PETITIONER:
AMBICA QUARRY WORKS & ANR.

Vs.

RESPONDENT:
STATE OF GUJARAT & ORS.

DATE OF JUDGMENT11/12/1986

BENCH:
MUKHARJI, SABYASACHI (J)
BENCH:
MUKHARJI, SABYASACHI (J)
SINGH, K.N. (J)

CITATION:
1987 AIR 1073 1987 SCR (1) 562
1987 SCC (1) 213 JT 1986 1036
1986 SCALE (2)1037
CITATOR INFO :
R 1988 SC2187 (35,36)

ACT:
Gujarat Minor Mineral Rules, 1966: Rule 18--Renewal of lease-Lease granted prior to coming into operation of Forest (Conservation) Act, 1980--Renewal whether mandatory.
Forest (Conservation) Act, 1980: Pre-existing mining leases-Renewal of--Whether could be claimed as a matter of right.
Interpretation of statutes--Interpretation must subserve and help implement intention of Act. Expression 'may' when not construed as 'shall'.
Constitution of India:' Article 141--Precedent--Ratio of a decision to be understood in the background of facts of the case.

HEADNOTE:
Sub-clause (b)(i) of rule I8 of Gujarat Minor Mineral Rules, 1966, which were framed under Act 67 of 1957, provides that the lease for all minerals specified in sub-clause (i) of clause (a) may be renewed by the competent officer for one or more periods not exceeding ten years at one time.
Section 2 of the Forest (Conservation) Act, 1980, brought into force on 25th October, 1980 provides that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing (i) dereservation of reserved forest, and (ii) the use of forest land for non-forest purposes.
The appellants had been granted leases for quarrying minor minerals prior to the coming into operation of the 1980 Act. Their applications for renewal of leases under r. 18 of the Rules were rejected by the competent authority on the ground that the lands fell under the reserved forests which were governed by the 1980 Act. Their revision applications failed, and the High Court also rejected the writ petitions filed by them.
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In the appeals by special leave, it was contended for

the appellants that the conditions precedent for the operation of the Act were not existing, that there was no question of extending for non-forest purposes forest lands, since their's were existing quarry leases in areas which were at the relevant time dereserved forests, that they had not committed any breach of the terms of grant nor there were any other factors disentitling them to such renewal, that the words 'may be renewed' in r. 18(b)(i) should be read as 'shall be renewed', and so read they make it incumbent on the Government to renew the lease if the lessee so desired, and as they had invested large sums of money in mining operations a duty was cast on the authorities to exercise the power granting permission in a manner that they could receive full benefit of their investments.

For the respondents it was contended that after the coming into operation of 1980 Act there was no question of renewal of the leases because it had prevented renewal of lease without the approval of the Central Government.

Dismissing the appeals, the Court,

HELD: 1. Whether the power is one coupled with a duty must depend upon the facts and circumstances of each case and must be so decided by the Courts in each case. [569D]

I.2 The Gujarat Minor Minerals Rules, 1966 dealt with a situation prior to the coming into operation of the Forest (Conservation) Act, 1980. While under r. 18 of the Rules there was power to grant renewal, which might have cast a duty on account of the investments made by the appellants in the areas covered by the quarrying leases, they could not claim renewals as a matter of right after the Act was brought into force. Their applications were rejected on good grounds. The orders of the appropriate authorities deal with the situation. [569G, F, 570B]

Julius v. Lord Bishop of Oxford, [1880] 5 Appeal Cases 214 and Craies on Statute Law, 7th Edn. 229, referred to.

2.1 All interpretations must subserve and help implement the intention of the Act. The primary purpose of the Act of 1980 is to prevent further deforestation and ecological imbalances. Therefore, the concept that power coupled with duty enjoined upon the respondents to renew the lease, stands eroded by the mandate of the legislation manifest in the Act. The primary duty was to the community and that
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took precedence over the obligation to the individuals. [573C,A,569H-570A]

2.2 The appellants are asking for renewal of the quarry leases. It will lead to further deforestation or at least it will not help reclaiming hack the areas where deforestations have taken place. The Central Government has not granted approval. If the State Government was of the opinion that this was not a case where it should seek approval of the Central Government, the State Government could not apparently seek such approval. [572G, S73A]

3. The ratio of any decision must he understood in the background of the facts of that case. A case is only an authority for what it actually decides, and not what logically follows from it. [572C]

Quinn v. Leathem, [1901] Appeal Cases 495, referred to.

State of Rajasthan v. Hari Shankar Rajendra Pal, [1965] 3 SCR 402, State of Bihar v. Banshi Ram Modi and Others, [1985] 3 SCC 643, distinguished.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 4250-425

1 of 1986.
From the Judgment and Order dated 9th August, 1985 of the Gujarat High Court in Spl. Civil Appln. No. 2471 of 1985 and 62 18 of 1983.
Govind Dass, S.H. Sheth, Mrs. H. Wahi and M.V. Goswami for the Appellants.
P.S. Potio, T.U. Mehta, and M.N. Shroff for the Respondents.
The Judgment of the Court was delivered by
SABYASACHI MUKHARJI, J: We grant leave in these two special leave applications and dispose of these appeals arising out of the decisions of the High Court of Gujarat by the judgment herein.
The two appeals centre round the question of how to strike balance between the need of exploitation of the mineral resources lying hidden in the forests and the preservation of the ecological balance and to arrest the growing environmental deterioration and involve common questions of law. In the appeal arising out of special leave petition No. 12041 of 1985 the appellant firm had been granted a
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quarry lease for the minor mineral black trap at S. No. 73 of Village Morai of Taluka--Pardi, in the District of Valsad in the State of Gujarat..The lease was granted on or about 8th November, 1971 for a period of ten years. The area comprised of 13 acres of land for quarrying purpose. Three persons were granted-2-1/2 acres of land each and the remaining-5-1/2 acres of land were placed at the disposal of Industries, Mines and Power Department for the purpose of granting quarry lease from the same. The case of the appellant was that the said lands were dereserved from the forest area from 1971.
On or about 3rd August, 1981 when the appellant's term of lease was about to expire, the appellant applied for renewal of lease asper rule 18 of Gujarat Minor Mineral Rules, 1966 (hereinafter called the said Rules). The application of the appellant for renewal of lease was rejected by the Assistant Collector, Valsad, on the ground that the land fell under the "Reserved Forest" area and hence the Forest (Conservation) Act, 1980 (hereinafter called '1980 Act') applied to the forests. The forest department of State of Gujarat refused to give 'no objection' certificate. The contention of the appellant was that by the order dated 29th November, 1971, the forest department had dereserved the said land from the reserved area and had allotted the land for the quarrying purpose to the appellant. The contention of the appellant was as the land was under the control of the Industries, Mines & Power department, the 1980 Act did not apply to the same. An appeal was preferred by the appellant which was dismissed by the Director, Industries, Mines and Power department Government of Gujarat on or about 4th March, 1985.
It is asserted by the appellant that on or about 29th January, 1983, the Government had issued two circulars instructing the Director of Geology and Mining and other authorities not to issue the leases in the fresh area issued by the State Government. The appellant thereafter filed a writ petition in the High Court of Gujarat. The High Court of Gujarat dismissed the petition. The appellant has come up in appeal before this Court from the said decision. The appeal arising out of S.L.P. No. 12041 of 1985, hereinafter mentioned as first appeal.
The case of the appellants in the second appeal is that on diverse dates quarry leases. had been granted to the said appellants. There were ten of them. Eight of the appellants got their first renewal of their quarry leases in 1976-77.

Appellant No. 9 applied for first renewal in August, 1979. Appellant No. 6 applied for first renewal on 20th July, 1982. In 1982, some of the appellants except appellants 6 to 9 applied
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for second renewal to the Collector. In December, 1982, second renewals were refused by the Collector. Revision filed by the appellants against the order of the Collector was rejected by the Director, Geology and Mining in 1983 and in December, 1983, writ petition often described as special civil application was filed before the High Court, challenging the refusal to renew. The High Court rejected the said writ petition. The second appeal herein arises out of the said decision in August, 1985 of the High Court of Gujarat.

Both these appeals involve the question, whether after coming into operation of 1980 Act, the appellants were entitled to renewal either first or second of their quarry leases? In this connection it is necessary to refer to the 1980 Act. This was an Act passed by the Parliament to provide for the conservation of forest and for matters connected therewith or ancillary thereto. The Statement of Objects of the said Act is relevant. It is stated that deforestation caused ecological imbalances and led to environmental deterioration. It recognised that deforestation had been taking place on a large scale in the country and it had thereby caused widespread concern. With a view to checking further deforestation, an Ordinance had been promulgated on 25th October, 1980. The Ordinance made the prior approval of the Central Government necessary for dereservation of reserved forests and for the use of forest land for non-forest purposes. The Ordinance had also provided for the constitution of an advisory committee to advise the Central Government with regard to grant of such approval. The 1980 Act replaced the said Ordinance. The Act extends to the whole of India except the State of Jammu & Kashmir, and came into force on 25th October,: 1980. Section 2 of the said Act is only relevant for our present purpose. It provides as follows:

> "2. Restriction on the dereservation of forests or use of forest land for non-forest purpose --Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing--
> (i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that state) or any portion thereof, shall cease to be reserved;
> (ii) that any forest land or any portion thereof may be used for any non-forest purpose.
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> Explanation.--For the purposes of this section "non-forest purposes" means breaking up or clearing of any forest land or portion thereto for any purpose other than re-afforestation. "

The said section makes it obligatory for the State Government to obtain the permission of the Central Government for (1) dereservation of reserved forest and (2) for use of forest land' for non-forest purposes. It is apparent, therefore, that the two dual situations were intended to be prevented by the legislation in question., namely dereservation of reserved forest, and use of forest land for non-

forest purposes.

In the instant appeals leases for quarrying purposes had been granted prior to the coming into operation of the Act in question. Shri Gobind Dass, learned counsel for the appellant in the first appeal and Shri Sheth learned counsel for the appellants in the second appeal contended that there was no question of extending for non-forest purposes forest lands. There were existing quarry leases in one case first renewal was sought and in some other cases second or third renewals were being sought. Therefore these were at the relevant time dereserved forests. Neither of the two contingencies sought to be prevented was there. The conditions precedent for the operation of the Act were not there in the facts of these appeals, it was urged.

Our attention was drawn to rule 18 of Gujarat Minor Mineral Rules, 1966 which were framed under the Act 67 of 1957 by the Government of Gujarat. The rules provided for the period of the lease, renewals and availability of areas already granted and sub-clause (b)(i) of the said rule 18 of the said Rules provides as follows:

> "(b)(i) The lease for all minerals specified in-sub-clause (i) of clause (a) may be renewed by the competent officer for one or more periods and the period of renewal at one time shall not exceed ten years and the total period for which the lease may be renewed shall not exceed twenty years in the aggregate."

Shri Sheth drew our attention to rule 3 of Part VIII (page 62) of the Manual which deals with the procedure of granting renewals under the rules.

On the other hand Shri Mehta, counsel for the respondents in the

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first appeal and Shri Poti, counsel for the respondents in the second appeal contended before us that after coming into operation of 1980 Act there was no question of renewal of the leases because this Act had prevented renewal of the lease without the approval of the Central Government.

Shri Gobind Dass, however, placed strong reliance on State of Rajasthan v. Hari Shankar Rajendra Pal, [1965] 3 SCR 402. That was a decision dealing with Rajasthan Mines Minerals Concession Rules, 1958. This Court in that case was concerned with Rule 30 under Chapter IV under the said Rajasthan Rules. This Court observed that the word "may' in the proviso in rule 30 in regard to the extension of the period by Government should be construed as 'shall' so as to make it incumbent on Government to extend the period of the lease if the lessee desired extension. The Rajasthan Rules provided, inter alia, as follows:

> "Period of lease--A mining lease may be granted for a period of 5 years unless the applicant himself desires a shorter period;
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> Provided that the period may be extended by the Government for another period not exceeding 5 years with option to the lessee for renewal for another equivalent period, in case the lessee guarantees investments in machinery, equipments and the like,

at least to the tune of 20 times the value of annual dead-rent within 3 years from the grant of such extension. The value of the machinery, equipment and the like shall be determined by the Government. Where the lease is so renewed, the dead rent and the surface rent shall be fixed by the Government within the limits given in the Second Schedule to these rules, and shall" in no case exceed twice the original dead-rent and surface rent respectively, and the royalty shall be charged at the rates in force at the time of renewal."

It was submitted by Shri Gobind Dass that the said rule was in pari materia with sub-rule (b) of rule 18 of Gujarat Minor Mineral Rules 1966. Often when a public authority is vested with power, the expression 'may' has been construed as 'shall' because power if the conditions for the exercise are fulfilled is coupled with duty. As observed in Craies On Statute Law, 7th Edition, page 229, the expression "may" and "shall" have often been subject of constant and con-
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flicting interpretation. "May" is a permissive or enabling expression but there are cases in which for various reasons as soon as the person who is within the statute is entrusted with the power, it becomes his duty to exercise it. As early as 1880 the Privy Council in Julius v. Lord Bishop of Oxford, 1880, 5 Appeal Cases, 214. explained the position. Earl Cairns, Lord Chancellor speaking for the judicial committee observed dealing with the expression "it shall be lawful" that these words confer a faculty or power and they do not of themselves do more' than confer a faculty or power. But the Lord Chancellor explained there may be something in the nature of the thing empowered to be done, sometimes in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons' for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. Whether the power is one coupled with a duty must depend upon the facts and circumstances of each case and must be so decided by the courts in each case. Lord Blackburn observed in the said decision that enabling words were always compulsory where the words were to effectuate a legal right.

Here the case of the appellants is that they have invested large sums of money in mining operations. Therefore, it was the duty of the authorities that the power of granting permission should have been so exercised that the appellants had the full benefits of their investments. It was emphasized that none of the appellants had committed any breach of the terms of grant nor were there any other factors disentitling them to such renewal. While there was power to grant renewal, and in these cases there were clauses permitting renewals, it might have cast a duty to grant such renewal in the facts and circumstances of the cases specially in view of the investments made by the appellants in the areas covered by the quarrying leases, but renewals cannot be claimed as a matter of right for the following reasons.

The rules dealt with a situation prior to the coming into operation of 1980 Act. ' 1980 Act' was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menaces and further deforestation and ecological imbalances

should be prevented. That was the primary purpose writ large in the Act of 1980. Therefore the concept that power coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary
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duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must predominate over the obligation to the individuals.

For the same reasons we are unable to accept the view that the ratio of the decision of this Court in the case of State of Rajasthan v. Hari Shankar Rajendra Pal (supra) could be invoked in the facts and circumstances of these cases to demand renewal. Furthermore it appears to us from the affidavits in opposition filed on behalf of the respondents that there were good Founds for not granting the renewal of the lease. The orders of the appropriate authorities in both these cases deal with the situation.

Both Shri Gobind Dass as well as Shri Sheth, however, relied very heavily on the decision of this Court in State of Bihar v. Banshi Ram Modi and Others, [1985] 3 SCC 643. As the said decision dealt with section 2 of the 1980 Act, it is necessary to refer to the facts of that case. There a mining lease for winning mica was granted by the State Government in respect of an area of 80 acres of land which formed part of reserved forest before coming into force of 1980 Act. However, the forest land had been dug up and mining operations were being carried on only in an area of 5 acres out of the total lease area of 80 acres. While carrying on mining operations, the respondent came across two associate minerals felspar and quartz in the area. The respondent in that case, therefore, made an application to the State Government for execution of a Deed of Incorporation to include the said minerals also in the lease. Though the 1980 Act had come into force, the State Government executed the Deed of Incorporation incorporating these items without obtaining prior sanction of the Central Government under section 2 of 1980 Act. Since the respondent in that case made a statement before the Court that he would carry on the mining operations only on 5 acres of land which had already been utilised for non-forest purposes even before the Act came into force, the question for determination was whether prior approval of the Central Government under section 2 of 1980 Act in the facts of that case was necessary for the State Government for granting permission to win associate minerals also within the same area of 5 acres of land? This Court answered the question in negative and affirmed the judgment of the High Court. This Court observed at pages 647 and 648 of the report as follows:

> "The relevant parts of Section 2 of the Act which have to be construed for purposes of this case are clause (ii) of and
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> the Explanation to that section. Clause (ii) of Section 2 of the Act provides that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose. Explanation to Section 2 of the Act defines "non-forest purpose" as breaking up or clearing of any

forest land or portion thereof for any purpose other than reforestation. Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the 'forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply. In the instant case it is not disputed that in an area of five acres out of eighty acres covered by the mining lease the forest land had been dug up and mining operations were being carried on even prior to the coming into force of the Act. If the State Government permits the lessee by the amendment of the lease deed to win and remove felspar and quartz also in addition to mica it cannot be said that the State Government has violated Section 2 of the Act because thereby no permission for fresh breaking up of forest land is being given. The result of taking the contrary view will be that while the digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica. That would lead to an unreasonable result which Would not in any Way subserve the object of the Act. We are, therefore, of the view that while before granting permission to start. mining operations on a virgin area Section 2 of the Act has to be complied with it is not necessary to seek the prior approval of the Central Government for purposes of carrying out mining operations in a forest area which is broken UP or cleared before the commencement of the Act. The learned counsel for respondent 1 has also given an undertaking that respondent 1 would confine his mining operations only to the extent of five acres of land on which mining operations
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have already been carried out and will not feel or remove any standing trees thereon without the prior permission in writing from the Central Government. Taking into consideration all the relevant matters, we are of the view that respondent 1 is entitled to carry on mining operations in the said five acres of land for purposes of removing felspar and quartz subject to the above conditions."

The aforesaid observations have been set in detail in order to understand the true ratio of the said decision in the background of the facts of that case. It is true that this Court held that if the permission had been granted before the coming into operation of the 1980 Act and the forest land has been broken up or cleared, clause (ii) of section 2 of 1980 Act would not apply in such a case. But that decision was rendered in the background of the facts of that case. The ratio of any decision must be understood in the background of the facts of that case. It has been said

long time ago that a case is only an authority for what it actually decides, and not what logically follows from it. (See Lord Halsbury in Quinn v. Leathem) [1901] Appeal Cases 495. But in view of the mandate of Article 141 that the ratio of the decision of this Court is a law of the land, Shri Gobind Dass submitted that the ratio of a decision must be found out from finding out if the converse was not correct. But this Court, however, was cautious in expressing the reasons for the said decision in State of Bihar v. Banshi Ram Modi & Others (supra). This Court observed in that decision that the result of taking the contrary view would be "that while digging for purposes of winning mica can go on, the lessee would be deprived of collecting felspar or quartz which he may come across while he is carrying on mining operations for winning mica. That would lead to an unreasonable result which will not in any way sub-serve the object of the Act." There was an existing lease where mining operation was being carried on and what was due by incorporation of a new term was that while mining operations were being carried on some other minerals were available, he was given right to collect those. The new lease only permitted utilisation or collection of the said other minerals.

In the instant appeals the situation is entirely different. The appellants are asking for a renewal of the quarry leases. It will lead to further deforestation or at least it will not help reclaiming back the areas where deforestations have taken place. In that view of the matter, in the facts and circumstances of the case, in our opinion, the ratio of the said decision cannot be made applicable to support the appellants' demands in these cases because the facts are entirely diffe-

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rent here. The primary purpose of the Act which must subserve the interpretation in order to implement the Act is to prevent further deforestation. The Central Government has not granted approval. If the State Government is of the opinion that it is not a case where the State Government should seek approval of the Central Government, the State Government cannot apparently seek such approval in a matter in respect of, in our opinion, which it has come to the conclusion that no renewal should be granted.

In that view of the matter and the scheme of the Act, in our opinion, the respondents were fight and the appellants were wrong. All interpretations must sub-serve and help implementation of the intention of the Act. This interpretation, in our opinion, will sub-serve the predominant purpose of the Act.

In that view of the matter, we are unable to sustain the submissions urged in support of these appeals. The appeals therefore fail and are accordingly dismissed. In view of the facts and circumstances of these appeals, however, we direct the parties to pay and bear their own costs.

P.S.S. Appeals dismissed.

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