PETITIONER:
KRISHNA KUMAR MEDIRATTA

Vs.

RESPONDENT:
PHULCHAND AGARWALA & ORS.

DATE OF JUDGMENT21/01/1977

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
RAY, A.N. (CJ)

CITATION:
1977 AIR 984 1977 SCR (2) 702
1977 SCC (2) 5

ACT:

Mines & Minerals (Regulation and Development) Act 1957, ss. 11 (2) and 19 --Mineral Concessions Rules, 1960, Rules 9(2), 10, 11, 13-Scope of--A bona fide application accompanied by an incorrectly calculated fee or a fee which is dificient by oversight, if made good later is valid and it takes precedents under s. 11 (2) for a preferential right as among contesting applicants.

HEADNOTE:

The appellant applied on 14-10-1961 for a prospecting licence for an area of 833.53 acres under rule 9(1) of the Mineral Concessions Rules, 1960. The application was in order, in all respects, except to the extent that instead of Rs. 32/-, the fees payable, a sum of Rs. 24/- only was paid. However, on realisation of this mistake, he paid the deficit of Rs. 8/- on 28-12-1961 and, by way of abundant caution, made a fresh application on_26-2-1962. Respondent No. 1 had applied on 2-11-1961 for a prospecting licence for 748.16 acres out of which 272.40 acres were common with those for which the appellant had already applied. Since no orders were passed disposing of the applications of the appellant within 90 days of the making of it, the appellant filed a revision before the Central Government treating this omission on the part of the State to be tentamount to refusal of his application as provided by rule 11(1). On 20-10˜1964, the Central Government asked the State Government to consider the application of the appellant dated 14-10-1961 within the next 9 months. The State Government, instead of considering the application dated 14-10-1961 as directed, offered thrice, on 30-1-1965, 7-7-1965 and 2-4-1970, a prospecting licence for an area of 365 acres which was not accepted by him and his attempts by way of revision against these orders to the Central Government and a writ petition in the High Court failed. The State Government, however, on 22-6-1965, directed the grant of a prospecting licence to respondent No. 1 for an area including 272.40 acres in dispute which was actually executed in his favour on 30-4-1970. The appellant's objection before the Collector against this was rejected. On 12-4-1973, the Central Government accepted the objection relating to 272.40 acres and opined that his application dated 14-10-1961 was earlier

in point of lime within the meaning of s. 11(2) of the Mines & Minerals (Regulation and Development) Act, 1957. Against this order the respondent No. 1 went to the High Court under Art. 226 of the Constitution. The High Court quashed the orders of the Central Government, by its order dated 12-3-1974 and held the application of the appellant dated 14-10-1961 not having been accompanied by the correct fee was no application at all in the eye of law.

Accepting the appeal by special leave, the Court,

HELD: (1) After considering legal position and all the facts and equities of the case, the Central Government correctly held, on the question of law before it, that the appellant's application before the State Government was a valid one as it had been entertained without objection even if it was not accompanied, when filed, by the correct amount of fee. [706 A, E]

(2) The Central Government had correctly relied upon an estoppel against the State Government. The deficiency in the fees having been duly accepted on behalf of the State Government, it was bound to proceed on the assumption that there was a proper application before it valid from the date of filing it. The State Government was precluded by its own deeds from denying the validity of the application. [706 A, E]

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(3) There is no patent error upon the face of the record warranting a correction in exercise of its extraordinary jurisdiction under Art. 226 of the Constitution by the High Court in the instant case. On the other hand, High Court itself committed an apparent error in holding that an application which has only to be accompanied by the fee would be considered validly filed on the date on which it was filed only if proper fees has been tendered with it when it was filed. [706 G-H]

(4) It is not very becoming for Governmental authorities when duties laid down by statutory rules having been performed by them, to take shelter behind such technicalities for denying a citizen's right to have his application considered and decided. Rule 11(1) of the Rules framed was a recognition of that right so that an applicant for a licence under the Rules could approach the Central Government in case the State Government did not pass the required orders within a reasonable time. [706 E-F]

(5) A right and reasonable procedure looks to substance rather than form of acts or transactions in order to determine their nature. There is no rule whatsoever which says that failure to submit the correct fee at the time of the filing of the application will make the application void or invalid. Rule 13 makes it clear, by differentiating between an application and the fee by which it has to be accompanied. The fee can be refunded but the application made remains. The filing of the application is one thing and compliance of some annexed duty, which is legally separable, is another, unless a statute or a rule provides otherwise. [707 A, C, 708 H 709 C]

(6) It is clear from s. 19 that the Act itself provides what is void and ineffective where that is the intention. Section 19 attaches a voidness only to a grant made without due compliance. with all rules. It is nowhere said that the Act of making an application will be similarly void for breach of rules. [709 B-C]

(7) In the instant case, in view of the provisions of s. 19 of the Act, a prospecting licence in favour of respondent No. 1 was itself void to the extent of an area of 272.40 acres for which, a licence had already been properly applied

for by the appellant. Unless the applicant's application had been properly refused for a valid reason, he could not be denied the benefit of s. 11(2) of the Act. It may be that a licence cannot be granted without making good the deficiency in fee which should accompany the application, but that does nor mean that a bona fide application accompanied by an incorrectly calculated fee or a fee which is deficient by oversight could not be made at all or if made must be treated as void or of no effect whatsoever. [709 C-G]

(8) The use of the word "shall" in imposing a duty is not conclusive on the question whether the duty imposed is mandatory or directory. It is not the breach of every mandatory duty in performing a prescribed act that could make an action totally ineffective or void ab initio. The meaning of the. word "shall" in Rule 9(2) of the Mineral Concessions Rules, 1960, was only incidentally involved here. [707 B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 792 of 1975.

(Appeal by special heave from the judgment and order dated the 12th March, 1974 of the Orissa High Court in O.J.C. No. 336 of 1972)

B. Sen, B. V. Desai and R.H. Dhebar, for the appellant.

Mrs. S. Bhandare. M.S.Narasimhan, A.K. Mathur and A. K. Sharma, for respondent No. 1.

S.K. Mehta, for Girish Chandra, for respondent No. 2.

Gobind Das, B. Parthasarthi for respondent No. 3.

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The Judgment of the Court was delivered by

BEG, J. The appellant before us applied on 14th October, 1961, for a prospecting licence for an area of 833.53 acres in the requisite form 'B', under rule 9(1) of the Mineral Concessions Rules, 1960, made under Section 13 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act). The application was filled in correctly. But a sum of Rs. 24/- only, instead of Rs. 32/-, accompanied the application. It appears that 'the appellant realised the mistake in calculating later and paid the deficit of Rs. 8/- on 28th December, 1961. By way of abundant caution, he made a fresh application also on 26th February, 1962. In the meantime, the respondent No. 1 had applied on 2nd November, 1961, for a prospecting licence for 748.16 acres out of which 272.40 acres were common with those for which the appellant had already applied. No orders were passed disposing of the application of the appellant within 90 days of the making of it. The appellant treated this omission to be tantamount to refusal of his application, as provided by rule 11 (1), and preferred a revision application before the Central Government under Section 30 of the Act. On 20th October, 1964, the Central Government asked the State Government to consider the application of the appellant dated 14th October, 1961, within the next nine months. On 13th January, 1965, the State Government offered the appellant a prospecting licence for an area of 365 acres. On 12th February, 1965, the appellant moved the Central Government for revision of the order making the offer. On 19th March, 1965, the Central Government informed the appellant that his application was premature since neither nine months had elapsed nor final orders had been passed by the State Government. On 9th May, 1965, the Central Government actually rejected the revision applica-

tion of the appellant presumably for reasons found in the above mentioned communication. On 22nd June, 1965, the State Government directed the grant of a prospecting licence to respondent No. 1 for an area including 272.40 acres, in dispute. On 7th July, 1965, the State Government again offered the appellant the grant of a licence for 3.65 acres. On 2nd January, 1967, the High Court dismissed the Writ Petition of the appellant filed against the abovementioned order of the Central Government dated 9th May, 1965, rejecting his revision application. On 2nd April, 1970, the State Government again offered the appellant a prospecting licence for an area of 365 acres. On 30th April, 1970, a prospecting licence was actually executed in favour of respondent No. 1 for an area which included the disputed 272.40 acres. The appellant's objections before the Collector were rejected. On 27th May, 1970, the appellant again filed a revision application before the; Central Government against the offer dated 2nd April, 1970, for the third time. by the State Government of the smaller area of 365 acres. On 23rd November, 1970. the respondent No. 1, actually applied for a mining lease. but, on 12th April, 1973, the Central Government accepted the appellant's objection relating to 272.40 acres. Hence. the respondent No. 1 went to the High Court under Article 226 of the Constitution. The High Court quashed the order of the Central Government by its order dated 12th March, 1974, on the ground that the original application of the
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appellant, dated 14th October, 1961, not having been accompanied by the correct fee, was no application at all in the eye of law. Hence on the view taken by the High Court, the appellant, not having complied with mandatory provisions, had not filed any application which could be accepted by the State Government. The High Court took the view that the Central Government's order dated 12th April, 1973, suffers from a patent error. The appellant having obtained special leave to appeal, the case is now before us.

It has to be remembered that the special jurisdiction of the High Court under Article 226 had been invoked by the respondent. The High Court had before it a very detailed statement of reasons for the order of the Central Government in exercise of its powers under Section 30 of the Act. We have also been taken through these reasons contained in the letter dated 12th April, 1973, sent to the appellant. It shows that both the parties between whom the dispute relating to 272.4.0 acres of land for grant of a prospecting licence had gone before the Central Government several times, and the matter was not finally decided by the State Government. Even though the State Government may have, according to its own erroneous view disabled itself from granting a prospecting licence to the respondent in respect of disputed 272.40 acres, due to its decision to grant this area to the respondent, yet, as the letter from the Central Government points out, the prospecting licence of the respondent who was impleaded in the revision proceedings before the Central Government and duly heard on all questions, was due to expire on 30th April, 1972. After considering the legal position and all the facts and equities of the case, the Central Government correctly held, on the question law before it, that the appellants application before the State Government was a valid one as it had been entertained without objection even if it was not accompanied, when flied, by the correct amount of fee. In a communication sent, the Central Government stated its reasons to the appellant as follows:

> "The question arises whether you were indeed or can indeed be deemed to be the prior application for the area. It has been seen that your application dated 14.10.1961 was not perfect in the sense that fee paid into the treasury fell short of Rs. 8/-. However, the State Government itself by giving a chance to you to rectify this mistake acknowledged implicity that it had in its hands an application otherwise valid. Therefore, the appropriate date which should be taken into consideration is 14.10.61 and not 28-12-1961, as interpreted by the State Government. The State Government's order permitting you to make good the deficit in the amount of fees originally paid into the treasury has nothing to do with the submission of the application which was done on 14.10.61. The Stale Government could, if it so wished, have refused the application dated 14.10.61 as being imperfect. But, since it did not do so and permitted the application to remain under consideration, it recognised your right as an applicant. Therefore, the State Govern-
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> ment cannot argue that impleaded party Phulchand Agarwal by submitting his application on 2.11.61 becomes a prior applicant".

In other words, the Central Government had, correctly in our opinion, relied upon an estoppel against the State Government. After giving the above-mentioned reasons, the Central Government considered it fair that the appellant should be. granted a prospective licence in respect of 272.40 acres also over and above the 365 acres already granted to him by the State Government. The operative part of the order passed by the Central Government is:

> "In the circumstances of the case, the Central Government, in exercise of their revisional powers under Rule 55 of of the Mineral Concessions Rules, 1960, and of all other powers enabling in this behalf, hereby set aside the order of the State Government contained in their letter No. II(E)M. 82/70-3015MG, dated 2.4.1970, and further direct the State Government to grant the overlapping of 272.40 acres to you over and above the area of 365 acres already granted to you."

The only question which arises beforeus is whether the order of the Central Government suffers from an error apparent upon the face of the record so as to furnish a ground for interference by the High Court on the purest of pure technicalities, which, as had been pointed out in the letter sent from the Central Government to the appellant, had ceased to matter. The deficiency in the fees having been duly accepted on behalf of the State Government, it was bound to proceed on the assumption that there was a proper application before it valid from the date of filing it. It was precluded, by its own dealings, from denying the validity of the application. It is not very becoming for governmental authorities, when duties laid down by statutory rules. have not been performed by them, to take shelter behind such technicality for denying a citizen's rights to have his application considered and decided. Rule 11 (1) of the Rules framed was a recognition of that right so that an applicant for a licence under the rules could approach the

Central Government in case the State Government did not pass the required orders within a reasonable time. The Central! Government had passed a very fair order after considering the matters' before it.

We have been taken very laboriously through all the relevant provisions of the Act and the Rules to convince us that the High Court's view was correct that there was an error apparent upon the face of the record in the view of the Central Government which the High Court had corrected in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. We are unable to detect such on error on the part of the Central Government. On the other hand, we find that the High Court itself committed an error, which seems to us to be very apparent, in holding that an application which had only to be accompanied by the fee would be considered validly filed on the date on which,

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it was made only if proper fee had been tendered with it when it was filed. A right and reasonable procedure looks to substance rather than form of a transaction in order to determine its nature. The statute and the rules made thereunder would have said so if the application itself was to be deemed to be void ab initio for non-compliance with a particular technical requirement if that was the intention behind them.

All that we have here is the word 'shall' used in Rule 9(2). But, this Court has repeatedly held that the use of the word 'shall' in imposing a duty is not conclusive on the question whether the duty imposed is mandatory or directory. Moreover, that question was only incidentally involved here. It is not the breach of every mandatory duty in performing a prescribed act that could make an action totally ineffective or void ab initio. The filing of the application is one thing and completion of some annexed duty, which is legally separable, is another unless a statute or a rule provides otherwise.

Rule 9 reads:

"9 (2) Every such application shall be accompanied by---

(a) a fee calculated in accordance with the provisions of Schedule II; and

(b) an income-tax clearance certificate in Form C the from

Income-tax Officer concerned; and

(c) a certificate of approval in Form A or if the certificate of approval has expired, a copy of application made to the State Government for its renewal". '

It is not disputed that all the requirements of the rule, except that a properly calculated fee should have accompanied the application, were fulfilled. Apparently, Rule 10 was also complied with and the application was ,duly received and acknowledged. Rule 10 reads as follows:

"10. Acknowledgement of application ....

(1) Where an application for the grant or renewal of a prospecting licence is delivered personally, its receipt shall be acknowledged forthwith.

(2) Where such application is received by registered post, its receipt shall be acknowledged on the same day.

(3) In any other case, the receipt of such application shall be acknowledged within three days of the receipt.

(4) The receipt of every such application

shall be acknowledged in Form D.

The next rule provides:

"11. Disposal 0f application for the grant and renewal 0f prospecting licence.---(1) An application for the grant of a prospecting licence shall be disposed of within nine months

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from the date of its receipt and, if it is not disposed of within that period, it shall be deemed to have been refused.

(2) An application for the grant or renewal of a prospecting licence shall be made at least ninety days be(ore the expiry of the prospecting licence and shall be disposed of before the expiry of the licence and if the application is not so disposed of within that period, it shall be deemed to have been refused.

(3) The State Government may, for reasons to be recorded in writing and communicated to the applicant, at the time of renewal, reduce the area applied for."

Repeated offers of the State Government to the appellant show that it acknowledged the pendency of an application before it so that it offered a reduced area to him. Again, the directions of the Central Government, asking the State Government to consider the application and giving nine months for it implied that there was an application to consider before the State Government. The respondent did not question the validity of the Central Government's order of 20.10.1964. It seems futile to urge now that there was no application at all of the appellant for the State Government to consider.

Again, rule 13 provides:

"13. Refund of fee .... (1) 'Where an application for the grant of a prospecting licence is refused or deemed to have been refused under these rules, the fee paid by the applicant shall be refunded to the applicant.

(2) Where an applicant for the grant of a prospecting licence dies before the order granting him a prospecting licence is passed, his application for the grant of a prospecting licence shall be deemed to have been rejected and the fee paid by him shall be refunded to his legal representative.

(3) In the case of an applicant in ,respect of whom an order granting a prospecting licence is passed but who dies before the deed referred to in sub-rule (1) of rule 15 is executed, the order shall be deemed to have been revoked on occurrence of the death and the fee paid shall be refunded to the legal representative of the deceased".

This rule also makes it clear that there is a distinction between an application and the fee which has to accompany it. The fee can be refunded, but, the application made remains.

There is no rule whatsoever which rays that failure to submit the correct fee at the time of the filing of the application will make the

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application void or invalid. Section 19 of the Act, however, says clearly :

> "19.' Any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect".

Hence, it is clear that the Act itself provides what is void and ineffective where that is the intention. It would have been provided at least by the Rules that an application not accompanied by the correct fee is void if that had been the intention behind them. Section 19 attaches voidness only to a grant made without due compliance with all rules. It is nowhere said that the act of making an application will be similarly void for a breach of rules.

Another submission made before us is that the grant of a prospecting licence in favour of Phulchand, not having been set aside by the Central Government, the High Court had rightly interfered. In view of the provisions of Section 19 of the Act the prospecting licence in favour of respondent No. 1 was itself void to the extent of an area of 272.40 acres for which a licence had already been properly applied for by the appellant. Unless the appellant's application had been properly refused, for a valid reason, he could not be denied the benefit of section 11 (2) of the Act. Section 11 (2) reads as follows:

> "11(2) Subject to the provisions of sub-section where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later."

Reliance is placed on behalf of the respondent on the conditions for the grant of the licence contained in Rule 14 which does not govern the conditions for filing an application at all. It may be that a licence cannot be granted without making good the deficiency in fee which should accompany the application, but that does not mean that a bona fide application accompanied by an incorrectly calculated fee or a fee which is deficient by over-sight, could not be made at all, or, if made, must be treated as void or of no effect whatsoever. On this question, the view taken by the Central Government was, in our opinion, correct, just, and proper. On such a view, it is not necessary to discuss any of the cases on the kind of error which could be corrected by the High Court as there was no error of any kind in the Central Government's order for the High Court to be able to correct it. On the other hand the error, which we consider necessary to correct, is in the High Court's order.

Consequently, we set aside the judgment and order of the High Court and restore those of the Central Government. The parties will bear their own costs.

S.R. Appeal allowed.