

inder Singh Vs. the Collector and anr.

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Court : Delhi

Decided On : Dec-18-1971

Reported in : 7(1971)DLT421

Judge : H.R. Khanna and; V.S. Deshpande, JJ.

Acts : [Punjab Land Revenue Act, 1887](#) - Sections 154; Delhi Minor Minerals Rules, 1938 - Rule 18

Appeal No. : Letter Patent Appeal No. 7 of 1966

Appellant : inder Singh

Respondent : The Collector and anr.

Advocate for Pet/Ap. : S.C. Malik,; B.T. Singh,; D. Chaudhary and;

Judgement :

V.S. Deshpande, J.

(1) This and the connected 35 Letters Patent Appeals have been preferred against the judgment of S K. Kapoor J. dismissing 48 Civil Writ Petitions thereby The petitioners had filed suits against the Government for a declaration of permanent injunction restraining the Government from interfering with the right of the petitioners to quarry stones from certain lands on the ground that the said land belonged to Ramjas College Society. During the pendency of the suit a temporary

injunction Was granted to the petitioner whereunder the petitioner could quarry stones without interference by the Government but subject to payment of royalty. The suit was dismissed and the appeal filed by the petitioner was also dismissed. The Collector thereupon took proceedings against the petitioner under rule 18 (iv) of the Delhi Minor Minerals Rules 1938 and imposed a penalty on the petitioner amounting to 5 times the royalty payable by the petitioner. This order levying penalty was challenged by the petitioner by filling the writ petition No. 122-D of 1932 with which 47 other such petitions were consolidated. The grounds urged by the petitioner against the impugned order before the learned single Judge may be broadly summarised as below :-

(1)The quarrying of the stones by the petitioner during the period for which the orders of temporary injunction granted by the trial and the appellate courts were inforce could not be said to have been done 'without a permit' within the meaning of rule 18 (iv) and thereforee the levy of penalty was illegal. (2) Assuming that the penalty was livable under rule 18 (iv) the Collector misconstrued rule 18 (iv) inasmuch as he levied the penalty on the footing that he had no option to levy any penalty less than 5 times the amount of royalty payable by the petitioner. Correctly construed a lesser penalty could have been imposed by the Collector. The learned Single Judge negatived both these contentions and dismissed the writ petitions In these connected appeals the learned counsel for the appellants have confined themselves before us only to the above mentioned two grounds in canvassing the correctness of the decision of the learned single Judge

(2) The Delhi Minor Minerals Rules 1933 were framed under clause (e) and (g) of Sub-section 1 of section 155 of the Punjab Land Revenue Act, namely 'generally for carrying out the purposes of the Act.' Under section 41 of the said Act all Mines of Metals and Coal shall be deemed to be property of the Government and the Government shall have all powers for the proper enjoyment of the rights thereto. Under section 42 of the Act a quarry which does not belong to a private person is presumed to belong to the Government. The Delhi Minor Minerals .Rules have been made to regulate the working of the quarries belonging to the Government by private persons. Under rule 3 no person shall quarry any minerals belonging to Government unless he obtains a permit. Under rule 8 a permit is issued subject to

payment of royalty at the prescribed rates. Breaches of rules invite levy of penalties which are enumerated in rule 18. Sub-rule (iv) of rule 18 with which we are concerned is as follows :- 18 (iv) Unauthorised extraction of minerals-

(3) Any person who (a) quarries any mineral without a permit or who (b) quarries a different mineral from that specified in the permit or a large amount than what is so specified or (c) alienates by sale or otherwise any mineral in contravention of the conditions prescribed in these rules or in his permit shall be liable to pay five times the amount of royalty payable under rule 8 plus the amount of royalty ordinary payable under that rule, and such royalty if not paid within one month of demand may be realised as an arrear of land revenue under the provisions of section 98(b) of the [Punjab Land Revenue Act, 1887](#) (XVII of 1887).'

(4) In view of the dismissal of the suits of the petitioner referred in the writ petition and in *Inder Singh v. Chief Commissioner, Delhi*, it is *res judicata* against the petitioner that he was not entitled to quarry the stones without a permit from the Government which is issued subject to payment of royalty. It is also common ground between the parties that no permit had been issued to the petitioner for the period during which quarrying of stones was made by the petitioner under the orders of temporary injunction passed by the trial and the appellate courts on the filing of the suit by the petitioner. The learned counsel for the appellant argued that the heading of rule 18 (iv) is 'Unauthorised extraction of minerals' which cannot apply when extraction was under the orders of temporary injunction. We are unable to accede to this contention. In our view the correct legal position was as follows:-

5. The petitioner admittedly had no legal right to quarry the stones without a permit. No permit was issued to the petitioner by the Government. In the suit filed by the petitioner no order on merits of the case was ever made by the courts declaring that the petitioner was entitled to quarry the stones without a permit. The nature of the order granting a temporary injunction is clear. Such an order is based on the principle that the plaintiff had a *prima facie* case to be heard by the court. The plaintiff came to the court with the plea that he was entitled to quarry the stones without a permit. The merits of this plea were to be heard and decided on. In the

mean while the defendant was restrained from interfering with plaintiff's quarrying. The legality of the quarrying of the stones by the plaintiff was to be decided by the final decision of the Court. Till the final decision the the quarrying of the stone by the plaintiff was to be regarded neither as legal nor as illegal but essentially depending on the final decision. thereforee, when the suit of the plaintiff was dismissed then for the first time the legality or the rightfulness of the quarrying of the stones by the plaintiff was decided. Effect of the dismissal of the suit was to vacate the temporary injunction. Further, its effect was to characterise the quarrying of the stones by the plaintiff under those order of the temporary injunction as being without any right to do so. As the plaintiff was held not to have any right to quarry the stones without the permit, the action of the plaintiff fell within rule 18(iv) inasmuch as the plaintiff quarried the stones "without permit" within the meaning of the said rule.'

(5) Even if the plaintiff had secured a decree against the Government but such a decree were set aside in appeal still the off ct would have been that the quarrying of the stones during the pendency of the suit and the appeal by the plaintiff was illegal and the plaintiff would be liable to the penalty prescribed by rule 18(iv). It was urged by the learned counsel for the appellant that rule 18(iv) is a penal provision and what the plaintiff did under the cover of the orders of the temporary injunction could never amount to such breach of rule 8 as to invite penalty under rule 18(iv). This argument is untenable Firstly, the penalty under rule 18(iv) is not criminal but only civil, the purpose of which is to protect the property and the revenue of the Government. Secondly it was not necessary that the plaintiff must commit some offence or misconduct before which the penalty could be imposed on him. The only reason why the penal provision were attracted was that the plaintiff quarried the stones without a permit from the Government. Had he not filed the suit, there could be no dispute that the quarrying of stone by him was without the permit. This position was not changed in any way by the mere filing of the suit by the plaintiff A suit which is dismissed is as good as a suit not filed plus the res-judicata which arises against the plaintiff by the decision of the suit against him. The position is the same whether an order of temporary injunction was or was not passed during the pendency of such a suit. If such an order was passed, it perished with the suit If such an order was not passed the dismissal of the suit

itself left the plaintiff in the same position as he was when the suit was filed. On the first contention therefore; we are in agreement with the learned single judge and the decision in Inder Singh vs. Chief Commissioner, Delhi referred to above.

(6) In urging the second contention however, the appellants are on a sound footing. Though the primary purpose of penalty prescribed by rule 18(iv) is to protect the property and the revenues, of the Government, it is clear that it is a penal provision. The penal element consists in the fact that not only the royalty is recovered from the petitioner as it is recovered from other persons who quarry the stones after obtaining the permits but the petitioner is made to pay over and above the royalty a certain amount by way of penalty. It is entirely just and proper and that a distinction is made by rule 18(iv) between a person who queries stones with a permit and one who does so without a permit. The latter must be made to pay something more than the former inasmuch as the former had the right to do something which the latter did not have. But Rule 18(iv) does not stop here. It goes further and states the amount payable as penalty being "5 times the amount of royalty payable under Rule 8". The learned counsel for the appellants have urged that 5 times the amount of royalty is only the maximum amount of penalty payable by the person who quarries stones without a permit. Rule 18(iv) does not require that in every case the maximum penalty must be imposed. The learned counsel for the respondent on the other hand relied on the reasoning of the learned single Judge and submitted that the language of Rule 18(iv) was clear and did not leave any discretion to the Collector in imposing a penalty less than 5 times the amount of royalty.

(7) The reason, according to the learned counsel for the respondent why rule 18 (iv) did not leave any room for option to any authority to reduce the amount of penalty below 5 times the royalty was that Rule 18 (iv) does not mention any authority which could do so. On the other hand it was urged that the amended Rule 18 (iv) in 1965 replaced the words 'shall be liable to pay 5 times the amount of royalty payable under Rule 8 plus the amount of royalty ordinarily payable under the rule' by the words "shall be liable to pay as royalty the amount ordinarily payable under Rule 8 plus such amount not exceeding 10 times the amount so payable as the Collector may determine." We are not able to appreciate this

argument. It is true that Rule 18 (iv) simply lays down that a person quarrying without a permit shall be liable to pay the stated amount of penalty. This does not mean, however, that Rule 18 (iv) operates by itself. Several provisions of the penal statutes also state that a person committing the described offences of acts shall be liable to the stated punishment or fines or penalties. But whether it is a civil penalty or a criminal punishment, it has to be imposed by the legal process. The expression "shall be liable" was considered in the American decision 'The Kate Heron*' cited in the State v. Amru. It was pointed out by the American Court that these words did not effect a present ...forfeiture but only gave "a right to have the vessel forfeited upon due process of law." Following this it was observed at page 429 in the above mentioned Punjab decision that the word "liable" has been interpreted in other cases also to mean "exposed to a certain contingency or casualty more or less probable." It was further pointed out in the said decision that the word "liable" occurring in R.S.C. order 16, rule 28 (i) in England has been interpreted to mean that the jurisdiction is discretionary and not that the order must necessarily be made. In C.W. No. 196/70 Shri Bishan Sarup Gupta v. Union of India decided on 22nd September, 1970 a Division Bench of this Court had occasion to consider the rule according to which repeated failure to pass departmental examinations within a period of 3 years shall involve loss of appointment. It was argued for the petitioner that the retention of direct recruits in spite of the failure to pass the departmental examinations for 3 years was illegal as being contrary to this rule. This contention was repelled by the the Division Bench speaking through one of us (H.R. Khanna, C.J.) in the following words ;-

THE concluding words of Rule 20(a)merely confer a power on the authority concerned to terminate the services of those officers who failed to pass the departmental examinations within 3 years of their appointments. The rule creates also a corresponding liability for the defaulting officers that he shall be liable to removal in case the authorities concerned choose to exercise the powers conferred by the rule 20(a). It is however, not the effect of rule 20(a) that even if the authorities concerned did not choose to exercise the powers conferred by that rule the services of the defaulting officers shall stand terminated".

(8) Rule 18(iv) only lays down the condition creating the liability for the imposition of a penalty. But some authority has to decide whether the conditions of rule 18(iv) were fulfilled. In the present case it was the Collector Shri H.S. Mumta who passed an order on 2nd February, 1962 after hearing the petitioner that the petitioner had quarried the stones without a permit. This shows that the rule 18(iv) has to be operated by the Collector and it does not operate by itself. This conclusion is supported by a perusal of rule 18 as a whole. For, in each of the other parts of rule 18, the Collector has been mentioned as the operating authority. Is there any particular reason why the Collector is not mentioned in clause (iv) of rule 18? The only reason which accounts for this is that clause (iv) only declares the conditions giving rise to a penalty and the amount of penalty. It was not necessary therefore, for the Collector to be mentioned therein specifically. In the other clauses some specific things had to be done by the Collector and so he had been mentioned. This does not mean however that the penalty under rule 18(iv) gets fastened on the petitioner automatically. For, the same authority who decides whether the conditions giving rise to penalty were fulfilled or not must also levy the penalty. We are of the view therefore, that there is no particular significance in the fact that the Collector was not mentioned specifically in clause (iv) of rule 18 and that it is the Collector who takes action under clause (iv) just as he does under other clauses of Rule 18.

(9) The next question is the significance of the word 'shall' used in clause (iv) of rule 18. The learned counsel for the respondent urges that it is not open to the Collector to levy penalty below the amount of 5 times of the royalty. The learned counsel for the appellant on the other hand urges that the word 'shall' is used only in a directory and not in a mandatory sense. Our approach to rule 18 (iv) is a synthesis of both these views. Rule 18 (iv) is divisible into two parts namely (i) that a penalty shall be imposed and (ii) the maximum amount of penalty shall be 5 times the amount of royalty. The word 'shall' has a mandatory force in so far as the imposition of a penalty is to follow on breach of rules. This is in line with the general principle of law that the commission of an offence or a breach of rule has to be visited with punishment or penalty as the case may be. But the second part of the rule indicates the amount of penalty. It does not in our opinion mean that in every case the maximum penalty of 5 times the amount of royalty must be

imposed. Our reasons for this view are as follows :-

FIRSTLY clause (iv) of rule 18 purports to deal with many kinds of breaches of rules such as (a) quarrying without permit (b) quarrying a mineral different from the one specified in the permit (c) quarrying an amount larger than what was specified in the permit and (d) alienating by sale or otherwise any mineral in contravention of the conditions prescribed in the rules. The gravity of each of these breaches is by no means the same. Further, even inside each of these categories facts of each case would be different from the facts of other cases. This omnibus provision therefore, deals with a nominal or a technical breach as well as a flagrant or serious breach. It is the Collector who has to determine whether the breach has occurred and if so whether the breach is a light one or a grave one. It is then that he has to impose the penalty for the breach. In doing so the Collector acts as quasi judicial authority, after hearing the parties on whom the penalty is to be imposed. It is the essence of the quasi judicial function that the order of the imposition of penalty in each case should be in accordance with the particular facts and merits of that case. It is impossible to contemplate that the Collector can pass one standardised order imposing the same penalty for not only the different kinds of breaches but also for the different kinds of cases within each such type of breach. Such action on the part of the Collector would be in gross violation of the first principle of justice, namely the individualization of the penalty. This principle is so well established in criminal and civil law that no body can urge that one standard penalty can be imposed on different kinds of offence and in different cases regardless of different facts of each case. The contention advanced by the respondent that in every case regardless of the kind of the breach and the particular facts of the case, the same penalty has to be imposed by the Collector thus conflicts with justice and common sense. As observed by Thomas J. in *Re Maryon-Wilson's Will Trusts*, 'it is the duty of the court to avoid a statutory result that flouts common sense and justice it must do so not by disregarding the statute overriding it, but by interpreting it in accordance with the judicially presumed parliamentary concern for sense and justice.'. This is a reason therefore, for us to see whether two reasonable constructions of rule 18- (iv) are possible and if so prefer that construction which accords with justice and common sense.

Secondary in the Wright v. Ford Motor Co. Ltd. Lord Parker C. j. had to construe the following words in section 155(i) of the Factories Act, 1961 namely :-'In the event of any contravention in or in connection with or in relation to a factory of the provisions of this Act the occupier..... of factory shall..... be guilty of an offence.' Prima facie, section 155 (i) referred to any contravention under the Act, by whomsoever committed, so that an employer would be liable for offences committed by his employee. But these wide words were construed narrowly so as to make the employer liable for all contraventions other than those in respect of which the sole obligation to perform is imposed on the employee. For, as observed by Lord Parker C. J. To give it the other meaning seems to me to conflict with the principle that a master is not vicariously liable for crimes of his servant.' Similarly, in the present case the construction of rule 18(iv) suggested by the respondent conflicts with the principle of individualisation of penalty which means that a penalty must fit the merits of each case. This is another reason therefore, why such construction cannot be accepted and the alternative construction suggested by the appellant should be preferred. Thirdly the contention that the same penalty must be imposed for every breach and in every case irrespective of the difference in the facts also offends against the principle that unequals must not be dealt with equally as this would be doing unequal justice violating the principle of equal justice before law. This principle of equality before law as observed by Bose, J. in Bidhi Supply Company v. Union of India at page 280, 'sets out, to my mind, an attitude of mind, a way of life, rather than a precise rule of law' It is well established that the provision of a statute or of a statutory rule should, as far as possible be construed in such a way as to accord with such a fundamental principle as equal protection of law for all and therefore, the construction put forward by the appellants is to be preferred to the constructions put forward by the respondent. Fourthly, the use of the word 'shall' in clause (iv) of rule 18 does not make the whole of the said rule mandatory. Clause (iv) deals with 2 distinct matters namely (i) that a penalty must follow the commission of a breach of rules and (ii) the maximum amount of penalty may be 5 times the amount of royalty. It is only the first part of clause (iv) which is mandatory, namely that a breach must attract a penalty. But it does not necessarily follow that the second part must be mandatory in the sense that the maximum penalty of 5 times the amount of royalty must be imposed for

every kind of breach regardless of the merits of the each case. As observed by the Supreme Court in *State of Uttar Pradesh v, Babu Ram Upadhyaya* paragraph 20, 'when a statute uses the word "shall", Prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the legislature the Court may consider, infer alias the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provision-in question is avoided, the circumstances, namely the the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and. above, all, whether the object of the legislation will be defeated or furthered.' In *Sainik Motors v. State of Rajasthan*, the words of section 4 of the Rajasthan Presenters and Goods Taxation Act, 1959 were that the State Government "may accept a lump sum in lieu of the tax' while the words of rule 8 (ii) were that 'the owner of a public carrier shall pay to the State Government a lumpsum in lieu of the tax.' Rule 8 (a) also required the payment of Lumpsum. It was argued before the Court that rule 8 and 8 (A) were ultra virus as they were contrary to section 4. This contention was repelled by their Lordships in para (13) in the following words:-

"THE Act and the rules must be read harmoniously, and reading them so, it is plain that the apparent mandatory language of the rules the notification still retains the permissive character of the section, had only lays down what the amount of the lumpsum must be, if lumps an payment is made in lieu of payment of the tax calculated on actual and freights If the two rules and the notification are read in this way, the mandatory language is limited to the prescribing of the imp sum rates. In our opinion the two rules and the notification are not valid and contradictor of the Act.' Applying the same reasoning to rule 18 (iv) it would appear that the mandatory force of the word 'shall' limited to the first part of the rule requiring the imposition of a penalty but does not extend to the second part prescribing the quantum of the penalty. The second part is to be read in the context of the other clauses of rule 18. If this is done, it would be seen that the Collector has a discretion in acting under the second part of clause (v) just as he

has discretion in acting under the other clauses of rule 18. The second part of clause (iv) thus takes colour from the other clauses of rule 18 and so construed would fix only the maximum amount of penalty leaving the actual amount of penalty to be fixed by the Collector according to the facts of the each case.

Lastly, the rule making authority itself seems to have realised that the language of rule 18(iv) was likely to create the impression that the Collector was bound to impose the same penalty for all kinds of breaches of rule in all cases though the rule making authority intended to prescribe only the maximum quantum of the penalty and then leave it to the Collector to determine the quantum of the penalty in each case subject to the maximum. Rule 18(iv) has therefore, been amended as stated above to bring out this intention clearly.

(10) In his order dated 2nd February, 1962, the Collector clearly proceeded on the view that he had only to multiply the amount of royalty by 5 times to arrive at the quantum of penalty and the mechanical way in which he proceeded shows that he thought that he had no discretion to determine what the quantum of the penalty should be. For the reasons stated above, this was a clear error of law apparent on the face of the record committed by the Collector in construing and applying a statutory rule, namely, Rule 18(iv). This has vitiated the said order. We, therefore, quash the said order and direct the Collector to determine the quantum of the penalty to be imposed on each of the petitioners according to the facts of each case after hearing each of them afresh.

(11) In CM. 3981/67 the appellant Inder Singh had applied for permission to plead additional grounds of appeal. Inter alia, he averred that the provisions of section 166 (g) of the Punjab Land Revenue Act are ultra vires of the Constitution. As a rule the scope of a Letters Patent Appeal is limited to the matter which was dealt with by the learned single Judge and new things are not allowed to be raised by the appellant. Further, the decision of the new questions sought to be raised in the additional grounds becomes unnecessary in view of the above findings. C.M. 3981/67 was, therefore, not pressed and was dismissed.

(12) The Letters Patent Appeals are allowed in the above terms but, without any order as to costs.

