The Indian Law Reports

CIVIL MISCELLANEOUS

Before S. K. Kapur, J.

NEOGY AND SONS,—*Petitioner*

versus

THE UNION OF INDIA,—*Respondent*

Civil Writ No. 31-D of 1963.

September 13, 1966

Mines and Minerals (Regulation and Development) Act (LXVII of 1957)—S. 30—Scope of—Mineral Concession Rules (1949)—Rules 28(1-A) and 57(2)—Application not decided within nine months—Whether deemed refused for purposes of review or for purposes of all the rules—Interpretation of Statutes—Intention of legislature clear from language—Whether other factors to be considered—Mistake—Whether can be attributed to legislature.

Held, that the Central Government, for good reasons, can *suo moto* act under section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 and it is not confined only to the removal of grievances of the individuals, who move in the matter. Under this section the Central Government can revive the applications for grant of mining leases which are deemed to have been refused because of the expiry of nine months as prescribed in Rules 28(A) of the Mineral Concession Rules, 1949.

Held, that the applications for grant of mining leases which are not decided within nine months as prescribed in Rule 28(1-A) of the Mineral Concession Rules, 1949, must be deemed to have been refused not only for the purpose of filing review applications but for the purposes of all the said Rules.

Held, that the intention of the legislature must be primarily ascertained from the language used. If there is no ambiguity in the Statute, its bare reading should suffice and no interpretation is called for. In that situation one cannot depart from the letter of the law. It is not legitimate to alter the language of the rule.

Held, that the Courts are not entitled to attribute mistakes to the Legislature. There may be exceptional circumstances justifying correction of errors, mistakes,

omissions and misprints. But a very strong case has to be made out that correction is the only course for making the strict letter of the statute yield to the obvious intent of the legislators.

Petition under Articles 226 *and* 227 *of the Constitution of India praying that this Hon'ble Court may be pleased to issue a writ of* certiorari *quashing that part of the order of the Central Government, dated* 30*th November,* 1962 (*Annexure A*), *which directed the State Government to take into consideration those applications which were filed in persuance to the State Government's Notification, dated* 20*th November,* 1959 (*Annexure B*), *or may pass such other order or orders as Your Lordships think fit and proper.*

N. C. CHATTERJEE, SENIOR ADVOCATE WITH A. K. NAG, ADVOCATE, for the Petitioner.

S. N. SHANKER WITH N. SRINIVASA RAO, *for the Respondents and* B. R. L. IYENGAR, SENIOR ADVOCATE, WITH S. K. MEHTA AND K. R. GUPTA, ADVOCATES, for the intervener.

ORDER

KAPUR, J.—On 20th November, 1959, a notification was issued by the State Government of Madhya Pradesh in the purported exercise of power under rule 67 of the Mineral Concession Rules, 1949 (hereafter referred to as the 1949 Rules), throwing open the entire areas of Kulkaria and Amua bearing ochre deposits in Tehsil Raghurajnagar for regrant of prospecting licences or mining leases. It was *inter alia* stated in the notification that Kulkaria Hill area had been divided into 8 blocks while Amua Hill area into 14 blocks and separate applications for prospecting licence or mining leases will be entertained for each block after 30 days of the date of the publication of the notice. In pursuance of this notification 26 applications were filed by different parties, including 5 by the petitioners, for grant of prospecting licences or mining leases. Nine months' period prescribed by rule 28(1-A) of the 1949 Rules for the disposal of the applications expired on 21st September, 1960. On 31st May, 1961, the Government of the State of Madhya Pradesh issued a memorandum which was communicated to all the 26 applicants stating that the Government had rejected all the 26 applications, including those by the petitioners. The ground set forth in the said memorandum was that "the area is to be redivided into more economical blocks." In the end the memorandum stated that "the area may please be thrown open for regrant as per instructions being issued separately". On 27th January, 1961,

the petitioners made a fresh application for grant of a mining lease (Annexure 'D' to the petition). This application was also rejected by the State Government on the ground "that the area is to be redivided into more economic blocks". The petitioners filed a review petition to the Central Government and it is of importance to point out that the Central Government addressed a communication, dated 6th April, 1962, to the petitioners inviting their comments on a proposal by the Central Government set out in the said communication. It was *inter alia* recited there :—

> ".....that the Central Government propose to direct the State Government to grant mining lease over the areas in question by selecting the parties, in accordance with section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, from amongst all those parties who had applied in response to State Government's notification, dated 20th November, 1959 (irrespective of the fact whether any of them applied separately for particular blocks or for whole of the area advertised by the State Government) and to pass final orders by 30th September, 1962."

It appears that mention of the separate applications for particular block or for whole of the area was made in the communication, dated 6th April, 1962, in view of the fact that the State Government had invited separate applications for each block. Mr. Shanker's explanation about this letter is that the Central Government did not approve, as a matter of policy, the scheme set forth by the State Government in the notification, dated 20th November, 1959, inviting separate applications for each block. The petitioners sent their comments on 24th April, 1962, and on 2nd May, 1962, applied for a personal hearing in the matter. The Central Government by order, dated 30th November, 1962, set aside the order of the State Government, dated 16th September, 1961, and further directed them "to grant lease over Kulkaria Hill area by selecting the parties in accordance with section 11 of the Mines and Minerals (Regulation & Development) Act, 1957, from amongst all those who had applied for grant of mineral concessions for ochre in response to State Government notification, dated 20th November, 1959 (irrespective of the fact whether any of them applied separately for particular blocks or for whole of the area advertised by the State Government and whether any one of them filed a revision application of not under rule 54 of the Mineral Concession Rules, 1960) and pass final orders by 31st January, 1963". In other words, by the said order, the Central

Government gave effect to the proposal contained in their letter, dated 6th April, 1962, mentioned already above. Mr. Chatterjee appearing for the petitioners has asked for quashing of the order of the Central Government, dated 30th November, 1962, to the extent that it revives the applications of all those applicants who had applied in pursuance of the notification, dated 20th November, 1959, irrespective of the fact whether or not they had preferred any review application to the Central Government. His case is that besides the petitioners only one other party, namely, Messhs Lachhi Lal and Company, had filed a review application and consequently the other applications could not be directed to be considered. He further argues that as a consequence of rule 28 (1-A) of the 1949 Rules the applications of the 24 applicants were deemed to have been refused on the expiry of nine months from the date of receipt of the applications and in the absence of any revision or review filed by them, the Central Government could not inject life into something which had died long time before the date of the order. Mr. Iyengar, the learned counsel for Messrs Lachhi Lal and Company, intervener-respondent, supports Mr. Chatterjee in the above contention and then proceeds further to say that Messrs Lachhi Lal and Company alone could be entitled to the mining lease by virtue of section 11 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the said Act) and by virtue of the fact that the petitioner's applications were not in accordance with law. Mr. Shanker, the learned counsel for the Union of India, seeks to meet the argument of Mr. Chatterjee on three grounds:—

(1) The deemed refusal as prescribed by rule 57(2) of the 1949 Rules is only for the purposes of filing a review application to the Central Government and not for all purposes with the result that the said 24 applications, even if not disposed of by the State Government, were still alive when the Central Government passed the impugned order.

(2) Section 30 of the said Act confers plenary powers on the Central Government to revise any order made by a State Government or other authority and, therefore, in exercise of the powers conferred under section 30, the Central Government could, of its own motion, pass the impugned order. He further says that the petitioners' grievance may have had some validity if the impugned order had been passed without hearing them but they were fully heard on the proposal of the Central Government as to the revival of the 24 applications when the Central Government

invited the comments of the petitioners by their letter, dated 6th April, 1962 (Annexure 'G').

(3) The application of the petitioners, dated 27th January, 1961, was not a valid application as that had not been submitted in response to any notification issued under rule 67.

Mr. Shanker has in support of his contention regarding the effect of deemed refusal relied on *Dev Gupta and Co.* v. *State of Bihar and another* (1), Choudhary, J., observed:—

> "The contention put forward is that the application of respondent No. 2 also stood rejected, and the State Government could not legally pass any order thereafter granting a mining lease to her. In my opinion, the argument is based on confusion. No doubt, reading rule 28(1-A) with rule 57(2) of the Rules, it is clear that, if the State Government fails to dispose of an application for the grant of a mining lease within nine months, it must be deemed to have been refused by it.
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> But this provision is made, in my opinion, only for the purpose of filing a review application before the Central Government, so that an applicant desirous to have a mining lease may not have to wait unnecessarily for a long period without any order being passed on his application. That, however, does not mean that, after the lapse of nine months from the date of receipt of the application, the State Government ceases to have jurisdiction over the matter so as not to pass any order on any application after the lapse of nine months from the date of its receipt.
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> The expression 'deemed to be a refusal' in rule 57(2) is only for the purpose of a review application to be filed before the Central Government, and it is not a part of rule 28 (1-A)."

Mr. Chatterjee, on the other hand, says that this decision does not correctly lay down the law. This is, in the circumstances, the first controversy which I have to resolve. In my opinion, Mr. Chatterjee is right when he says that the applications not decided within nine

(1) A.I.R. 1961 Patna 487.

months must be deemed to have been refused not only for the purpose of filing review applications but for the purpose of all the 1949 Rules. If Mr. Shanker's contention were right one would have to read "for the purpose of this rule" instead of "for the purpose of these rules" in rule 57(2). I do not think it is legitimate to alter the language of the rule. Two reasons may possibly be advanced in support of the suggested alteration—(1) The words "these rules" may have been a mistake, and (2) plural "these" was used because the Legislature intended that the effect of deemed refusal should operate not only for purposes of rule 57 but also other rules dealing with review or revision. As to (1) I do not think the Courts are entitled to attribute mistakes to the Legislature. There may be exceptional circumstances justifying correction of errors, mistakes, omissions and misprints. But a very strong case has to be made out that correction is the only course for making the strict letter of the statute yield to the obvious intent of the legislators. Regarding the second suggestion there appears to be no compelling reason to depart from the plain language or to limit its operation. The intention of the Legislature must be primarily ascertained from the language used. I think there is no ambiguity in the statute. That being so its bare reading should suffice and no interpretation is called for. In that situation one cannot depart from the letter of the law. Apart from that, to me it appears, after attending to the various provisions of the Rules, that the rule-making authority meant what it said, for, otherwise, a peculiar situation would arise. If refusal is deemed only for the purpose of filing review applications, the result would be that the State and the Central Governments would start running parallel to each other in the matter of disposal of the applications made. If after the expiry of nine months one applicant files a review application, the Central Government would be seized of that matter whereas the State Government would still be competent to decide at least the other applications. This could never have been intended. I find that the rule-making authority has in rule 24 of the 1960 Rules expressly provided that the application not disposed of within the period specified in sub-rule (1) of rule 24 shall be deemed to have been refused. Under rule 25 of the 1960 Rules the fee paid by the applicant has to be refunded after refusal of the application or deemed refusal thereof. The rule-making authority by enacting rule 24(3) appears to be expressly undoing the effect of the Patna decision and giving effect to its original intention in a much clearer language. Mr. Shanker also suggested that if under rule 57 the deemed refusal was to operate for all purposes, there was no point in adding the words "and any person aggrieved by such failure, may, within two months of the expiry of the period aforesaid, apply to

the Central Government for reviewing the case", as, even without these words, the aggrieved person could, under the earlier part of the rule, apply to the Central Government within two months. This argument, however, overlooks the fact that in sub-rule (1) of rule 57 two months' period is provided from the date of the receipt of the order and addition of the above-quoted words must have been made to overcome that difficulty. The same purpose appears to underlie the addition of explanation to rule 54 of the 1960 Rules. In the light of this discussion it must be held that the deemed refusal under rule 28 operates for the purposes of all the rules and not only for the purpose of review applications. Consequently, it is with extreme reluctance, because of my respect to the learning and experience of the learned Judges of the Patna High Court, that I express my dissent from their view. From the above it follows that 24 applications were, in any case, deemed to have been dismissed on the expiry of nine months. But, on that ground alone the order of the Central Government cannot be quashed, because, in my opinion, section 30 of the said Act gives sufficient powers to the Central Government to pass the impugned order. If the 24 applications are deemed to have been dismissed, the Central Government could of its own motion set aside that order and direct the disposal of all the applications together made in pursuance of the notification, dated 20th November, 1959. The petitioners were fully heard on that proposal and, therefore, they can make no grievance on the ground of violation of natural justice. It appears that the Central Government was not happy with the proposal contained in the notification inviting separate applications for each block and that seems to be the reason why it directed the disposal of all the applications irrespective of the fact whether any of the applicants applied separately for a block or for the whole of the area advertised by the Central Government. That sounds good reason for acting *suo moto* under section 30 of the said Act and setting aside the deemed dismissal of those 24 applications.

The argument of Mr. Iyengar that power under section 30 is confined only to the removal of grievances of the individuals who move in the matter does not coincide with the language of section 30 of the said Act.

Mr. Shankar has raised yet another objection as to the maintainability of the petition. He says that one of the partners, Mr. Neogy, had died and there was nothing on the record to show either that the new firm was registered or that the old firm which had applied for the mining lease continued after his death, and that the petition at the instance of the present petitioners should not be

entertained. In view of my decision on other points it is unnecessary to decide this question.

In this view it is not necessary for me to consider the third contention of Mr. Shankar that application of the petitioners, dated 27th January, 1961, was not a valid application.

In the result, this application must fail and is dismissed with no order as to costs.

R. N. M.

REVISIONAL CIVIL

Before Mehar Singh, C. J., and J. S. Bedi, J.

M/S BEHARI LAL RAM CHARAN,—*Petitioner*

versus

KARAM CHAND SAHNI AND OTHERS.—*Respondents*

Civil Revision No. 447-D of 1965.

September 15, 1966

Succession Act (XXXIX of 1925)—Ss. 57 and 213—Suit for recovery of money due to a Hindu filed in Delhi by his legatee basing claim on a will—Whether competent without obtaining probate of the will or letters of administration.

Held, that clause (a) of section 57, read with sub-section (2) of section 213 of the Indian Succession Act, 1925, applies to those cases, where the property and parties are situate in territories of Bengal, Madras and Bombay, while clause (b) applies to those cases where parties are not residing in those territories but the property involved is situate within those territories. Therefore, where both the person and property of any Hindu, Budhist, Sikh or Jaina, are outside the territories mentioned above, the rigour of section 213, sub-section (1), is not attracted. Before a suit is instituted in Delhi by a legatee for the recovery of the amount due to a Hindu, basing his claim on a will of the deceased, it is not necessary to obtain probate of the will or letters of administration with the will or an authenticated copy of the will annexed.