

Supreme Court of India

Ichchapur Industrial ... vs The Competent Authority, Oil & ... on 19 December, 1996

Author: S Ahmad

Bench: Kuldip Singh, S. Saghir Ahmad

PETITIONER:

ICHCHAPUR INDUSTRIAL CO-OPERATIVE SOCIETY LTD.

Vs.

RESPONDENT:

THE COMPETENT AUTHORITY, OIL & NATURAL GAS COMMISSION& ANR.

DATE OF JUDGMENT: 19/12/1996

BENCH:

KULDIP SINGH, S. SAGHIR AHMAD

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.SAGHIR AHMAD, J.

Leave granted.

2. Water is a mineral within the meaning of Mines Act, 1952 read with Section 2(ba) of the Petroleum and Minerals Pipelines (Acquisition of Right of User in land) Act, 1962 (for short, the Act) or not is the question raised by the respondent in this appeal.

3. Appellant owns survey plot nos. 780, 781, 913/2, 914, 893, 918/223, 924/2, 923, 926 of moja Ichchapur, Tehasil Choryasi, District Surat which were notified on 23.6.83 under Section 3(1) of the Act. For acquiring the right of user in those plots to enable the respondent no.2, namely, the oil and Natural Gas Commission, in whom the rights were ultimately vested, to lay pipelines for transporting Petroleum from one place to another, a Notification was issued under Section 3(1) of the Act on 23.6.83. This Notification was followed by Notification dated 16.1.84 issued under Section 6(1) of the Act and the right of user in the aforesaid land stood acquired for laying the pipelines. It was also indicated in that Notification that the right of user in the said lands shall, instead of vesting in the Central Government, vest in the Oil and Natural Gas Commission.

4. In pursuance of the aforesaid notifications, Oil and Natural Gas Commission (for short, ONGC) laid down pipelines in the aforesaid plots of land for transportation of Petroleum from Utran Terminal to Kribhco Terminal.

5. The right of user having vested in the ONGC, they initially laid one 12" Gas pipeline through the said land (30 metres wide) for transportation of the Gas. The Gas processing plant is said to be located at Hazira and south basin. Gas is being processed at that plant since 1988 for being supplied to various consumers. In order to run the aforesaid plant efficiently and effectively, water is a commodity which is vitally required. Water was initially drawn for that purpose from KRBC canal division but when ONGC was informed that no further water would be made available from the canals due to Kakarprra Irrigation Project, the ONGC decided to draw water from the alternative sources through their own pipelines which they thought they would lay down underneath the land of which the right of user had already vested in them. Accordingly, a notice dated 6.10.94 was issued under Section 8 of the Act for laying pipelines to carry water for effective working of the Gas processing plant. The pipeline was to pass through a stretch of land of 13 Kms. out of which the land owners/occupiers of 11 kms. did not raise any objection whatsoever but the appellant who is concerned only with 2 Kms. of land challenged the notice on the ground that the proposed pipelines were not being laid for transporting petroleum or any other mineral but for transporting water which was not permissible under the Act. This contention has been rejected by the Gujarat High Court which was of the opinion that the action of ONGC in laying down the proposed pipeline for transporting water was fully covered by the provisions of the Act specially as the right of user of the land through which the pipeline was proposed to be carried had already vested in the ONGC.

6. The appellant has again raised this question in this appeal while ONGC has raised an additional ground that "WATER" for which the pipelines have been laid is a mineral and since "Minerals" could be validly carried through those pipelines, "Water" could also be carried or transported through them.

7. Whether "Water" is a mineral or not was not decided by the High Court as it was of the opinion that carrying of water through the pipelines would be covered by the phrase "any other act necessary for the utilisation of the pipeline" used in Section 7(1)(ii) of the Act on the simple logic that:-

(i) Pipeline earlier laid were meant, and, are being utilised for transportation of Gas.

(ii) This Gas is processed at the Gas processing plant.

(iii) For running of Gas processing plant, water is necessary otherwise the plant will not run and Gas will not be available.

(iv) If water was carried through the new pipelines to run the plant, it would amount to an act for the utilisation of pipelines for transportation of the Gas.

8. Section 2(ba) defines "Minerals" as under:-

"2(ba). "minerals" have the meanings assigned to them in the Mines Act, 1952, and include mineral oils and stowing sand but do not include petroleum."

9. "Petroleum" has been defined in Section 2(c) as under:- "2(c). "petroleum" has the same meaning as in the Petroleum Act, 1934, and includes natural gas and refinery gas."

10. Section 3 of the Act provides as under:-

"3 Publication of notification for acquisition.-

(1) Whenever it appears to the Central Government that it is necessary in the public interest that for the transport of petroleum [of any minerals] from one locality to another locality pipelines may be laid by that Government or by any State Government or a Corporation and that for the purpose of laying such pipelines it is necessary to acquire the right of user in any land under which such pipelines may be laid, it may, by notification in the Official Gazette, declare its intention to acquire the right of user therein. (2) Every notification under sub- section (1) shall give a brief description of the land. (3) The competent authority shall cause the substance of the notification to be published at such places and in such manner as may be prescribed."

11. Section 5 and 6 provide as under:

"5. Hearing of Objections - . (1) Any person interested in the land may, within twenty-one days from the date of the notification under sub-section (1) of section 3, object to the laying of the pipelines under the land. (2) Every objection under sub-section (1) shall be made to the competent authority in writing and shall set out the grounds thereof and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as that authority thinks necessary, by order either allow or disallow the objections. (3) Any order made by the competent authority under sub- section (2) shall be final." "6. Declaration of acquisition of right of user. - (1) Where no objections under sub-section (1) of Section 5 have been made to the competent authority within the period specified therein or where the competent authority has disallowed the objections under sub-section (2) of that Section, that authority shall, as soon as may be, [either make a report in respect of the land section (1) of section 3, or make different reports in respect of different parcels of such land, to the Central Government containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government] and upon receipt of such report, the Central Govt. shall [if satisfied that such land is required for laying any pipeline for the transport of petroleum or any mineral,] declare, by notification, in the Official Gazette, that the right of user in the land for laying the pipelines should be acquired [and different declarations may be made from time to time in respect of different parcels of the land

described in the notification issued under sub-

section (1) of section 3, irrespective of whether one report or different reports have been made by the competent authority under this section].

(2) On the publication of the declaration under sub-section (1), the right of user [in the land specified therein] shall vest absolutely in the Central Government free from all encumbrances.

(3) Where in respect of any land, a notification has been issued under sub-section (1) of section 3 but [no declaration in respect of any parcel of land covered by that notification has been published under this section] within a period of one year from the date of that notification, that notification shall cease to have effect on the expiration of that period. (4) Notwithstanding anything contained in sub-section (2), the Central Government may, on such terms and conditions as it may think fit to impose, direct by order in writing, that the right of user in the land for laying the pipelines shall, instead of vesting in the Central Government vest, either on the date of publication of the declaration or, on such other date as may be specified in the direction, in the State Government or the corporation proposing to lay the pipelines and thereupon the right of such user in the land shall, subject to the terms and conditions so imposed, vest in that State Government or corporation, as the case may be, free from all encumbrances."

12. There is no dispute between the parties that a Notification under Section 3 of the Act was duly published which was subsequently followed by Declaration under Section 6 with the result that the right of user of the land in question vested in the ONGC. The question which is being canvassed before us now is that new pipelines for carrying another commodity cannot be laid unless fresh Notification under Section 3 followed by a Declaration under Section 6, which too is made after following the procedure prescribed under Section 4 and 5, are issued or the land itself is acquired under the Land Acquisition Act for this purpose. We shall consider this question, if need be, later as we intend to take up the other question, namely, the question whether "Water" is a "Mineral" or not, first.

13. This question arises in view of the provisions contained in Section 7 of the Act which provides that where the right of the user, in any land, has vested in the Central Government or in any State Government or Corporation under Section 6, it shall be lawful by those authorities to enter upon the land and lay pipelines or to do any other act necessary for the laying up of pipelines.

14. Clauses (ia) and (ii) of Sub-section (1) which are relevant are reproduced below:-

"(ia) for laying pipelines for the transport of petroleum, it shall be lawful for any person authorised by the Central Government or such State Government or corporation to use such land for laying pipelines for transporting any mineral and where the right of user in any land has so vested for laying pipelines for transporting any mineral, it shall be lawful for such person to use such land for

laying pipelines for transporting petroleum or any other mineral; and

(ii) such land shall be used only for laying the pipelines and for maintaining, examining, repairing, altering or removing any such pipelines or for doing any other act necessary for any of the aforesaid purposes or for the utilisation of such pipelines."

15. A perusal of the above would indicate that if the right of user of the land has vested in the Government for laying pipelines for transporting petroleum, it shall be lawful to lay pipeline for transporting minerals. It also provides that where the right of user of a land has vested in the Government for laying pipelines for transporting any mineral, it would be lawful to lay pipelines for transporting petroleum or any other mineral including the mineral for the transportation of which the right of user had already vested. The two rights, namely, the right to lay pipeline for Petroleum and the right to lay pipeline for minerals have been linked together. If one is acquired, the other also becomes available.

16. Clause (ia) was introduced in Section 7 by the Petroleum Pipelines (Acquisition of Right of User in Land) Amendment Act, 1977 (Act 13 of 1977) with effect from 3rd of February, 1977. BY the same Amending Act, the definition of "Minerals" contained in Clause (ba) of Section 2 was also introduced in the parent Act. "Mineral" was not earlier defined and so also the right to lay down pipelines for carrying "Mineral" was also not available in the original Act. The Statement of Objects and Reasons for amending the parent Act by Act 13 of 1977 provides, inter-alia, as under:-

"The Petroleum Pipelines (Acquisition of Right of user in Land) Act, 1962 was enacted to empower the Central Government to acquire the right of user in any land if it appears to that Government that it is necessary, in the public interest, to lay pipelines under such land for the transport of petroleum (which is defined to include natural gas and refinery gas) from one locality to another. When the legislation was enacted, petroleum (including natural gas and refinery gas) was the only commodity for which transportation through pipelines was contemplated. Technological advance has since made it possible to transport in bulk, mineral (besides petroleum) through pipelines. It is therefore proposed to amend the Act to enable the acquisition of the right of user in land also for laying pipelines for the transport of minerals (besides petroleum) from one place to another."

17. In view of the availability of right to lay down pipelines for transporting a "Mineral" after the amendment of the Act, the respondents can legally lay down the pipelines through the land in question for carrying and transporting "Water" provided "Water" is a "Mineral"

18. The definition of "Minerals" which we have already quoted above would indicate that the meaning given to it in the Mines Act, 1952 is to apply here also on the basis of classic principle of Legislation by Reference or Incorporation which is a legislative device adopted for the sake of convenience in order to avoid verbatim reproduction of the provisions of the earlier Act into the later. The provisions so incorporated become part and parcel of the later Act as if they had been bodily transposed into it.

19. On this principle, the definition of "Minerals" as set out in this Mines Act, 1952 shall be deemed to have been bodily lifted and incorporated into this Act. We have, therefore, to look to that Act of find out the true meaning of the word "Minerals" which is defined in Section 2(jj) as under:-

2(jj). "minerals" means all substances which can be obtained from the earth by mining, digging, drilling, dredging, hydraulic, quarrying or by any other operation and includes minerals oils (which in turn include natural gas and petroleum)."

20. The definition would indicate that "Minerals" as substances which can be obtained from the earth by employing different technical devices indicate in the definition, namely, "mining, digging, drilling, dredging, hydraulic, quarrying". These words are followed by the words "by any other operation". On account of the vicinity of these words with the previous words, namely, mining, digging, drilling etc., they have to be understood in the same sense and, therefore, if "Minerals" are obtained from earth "by any other operation" such operation should be an operation akin to the device or operation involved in mining, digging, drilling etc. Another significant feature of the definition is the use of words "substances which can be obtained from the earth" which indicate that the "Minerals need not necessarily be embodied in the earth or lie deep beneath the surface of the earth. They may be available either on the surface of the earth or down below. If the "Mineral" is available on the surface, the operation which would be obviously employed would be dredging, quarrying or hydraulic or any other similar operation. The definition, therefore, is very wide in terms but in spite of its wide connotation, every substance which can be obtained earth would not be a "Mineral".

21. Learned counsel for the appellant contended that we should not enter into the exercise of analysing the definition of "Mineral" to find out whether "Water" would fall within that definition or not, as the only meaning which can be assigned to "Water" is the common meaning as understood by a common man does not treat "Water" as a mineral, but treats it as the most common commodity available free of cost like "fresh air" and other gifts of nature which are available in plenty to all living beings, including human beings on the surface of the earth. We are not prepared to accept this contention.

22. Water undoubtedly covers more than seventy per cent of the earth's surface. It fills the oceans, rivers and lakes and is in the ground and in the air we breathe. In fact, "Water" is everywhere. Without "Water", there can be no life. Great Civilisations have risen where water supplies were plentiful. They have fallen when these supplies failed. In the "World Book Encyclopedia", Vol. 21, it is further stated about "Water" is under:

"People have worshiped rain gods and prayed for rain. Often, when rains have failed to come, crops have withered and starvation has spread across a land. sometimes the rains have fallen too heavily and too suddenly. The rivers have overflowed their banks, drowning everything and everyone in their paths.

Today, more than ever, water is both slave and master to people. We use water in our homes for cleaning, cooking, bathing and carrying away wastes. We use water to

irrigate dry farmlands so we can grow more food. Our factories use more water than any other mineral. We use the water in rushing rivers and thundering waterfalls to produce electricity.

Our demand for water is constantly increasing. Every year, there are more people in the world. Factories turn out more and more products and need more than more water. We live in a world of water. But almost all of it - about 97 per cent - is in the oceans. This water is too salty to be used for drinking, farming and about 3 per cent of the world's water is not easily available to people because it is locked in icecaps and other glaciers. By the year 2000, the world demand for fresh water may be double what it was in the 1980's. But there will still be enough to meet people's needs.

There is as much water on earth today as there ever was - or ever will be."

In the book titled "Earth" by Frank Press of the Massachusetts Institute of Technology and Raymond Siever of Harvard University, it is stated :

"Water dissolves minerals during weathering, then carrier the dissolved materials away - into the ground or into rivers, most of which ultimately empty into the ocean. The movement of the Earth's waters from one place to another and the dissolved loads carried by them are parts of a continuous overall pattern" hydrologic cycle.

Groundwater accumulate by infiltration of water into soils and bedrock and reappears at the surface in springs and streams beds. Groundwater levels, and thus water infiltration and pumping from wells. The evolution of surface waters ad the ocean are related to the escape of gases from the interior."

On account of its abundance, the common man does not think that "Water" could also be treated or utilised as a mineral.

23. But there are subterranean waters which lie wholly beneath the surface of the earth and which either ooze or seep through the surface strata without pursing any defined course of channel (percolating waters) or flow in a permanent and regular but invisible course, or lie under the earth in a more or less immovable body, as a subterranean lake. This water can be obtained only by the process of "Drilling" which, according to Chambers Dictionary also includes "Boring".

24. Now, if it is a substance which can be obtained from the earth by the process of drilling. It would immediately fall within the definition of "Mineral" set out and placed in this Act. Even otherwise, Rutley's Elements of Mineralogy, 26th Edition, brought out by H.H. READ, F.R.S., Professor Emeritus of Geology in the Imperial College of Science and Technology and the University of London, "Mineral" is defined as under:-

"A mineral is a substance having a definite chemical composition and atomic structure and formed by the inorganic processes of nature."

25. On the basis of this definition, Rutley says:- "Again, water, snow and ice come within the definition since they are naturally occurring homogeneous inorganic substances of a definite chemical composition.

26. We have, however, taken the aid of Rutley's book only to indicate that in Mineralogy, water is treated, on account of its chemical composition, a mineral. If, therefore, it falls within the definition of "Mineral" as set out in this Act, it should not surprise anyone, not even the common man, as it is a substance which can also be obtained by a process of drilling and notwithstanding that it is available in plenty and everywhere, it is to be treated more valuable than any other "Mineral."

27. In Civil Appeal No. 10538 of 1983, decided by us on 17.12.96, we have already indicated the Rule to Interpret a "Definition" and have stressed that the Definition has to be read in the context in which it is used and the purpose for which the Act was made. We observed that where the definition clause is preceded by the words "unless the context otherwise requires", the definition has to be interpreted in the light of the context in which it is used. We observed:-

"This implies that a definition, like any other word in a statute, has to be read in the light of the context and scheme of the Act as also the object for which the Act was made by the legislature."

28. If the question is examined in this background, it would be noticed that the definition of "Mineral" which has been bodily lifted from the Mines Act, 1952 and has been placed in the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 was deliberately introduced by Amending Act No. 13 of 1977 so that while carrying Petroleum through the pipelines, any other minerals may also be carried through it. If, therefore, water is treated as a "Mineral" it would be permissible for the ONGC to carry it through any other pipeline without any further Notification or Declaration under Section 3 or 6 of the Act. This interpretation which is in consonance with the scientific definition of a "Mineral", serves the purpose of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962. The contention of the learned counsel for the appellant that "Water" should be understood in the same sense in which it is understood by a common man cannot, therefore, be accepted. This Act is an Act of Parliament intended to deal with the particular technology and the commodities involved therein. We are, therefore, of the view that in this Act, "Water" has been used in both the senses, namely that (i) it is a mineral; and (ii) the most common, readily and freely, available substance on earth.

29. That apart, on the second question, we fully endorse the view taken by the Gujarat High Court in holding that carrying of "Water" through the new pipelines would be an act for the utilisation of the pipeline within the meaning of "Section 7" of the Act and, therefore, permissible.

30. The whole Project under the Act is a Project of national importance and, therefore, any individual inconvenience has to yield to the national interest.

31. We do not find any infirmity in the judgment passed by the Gujarat High Court and dismiss the appeal, but without any order as to costs.