

## STATE OF BIHAR

v.

BANSHI RAM MODI &amp; ORS.

May 7, 1985

[A.P. SEN AND E.S. VENKATARAMIAH, JJ.]

*Forest (Conservation) Act, 1980, s. 2(ii)—Interpretation of—Mining lease granted prior to coming into force of the Act—Minerals not specified in lease found in the area—Whether permission of Central Government necessary for winning new minerals from the same area.*

Clause (ii) of Section 2 of Forest (Conservation) Act, 1980 (for short, the Act) which came into force on October 25, 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 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 reafforestation.

Respondent No. 1, who had been granted a mining lease in the year 1966 for a period of 20 years for mining and winning mica in respect of 80 acres of land in accordance with Mining Concession Rules, 1960 came across two other minerals, namely, feldspar and quartz during the course of mining operations. Under the conditions of the lease, Respondent No. 1 applied to the State Government to include the said minerals also in the earlier lease deed so that he could win and dispose of those minerals also. Thereupon, the State Government and the lessee executed a Deed of Incorporation on April 6, 1983 allowing the lessee to win and carry away feldspar and Quartz after paying the required royalty from the area over which he had been granted lease for mining mica. On August 8, 1983 the Divisional Forest Officer wrote a letter to the lessee stating that the impugned mining area was situated within the reserved forest area and that, since previous approval of the Central Government had not been obtained for inclusion of feldspar and quartz in the mining lease as required by the Act. Respondent No. 1 could not be permitted to win feldspar and quartz even through the Deed of Incorporation had been executed. Aggrieved by the said letter, Respondent No. 1 filed a writ petition in the High Court contending that the provisions of the Act were not applicable to a case where the lease had been entered into prior to the coming into force of the Act and that there was no need to break up or clear any forest land other than the area of only 5 acres of land where mining operations were being carried on. The High Court allowed the writ petition. Hence this appeal by the State.

Disposing of the appeal,

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HELD: (1) It is clear from a reading of clause (ii) of section 2 of the Act and the Explanation to that section that 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. [350 D-F]

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(2) 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. [350 G-H; 351 A]

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(3) While before granting permission to start mining operations on a vergin 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. [351 B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2439 of 1984.

From the Judgment and Order dated 18.11.1983 of the Patna High Court in W.P. No. 1014 of 1983.

*Jaya Narayan and Pramod Swarup* for the Appellant.

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*Gaur G. Ray, A.K. Nag, Mrs. N. Bakshi, Anil Dev Singh, P.P. Gupta and R.N. Poddar*, for the Respondent.

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The Judgment of the Court was delivered by

VENKATARAMIAH, J. Respondent No. 1 Banshi Ram Modi was granted a mining lease by the State of Bihar for mining and winning mica in respect of an area of eighty acres of land in the

villages of Meghatri and Bishuntikar in the district Hazaribagh, which formed part of reserved forest area in the year 1966. A mining lease deed was executed in that connection by the lessee and the State Government on April 25, 1966 in accordance with the Mineral Concession Rules, 1960. The lease deed was registered on May 30, 1966. The period of lease was fixed at 20 years. The said lease will expire on April 24, 1986 unless it is renewed in accordance with law.

During his mining operations which are admittedly now being carried on in about five acres only Respondent No. 1 came across two other minerals name'y felspar and quartz which are commonly known to be associated minerals of mica. Under the conditions of the lease the lessee had to report to the State Government the discovery in the leased area of any mineral not specified in the lease within sixty days of such discovery and if any mineral not specified in the lease was so discovered in the leased area he could not win and dispose of such mineral unless such mineral was included in the lease or a separate lease was obtained therefor. Accordingly, on discovery of felspar and quartz in the area where the mining operations were being carried on for mica, Respondent No. 1 applied to the State Government to include the said minerals also in the lease executed on April 25, 1966, so that he could win and dispose of these minerals also. On the State Government agreeing to do so, a Deed of Incorporation dated April 6, 1983 was duly executed by the parties to the original lease. By the said Deed, felspar and quartz were included in the original lease as minerals which the lessee could win and carry away after paying the required royalty from the area over which he had been granted lease for mining mica. All other conditions of the lease including the period of lease remained the same. In fact it was not a new mining lease for a fresh period. The lease is to expire on April 24, 1986 as originally stipulated.

It may be mentioned here that the State Government did not obtain the previous approval of the Central Government for the inclusion of the two new minerals in the original lease under clause (ii) of section 2 of the Forest (Conservation) Act, 1980 (Act 69 of 1980) (hereinafter referred to as 'the Act') which was deemed to have come into force on October 25, 1980. The relevant part of section 2 of the Act reads thus :—

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose-Notwithstanding

**A** 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,—

... — ...

**B** (ii) that any forest land or any portion thereof may be used for any non-forest purpose.

**C** Explanation—For the purpose of this section ‘non-forest purpose’ means breaking up or clearing of any forest land or portion thereof for any purpose other than reforestation.”

**D** It would appear that after the coming into force of the Act the Government of India (Ministry of Agriculture) wrote to the Chief Secretary to the Government of Bihar drawing his attention to the provisions of the Act, and the prohibitions contained therein. Perhaps, as a result of the said letter the Divisional Forest Officer, Kodarma Forest Division, Kodarma, within whose jurisdiction the mining area of Respondent No. 1 was situated, wrote to Respondent No. 1 on August 8, 1983 stating that the mining area was situated within the reserved forest area and that since previous approval of the Central Government had not been obtained for inclusion of felspar and quartz in the mining lease as required by the Act, Respondent No. 1 could not be permitted to win felspar and quartz, even though the Deed of Incorporation had been executed.

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**F** Aggrieved by the said letter of the Divisional Forest Officer, Respondent No. 1 filed a writ petition on the file of the High Court of Patna (Ranchi Bench) contending that the provisions of the Act were not applicable to a case where the lease had been entered into prior to the coming into force of the Act and that there was no need to break up or clear any forest land other than the area where mining operations were being carried on. The High Court after hearing the parties allowed the writ petition holding that the Act had no application to the instant case and he could win and take away felspar and quartz from the mining area. But it however made clear that if for winning felspar and quartz the lessee was required to break up or clear any forest land other than the area required for mining to win mica, he could not do so without obtaining the previous approval of the Central Government under the Act.

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Aggrieved by the judgment of the High Court, the State of Bihar has filed this appeal by special leave.

In this case it has to be mentioned that the learned counsel for Respondent No. 1 has stated that Respondent No. 1 would not in any event carry on any mining operations on any area other than the five acres of land which had already been utilised for non-forest purpose even before the Act came into force by breaking up the land, for the purpose of winning felspar or quartz. It has also to be mentioned here that before the High Court, the learned Standing Counsel for the Central Government had stated that the Act had no application to leases granted prior to the coming into force of the Act and that there is no repudiation of that stand before us by the Central Government. In view of the above statements the only question which remains to be considered in this appeal is whether the mining operations which are being carried on in the five acres of land for the purpose of winning felspar and quartz, are illegal by reason of the absence of the previous approval of the Central Government granted under the Act.

In order to appreciate the contentions of the parties on the limited question before us, it is necessary to ascertain the object of the Act. As its Statement of Objects and Reasons indicates, the Act was passed with a view to checking deforestation which had been taking place in the country on a large scale and which had caused ecological imbalance and thus led to environmental deterioration. It is well-known that breaking up of the soil or the clearing of the forest land affects seriously reafforestation or regeneration of forests and therefore such breaking up of the soil can only be permitted after taking into consideration all aspects of the question such as the overall advantages and disadvantages to the economy of the country, environmental conditions, ecological imbalance that is likely to occur, its effects on the flora and the fauna in the area etc. The Act having stated in section 2 thereof that no dereservation of forests or use of forest land for non-forest purposes can be permitted without the previous approval of the Central Government has further provided for the constitution of an Advisory Committee to advise the Central Government on all cases in which the question of granting permission required by section 2 of the Act arises. The Act is intended to serve a laudable purpose and it has got to be enforced strictly for the benefit of the general public. The Act applies not merely to cases of mining lease granted in respect of areas within the reserved forests

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**A** but to all cases where forest land is sought to be used for non-forest purposes.

**B** The question before us is a narrow one and that is whether in the case of a mining lease which has been granted for winning a certain mineral prior to the coming into force of the Act, if the lessee applies to the State Government after the coming into force of the Act for permission to win and carry any new mineral from any part of a forest area which is already utilised for non-forest purposes by carrying out mining operations before the coming into force of the Act, the prior approval of the Central Government has to be obtained under section 2 of the Act for the purpose of granting such permission.

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**D** The relevant parts of section 2 of the Act which have to be construed for purposes of this case are clause (ii) of and 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 reafforestation. 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

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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 No. 1 has also given an undertaking the Respondent No. 1 would confine his mining operations only to the extent of five acres of land on which mining operations have already been carried out and will not fell 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 No. 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.

With the above modification, the judgment of the High Court is affirmed. The appeal is accordingly disposed of but with no order as to costs.

M.L.A

*Appeal disposed.*