Supreme Court of India
Mahantappa & Ors vs State Of Karnataka on 1 December, 1998
Author: M J Rao
Bench: K.Venkataswami, M.Jagannadha Rao.

PETITIONER:
MAHANTAPPA & ORS.

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 01/12/1998

BENCH:
K.Venkataswami, M.Jagannadha Rao.

JUDGMENT:

M. Jagannadha Rao, J.

Leave granted.

The appellant's writ petition No. 1046 of 1997 was dismissed by a learned Single Judge of the Madras High Court by Judgment dated 20.10.1997 and further appeal filed by the appellant before the Division Bench in Writ Appeal No. 1686 of 1998 was also dismissed. Aggrieved by the said Judgments this appeal has been preferred.

The following are the relevant facts.

The District Collector, Tuticorin (First respondent) published a notification in the District Gazetta in January 1995 calling for tender applications for grant of lease of sand quarry in 1.17 1/2 hectares for a period of two years from 1.1.95 to 31.3.1997. The said advertisement was amended and modified as a lease for three years i.e. upto 31.3.98, rather than for two years. On 23.2.1995 the petitioner submitted his tender and offered a sum of Rs. 1.60 lakhs per annum. The offer of the petitioners was the highest. The first respondent did not accept the offer but rejected the same by orders dated 22.3.1995 in exercise of his powers under Rule 8(6)(b)(ii) of the Tamilnadu Minor mineral Concession Rules, 1959 (hereinafter called 'the Rules'). The collector felt that the appellant's offer, even though it was highest, was less than the upset price as estimated by the department. The appellant preferred an appeal to the Director of Geology and Mines (second respondent). The Director allowed the appeal of the appellant by his order dated 1.4.1997 on the ground that by the closing date of the tenders namely, 6.3.1995 the upset price was not fixed by the Assistant Geologist, that such upset price was fixed only on 10.3.1995 long after the closing date namely, 6.3.1995. The Director also held that compared to another tender where the offer of Rs. 1.75 lakhs of this very

appellant was accepted for an extent of 3.24 hectares, the present offer of the appellant for 1.60 lakhs was not unreasonable particularly when the extent of the quarry area in this case was only 1.17 1/2 hectares. However, the Director applied the provisions contained in the amendment to Rule 8-A introduced by G.o. Ms.235 on 19.12.1996 by which additional Seigniorage fee was payable in addition to lease amount. By the date when the Director allowed the appeal on 1.4.1997, part of the lease period from 1.4.1995 upto 1.4.1997 had already expired. Therefore, the Director granted the lease only for the remaining period from 1.4.1997 upto 31.3.1998.

Aggrieved by the said order to the extent that full three year lease was not granted by the Director amended Rules dated 19.12.96, the appellant filed the writ petition in the High Court. He contended that when the Director applied the amended rules dated 19.12.1996 which were issued in GOMs No.235, so far as seigniorage was concerned, the Director should have also given the benefit of the amendment to Rule 8(8)(a) which stated that the lease should run for a period of three years form the date of the execution of the lease deed. The writ petition was contested by the respondents before the learned Single Judge.

The learned Single Judge while dismissing the writ petition observed that the auction notice specified a particular period namely, 1.1.95 to 31.3.98 and, therefore, the appellant could not claim that the three year period was to run as per the amended Rule 8(8)(a), that the amendment was prospective in nature and was not applicable to leases which had already been processed and rejected the Collector earlier, - in this case on 22.3.1995. Merely because the appellate order was passed subsequent to the amendment of the rules in GOMs No.235 dated 19.12.1996, the appellant could not seek the benefit of the amendment. Before the learned single Judge, the appellant relied upon the judgment of this Court in State of Tamilnadu vs. Hind Stone [1981 (3) SCR 742] for the proposition that if rules were amended during the pendency of an application for the grant of a mining lease, the said rules should be applied to such pending applications. The said decision was distinguished by the learned Single Judge on the ground that the appellant's application was rejected by the Collector on 22.3.1995 long before the rules came into force on 19.12.1996 and that the pendency of the appeal by the rime the emended rules came into force, was not a sufficient reason for applying the amendment. So far as the appellate order of the Director asking the appellant to pay seigniorage as per the amended rule was concerned, the learned Single Judge justified the said charge on the ground that the said fee was leviable form 1.4.1997 to 31.3.1998. On these grounds, the writ petition was dismissed.

When the appellant appealed before the Division Bench the learned Judges too distinguished the decision of the Supreme Court in Hind Stone [1981 (2) SCR 742]. The Bench also held that the new rules did not apply. The Bench was also of the view that the value of the sand by the time the appellate order came to be passed on 1.4.97 would have been more than what the appellant offered at the time of the tender of 21.3.1995 and that, therefore, in case the appeal were to be allowed, the interests of the State would suffer. For all these reasons, the appeal was dismissed.

In this appeal before us, it was contended by the learned senior counsel of the appellant Shri K.R. Choudhary that the learned Single judge and the Division Bench as also the Director (second respondent) were wrong in not applying the amended rule in GOM No. 235 dated 10.12.1996.

According to him the judgment of this Court in State of Tamilnadu vs. Hind Stone [1981 (2) SCR 742] was directly in point when it said that the application for grant of a lease of minerals under these rules had to be disposed of on the basis of such rules as may be in force at the time the application was disposed of and not by the rules in force at the time the application for grant of lease was made. Learned senior counsel, therefore, contended that the Director. Mines and Geology ought to have, while allowing the appeal of the appellant, granted a lease for a period of three years from the date of execution of the lease as provided in the amended rules in rule 8(8)(a).

On the other hand, the learned counsel for the respondents contended that the tender being for a specific period from 1.4.1995 to 31.3.1998 it was not permissible for the appellant to seek a lease for a period beyond 31.3.1998 on the basis of the amended rules. The fact that the appeal before the Director was pending upto 1.4.1997 was not a ground for applying the amended rules. The rules were preceded by administrative instructions dated 12.3.1997 which stated that if any application had been processed before the commencement of the new rules then such applications should not be disposed of on the basis of the amended rules. Even otherwise the amended rules were prospective in nature. The judgment of this court relied upon by the appellant in Hind Stone was not applicable inasmuch as the application of the appellant was disposed of by the Collector on 22.3.1995 whereas the rules came into force long thereafter on 19.12.1995 whereas the rules came into force long thereafter on 19.12.1996. If the appellant were granted three years lease from the date of the execution of the lease then the appellant would be making a undue profit inasmuch as the value of sand has gone up between 1995 and 1998 and to that extent the interests of the Government would suffer.

The point for consideration is whether the appellant is entitled to a quarrying lease for sand for three years from the date of the execution of the lease dated as per rule 8(8)(a) of the rules as amended by the GOM No.235 dated 19.12.1996 or only upto 31.3.1998 as per the advertisement?

It may be noticed that Rule 8(8)(a), before its amendment by GOMs No. 235 dated 19.12.1996 read, in so far as it is material for the case before us, as follows :

"Rule 8(8)(a): The period of any quarry lease granted under this rule for quarrying stones shall be five years and the period of quarry lease for quarrying sand and other minor minerals shall be three years, subject to the following conditions :-

(I) The date of commencement of the period of a quarrying lease granted under this rule shall be the first day of the first financial year of the lease period:

provided that where the lease deed could not be executed before the 1st day of April in the first financial year of the lease period due to administrative reasons, the lessee is entitled for proportionate reduction in the annual lease amount in the first year of the lease period;

provided that. . . . . .

provided also that the lease amounts for the second and subsequent financial years of the lease period shall be fixed by enhancing the lease amount of the previous year by twenty per cent of as prescribed by the State Government from time to time.

(II) . . . . . "

By the amendment made w.e.f. 19.12.1996 in GOMs No. 235 (Industries) it is stated as follows :

"Amendments.

In the said rules, in rule 6 --

(1) In sub-rule (80, in clause (a) --

(a) for sub-clause (i) including the provisos, the following sub-clause shall be substituted, namely :-

(i) the date of commencement of the period for which the quarrying lease is granted under this rule shall be the date on which the lease deed is executed.

(b) for sub-clause (ii), the following sub-clause shall be substituted, namely :-

(ii) the lease shall expire on the date specified in the lease deed and in no case extension of the period of lease shall be made.

(2) in sub-clause (iv), for clause (b), the following clause shall be substituted, namely :-

(b) All leases, besides the one time payment of the bid amount/tender amount, which is the lease amount, shall also pay seigniorage fee or deed rent . . .

Besides the lease amount and the seigniorage fee or deed rent, the lessee shall also pay such other levies, as may be prescribed by the State Government, ..."

In is clear, therefore, that after the amendment, the three year period for quarrying of sand is to be counted from the date of execution of the lease. Apart from the lease amount, seigniorage fee or dead rent or other charges have to be paid.

In the present case, the above amendment by GOMs No.2355 dated 19.12.1996 came into force after the order of rejection was passed by the Collector on 22.3.1995, obviously, the Collector could not have applied the amendment. But the appeal was preferred to the Director on 20.4.1995 and it was during the pendency of the appeal that the amendment dated 19.12.1996 came into being.

As to the effect of the amendments to the Rules, the judgment of the Supreme Court in State of Tamil Nadu vs. Hind Stone [1981 (20 SCR 742] is relevant. In that case, when certain renewal applications were pending under these very Rules, before the Government, Rule 8(c) was introduced

by GOMs No.1312 (Industries) on 2.12.1977. By that rule, "leases" for quarrying black granits in favour of private parties were banned. Question arose whether the amendment applied only to fresh leases or whether the pending renewal applications were to be disposed of under the Rules as they stood when the original lease was granted. Question also arose whether, the concerned authority could apply a Rule which came into force during the pendency of an application or whether the Rules in force on the date of the application alone applied. It was argued for the application alone applied. It was argued for the applicant that there was undue delay in the disposal of the renewal applications and hence the new amendments could not be applied. This Court initially observed (p.759) that an application for renewal is in substance an application for a lease. It held :

"It must be remembered that an application for the renewal of a lease is, in essence an application for the giant of the lease for a fresh period. We are, therefore, of the view that Rule 8(c) is attracted in considering applications for renewal of leases also."

This Court also held that if rules are amended during the pendency of an application for a mining lease, the amended rule is to be applied while disposing of the application. The argument if there was long delay in disposal of applications, subsequent amendments should not be applied, was rejected. At (pp.759-760) it was held:

"while it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application."

question for consideration is whether in cases where the application for lease is rejected by the Collector and an appeal is filed by the applicant before the Director, and the rules are amended during the pendency of the appeal, the above principle in Hind Stone can be applied?

In our view, what applies to applications applies equally to appeals because, an appeal is nothing by the continuation of the proceeding which stated with an application. In our view it makes no difference whether the delay has occurred on account of keeping the applications pending or on account of an appeal being filed. In either case, Hind Stone becomes applicable.

The learned single judge and the Division Bench, in our view, erred in not applying the judgment of this Court in Hind Stone to the appeal that was pending before the appellate authority. We are of the view that the amended Rule 8(8)(a) which came into force on 19.12.1996 applied to the appeal which came to be disposed of on 1.4.1997. If that be so, the period of 3 years for a sand quarry lease must necessarily run from the date of execution of the lease deed.

Learned counsel for the State, however, relled on the fact that the advertisement for lease was for a specific period i.e. 1.4.1995 to 31.3.1998. According to him, the appellant was entitled to a lease, by

orders of the Director dated 1.4.1997, only upto 31.3.1998 and if that period too had expired by now, no relief could be granted. In our opinion, the advertisement having been issued in order to implement these very Rules, the terms of the advertisement cannot be viewed in isolation. They have necessarily to be read in conjuction with the rules.

Yet another argument of the learned counsel for the State is that the amendment to the Rules dated 19.12.1996 was preceded by administrative instructions dated 12.3.1997 which stated that if by the date of amendment, the lease application had been processed, the amendment would not apply. The relevant part of the instruction reads as follows:

"The District Collectors are also informed that in these cases where order confirming the auction/tender have been issued already, the leases may be granted as per certain rule and instructions issued. In cases where auction/tender process was already over, the same may be confirmed under the earlier rules.

It is true that the latter part of this rule states that if the processing of the application is completed before the new rules come into force, than the new rules cannot be applied. In our opinion, this goes against the judgment of this Court in Hind Stone case which stated that if the application for lease was not disposed of by the date of the amendment, then the amendment would apply. The administrative order cannot, therefore, be relied upon by the respondents.

Further, the argument that the amendment is prospective and is applicable only to fresh application filed after the amendment cannot hold good again in view of what is decided in the Hind Stone case. It is the rule in force on the date of disposal of the application or appeal that is applicable. In case the amendment comes during the pendency of an appeal against a refusal to grant the lease, as in the case before us, the appeal by the applicant has to be disposed of by applying the amendment which has come into being during the pendency of the appeal.

Lastly, we come to the submission by the respondent's counsel that the price of sand had increased between 1995 and 1998 and if fresh tenders are called today, the state would get a higher amount.

In this context, we may point out that the rule 8(8)(a)(i) as it stood before the amendment had a proviso that the lease amounts for the second and subsequent financial years shall be fixed by way of an annual increase of 20%. We find, however, that the said proviso was dropped w.e.f. 19.12.1996. This is clear from the fact that the amendment states.

"for sub-clause (i) including the provisos, the ne amendment is substituted."

In the present case, the appellant's tender was rejected on 22.3.1995 and the provision for periodic increases was there till 19.12.1996 only. in the circumstances of the case, we have put it to the appellant's senior counsel that in the event the appeal is to be allowed, we will apply the old rule upto a least 19.12.1996 so far as the rate is concerned. Learned senior counsel agreed for such enhancement. The enhancement would be roughly for 2 years. In the peculiar circumstances of the case, we direct that the lease amount will stand increased, to start, by 40% of the offer i.e. instead of

Rs.1.60 lakhs, it will be Rs.2.24 lakhs per annum, the period of lease will run for a period of 3 years from the date of execution of the lease as stated in the amended rule, at the rate of Rs.2.24 lakhs per annum. The appellant shall have to pay the seigniorage also as per the amended rules in addition to the lease amount. Time for payment of the enhancement in the lease amount or any balance of the lease amount or seigniorage, will be one month from today.

The judgment of the learned single judge and division bench are set aside. The order of the Director of Geology & Mining dated 1.4.1997 is modified accordingly. The appeal is allowed as stated above. In the circumstances, there will be no order as to costs.