State Of Bihar & Ors vs Ramesh Prasad Verma (Dead)Thr. Lrs on 31 January, 2017

Equivalent citations: AIR 2017 SUPREME COURT 734, AIR 2018 SC (CIVIL) 554, (2017) 1 JLJR 421, (2017) 1 PAT LJR 478, 2017 (5) SCC 665, (2017) 2 SCALE 62, (2017) 171 ALLINDCAS 71 (SC), 2017 (2) KCCR SN 177 (SC)

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Bench: Amitava Roy, Arun Mishra

[REPORTABLE]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2017
(ARISING OUT OF SLP (CIVIL) NO.3652 OF 2010)

STATE OF BIHAR & ORS. ....APPELLANTS

VERSUS

RAMESH PRASAD VERMA (DEAD) THR. LRS. ...RESPONDENTS

AND

CIVIL APPEAL NO. OF 2017
(ARISING OUT OF SLP (CIVIL) NO.3653 OF 2010)

J U D G M E N T

AMITAVA ROY, J.

Leave Granted.

2. Vexed by the determination thereby limiting the application of the Notification SS-2/MM-11/2001-2361.../M dated 26.12.2001 to the date of issuance thereof, for the purpose of realizing royalty in respect of the minerals mentioned therein @ Rs.100/- per cubic meter, otherwise prescribed by the Notification dated 24.03.2001 notifying the Bihar Minor Mineral Concession (Amendment) Rules, 2001, the State of Bihar and its concerned functionaries are in appeal seeking redress. The impugned judgment and order dated 21.08.2009 is common in both the appeals and consequently, marginal variation in the contextual facts notwithstanding, the legal issues raised are the same, permitting analogous disposal of the proceedings in hand.

3. We have heard Mr. Gopal Singh learned counsel for the appellants and Mr. Sunil Kumar, learned counsel and Mr. Nagendra Rai, learned senior counsel for the respondents in appeals corresponding to S.L.P. (C) Nos. 3652 of 2010 and 3653 of 2010 respectively.

4. The facts, as construed to be germane for the adjudication, fall in a short compass and for the sake of brevity and convenience would be lifted from the appeal corresponding to SLP(C) No.3652 of 2010. To reiterate, nothing turns on the facts with fringe differences in the two appeals and in course of the arguments as well, no marked distinguishable features have been highlighted warranting individual analysis thereof.

5. The respondent had been granted a lease for 10 years from the year 1992 under the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as "the Rules") and on the expiry of the term thereof, the same had not been renewed. The lease had been accorded to win pebbles (gutika) from the basin of Pandai river. The rate of royalty, as was fixed by the Notification dated 17.08.1991 initially at the commencement of the lease, stood revised thereafter on 29.08.1994. Eventually, by the aforementioned Notification dated 24.03.2001 ushering in the amendment to the Rules, amongst others the rate of royalty for "boulder, gravel, shingles, which is used for making chips", was prescribed to be Rs.100/- per cubic meter. The relevant excerpt from Schedule II to the Rules qua the above Minerals is extracted herein below for ready reference :

> Royalty |Sl. No. |Name of the Minerals |Rate per cubic metre (in | | | |rupees) | | 1 |2 |3 | |1. |Boulder, Gravel, Shingle |50.00 | |2. |Boulder, Gravel, Shingle which used for |100.00 | | |making chips | | At the foot of the Notification, the following note was attached :
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> "Note: In respect of Minerals mentioned in Sl. Nos.1 and 2 the identified areas of the two categories of the said Minerals, shall be notified separately, as per rules.
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> 3. This order will come into force from 1.4.2001." It would be appropriate as well to quote at this juncture, Rule 26 of the Rules pertaining to rent/royalty an assessment as herein below:
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> "26. Rent/royalty and assessment – (1) When a lease is granted or renewed:-
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> (a) Dead rent shall be charged at the rates specified in Schedule I;
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> (b) Royalty shall be charged at the rates specified in Schedule II; and
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> (c) Surface rent shall be charged at the rate specified by the Collector from time to time for the area occupied or used by the lessee.
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> (2) On and from the date of commencement of these rules, the provisions of sub-rule (1) shall also apply to the leases granted or renewed prior to the date of such commencement and subsisting on such date.

(3) If the lease permits the working of more than one Mineral in the same area, the Collector may charge separate dead rent in respect of each Mineral:

Provided that the lessee shall be liable to pay the dead rent or royalty in respect of each Mineral, whichever be higher in amount.

(4) Notwithstanding any thing contained in any instrument of lease the lessee shall pay rent/royalty in respect of any minor mineral own, extracted and removed at the rate specified from time to time in Schedules I and II.

(5) The State Government may, by notification in the official Gazette, amend the first and second Schedules so as to enhance or reduce the rate at which rents/royalties shall be payable in respect of any minor Mineral with effect from the date of publication of the notification in the official Gazette.

(6) The (Competent Officer), after such enquiry and verification as he may deem necessary of the monthly returns furnished by the lessee in Form "H" shall assess the amount of rent/royalty payable by the lessee at the end of the prescribed period."

6. As would be evident from the Notification dated 24.03.2001, thereby the rate of royalty for boulder, gravel, shingle, which are used for making chips, though had been stipulated to be Rs.100/- per cubic meter, the footnote thereof clarified that the identified areas thereof would be notified separately as per the Rules. Otherwise, the rates were made effective on and from 01.04.2001. As the respondent was dealing in boulder, gravel, shingle which are used for making chips, the adjudicate understandably would be limited to these minerals.

7. Be that as it may, as the recorded facts demonstrate, demand notices dated 06.09.2001 and 29.11.2001 for the terms 01.04.2001 to July, 2001 and 01.07.2001 to October, 2001 for Rs. 28,80,079/- and Rs.16,75,353/-, followed in response whereto, the appellant deposited Rs.11 lakhs and Rs.8.5 lakhs correspondingly. At that stage, the Notification dated 26.12.2001 adverted to hereinabove, was issued by the Government of Bihar, Mines and Geological Department, to the effect that boulder, gravel, shingle found in the Districts of Rohtas and Bettiah are capable of being made into stone chips, for which the royalty would be payable @ Rs.100/- per cubic meter, as fixed by the Notification dated 24.03.2001 issued under Rule 26 of the Rules. The said Notification mentioned that the districts mentioned therein had been identified on the basis of a report of a team of experts constituted for the purpose. Pleaded facts are available to the effect that the State Government on 05.05.2001 had indeed constituted an Expert Committee to notify the areas in the basin of the Pandai river, wherefrom the above minerals, if extracted, would attract the royalty @ of Rs.100/- per cubic meter, as ordained by the Notification dated 24.03.2001.

8. As with the issuance of the Notification dated 26.12.2001, the royalty @ Rs.100/- per cubic meter for the minerals concerned was sought to be realized by the State Government w.e.f 24.03.2001, the respondents separately assailed the demand notices unsuccessfully before the Departmental Appellate Authority, whereafter they laid the impeachment thereto before the High Court under

Article 226 of the Constitution of India.

9. The learned Single Judge dismissed the impugnment observing that once the areas were identified by the Notification dated 26.12.2001, the demand would relate back to 01.04.2001.

10. The respondents, as a consequence, carried the challenge in appeal to the Division Bench, which upheld the same.

11. As the impugned verdict would reveal, the Division Bench noticed that the respondents had not challenged the validity of the notification dated 24.03.2001 and had confined their demurral only to the retrospective application thereof, pursuant to the Notification dated 26.12.2001. The Division Bench held the view that once the rate of royalty had been enhanced, as effected by the Notification dated 24.03.2001, it was incumbent on the part of the concerned authorities also to notify the relevant areas therewith, so as to enable the lessees to pass on the liability to the purchasers in the transactions to follow. As, in absence of the identification of the areas by the Notification dated 23.04.2001, there was a possibility that the higher rates of royalty would not be applicable to them, the respondents might not have passed on such liability in their contemporary transactions. It was thus concluded that the realization of royalty at the higher rates, as fixed by the Notification dated 24.03.2001, was not realizable from the date prior to 26.12.2001.

12. Consequently, both the respondents, as held, were required to pay royalty at the rate fixed by the Notification dated 24.03.2001 w.e.f. 26.12.2001, following necessary adjustments of the amounts already deposited by them.

13. Whereas, the learned counsel for the appellant has emphatically urged that the Notification dated 26.12.2001 is apparently clarificatory in nature and only identifies the areas wherefrom the minerals involved, if extracted would attract the rate of royalty otherwise fixed by the Notification dated 24.03.2001, and that the High Court has ex facie erred in its interpretation thereof, the impugned decision has been endorsed on behalf of the respondents by pleading that the Rules by themselves being a delegated legislation, in absence of any provision in the parent statute authorizing realization of royalty with retrospective effect, the Notification dated 26.12.2001 cannot be given a retrospective effect on and from 24.3.2001 and thus, no interference by this Court is called for. The learned counsel for the respondents have contended further that the Notification dated 26.12.2001 is even otherwise non est, as it seeks to alter as well the description of the minerals set out in Schedule II of the Notification dated 24.03.2001. Reliance on their behalf has been placed on the decisions of this Court in The Income Tax Officer, Alleppy vs. M.C. Ponnoose and others etc. (1969) 2 SCC 351, Hukam Chand Etc. vs. Union of India and others (1972) 2 SCC 601, Commissioner of Income Tax vs. Bazpur Co-operative Sugar Factory Ltd. (1988)3 SCC 553, Bejgam Veeranna Venkata Narasimloo and others vs. State of A.P. and others (1998) 1 SCC 563.

14. The materials available on record and the competing assertions have received our due consideration. Admittedly, the Notification dated 24.03.2001 occasioning enhancement of the rate of royalty for boulder, gravel, shingle which are used for making chips and extracted by the respondents' firm from the basin of the Pandai river, is not under assailment by them. They have not

questioned as well the enforcement of this notification w.e.f. 01.04.2001. As claimed by them, in response to the demand notices thereafter, they have made part payments of the royalty claimed. They have unequivocally averred that they deal in boulder, gravel, shingle, which are used for making chips.

15. The footnote to the Notification dated 24.03.2001, in clear terms, proclaims that the areas of the two categories of the minerals, corresponding to Sl. Nos.1 and 2 (boulder, gravel, shingle, which are used for making chips) once identified, would be notified separately as per the Rules. Eventually, such areas being located in the Districts of Rohtas and Bettiah, having been identified by the Expert Committee constituted for the purpose, the Notification dated 26.12.2001 followed. A plain reading of this Notification would demonstrate, in unambiguous terms, that it is in continuation of the one dated 24.03.2001 fixing the rate of royalty at Rs.100 per cubic meter for boulder, gravel, shingle, from which chips is prepared. Though it mentioned that the boulder, gravel and shingle found in the Districts of Rohtas and Bettiah were fit and suitable for making stone chips, in our comprehension, though imputed by the respondents, there is in reality no alteration in the description of the minerals so as to exclude those extracted by them from the purview of this Notification or the one dated 24.03.2001. The words “is” and “fit and suitable” for making, in the attendant facts and circumstances, unmistakably refer to boulder, gravel and shingle from which either are used for making chips or are capable of making the same. The assertion of the respondents to the contrary does not commend for acceptance and is rejected.

16. In Re Rule 26, it is apparent therefrom that when a lease is granted or renewed, amongst others royalty would be charged at the rate specified in Schedule II and that the State Government may, by notification in the official gazette, amend the First and Second Schedules so as to enhance or reduce the rate at which rents/ royalty would be payable in respect of any minor Mineral w.e.f. the date of the publication of the notification in the official gazette. Though it has been contended on behalf of the respondents that the mandate contained in sub-rule 5 of Rule 26 authorizing the State Government to enhance or reduce the rate of rents/royalties, has to be construed to make such enhancement or reduction effective essentially on and from the date of the publication of the notification in the Official Gazette to that effect, we are unable to subscribe to this plea vis-a-vis the Notification dated 26.12.2001 in its operation. In our estimate, having regard to the relevant provisions of the Rules and, in particular the two Notifications in hand and most importantly the footnote to the one dated 24.03.2001, the Notification dated 26.12.2001 is only clarificatory in nature, inasmuch as it declares only the areas from which, if the minerals concerned are extracted would draw the rate of royalty already fixed by the Notification dated 24.03.2001, payable on and from 01.04.2001.

17. No other interpretation would accord with the legislative intendment contained in Rule 26 as well as the objectives of the two Notifications.

18. All the decisions cited at the Bar are to the effect that a delegated legislation cannot traverse beyond the contours of the authority endowed by the parent statute and unless authorized by it, is not empowered to make any law or provision with retrospective effect, impairing the already vested rights of those likely to be adversely affected thereby. In our mind, these pronouncements, in the

singular facts of the case are of no avail to the respondents having regard in particular to the clarificatory nature of the Notification dated 26.12.2001.

19. In Commissioner of Income Tax-I, Ahmedabad vs. Gold Coin Health Food Pvt. Ltd. (2008) 9 SCC 622, a three-Judge Bench of this Court, while dwelling on the sweep of a clarificatory or declaratory legal provision, relied on the following extract from the celebrated treatise "Principles of Statutory Interpretation", 11th Edition 2008 by Justice G.P. Singh:

> "The presumption against retrospective operation is not applicable to declaratory statutes. As stated in Craies and approved by the Supreme Court: For modern purposes a declaratory Act may be defined as an Act to remove doubts existing as to the common law, or the meaning or effect of any Statute. Such acts are usually held to be retrospective."……..
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> ……."An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended. The language `shall be deemed always to have meant' or `shall be deemed never to have included' is declaratory, and is in plain terms retrospective. In the absence of clear words indicating that the amending Act is declaratory, it would not be so construed when the amended provision was clear and unambiguous. An amending Act may be purely clarificatory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect and, therefore, if the principal Act was existing law when the constitution came into force, the amending Act also will be part of the existing law."

20. The following quote contained in Zile Singh vs. State of Haryana & Ors. AIR 2004 SC 5100, was also noted with approval:

> "14. The presumption against retrospective operation is not applicable to declaratory statutes…. In determining, therefore, the nature of the Act, regard must be had to the substance rather than to the form. If a new Act is "to explain" an earlier Act, it would be without object unless construed retrospectively. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended…. An amending Act may be purely declaratory to clear a meaning of a provision of the principal Act which was already implicit. A clarificatory amendment of this nature will have retrospective effect."

21. The proposition has been so well laid that we do not wish to burden the present rendition by referring to other rulings in the same vein. Suffice it to state that any legislation or instrument having the force of law, if clarificatory, declaratory or explanatory in nature and purport, in order to

supply an obvious omission or to clear up doubts qua any prior law, retrospective operation thereof is generally intended. Applying this test, in absence of any indication to the contrary, either in the parent Act or the Rules or the Notifications involved, we are thus of the unhesitant opinion that on a conjoint reading of Rule 26 and the two Notifications, the enhanced rate of royalty at Rs.100/- per cubic meter for boulder, gravel and shingle, which are used or are capable of being used for making chips would be realizable w.e.f. 01.04.2001 and axiomatically thus, the respondents are liable to discharge the demand, therefor, as raised in terms thereof. The respondents were fully aware of the amended rate of Rs. 100/- per cubic metre for the minerals extracted by them and thus the reasoning of the High Court that they might not have passed on the burden to their purchasers is without any factual basis and being clearly speculative is untenable. The High Court, in our view, had clearly erred in interpreting the relevant legal provisions and the Notification dated 26.12.2001 in particular in holding that the enhanced rates, as fixed by the Notification dated 24.03.2001, would be payable for the minerals involved, as extracted from the two areas, mentioned in the Notification dated 26.12.2001 on and from that date. The determination made by the High Court is thus indefensible and consequently, the impugned decision is hereby set aside.

22. The appeals are thus allowed. No costs.

.....J. (ARUN MISHRA) .....J. (AMITAVA ROY)
NEW DELHI;

JANUARY 31, 2017.