

CASE NO.:
Appeal (civil) 9811-9812 of 1995

PETITIONER:
V.P. PITHUPITCHAI AND ANR.

RESPONDENT:
SPECIAL SECRETARY TO THE GOVT. OF TAMIL NADU

DATE OF JUDGMENT: 30/04/2003

BENCH:
RUMA PAL & B.N. SRIKRISHNA

JUDGMENT:
JUDGMENT

2003 (3) SCR 1045

The Judgment of the Court was delivered by

RUMA PAL, J. The appellants gather and trade in seashells. The seashells are collected from lands belonging to private individuals along the seashore near Tuticorin in the state of Tamil Nadu. The question to be decided is whether seashells can be termed to be 'mineral' within the meaning of the Mines and Minerals (Regulation and Development) Act, 1957 (referred to as the Act).

The Act was enacted by the Central Government in exercise of its power under Entry 54 of List 1 of the Seventh Schedule read with Article 246 of the Constitution. Under Section 2 of the Act it was declared that it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. The word 'minerals' has been somewhat unhelpfully, defined in Section 3(a) as including "all minerals except mineral oils." Despite the generality of this definition, from the provisions of the Act it is clear that there are two classes of minerals. The first is that of "minor minerals" which has been defined in Section 3(e) of the Act as meaning "building stones, gravel, ordinary clay, ordinary sand other than sand used for prescribed purposes, and any other mineral which the Central Government may, by notification in the Official Gazette, declare to be a "minor mineral". The second group of minerals would be the "major minerals" or the minerals not included within the definition of "minor minerals". The importance of this distinction between the two types of minerals lies in the fact that as far as minor minerals are concerned the State Governments have been empowered under Section 15 to make rules in respect of minor minerals by notification in the Official Gazette for regulating the grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals and for the purposes connected therewith. The provisions of the Act, namely, Section 5 to 13 which relate to all other minerals do not apply to minor minerals.

The Act envisages three kinds of operations in respect of minerals-mining, prospecting and reconnaissance. We are in this case concerned with mining leases. Section 4 of the Act inter alia provides that no person shall undertake mining operations in any area except under and in accordance with the terms and conditions of a mining lease granted under the Act and the Rules framed thereunder. Sub-section (1) of Section 6 places restrictions on the acquisition of any mineral or prescribed group of associated minerals in a State. The associated minerals have been specified in Rule 69 of the Mineral Concession Rules, 1960. Section 9 provides for the payment of royalty in respect of mining leases in respect of any mineral removed or consumed by the holder or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in

the Second Schedule in respect of that mineral. The Second Schedule contains a list of 50 specified minerals. Entry 28 refers to "lime shell" and item 51 deals with 'all other minerals not herein before specified'.

By a letter dated 24.9.73, the Collector, Tirunelveli, wrote to the State Government, stating (in so far as it is relevant) that large quantities of seashells were being quarried from "patta lands" near Tuticorin village and transported to various places for sale. Since seashells did not find place in the list of "associated minerals" under Rule 69 of the Mineral Concession Rules, 1980, the Collector requested that the Central Government should be moved to notify seashells as an associated mineral under the Act.

On 3rd April 1975, the State Government issued a memo which said that the proposal of the Collector had been carefully examined in consultation with the Director of Industries and Commerce and that it was "reported that seashells are the same as 'lime shell' which is classified as a major mineral under the Second Schedule to the Mines and Minerals (Regulation and Development) Act, 1957 and royalty rates similar to "limestone" have been prescribed. Hence seashells have to be treated only as "major minerals". Pursuant to this order, the Collector called upon the appellants to take out leases and pay royalty in respect of seashells at the rate prescribed for lime shell in the Second Schedule to the said Act.

Some of the appellants approached the Government with representations against the levy and requirement of taking a licence. The Government by G.O. dated 26.5.1977 rejected the representations. The reason given was that in other districts "seashell" had been treated as a major mineral and mining leases had been granted by the Government in respect of seashells.

The appellants then challenged the order dated 3.4.75 before the High Court of Madras under Article 226 of the Constitution. Although the learned Single Judge held, that as seashells are admittedly dug out from the earth, they would fall within the definition of "minerals", the writ petitions were allowed by holding that as seashells were not included in the Second Schedule to the Act, royalty could not be levied in respect of seashells in the absence of any notification by the Government of India under Section 13(2) of the Act.

The Appellate Court allowed the appeals preferred by the State Government. The Court considered the definition of minerals and came to the conclusion that a seashell was a mineral since it was not an organic substance. The submission of the appellants that a mineral must form part of the earth's crust, was also rejected. The Court found no definition of the word "limeshell" in any English Dictionary and held that the word "limeshell" was a compound word consisting of "lime" and "shell" and that "shell" which contains "lime" is classified as "limeshell". Although it was acknowledged by the Court as not being an authority, reference was made to a paper submitted in a seminar on Carbonate Rocks of Tamil Nadu organised by the Geologists Association of Tamil Nadu in 1974 where, apparently, the material commonly known as seashells was referred to as "limeshell" and the word limeshell and seashells were taken as synonymous and "indiscriminately (sic) used" for giving the same meaning in different places. The Appellate Court therefore came to the conclusion that the word "lime" shown in item 14 of the Second Schedule includes what is known as seashells "in this part of the country" and therefore was subject to levy of royalty as a major mineral.

We are unable to uphold the decision of the Appellate Court. The word 'mineral' although not defined in the Act has been judicially interpreted.

According to this Court's view in State of M.P. v. Mahalaxmi Fabric Mills Ltd., [1995] Supp 1 SCC 642.

"Mineral in ordinary and common meaning is a comprehensive term including every description of stone and rock deposit whether containing metallic or

non-metallic substance. The word mineral in popular sense means those inorganic constituents of the earth's crust which are commonly obtained by mining or other process for bringing them to the surface for profit." (p.665)

However in Bhagwan Dass v. State of U.P. [1976] 3 SCC 784, 789, it was said.

"it is wrong to assume that mines and minerals must always be sub-soil and that there can be no minerals on the surface of the earth. Such an assumption is contrary to informed experience. In any case the definition of mining operations and minor minerals in Section 3 (d) and (e) of the Act of 1957 and Rule 2(5) and (7) of the Rules of 1963 shows that minerals need not be subterranean and that mining operations cover every operation undertaken for the purpose of "winning" any minor mineral. "Winning" does not imply a hazardous or perilous activity. The word simply means "extracting a mineral" and is used generally to indicate any activity by which a mineral is secured."

See also : M/s. Banarasi Dass Chadha & Brothers v. Lt. Governor, Delhi Administration and Ors., [1978] 4 SCC 11 at p. 13.

The learned Single Judges's observation that as seashells are admittedly dug out from the earth, therefore, they fall within the definition of 'mineral' appears to be an incorrect approach. Minerals need not necessarily be dug out from the earth and what is dug out from the earth need not necessarily be a mineral. Therefore, a mineral as judicially defined would mean an inorganic substance found either on or in the earth which may be garnered and exploited for profits.

This is in keeping with the meaning given in the several dictionaries referred to by the High Court to determine the meaning of the word 'mineral' which are reproduced:

(i) Websters Third New International Dictionary, 1968 defines 'mineral' as:

"a solid homogenous crystalline chemical element or compound - as diamond or quartz) that results from the inorganic processes of nature and that has a characteristic crystal structure and chemical composition or range of compositions..... something that is neither animal nor vegetable as in the old general classification of things into three kingdoms; animal, vegetable and mineral".

(ii) Funk and Wagnalls' Standard Dictionary, International Edition, Volume II:

"a naturally occurring, homogenous substance or material formed by inorganic processes and having a characteristic set of physical properties, a definite range of chemical composition, and a molecular structure usually expressed in crystalline forms.....Any inorganic substance, as ore, a rock, or a fossil." (iii) Oxford Illustrated Dictionary: "Substance (e.g. metal, coal, salt) got by mining.....

....(chem) element or compound occurring naturally as a product of inorganic processes..... substance which is neither animal nor vegetable." (iv) Groliar International Dictionary Volume II,

"any naturally occurring, homogenous inorganic substance having a definite chemical composition and characteristic crystalline structure, colour and hardness.....

Any of various natural substances.

a. An element, such as gold or silver.

- b. A mixture of inorganic compounds, such as hornblende or granite.
- c. An organic derivative such as coal or petroleum.....any substance that is neither animal nor vegetable, inorganic matter."

It is not really necessary for us to consider whether seashells fall within the residuary entry in the Second Schedule as that was nobody's case at any stage of the proceedings. We are strictly called upon to determine the correctness of the High Court's opinion that a seashell is limeshell within the meaning of Item 28 of the Second Schedule to the Act because the term 'lime' denotes the chemical composition of the shell and the term 'sea' denotes the place of its occurrence.

A distinction must be drawn between (i) a substance identified as a mineral, (ii) a substance containing minerals (for example bones which contain large percentages of calcium and phosphate and to some extent carbonate) and (iii) a substance which may be the original source of a mineral (for example plants which after being subjected to millions of years of geological processes ultimately become coal). In the first case, the classification of a substance as a mineral is simple. But the bones in the second class and trees in the third class can hardly be termed to be minerals although they may contain or ultimately result in a mineral. Seashells may, like bones, contain calcium carbonate, and may also like trees, through a geological process result in a mineral such as limestones. But 'it cannot be said that a seashell in its original form is a mineral.

The Appellate Court was in any event not justified in arriving at the meaning of the word "limeshell" by treating it as a compound word, as if it were a term evolved for the purposes of the Act by the Central Government, it must be assumed that the Parliament has used the word 'limeshell' with a purpose. Besides even if lime may be a product of seashells, unprocessed seashells cannot be equated with lime. Had limeshells' meant seashells and nothing more, Parliament would have referred to it as such without resorting to convoluted description of a familiar object. The respondents sought to contend that seashell was nothing but a synonym for 'limeshell' and have relied upon the chemical composition of limestone to justify this assertion. The submission is unacceptable. There are three separate entries in the Second Schedule in which the word 'lime' finds place. The first is Entry 26 which specifies 'limestone', the second 'Lime Kankar' under Entry 27 and the third is Entry 28 which refers to 'Limeshell'. Further while seashells may evolve geologically into a form of limestone, it is not limestone. If a person wanted to have a tonne of limestone, it is doubtful whether he would be satisfied with a tonne of seashells instead.

The key paper referred to by the High Court has not been produced before us. We do not know who submitted the paper nor what the qualifications of the person were. Nor can we ascertain what was in fact said. The High Court was right in saying that the paper cannot be cited as an authority for the definition of limeshell. The word 'limeshells' has been defined in the Oxford English Dictionary (1933 edn. Vol. VI at page 296) as "Burnt lime before it is slaked". According to this definition therefore, "lime shell" is the product of lime. It is not either the lime itself nor the substance from which lime may be derived.

All this discussion clearly shows that the issue whether seashell is mineral for the purposes of the Act, was not one which could be determined without extensive research by technically competent persons. According to the respondent the State Government was guided by the report of the Additional State Geologist in issuing the order dated 3.4.1975. The order does not refer to any report nor has the report been brought on record nor its contents disclosed. The letter dated 3rd April 1975 does not show that the State Government had acted on the finding of any acknowledged expert.

The determination that seashells is lime-shell and a major mineral within the meaning of the Act does not appear to have been based upon any 'material whatsoever'. The reason given in GO dated 26.5.1977 for rejection of the representation of some of the appellants, namely, that mining leases had already been issued in other districts of the State in respect of seashells, is no reason at all. The counter affidavit which has been filed before this Court on behalf of the respondent has been affirmed by the Deputy Secretary, Industrial Department. His competence as a geological expert is not known. In his counter-affidavit he has sought to define limeshell as "desposition from marine animals with lime skeletons as unconsolidated deposits of loose shells admixed with fine silt and sand", meaning thereby that limeshell are deposits from marine animal skeletons, upon their being admixed with silt and sand. It is also said that limeshell are found as "stratified deposits varying in thickness....." and further, as "lagoonal deposits.....river bed deposits.....

and marine/sea deposits". It is therefore apparent that even the definitions put forward by the deponent, do not indicate the seashells by themselves are limeshell. Limeshell according to the definition advanced by the respondent is in the nature of a deposit of lime, which might be derived from marine animal shells upon further processing and after admixture with other inorganic elements. For all these reasons the decision of the State Government be as expressed in the G.O dated 3.4.1975 cannot be sustained.

There is another aspect of the matter. Having regard to the fact that the Act is a Central Government's legislation which occupies the field, it is a moot point whether the State Government was competent to have decided the issue as to whether a particular substance was a mineral or not for the purposes of the Act.

We, therefore, allow these appeals and set aside the impugned decision of the High Court. At the time of entertaining the special leave petitions, out of which these appeals arise, on 26th February 1988, this Court had directed.

"Pending notice there will be interim stay subject to the condition that the petitioner will deposit 50% of the royalty payable to the Collector and furnish Bank Guarantee in respect of the rest of the royalty to the satisfaction of the Collector concerned within six weeks."

This interim order is still operative."

In view of our decision in the appeals, the requirement of taking out a mining lease under the 1957 Act and of payment or royalty thereunder in respect of seashells cannot, of course, be sustained. However since the matter is pending before this Court for a long time and realisations have been made by the State Government on the basis of the impugned decision of the High Court, it would not be appropriate to direct refund of the amounts already collected by the respondent from the appellants under the Act in respect of seashells. However, if there are any pending demands, they shall not be proceeded with and no recovery would be made. As far as the bank guarantees are concerned, they shall stand discharged. It is made clear that the respondent shall not be entitled to any amount from the appellants except such amount as may have already been deposited with the State Government by the respondent. No demand whether already raised or pendings will lie against the appellant under the Act.