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HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition (C) No.2140 of 2020

Order reserved on: 22-6-2023

Order delivered on: 4-7-2023

1. Shankar Lal Verma, S/o Late Bukhan Lal Verma, aged about 65 years, R/o Flat No.404, Block 01, MIG-1, Fourth Floor, Kanchan Janga Complex, Kabir Nagar, Tatibandh, Raipur, District Raipur (C.G.)

2. Basant Kumar Sahu, S/o Kanhaiyalal Sahu, aged about 42 years, R/o Q.No.131/8, W.R.S. Colony, Near Sai Mandir, Khamtarai, Raipur, Khamtarai-2 (Khamtarai), District Raipur (C.G.)

3. Savita Kashyap, W/o M.K. Kashyap, aged about 45 years, R/o Shakuntalam Kunj, Behind Tarun Van, H.No.363/2015, Sanyasi Para, Khamtarai, Khamtarai-2 (Khamtarai), Raipur, District Raipur (C.G.)

---- Petitioners

Versus

1. State of Chhattisgarh, through the Secretary, Department of Revenue, Mahanadi Bhavan, Mantralaya, Atal Nagar, Naya Raipur, District Raipur (C.G.)

2. Collector, Raipur, District Raipur (C.G.)

3. Sub Divisional Officer (Revenue), Arang, District Raipur (C.G.)

---- Respondents

For Petitioners: Mr. Sushobhit Singh, Advocate.
For Respondents / State: -
Mr. Amrito Das, Additional Advocate General.

Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Arvind Singh Chandel, JJ.

C.A.V. Order

Sanjay K. Agrawal, J.

1. The effect of not laying the impugned amendment in the Rules

relating to assessment and imposition of premium for diversion under Section 172 read with Section 59 of the Chhattisgarh Land Revenue Code, 1959 (for short, 'the Code') before the State Legislative Assembly in contravention of the laying clause contained in sub-section (4) of Section 258 of the Code, is the issue involved in this writ petition.

2. The aforesaid question arises in the following factual backdrop: -

3. The erstwhile State of Madhya Pradesh enacted rules regarding alteration of assessment and imposition of premium for diversion under Section 172 read with Section 59 of the Madhya Pradesh Land Revenue Code, 1959 for diversion from a non-agricultural purpose to an agricultural purpose in non-urban and urban areas and diversion from an agricultural purpose to a non-agricultural purpose, by notification dated 6-1-1960 which was in vogue till the impugned notification issued on 4-2-2020, whereby the State of Chhattisgarh notified amendment in the notification dated 6-1-1960 exercising power and jurisdiction under Section 258(1) read with Section 59 of the Code making revision of rates in diversion of change of purpose enumerated therein. Section 258(1) of the Code empowers the State Government to make rules for the purpose of carrying into effect the provisions of the Code. Section 258(2)(iii) provides that the State Government can makes rules concerning regulation of assessment of land revenue on diversion of land to other purposes and imposition of premium under Section 59 and in that regard, notification dated 6-1-1960 was issued regarding

alteration of assessment and imposition of premium was notified and the said notification continued in operation. Section 258(4) provides that all rules made under the Code shall be laid on the table of the Legislative Assembly and shall be subject to such modifications as the Legislative Assembly may make.

4. The petitioners in the writ petition questioned the impugned notification dated 4-2-2020 on the premises that the rule making power of the State Government under Section 258(3) of the Code is subject to Section 258(4) of the Code and therefore such amendment in the rules ought to have been tabled before the State Legislative Assembly for discussion as in the impugned notification, there is steep rise / enhancement in the rate of diversion annually and onerous liability has been imposed upon the citizen including the petitioners without any debate and discussion and laying of amended rules before the State Legislative Assembly was mandatory in nature and in absence of tabling the amended rules before the Legislative Assembly, the impugned notification is ultra vires to the provisions of the Code and it is inoperative and unconstitutional. The petitioners by way of amendment in the writ petition, on 17-4-2023, have inserted an amendment in the Grounds clause of the writ petition stating that as per the provisions of the Constitution of India, Schedule-7, List-2, Item No.45, land revenue is prescribed as one of the taxing powers of the State Legislature to legislate upon the subject of land revenue, imposition, charging, levy of land revenue is a tax and therefore the

provisions for implementing/enforcing a taxing statute ought to be construed strictly and mandatorily as well. Therefore, it was more the reason for tabling the notification before the State Legislative Assembly in absence of which the impugned notification is ultra vires to Section 258 of the Code read with Article 265 of the Constitution of India and is liable to be declared unconstitutional.

5. The respondents / State have filed return stating inter alia that Section 258(4) of the Code is the requirement of merely laying the rules so framed before the State Legislature is directory, as the consequence of not laying has not been provided in the rules and as such, relying upon the decisions of the Supreme Court in the matters of **M/s. Atlas Cycle Industries Ltd. and others v. The State of Haryana**[1], **The Quarry Owners Association v. The State of Bihar and others**[2] and **Krishna Kumar Singh and another v. State of Bihar and others**[3], it has been pleaded that the provision of Section 258(4) of the Code is directory in nature and non-observance of the said provision will not render the impugned notification ultra vires and the writ petition deserves to be dismissed. No rejoinder has been filed.

6. Mr. Sushobhit Singh, learned counsel appearing for the petitioners, would submit that the provision contained in Section 258(4) of the Code providing for laying of rules framed under Section 258(2)(iii) regarding alteration of assessment and imposition of premium for diversion is mandatory and the impugned notification is in the

1 (1979) 2 SCC 196
2 (2000) 8 SCC 655
3 (2017) 3 SCC 1

nature of taxing statute, therefore, the provisions for implementing / enforcing a taxing statute ought to be construed strictly / mandatorily as well which ought to have been tabled before the Legislative Assembly and until and unless the Legislative Assembly approves it, the impugned notification ought not to have been acted upon in absence of laying the same before the Legislative Assembly, as such, the impugned notification is unconstitutional and ultra vires to the provisions of Section 258 of the Code and it deserves to be struck down as unconstitutional and contrary to Section 258(4). He relied upon the decision of the Supreme Court in the matter of **Jalkal Vibhag Nagar Nigam v. Pradeshiya Industrial and Investment Corporation**[4] to buttress his submission.

7. Mr. Amrito Das, learned Additional Advocate General appearing for the State / respondents, would submit that the “laying clause” provided under Section 258(4) of the Code does not provide for any consequence on account of absence of laying to the Legislative Assembly indicate that the rules so framed and not laid before the Legislative Assembly will not be enforceable in the eye of law and as such, there is no negative covenant attached to the non-laying of the rules so framed by the State Government. Therefore, Section 258(4) is merely directory in nature and non-laying of the notification dated 4-2-2020 before the Legislative Assembly is neither fatal nor does it denude the said notification from being enforced in the eye of law. He would further submit that laying of a

4 AIR OnLine 2021 SC 919

rule before the legislature is only directory in nature unless and until the consequences on account of non-laying is provided under the statute, more particularly, in the instant Code, the consequence of not laying has not been provided and as such, the writ petition deserves to be dismissed.

8. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also went through the record with utmost circumspection.

9. Section 59 of the Code provides for variation of land revenue according to purpose for which land is used. Section 172 provides for diversion of land which states that if a Bhumiswami of land held for any purpose in— (i) urban area or within a radius of five miles from the outer limits of such area; (ii) a village with a population of two thousand or above according to last census; or (iii) in such other areas as the State Government may, by notification, specify; wishes to divert his holding or any part thereof to any other purpose except agriculture, he shall apply for permission to the Competent Authority who may, subject to the provisions of this section and to rules made under this Code, refuse permission or grant it on such conditions as he may think fit. Section 258(1) of the Code is the general rule making power of the State Government to make rules and amend or annul rules generally for the purpose of carrying into effect the provisions of the Code. Sub-section (1) and clause (iii) of sub-section (2) of Section 258 state as under: -

"**258. General rule making power**.—(1) The State

> Government may make rules and may amend or annul rules made generally for the purpose of carrying into effect the provisions of this Code.
>
> (2) (i-a) xxx xxx xxx
>
> (ii) xxx xxx xxx
>
> (iii) regulation of assessment of land revenue on diversion of land to other purposes and imposition of premium under Section 59;
>
> (iv) to (lxiv) xxx xxx xxx"

Sub-section (4) of Section 258 of the Code mandates that all rules made under the Code shall be laid before the table of the Legislative Assembly. It states as under: -

> "(4) All rules made under this Code shall be laid on the table of the Legislative Assembly and shall be subject to such modifications as the Legislative Assembly may make."

10. Section 258(4) of the Code is a "laying clause". The object of any requirement of laying provided in enabling Acts is to subject the subordinate law making authority to the vigilance and control of the Legislature. A compliance with the laying requirement, however, does not confer any validity to the subordinate legislation if it is in excess of the power conferred by the enabling Act. Laying clauses may be expressed in different forms depending upon the degree of control which the Legislature wants to keep in its hands. Broadly, these clauses are of three varieties providing—(1) laying which requires no further procedure, (2) laying allied with an affirmative procedure, and, (3) laying allied with negative procedure. When a Parliamentary enactment confers power on the State Government

to make rules in respect of certain matters, it may provide that the rules so made be laid before the State Legislature. All the varieties of laying clauses are a check upon the rule making authority and negative the objection of excessive delegation. (See **Principles of Statutory Interpretation**, **12th Edition 2010, by Justice G.P. Singh – page 1039**, also see the judgement of the Supreme Court in the matter of **Hukamchand v. Union of India**[5] and further followed by the M.P. High Court in the matter of **Mathura Prasad Yadava v. Inspector General, Rly. Protection Force, Railway Board, New Delhi and others**[6].)

11. Laying clause/requirement of laying before the Legislature is a subject matter of discussion by various judgments rendered by their Lordships of the Supreme Court. The Constitution Bench judgment in this regard is **Jan Mohammad Noor Mohamad Bagban v. The State of Gujarat and another**[7] in which their Lordships of the Supreme Court have clearly held that since the Act under which the Rules are framed does not prescribe that the Rules will acquire validity from the date of tabling the Rules before the Legislature, the impugned Rules are valid. It has been observed in paragraph 18 of the report as under: -

> "(18) … Section 26(5) of Bombay Act 22 of 1939 does not prescribe that the rules acquired validity only from the date on which they were placed before the Houses of Legislature. The rules are valid from the date on which they are made under S. 26(1). It is true that the Legislature has prescribed that the rules shall be placed

5 (1972) 2 SCC 601
6 1974 MPLJ 373
7 AIR 1966 SC 385

> before the Houses of Legislature, but failure to place the rules before the Houses of Legislature does not affect the validity of the rules, merely because they have not been placed before the Houses of the Legislature. Granting that the provisions of Sub-s. (5) of S. 26 by reason of the failure to place the rules before the Houses of Legislature were violated, we are of the view that Sub-s. (5) of S. 26 having regard to the purposes for which it is made, and in the context in which it occurs, cannot be regarded as mandatory. The rules have been in operation since the year 1941 and by virtue of S. 64 of the Gujarat Act 20 of 1964 they continue to remain in operation."

12. The question relating to the effect of non-laying in contravention of a laying clause was elaborately discussed by their Lordships of the Supreme Court [in a three-Judge Bench decision] in **M/s. Atlas Cycle Industries Ltd.** (supra) while dealing with the non-compliance with sub-section (6) of Section 3 of the Essential Commodities Act, 1955, which provides that every order made under the section shall be laid before both Houses of Parliament as soon as may be, after it is made. It was held after noticing the earlier judgments that non-compliance with the Laying Clause did not affect the validity of the order and make it void. It was observed in paragraph 21 of the report as under: -

> "21. Now, the policy and object underlying the provisions relating to laying the delegated legislation made by the subordinate law making authorities or orders passed by subordinate executive instrumentalities before both Houses of Parliament being to keep supervision and control over the aforesaid authorities and instrumentalities, the "laying clauses" assume different forms depending on the degree of control which the legislature may like to exercise. As evident from the observations made at pages 305 to 307 of the 7th Edition of Craies on Statute Law and noticed with approval in

Hukam Chand v. Union of India[8], there are three kinds of laying which are generally used by the Legislature. These three kinds of laying are described and dealt with in Craies on Statute Law (supra) as under :

(i) Laying without further procedure,

(ii) Laying subject to negative resolution,

(iii) Laying subject to affirmative resolution.

(i) **Simple laying**.–The most obvious example is in Section 10(2) of the 1946 Act. In earlier days, before the idea of laying in draft had been introduced, there was a provision for laying rules, etc, for a period during which time they were not in operation and could be thrown out without ever having come into operation (compare Merchant Shipping Act, 1894, Section 417 ; Inebriates Act, 1898, Section 21) but this is not used now.

(ii) **Negative resolution**.–Instruments so laid have immediate operative effect but are subject to annulment within forty days without prejudice to a new instrument being made. The phraseology generally used is "subject to annulment in pursuance of a resolution of either House of Parliament." This is by far the commonest form of laying. It acts mostly as a deterrent and sometimes forces a Minister (in Sir Cecil Carr's phrase) to "buy off opposition" by promising some modification.

(iii) **Affirmative resolution**.–The phraseology here is normally "no order shall be made unless a draft has been laid before Parliament and has been approved by a resolution of each House of Parliament. Normally, no time limit is fixed for obtaining approval – none is necessary because the Government will naturally take the earliest opportunity of bringing it up for approval – but section 16(3) of the Housing (Financial and Miscellaneous Provisions) Act, 1946 did impose a limit of forty days. An old form (not much used nowadays) provided for an order to be made but not to become operative until a

8 (1972) 2 SCC 601

> resolution of both Houses of Parliament had been obtained. This form was used in Section 10(4) of the Road Traffic Act, 1930 [cf. Road Traffic Act, 1960, Section 19(3)]. … The affirmative resolution procedure necessitates a debate in every case. This means that one object of delegation of legislation (viz. saving the time of Parliament) is to some extent defeated. The procedure therefore is sparingly used and is more or less reserved to cases where the order almost amounts to an Act, by effecting changes which approximate to true legislation (e.g. where the order is the meat of the matter, the enabling Act merely outlining the general purpose) or where the order replaces local Acts or provisional orders and, most important of all, where the spending, etc. of public money is affected.
>
> xxx xxx xxx"

13. The principle of law laid down in **M/s. Atlas Cycle Industries Ltd.** (supra) was followed with approval in **The Quarry Owners Association** (supra) where rules and notifications made by the State Government under Sections 15 and 15A of the Mines and Minerals (Regulation and Development) Act, 1957 and required to be laid by a simple laying requirement, providing no affirmative procedure, before the State Legislature under Section 28(3) were not so laid. Their Lordships of the Supreme Court held that the annual administrative report submitted to the Legislature by the Department containing reference to notifications increasing the rate of royalty on minor minerals did not comply with the requirement of laying, still as the requirement of laying was directory, so omission to comply with it did not affect the validity of the notifications and their coming into force.

14. Thereafter, in the matter of **Prohibition & Excise Supdt., A.P. and**

others v. Toddy Tappers Coop. Society, Marredpally and others[9] (paragraph 24), their Lordships of the Supreme Court held that laying down of a subordinate legislation before both Houses of the legislature is directory in nature. However, the judgment cited on behalf of the petitioners i.e. **Jalkal Vibhag Nagar Nigam** (supra) is clearly distinguishable to the facts of the present case.

15. Reverting to the facts of the case in light of the laying clause provided in Section 258(4) of the Code and its object and considering the aforesaid principles of law laid down by their Lordships of the Supreme Court highlighting the requirement of laying clause and further considering the effect of non-compliance of the laying clause with reference to Section 258(4) of the Code, it is quite vivid that the aforesaid provision though requires that the amendment to the Rules so made under Section 258(2)(iii) has to be tabled before the Legislative Assembly, but the laying clause so contained in Section 258(4) of the Code is a simple laying clause without providing for further procedure and it nowhere prescribes an affirmative procedure and the rule continues subject to any modification that the Legislative Assembly may choose to make and in other words, the consequence on account of non-laying is not provided in Section 258(4) or it nowhere states that the rule will not come into force unless and until the rule is confirmed or approved with modification pursuant to its laying. As such, laying of the impugned rule before the Legislative Assembly is only directory in nature. Therefore, the impugned rule amending notification

9 (2003) 12 SCC 738

dated 4-2-2020 cannot be held to be unconstitutional and arbitrary in absence of its laying before the Legislative Assembly under Section 258(4) of the Code.

16. As a fallout and consequence of the aforesaid discussion, the writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Arvind Singh Chandel)
Judge

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Head Note

Laying requirement before the Legislative Assembly, of the Rules under Section 258(4) of the Chhattisgarh Land Revenue Code, 1959, is directory in nature.

छत्तीसगढ़ भू–राजस्व संहिता, 1959 की धारा 258(4) के तहत नियमों को विधान सभा के समक्ष रखे जाने की आवश्यकता, निर्देशात्मक प्रकृति की है।