

D. N. ROY AND S. K. BANNERJEE AND ORS.

v.

STATE OF BIHAR AND ORS.

September 30, 1970

[J. C. SHAH, K. S. HEGDE AND A. N. GROVER, JJ.]

Mineral Concession Rules, 1960, rr. 54, 55—Disposal of application—exercise of Suo-motu powers—Whether can be done without affording opportunity.

The respondent-State granted a mining lease to the appellant. The 5th respondent, whose application was rejected moved the Central Government under rule 54 of the Mineral Concession Rules, 1960, praying (i) for setting aside the grant in favour of the appellant, and (ii) for grant of the area on lease to him. The Central Government asked for the comments of the appellant and the State Government and after receipt of these comments, they were passed to the parties for further comments. The Central Government by an order passed on Sept. 30, 1964 rejected the application of 5th respondent as time-barred. Thereafter, the Central Government on Nov. 5, 1964, under the revisionary powers conferred by r. 55, of the Rules and "all the powers enabling in this behalf," set aside the order granting the lease to the appellant, and further directed regrant after issuing fresh notification. The appellant, moved the High Court under Art. 226 of the Constitution for quashing the order of November, 1964, The High Court dismissed the petition.

HELD : The appeal as well as the Writ Petition must be allowed and the order of the Central Government Nov. 5, 1964 must be set aside.

The High Court erred in its approach that the two prayers in the application of the 5th respondent were independent, and that the Central Government by its order of Sept. 30, 1964 had disposed of only the prayer of 5th respondent to grant the area on lease to him, but it had not disposed of his other prayer to cancel the grant in favour of the appellant. The two reliefs asked for by the 5th respondent were inter-connected reliefs. In the context in which they were made, they could not be considered as independent prayers. Further by its order dated September 30, 1964, the Central Government dismissed the entire application of the 5th respondent on the ground that the same was time-barred. If his application in respect of one part of his prayer was time-barred, it was equally time-barred in respect of the other part. [527 B-D]

The order of Nov. 5, 1964 of the Central Government does not show that it was made in the exercise of its *suo motu* powers. It is purported to have been made on the basis of the application made by the 5th respondent. [527 E]

If the Central Government wanted to exercise its *suo motu* power it should have intimated that fact as well as the grounds on which it proposed to exercise that power to the appellant and given him an opportunity to show cause against the exercise of *suo motu* power as well as

- A** against the grounds on which it wanted to exercise its power. The Central Government had not given him that opportunity. Failure of the Central Government to do so, vitiates the impugned order. [527 H]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1908 of 1968.

- B** Appeal from the judgment and decree dated August 9, 1966 of the Patna High Court in Misc. Judicial Case No. 1665 of 1964.

M. C. Chagla, Kailash Mehta and A. K. Nag, for the appellants.

- C** *Jagadish Swarup, Solicitor-General* and *R. C. Prasad*, for respondents Nos. 1, 3 and 4.

V. A. Seyid Muhammad and *S. P. Nayar*, for respondent No. 2.

The Judgment of the Court was delivered by

- D** *Hegde, J.* On June 24, 1959, the Deputy Commissioner Santal Parganas caused a notice dated June 20, 1959 published in the Bihar Gazette in accordance with the provisions of Rule 67 of the Mineral Concession Rules, 1949, of the availability for regrant of mining rights in respect of fireclay over the whole of village Palasthali No. 39, situate in Thana Nala, Block Kasta, Sub-Division Jamtara in the District of Santal Parganas. He announced in that notice that the said area will be available for regrant with effect from August 1, 1959 and invited applications for grant of mining lease in respect of that area in accordance with the provisions of Mineral Concession Rules, 1949. The appellant, a partnership firm applied for that lease on June 24, 1959 itself. Thereafter other persons including the 5th respondent Nankhu Singh also applied for obtaining the lease in question. The State Government of Bihar granted the lease to the appellant on March 31, 1962. In pursuance of that grant a written agreement was entered into between the State Government and the appellant and the same was duly registered. The State Government rejected the applications of the other applicants. Even during the pendency of the applications before the State Government, the 5th respondent moved the Central Government under rule 54 of the Mineral Concession Rules, 1960 which had replaced the 1949 Rules. Therein he prayed that the grant of the lease in favour of the appellant, if it had been made, should be cancelled and that he should be granted the mineral lease in question. The Central Government served a copy of that petition on the appellant and called for its comments. At the same time it called for the comments of the State Government as well. After
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receiving the comments of the State Government, the same were passed on to the appellant as well as to the 5th respondent and their further comments were called for. After examining the representation made by the parties and the comments offered by the State Government, the Central Government dismissed the petition made by the 5th respondent on September 30, 1964. The Order of the Central Government reads thus :

“GOVERNMENT OF INDIA
MINISTRY OF STEEL & MINES,
(Department of Mines and Metals),
No. MV-1(569)/61

New Delhi, the 30th September, 1964

From

Shri A. Nabar,
Under Secretary to the Government of India.

To

Shri Nankhu Singh,
P.O. Churulia, Distt. Burdwan (West Bengal)

Subject : *Application under rule 54 of the Mineral Concession Rules, 1960 in respect of Mining lease for fire-clay over 248 acres in Mouza Palasthali, P.S. Nala, Distt. Santal Parganas.*

Sir,

I am directed to refer to your application dated 17-10-1961 on the above subject and to say that after careful consideration the Central Government hereby reject your revision application as being time-barred.

Yours faithfully,

Sd./-A. Nabar,
Under Secretary to the Government of India.”

Thereafter the Central Government passed a further order on November 5, 1964 and that order reads thus :

Registered A/D

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"GOVERNMENT OF INDIA
MINISTRY OF STEEL AND MINES
(Department of Mines and Metals)
No. MV-1(569)/61

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New Delhi, the 5th November, 1964.

From

Shri H. S. Sahni,
Under Secretary to the Government of India.

C

To

The Secretary to the Government of Bihar,
Department of Mines and Geology, Patna.

D

Subject : *Revision application under rule 54 of the Mineral Concession Rules, 1960 from Shri Nankoo Singh relating to Mining lease for Fire-clay over 248 acres in Santal Pargana District.*

Sir,

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In continuation of this Ministry's letter of even number dated 30-9-1964 on the above subject, I am directed to say that since no entry in the standard register was made as required under former rule 67 of the Mineral Concession Rules, 1949, the area could not have been held to be available and the four applications (referred to in para 2 of the State Government's letter No. 3181/M, dated 9-6-1962) would be deemed to be premature and should have been rejected on that ground alone.

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Even assuming that the notification was valid, the first two applications were premature under rule 68 and on that ground should have been rejected. Apart from this the application of M/s. D. N. Roy and S. K. Bannerjee was deemed to be rejected on the expiry of 9 months from the date of receipt of application i.e., 24-3-1960. The party did not come up in revision. The application, therefore, ceased to exist and the order of the State Government granting the lease to this party on 31-3-1962 was without jurisdiction. The grant and consequent execution of the Mining lease are therefore, void.

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In view of the position explained above the Central Government in exercise of their revisionary power conferred by Rule 55 of Mineral Concession Rules, 1960 and all other powers enabling in this behalf hereby set aside the order of the State Government contained in their letter No. A/MM/4031/62-1789M, dated

31-3-1962 (mentioned in State Government's letter No. A/MM-4031/62-3181/M, dated 9-6-1962) granting Mining lease to M/s. D. N. Roy and S. K. Banerjee and further direct them to through open the area again under Rule 58(1) of Mineral Concession Rule 1960 for regrant. The notification should clearly indicate the date from which the area could be available for regrant and the date by which the petitioners should submit their applications for mineral concession.

4. M/s. D. N. Roy and S. K. Banerjee are being informed.

Yours faithfully,
Sd./- H. S. Sahni

Under Secretary to the Government of India.

Copy forwarded to M/s. D. N. Roy and S. K. Banerjee village and P. O. Churulia, Distt. Burdwan (West Bengal) with reference to their letter dated 12-6-1963.

Sd./- H. S. Sahni
Under Secretary to the Government of India."

Aggrieved by this order the appellant moved the Patna High Court under Art. 226 of the Constitution to quash the order of the Central Government dated November 5, 1964 (which will hereinafter be referred to as the 'impugned order'). The High Court dismissed its petition. As against the order of the High Court the appellant has brought this appeal after obtaining certificate of fitness from the High Court.

It was urged before the High Court that the Government having passed the final order on September 30, 1964, it had no power to review its own order and make any further order. Admittedly there is no provision under the Mines and Minerals (Regulation and Development) Act, 1957 or under the Mineral Concession Rules, 1960 empowering the Central Government to review its order. The High Court did not hold that the Central Government had any power to review its own order either under the Mines and Mineral (Regulation and Development) Act, 1957 or under the Mineral Concession Rules. It upheld the Central Government's order on two grounds namely that the order dated September 30, 1964 is not a complete order as it did not dispose of the application made by the 5th respondent completely and secondly the Central Government had *suo moto* power to review the order of the State Government under s. 30 of the Mines and Minerals (Regulation and Development) Act, 1957. These conclusions of the High Court were assailed before us.

- A In his application under rule 54 of the Mineral Concession Rules, 1960, the 5th respondent prayed for (i) setting aside the grant made in favour of the appellant and (ii) grant the area in question on lease to him. The High Court thought that these are two independent prayers. In its view the Central Government by its order dated September 30, 1964 had disposed of only the
- B prayer of the 5th respondent to grant the area on lease to him but it had not disposed of his first prayer namely to cancel the grant in favour of the appellant. In our opinion this is an incorrect approach. The two reliefs asked for by the 5th respondent were inter-connected reliefs. In the context in which they were made, they cannot be considered as independent prayers.
- C No grant in his favour could have been made without first setting aside the grant made in favour of the appellant. Therefore the first relief asked for by the 5th respondent is a necessary condition precedent for a grant in his favour. Further by its order dated September 30, 1964, the Central Government dismissed the entire application of the 5th respondent on the ground that the same was time-barred. If his application in respect of one part
- D of his prayer was time-barred, it was equally time-barred in respect of the other part.

- The impugned order of the Central Government does not show that it was made in the exercise of its *suo moto* power. It is purported to have been made on the basis of the application
- E made by the 5th respondent under rule 54 of the Mineral Concession Rules, 1960. In paragraph 3 of that order it says "in view of the position explained above the Central Government in exercise of their revisionary power conferred by Rule 55 of Mineral Concession Rules, 1960 and all other powers enabling in this behalf hereby set aside the order of the State Government contained in their letter No. A/MM/4031/62-1789M, dated March
- F 31, 1962".

- It is true that the order in question also refers to "all other powers enabling in this behalf". But in its return to the writ petition the Central Government did not plead that the impugned order was passed in exercise of its *suo moto* powers. We agree
- G that if the exercise of a power can be traced to an existing power even though that power was not purported to have been exercised, under certain circumstances, the exercise of the power can be upheld on the strength of an undisclosed but undoubted power. But in this case the difficulty is that at no stage the Central Government intimated to the appellant that it was exercising its
- H *suo moto* power. At all stages it purported to act under rules 54 and 55 of the Mineral Concession Rules, 1960. If the Central Government wanted to exercise its *suo moto* power it should have intimated that fact as well as the grounds on which it proposed to

exercise that power to the appellant and given him an opportunity to show cause against the exercise of *suo moto* power as well as against the grounds on which it wanted to exercise its power. Quite clearly the Central Government had not given him that opportunity. The High Court thought that as the Central Government had not only intimated to the appellant the grounds mentioned in the application made by the 5th respondent but also the comments of the State Government, the appellant had adequate opportunity to put forward his case. This conclusion in our judgment is untenable. At no stage the appellant was informed that the Central Government proposed to exercise its *suo moto* power and asked him to show cause against the exercise of such a power. Failure of the Central Government to do so, in our opinion, vitiates the impugned order.

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For the reasons mentioned above we allow this appeal as well as the writ petition and set aside the impugned order. Central Government shall pay the costs of the appellant in this Court as well as in the High Court.

Y.P.

Appeal and petition allowed.