in favour of the appellant, rate of royalty was enhanced by the State Government in exercise of their power under the State Rules. Demands of more royalty were made from the appellant by the State Government. He filed a writ petition (MP No. 328/1968) in the High Court on July 23, 1968 to challenge the demand of the enhanced royalty. After the decision dated September 2, 1970 of the High Court in M.P. 3 of 1968 the appellant amended his M.P. 328/1968 by introducing paras 20A and 20B and a prayer (b)(i) in the writ application to say that he was liable to pay, in view of the decision of the High Court, royalty on the limestone quarried by him at a rate which were chargeable on limestone as a major mineral. On certain grounds, which are not necessary to be detailed here, the High Court allowed M.P. 328/1968 by its judgment and order dated December 14, 1970 and remanded the matter of quantification of the amount royalty due from appellant to the authorities concerned. After remand the authorities determined the amount of royalty due from the appellant at Rs. 16,722/- and demanded the same from him. The appellant filed a writ petition (MP 390) 72) in the High Court to attack the demand of Rs. 16,722/- from him and contended that if royalty was charged from him on the basis of limestone as a major mineral then he had paid Rs. 36,000 and odd more. The High Court by its judgment and order dated March 25, 1974 allowed M.P. 390/1972 and quashed the demand of Rs. 16,722 made by the State Government from the appellant. The State of Madhya Pradesh filed an application for special leave to appeal from the said decision of the High Court. During the course of hearing of Gorelal Dubey's appeal, special leave was granted by us and thereupon the appeal was registered and numbered as CA 1781/75.

Mr. Tarkunde appearing for the appellant in CA 785/71 submitted that in view of the decision of this Court in *Smt. Rukmani Bai Gupta v. The State Government of Madhya Pradesh, Bhopal and others* the decision of the Central Government as also of the High Court to the effect that the appellant application for and grant of lease to him was in substance a lease for a major mineral is erroneous. He submitted that the order should be quashed and the State Government should be directed to grant a fresh lease to the appellant for another period of 10 years or the balance of the said period as the case may be. Mr. Sanghi appearing for respondent no. 3 endeavoured to point out that the decision of this Court in *Rukmani Bai's case* (supra) was distinguishable and the decision of the Central Government and the High Court is correct. He further pointed out that the appellant had

himself taken categorical stand in MP 328/1968 and MP 390/1972 that he had quarried limestone as a major mineral, disposed it of as such and was liable to pay royalty only on that basis. Counsel further submitted that there was no renewal clause in the appellant's lease and the period of 10 years having expired now the appellant was entitled to no relief in this Court. Mr. Ram Panjwani, appearing for the State of Madhya Pradesh supported the appellant on the question of the nature of his lease as being one for a minor mineral and pressed the Government's demand of Rs. 16,722 in C. A. 1781/75.

It appears even after the issuance of the notification dated September 20, 1961 by the Central Government making a change in the description of the limestone as a minor mineral confusion persisted amongst the applicants for quarry lease of limestone as also the governmental authorities. They did not clearly appreciate the distinction between the new description of limestone as a minor mineral given in 1961 notification and the one which had been mentioned in the 1958 notification. In Rukmani Bai's case the appellant had stated in column 6 of the application "limestone for burning as a minor mineral" and the lease which was granted described it as "limestone for burning". Taking into consideration the totality of the facts it was held by this Court that the application and the grant of the lease was for limestone as a minor mineral. The facts of the instant case are almost identical, the only difference being that in column 6 of the application the present appellant had merely stated 'minor minerals'. But reading the said expression with the expression "limestone for burning purpose" mentioned in para 1 the same result follows. A contrary view expressed by the Central Government and the High Court does not hold good. We, therefore, hold that the application of the appellant was for a minor mineral and the lease granted to him was for the same. After the adverse decision of the High Court, he was ill- advised to take the stand that he was liable to pay royalty on the amount of limestone quarried by him only as a major mineral. We were a bit surprised to know that the amount of royalty which is chargeable on limestone as a major mineral is lower than the one chargeable upon it as a minor mineral. Without further light it seems to us curious.

In paragraph 8 at page 996 it was pointed out in Rukmani Bai's case by this Court with reference to the two notifications issued by the Central Government in the years 1958 and 1961:

"The field of minor mineral, in so far as it concerned limestone, was narrowed down. Formerly limestone used for burning for manufacture of lime, whatever may be the uses to which such lime may be put, whether as building material or for other purposes, was within the definition of 'minor mineral', but after the amendment, it was only lime stone used for burning in kilns for manufacture of lime used as building material that was covered by the definition of minor mineral. When limestone is used for burning for manufactories of lime for industrial or sophisticated purposes otherwise than as building material, it would have to be of superior quality and hence after the amendment, was classified as major mineral, leaving only limestone used for burning in kilns for manufacture of lime used as building material to be regarded as minor mineral. But in both cases, whether under the original notification or the amended notification, limestone was contemplated to be used for burning for manufacture of lime. The only difference was that in the former, burning

could be by any means or process and lime manufactured could be for any purpose including building material, while in the latter, burning could be only in the kilns and for manufacture of lime used only as building material and for no other purpose."

It was admitted at the Bar that ordinarily and generally only limestone of inferior grade is used as burning in kilns for manufacture of lime used as building material and limestone of superior grade is used either as such for industrial purposes or a high quality lime produced from it is used for purposes other than building material including industrial or sophisticated purposes. For the purpose of some clarification we may add a few words to point out the distinction between the two notifications. Limestone used for lime burning was a minor mineral under 1958 notification irrespective of the process of burning or the quality of the lime it produced. After the 1961 notification only that type of limestone would be a minor mineral which is capable of being used for burning materials for producing that quality of lime which can ordinarily and generally be used as a building material. The leasee's responsibility ceases when the limestone quarried by him is used for burning in kilns producing the building material quality of lime. It would be beyond his control to see that the lime so produced was actually used as a building material. But then by and large the question of grant of a lease for quarrying or mining the limestone will have to be decided by the State Government on the basis of the quality of the limestone in a particular area. Mr. Sanghji endeavoured to place materials before us to show that in the area in question was to be found limestone of high grade and quality. He, therefore, submitted that the State Government should not be permitted to waste the national wealth of high grade limestone by granting a quarry lease as a minor mineral merely for the purpose of getting more royalty on it. We see force in this argument but it is not possible for us to decide the contentious question as to whether the limestone found in the area was such that could be used as a minor mineral or was fit to be used as a major mineral. If a major portion in the area is such that can be used as a minor mineral. then a lease in accordance with the State Rules will have to be granted and a special clause like clause 18A may be provided therein if per chance some quality of limestone quarried in the demised area is found to be of high grade. Similarly if the major portion is found to be of high grade limestone, then a mining lease for mining lime stone as a major mineral in accordance with the Central Rules will have to be granted. A special clause may be incorporated in such a lease also. In either event the lease will be liable to be cancelled if the lessee commits any breach of the terms of the lease including the one as to the purpose of using the limestone as a major or a minor mineral.

Following Rukmini Bai's case we have held that the application filed by the appellant and the lease granted to him was for quarrying limestone as a minor mineral. But that does not entitle him to get the relief as he wants from this Court. A peculiar feature of this case, and which may occur in respect of some other area is that there, were two applicants-one the appellant was wanted the lease of limestone as a minor mineral and the other respondent no. 3 who wanted it as a major mineral. In such a situation it was not open to the State Government to merely ignore the application of respondent no. 3 and grant lease to the appellant. Nor was it appropriate for the Central Government on the view which has been found to be erroneous by us to direct the State Government to consider the application of respondent no. 3 alone. The proper course in such a situation is to direct the State Government to consider both the applications, determine the question as to whether the quality of the limestone contained in the area in question is such that a lease to quarry it as a

minor mineral should be granted or is such that a lease for mining it as a major mineral should be granted and then it should proceed to grant the lease. The proper course which ought to have been followed has neither been followed nor has been directed to be followed.

For the reasons stated above, we allow C.A. 785/71, quash the order of the High Court as also of the Central Government. The leaser granted to respondent no. 3 pursuant to the said order shall cease to have effect. The State Government is directed to consider both the applications for grant of lease and dispose of the matter afresh in the light of this judgment. It will be open to the State Government to grant a lease for such period as it deems fit and proper to determine or for the balance of the period of the lease of the party to whom it may be granted. For the past period the appellant will be liable to pay royalty on the amount of limestone quarried by him during the subsistence of his lease on the basis of the royalty payable on a minor mineral and respondent no. 3, similarly, will be liable to pay royalty on the amount of limestone extracted by it during the period of its lease on the basis of the rates chargeable on a major mineral.

Learned counsel for Gorelal Dubey during the course of argument had offered to withdraw his writ petitions M.P. 328/68 and M.P. 390/1972 and to pay the sum of Rs. 16,722, if it be found that the lease granted to him was a lease for a minor mineral. In view of our finding recorded above, we allow CA 1781/75, set aside the orders of the High Court made in the two writ petitions and allow them to be withdrawn.

We shall make no order as to costs in any of the matters.

S.R.

Appeals allowed.