

CASE NO.:
Special Leave Petition (civil) 23678 of 2004

PETITIONER:
M/s.Oriental Select Granite Pvt. Ltd

RESPONDENT:
State of Karnataka & Ors

DATE OF JUDGMENT: 11/12/2007

BENCH:
G.P.Mathur & Aftab Alam

JUDGMENT:
J U D G M E N T

SPECIAL LEAVE PETITION (C) No.23678 of 2004
W I T H
S.L.P.(C) Nos.23686 of 2004, 24313-24314 of 2004, 19352-19354 of 2004,
25275 of 2004 and 21130 of 2005.

Aftab Alam, J.

In all the six petitions for Special Leave to Appeal, challenge is made to the same demand notice (of course with varying amounts in regard to different petitions). In all cases the challenge to the demand notice is on the same grounds. Hence, all the six cases were heard together and are being disposed of by this common order.

By the impugned demand notice, the petitioners were asked to pay the value of the granite excavated and transported by them during the period August 27, 1993 to January 18, 1996. The demand is raised on the basis that though the grant of quarrying leases by the State Government (in all 302 in number, including those in favour of the petitioners), was eventually held to be bad and illegal by the Karnataka High Court and the Supreme Court (vide judgment and order in Alankar Granites Industries & Ors. vs. P.G.R. Scindia, MLA & Ors. [(1996) 7 SCC 416], nonetheless, the lessees, including the petitioners, were able to carry on quarrying operations on the basis of the interim order passed in the case by this Court on August 27, 1993 till the appeals were finally dismissed on January 18, 1996. Here it may also be noted that the question regarding the grantees' liability to make good to the State the value of granite excavated by them during the aforesaid period has been settled by the Supreme Court in the decision in Karnataka Rare Earth & Anr. Vs. Senior Geologist, Department of Mines & Geology & Anr. [(2004) 2 SCC 783]. But on behalf of the six petitioners, presently before this Court, it is contended that during the period in question they carried on the excavation of granite not on the basis of the interim order passed by this Court in Alanakar Granites but on the basis of certain orders passed by the High Court. The ground on which the impugned notice is based, therefore, does not apply to them and as a matter of fact the petitioners are protected in view of some observations made in the decisions in Alankar Granites and Karnataka Rare Earth. In our view the contention is not sustainable either on facts or in law. This would be evident if the relevant facts are put in proper sequence.

The facts of the case are taken from Special Leave Petition (Civil) No.23678 of 2004 (M/s.Oriental Select Granite Pvt. Ltd. Vs. State of Karnataka & Ors.) which was argued as the lead case in the batch.

Prior to 1990 the petitioner held a mining lease for granite. On expiry of the lease period, sometime in the year 1990 its request for renewal of the lease was not allowed by the concerned authority in view of the bar created by Rule 3-A that was introduced in the Karnataka Minor Mineral Concession Rules, 1969. At that stage the petitioner went to the Karnataka High Court in Writ Petition No.20939 of 1990 questioning the constitutional validity of Rule 3-A and seeking appropriate directions to the concerned authority for renewal of the quarrying

lease granted in its favour, besides some other incidental reliefs. On October 24, 1990, a learned Single Judge of the Court passed an interim order in the writ petition in the following terms :

"Pending disposal of the aforesaid Writ Petition it is hereby ordered by this Court on 24.10.90, the operation of Rule 3-A of K.M.M.C.Rules insofar as the petitioner is concerned, be and the same is hereby stayed.

Further, that the Respondents be and are hereby restrained from interfering with the petitioner's right to carry on quarry operation in the schedule land on payment of royalty and transportation of the granite."

(portions in italics indicate emphasis laid on behalf of the petitioner)

The writ petition lay pending in the High Court for over 3-1/2 years. In the meanwhile Karnataka Minor Mineral Concession Rules, 1969 that contained Rule 3-A was replaced by Karnataka Minor Mineral Concession Rules, 1994 w.e.f. May 23, 1994. Taking note of the legislative development the writ petition was finally disposed of by order, dated June 24, 1994. The relevant extract from this order is as follows :

"The Respondents have refused to grant the renewal sought for on the basis of the said Rule as it stood at the relevant time. The said Rule 3A has undergone several changes and it has also been interpreted by this Court on several occasions. In the meanwhile the respondents have repealed the old Rules and have introduced new Rules i.e. Karnataka Minor Mineral Concession Rules, 1994 replacing the Rules of the year 1969 in which Rule 3A occurs. In the light of the later developments the respondents have to consider the application filed by the petitioner for renewal of the licence in the light of the law laid down by this Court and in the light of the Rules. Until then status quo shall be maintained, subject to relevant Rules. On this basis several petitions have been disposed off.

Learned counsel however submits under the new Rules renewal is not automatic and therefore the position as regards status quo should not be continued. But I do not think that I should detract from the earlier position now unless respondents themselves take appropriate action in that regard. Petition shall stand disposed off accordingly."

(words in italics indicate emphasis laid on behalf of the petitioners)

Mr. Altaf Ahmad, Senior Advocate, appearing on behalf of the petitioner strongly argued that the petitioner carried on the excavation and transport/export of granite on the basis of the interim order passed by the High Court on October 24, 1990, long before the interim direction given by the Supreme Court on August 27, 1993 in Alankar Granites. Further, the petitioner was able to continue the operations on the basis of the direction of the High Court to maintain status quo by its order dated June 24, 1994 while Alankar Granites remained pending in the Supreme Court. The petitioner was allowed to carry on excavation and transport/export of granite till January 18, 1996 when the Supreme Court pronounced judgment in Alankar Granites and all operations were then stopped by the State authorities. It was thus wrong to club the petitioner along with the lessees who were in operation on the basis of the interim direction given by the Supreme Court on August 27, 1993 in Alankar Granites and the respondents-authorities had wrongly raised the demand against the petitioner along with the demand notices issued to the other lessees. Mr. Ahmad further submitted that in the case of the petitioner the interim direction of this Court was not to simply allow him to continue quarrying but the operation of Rule 3-A itself was stayed and that brought about a material difference in the case of the petitioner. Learned counsel submitted that on June 24, 1994 when the writ petition came up for final disposal before the High Court the interim direction staying operation of Rule 3-

A had lost relevance but the other interim direction whereby the respondents were restrained from interfering with the petitioners right to carry on quarrying operation was extended by directing to the parties to maintain status quo. He went so far as to say that on the basis of the status quo order, it was still open to the petitioner to carry on quarrying operation in case the respondents had not so far considered its application for renewal of the licence. Learned counsel also referred to certain observations made in paragraph 8 of the decision in Alankar Granites and in paragraph 17 in Karnataka Rare Earth and submitted that the two decisions of this Court had made a distinction in case of grantees who carried on operations on a basis other than the interim order passed by this Court and in their case some room was allowed for concession.

The submission appears to be devoid of merit. One or two sentences picked up from here and there from the decisions in Alankar Granites and Karnataka Rare Earth referred to by Mr. Ahmad in no way support or protect the petitioners. Most importantly, the reliance placed on the two orders passed by the High Court would appear to be wholly misconceived and unfounded when viewed in the totality of relevant facts and circumstances.

It is noted above that the petitioner filed Writ Petition No.20929 of 1990 seeking directions to the concerned authority for renewal of the quarrying licence granted in its favour. The High Court passed certain interim orders in the case on October 24, 1990 that are reproduced above. On June 18, 1991, while this writ petition was pending the State Government granted/renewed 203 mining leases for granite to different parties, including the six petitioners presently before this Court. The action of the State Government in granting/renewing the leases (203 in number) came under challenge before the High Court in several writ petitions filed by way of Public Interest Litigation. All the writ petitions were allowed by a learned Single Judge of the Court and all the leases granted/renewed by the State Government were set aside. Some of the lessees aggrieved by the judgment of the Single Judge took the matter in appeal in W.A.Nos.538-539 of 1993 and connected matters. A Division Bench of the High Court dismissed all the appeals and confirmed the judgment of the learned Single Judge by order dated June 25, 1993. Against the decision of the Division Bench appeals were taken to this Court. All those appeals were put together and were referred to by the title of the leading case, Alankar Granites. It is an admitted position that the six petitioners presently before this Court had also filed appeals against the decision of the Karnataka High Court and their appeals too were part of the batch of Alankar Granites. In Alankar Granites this Court passed the following order on August 27, 1993 :

"Issue Notice.

Renewals of existing grants in favour of the petitioners shall continue till further orders of the Court."

Finally, however, all the appeals were dismissed by judgment and order dated January 18, 1996 and this Court held that the decision of the High Court striking down the grant of 203 leases (including those in favour of the petitioners) did not suffer from any infirmity.

The matter did not stop there. After all the appeals were dismissed by this Court on January 18, 1996, two of the lessees covered by the decision, namely, M/s.God Granites and Karnataka Rare Earth applied before the concerned authorities of the State Government for transport permits for transportation of granites quarried before the dismissal of the appeals by the Supreme Court and permits were granted to them under the relevant Rules. Later on, the authorities issued notice asking the two lessees to make good the value of granite that was transported after dismissal of the appeals. The demand notice was sought to be challenged before the High Court in W.P.Nos.5392-5394/1996. The two writ petitions were dismissed by a learned Single Judge by order dated March 4, 1996. The matter was taken in appeal before the Division Bench. The Division Bench, while dismissing the appeal made the observation that the concerned authorities 'could have directed the recovery of the whole of the granite excavated during the period of its stay or its price'. Against the order of the Division Bench, Karnataka Rare Earth & Anr. came in appeal before this Court in Civil Appeal Nos.3618-3619 of 1999. The appeals were finally dismissed by judgment and order dated January 23, 2004.

The demand notices that are sought to be challenged in this round on behalf of the six petitioners were issued in light of the observation made by the

Division Bench of Karnataka High Court and upheld in appeal by this Court in Karnataka Rare Earth.

In view of the facts and circumstances noted above, the very premise on which the case of the petitioners' is based appears to be quite unfounded and unacceptable. It is wrong and incorrect to say that the petitioners carried on quarrying operations on the basis of the interim order and the final order of status quo passed by the High Court in their writ petitions. On June 18, 1991, when the State Government renewed the petitioners' leases (besides many others), the writ petitions seeking direction to the concerned authorities in the State Government for renewal of their quarrying leases were rendered infructuous. The renewal of lease by the State Government opened up a new chapter in the controversy. The leases granted/renewed by the State Government on June 18, 1991, were struck down by a learned Single Judge of the Court and the judgment was affirmed in appeal by the Division Bench. In view of this development it cannot be said that the petitioners carried on their quarrying operations on the basis of the interim order passed by the High Court on October 24, 1990. In appeals from the decision of the High Court this Court in Alankar Granites passed the interim order on August 27, 1993. It is thus evident that the six petitioners, like all others covered by the decision in Alankar Granites, were able to carry on their quarrying operations on the basis of the interim order of this Court dated August 27, 1993 and not on the basis of any other order passed by the High Court. When the writ petition (W.P.No.20939/1990) came up for final disposal the Court was not informed that it was infructuous. The Court was also not informed about the developments taking place during its pendency and the matter of grant of lease being pending before this Court. The High Court, thus unaware of those developments, passed the final order, without any adjudication on the issues involved in the case, directing the parties to maintain status quo.

It is thus to be seen that the petitioners' contention that they carried on quarrying operations on the basis of the interim order of the High Court dated October 24, 1990 coupled with the final order of status quo dated June 24, 1994 is untenable for more reasons than one. First, the writ petition was rendered infructuous on June 18, 1991 when the petitioners' leases were renewed by the State Government. The interim order dated October 24, 1990 became ineffective with the renewal of the leases and it lost all force when the grant/renewal of leases by the State Government was struck down by the High Court. No reliance can also be placed on the final order in the writ petition as it was passed in a petition that was infructuous. Secondly, it was passed without any adjudication on the issues involved in the case and without determining the rights and liabilities of the parties. Thirdly, it was passed without the Court being informed about the developments that took place during the pendency of the case and the matter being pending before this Court. Most importantly, it is basic and elementary that once the same issues between the same or similarly placed parties are decided by this Court no order or direction passed by the High Court contrary to or at variance with the decision of this Court would survive.

I have, therefore, no manner of doubt that the petitioners, like all other lessees in Alankar Granites, carried on their quarrying operations on the basis of the interim order dated August 27, 1993 passed by this Court and the petitioners are fully covered by the decisions in Alankar Granites and Karnataka Rare Earth. This finding rejects the petitioners' plea that they carried on quarrying operations under the interim order and the order of status quo passed by the High Court and, therefore, no demand could be raised against them and they were protected by certain observations made in the decisions in Alankar Granites and Karnataka Rare Earth. But in fairness to Mr.Ahmad a reference may also be made to his submissions based on the two decisions. Mr.Ahmad submitted that in paragraph 8 of the decision in Alankar Granites this Court had observed that no benefit accrued to any lessee by virtue of the stay orders passed by the High Court because the operation of Rule 3-A was neither suspended nor struck down. The counsel pointed out that in the case of the petitioners the operation of Rule 3-A was, as a matter of fact, stayed by the High Court by interim order dated October 24, 1990 and, therefore, the petitioners were not liable to pay the value of the granite.

Paragraph 8 of the decision from which the two sentences are picked up reads as follows :

"Shri Soli Sorabjee, the learned counsel for some of the appellants, advanced another argument to support these

grants. He submitted that by virtue of the said order of the High Court in the earlier writ petitions challenging the further amendments made in Rule 3-A, the power under Rule 3(1) was available for making these grants with the prior approval of the Government which was given by the order dated 18-6-1991. We are unable to accept this submission. The said order in the earlier writ petitions merely had the effect of requiring the applications of the petitioners in those writ petitions to be disposed of without reference to rule 3-A but the validity of the grant made to those petitioners had to be adjudicated with reference to Rule 3-A unless Rule 3-A was struck down leading to its obliteration. Admittedly, Rule 3-A was not struck down and, therefore, the validity of the grant, if any, made even in favour of those petitioners had to be decided with reference to Rule 3-A. This being so, no benefit accrued to any other person by virtue of those stay orders. It is clear that the operation of Rule 3-A was not suspended and Rule 3-A has not been struck down. The prohibition contained in Rule 3-A against making any such grant, therefore, continued to operate."

From the passage quoted above, it is evident that the leases granted/renewed by the State Government were sought to be defended on the plea that in some earlier cases filed before the High Court (like the ones filed by the petitioners) the High Court had stayed the operation of Rule 3-A and consequently it was open to the State Government to grant/renew the leases in exercise of its power under Rule 3(1). The submission was turned down by this Court, holding that the validity of the grant had to be judged with reference to Rule 3-A, unless Rule 3-A was struck down leading to its obliteration. The observation relied upon by Mr.Ahmad was made in that context. Placed in context the reliance on the two sentences in the judgment appears to be quite misplaced.

Mr.Ahmad also referred to paragraph 17 of the decision in Karnataka Rare Earth where this Court observed as follows :

"Neither the appellants prayed for such relief nor the Court passed any such order. What this Court had not done, could not obviously have been done by the High Court in exercise of its writ jurisdiction in view of the earlier judgment of this Court having achieved a finality."

The counsel submitted that the petitioners had no occasion to make the prayer because they were already protected by the interim order of the High Court. It is already seen that that was not the position and hence, the submission is quite unacceptable.

Mr.Hegde in support of the demand relied upon two decisions of this Court, one in Kanoria Chemicals and Industries Ltd. & Ors. Vs. U.P.State Electricity Board & Ors. [(1997) 5 SCC 772] and the other in South Eastern Coalfields Ltd. Vs. State of M.P.& Ors. [(2003) 8 SCC 648]. The reliance is well placed but in light of the discussions made above the case of the petitioners is quite untenable even without adverting to those decisions.

In view of the discussions made above we find no merit or substance in these petitions for special leave. All the Special Leave Petitions are accordingly dismissed. There shall be no order as to costs.