
(2002) 06 OHC CK 0029
In the Orissa High Court
Case No : A.H.O. No. 45 of 2001

Banwarilal Newatia

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 19-06-2002

Acts Referred:

Mineral Concession Rules, 1960 — Rule 58, 59, 60
Mines and Minerals (Development and Regulation) Act, 1957 — Section 17A

Citation : AIR 2002 Ori 184 : (2002) 94 CLT 15 : (2002) OLR 795 Supp

Hon'ble Judges : P.K. Balasubramanyan, C.J.;A.S. Naidu, J

Bench : Division Bench

Advocate : Sanjit Mohanty, N.C. Sahoo, S. Nanda, S. Patnaik, D. Mohanty and M. Banerjee, for the Appellant; Additional Government Advocate for Respondent 1, N.C. Panigrahi, S.C. Dash, G.S. Dash, N.K. Tripathy and S.R. Panigrahi for Respondent 3 and Standing Counsel (Central) for Respondent 2, for the Respondent

Final Decision : Allowed

Judgement

P.K. Balasubramanyan, C.J.—When the appeal came up for admission it was taken up for final hearing and disposal, with the consent of counsel for the parties. Counsel on all the sides were heard in detail.

2. The appellant on 6.4.1981 applied for the grant of a prospecting licence under the Mineral Concession Rules, 1960 (hereinafter referred to as the "Rules") over an area of 332 acres in villages Dalimpur, Salarpenth etc. in the district of Keonjhar. On 29.4.1981, he made another application for the grant of Mining Lease for the said area. That application for mining lease was not disposed of within a period of twelve months as prescribed the Statute with the result that it was deemed that that application stood rejected. The appellant challenged that deemed rejection before the Central Government by way of a revision u/s 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "Act"). On 30.6.1982, the Central Government allowed that revision to the extent of remanding the application for mining licence made by

the appellant to the State Government directing the State Government to reconsider the application on merits within 200 days of the communication of that order. On 3.2.1983, the State Government passed an order rejecting the application for mining lease made by the applicant on the ground that the said area was close to Gandha Mardan Iron Ore Project of M/s. Orissa Mining Corporation Ltd. and the same may be required by that Corporation. The appellant accepted this stand adopted by the State Government and did not immediately pursue his claim for mining lease by filing a revision before the Central Government within the time prescribed by Rule 54 of the Rules.

3. On 26.12.1984, respondent No. 3 in this appeal filed an application for grant of a mining lease before the Collector, Keonjhar in respect of a portion of the same piece of land. That application was allegedly pending before the State Government without any orders being passed. Going by the Rule applied to the writ petitioner it must be taken to have been rejected on expiry of 12 months from the date of the application. On 9.10.1987, the appellant wrote a letter to the Secretary, Mining and Geology Department, Bhubaneswar, claiming that he had a preferential claim for the lease in respect of the said area and praying that the application for mining lease made by the respondent No. 3 may be rejected. Nothing happened thereafter for another seven years or so. On 6.12.1994, the State Government, presumably on the basis of the application made by respondent No. 3 on 26.12.1984, granted a prospecting licence to respondent No. 3. A deed of licence dated 29.6.1995 was also executed by the parties in that behalf. According to the respondent No. 3, he thereafter took over possession of the area in question and started prospecting the area for ascertaining the availability of mineral deposits. On 18.9.1995, the appellant filed O.J.C. No. 6563 of 1995 before this Court praying for the issue of a direction that he may be permitted to file a revision u/s 30 of the Act before the appropriate authority, though there was some delay, on the allegation that he came to know about grant of a prospecting licence to respondent No. 3 only in August, 1995. On 25.9.1995, a Bench of this Court disposed of the said writ petition by granting liberty to the appellant to file a revision before the Central Government within the time fixed in that judgment and suggesting that the delay in filing the revision should be condoned and the revision should be dealt with on merits. On 4.10.1995, the appellant filed a revision before the Central Government in terms of that direction.

4. While that revision was pending, respondent No. 3 applied for a mining lease in respect of the area on 25.4.1996. On 31.1.1998, the appellant moved the State Government requesting it to withhold all proceedings for grant of mining lease to respondent No. 3 on the basis of the application of respondent No. 3, until the revision filed by the appellant on 4.10.1995 was heard and disposed of by the Central Government. The State Government did not accede to the prayer of the appellant to keep the proceeding in abeyance. On 27.2.1999, it passed an order granting a mining lease in favour of respondent No. 3 over a portion of the disputed area. The appellant thereupon challenged that order of the Government

by filing O.J.C. No. 8364 of 1999 before this Court on 8.7.1999. The prayer in that writ petition was opposed by respondent No. 3 and the State Government. By judgment dated 14.12.2000, a learned Single Judge dismissed the writ petition and that dismissal is being challenged in this appeal by the appellant.

5. Before proceeding to consider the merits of the appeal, we may also mention that subsequently, by order dated 21.6.2001, the revision filed by the appellant as per the direction of this Court in O.J.C. No. 6563 of 1995, was dismissed by the Central Government. The appellant has challenged that dismissal in O.J.C. No. 12478 of 2001 under Articles 226 and 227 of the Constitution of India and the said writ petition has also come up before us along with the present appeal and by way of a separate order therein, we have this day admitted that writ petition and ordered notice thereon to the opposite parties.

6. In the writ petition giving rise to this appeal, the appellant sought the issue of a writ of certiorari to quash the proceeding dated 27.2.1999 by which the State Government ordered the grant of a mining lease to respondent No. 3 in respect of a portion of the area involved in this dispute and for other appropriate reliefs. The appellant pleaded that the appellant having made the earlier application for grant of mining lease, was entitled to preference in terms of Section 11 of the Act and since the rejection of his application earlier was not on merits, but on the ground that the area was required for M/s. Orissa Mining Corporation Ltd., he was entitled to have his application considered by the Government as and when the Government decided that the land was not needed by M/s. Orissa Mining Corporation Ltd., and the area was available for being leased out to persons for mining. It was further contended by the appellant that the mining lease was granted to respondent No. 3 without any publicity and without giving a fair opportunity to the various other citizens who were interested in taking the lease, including himself to apply for or seek it and that such an action and such a grant was anathema to the rule of law by which we are governed and that the said grant is liable to be set aside on the ground of unfairness in dealing with public property and that the State Government was liable to be directed to re-consider the claims of the rival claimants for the grant of mining lease in respect of the area in question. Respondent No. 3 resisted the writ petition by contending that the order rejecting the application of the appellant had become final, he not having challenged the same in any mode known to law at the proper time, and that the appellant had no locus standi to object to the grant of lease to respondent No. 3 on the basis of a proper application made by respondent No. 3. It was further contended by respondent No. 3 that the appellant did not file a revision against the rejection of his claim for grant of a mining lease and allowed that order to become final. It was further contended in paragraph-16 of the counter affidavit rather faintly, that the appellant had an alternate remedy against the grant in favour of respondent No. 3 and the appellant had not approached the Revisional Authority as provided under the Act and that the writ application was devoid of merits. It was also contended that the appellant was not entitled to any preference in terms of Section 11 of the Act as claimed by the

appellant. The learned Single Judge held that the ground which was valid in the year 1983 for rejecting the application of the appellant had ceased to exist in the year 1994 and since neither the Act nor the Mineral Concession Rules provided for, any procedure to be followed for the grant of a mining lease, there was no duty on the State to call for applications from intending takers of lease and the grant of lease to respondent No. 3 in the manner in which it was done, cannot be objected to successfully by the appellant. The learned Single Judge also held that though the application made by the appellant was first in point of time, the said application could not be treated as a formal application in terms of the Act and the Rules, and it could not be deemed to be pending since the Government had rejected it and hence it cannot be held that the appellant was entitled to preference in terms of Section 11 of the Act. Thus, the learned Single Judge declined to interfere with the grant of mining lease in favour of respondent No. 3 and dismissed the writ petition.

7. There was controversy before us, whether Rules 59 and 60 of the Mineral Concession Rules, 1960 applied to the case on hand. Rule 58 of the Rules provides for reservation of the area for exploitation in the public sector etc. which was omitted with effect from 13.4.1988. But Section 17-A was introduced in the Act providing for reservation of the area for the purpose of conservation by the Mining Act 37 of 1986. It gave power to the Central Government, after consultation with the State Government, to reserve any area not already held under any prospecting licence or mining lease as provided for in that Section. It was argued by the learned counsel on behalf of respondent No. 3 that the area in question had never been reserved either in terms of Rule 58 of the Rules or u/s 17-A of the Act and consequently, Rules 59 and 60 had no application and the procedure prescribed in that behalf need not be followed in the case of grant of a lease for the first time as in the present case. Also, it was submitted that the decision of the Supreme Court in Janak Lal Vs. State of Maharashtra and Others, holding that the procedure prescribed by Rules 59 and 60 of the Rules is mandatory, had no application to the case on hand. What is contended on behalf of the appellant is that the application of the appellant was rejected on the ground that the land was needed for the use of a public sector corporation and this amounted to a reservation in terms of Rule 58 of the Rules or Section 17-A of the Act. The stand adopted by the Government is that the land had never been notified as a reserve area, either under Rule 58 of the Rules or u/s 17-A of the Act and hence, the State Government was free to grant a lease of the said area without following the procedure laid down in Rules 59 and 60 of the Rules.

8. No notification or order could be brought to our notice by the learned counsel for the appellant showing that the land had been reserved either in terms of Rule 58 of the Rules or in terms of Section 17-A of the Act. In the absence of any such material and on the basis of the stand adopted by the State Government, which we find no reason to reject, it has to be taken that the land had never been reserved in terms of Rule 58 of the Rules, though the application made by the appellant was rejected by the State Government on the ground that the land was

needed for a Corporation and was not available to be leased out. Since the land was not formally notified, it is not possible to accept the argument on behalf of the appellant that the lease in favour of respondent No. 3 is liable to be struck down on the ground that the mandate or Rules 59 and 60 of the Rules had not been followed, on the authority of the decision of the Supreme Court in *Janak Lal Vs. State of Maharashtra and Others*, and the decision of this Court in *Orissa Mining Corporation Ltd. and Another Vs. Union of India (UOI) and Others*, The said contention on behalf of the appellant therefore stands overruled.

9. Section 4 of the Act provides that no person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or mining lease granted under the Act and the Rules made there under. Section 5 places restrictions on the grant of prospecting licence or mining lease. No lease can be granted to any person unless that person satisfies such conditions as may be prescribed, provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted unless there is previous approval of the Central Government. The Section also provides that no lease or licence can be granted to a person unless he is an Indian National. Section 6 provides the maximum area for which a prospecting licence or mining lease can be granted. Section 8 provides the maximum period for which a mining lease may be granted. Section 10 contemplates the making of applications for prospecting licences or mining leases in respect of particular lands in the prescribed form and an application had to be accompanied by the prescribed fee in that behalf. Where an application is received under Sub-section (1), the State Government was entitled either to grant the lease or refuse to grant the licence or lease. Section 11 provides a preferential right in a case where a prospecting licence had been granted in respect of any land. That licensee was to have a preferential right for obtaining a mining lease in respect of that land over any other person. Sub-section (2) gives a preference to the earliest applicant over the subsequent applicants either for grant of a licence or for a lease. Section 13 confers power on the Central Government to make rules in respect of the minerals and Section 13-A confers power on the Central Government to make rules for the grant of prospecting licences or mining leases in respect of the territorial waters or continental shelf of India. Section 15 of the Act confers on the State Government the power to make rules in respect of mines and minerals. In view of Section 14 of the Act, Section 13 did not apply to mines or minerals. In exercise of power u/s 13 of the Act, the Central Government had promulgated the Mineral Concession Rules, 1960. Section 19 deals with an application for prospecting licence and the renewal of a prospecting licence.

10. Grant of mining lease in respect of land in which minerals vest in the Government, is dealt with in Chapter-IV of the Rules. Rule 22 provides that an application for the grant of a mining lease in respect of the land in which the minerals vest in the Government shall be made to the State Government in Form-I through such officer or authority as the State Government may specify in that

behalf. Sub-rule (3) of Rule 22 indicates what are the documents that should accompany an application for grant of mining lease, Sub-Rule (4) of Rule 22 provides that on receipt of the application for the grant of a mining lease, the State Government shall take a decision to grant a precise area for the said purpose and communicate the said decision to applicant. Rule 26 provides that the State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

11. Thus, it is seen that neither the Act nor the Rules specifically provide for any procedure to be followed for the grant of mining leases in respect of the minerals vesting in the Government. In that context, the question is what would be the fair procedure by which the State Government could deal with the grant of mining leases under the Act and the Rules. Learned counsel for the appellant contended that in the light of the principles settled in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Tata Cellular Vs. Union of India*, the Government was bound to adopt a fair procedure once it had decided to grant a mining lease in respect of any land and since it was disposing of property belonging to the State or a right therein, it was bound to give equal opportunity to all citizens interested, to stake their claims for the grant of a mining lease. Learned counsel submitted that in the absence of any rule insisting on the following a particular procedure, the omission should be supplied and this was what was done by the Supreme Court in the decisions referred to above and the grant of a lease to respondent No. 3 without giving an opportunity to all the citizens interested, to apply for such licences or at least to the appellant, whose prior application was rejected not on merits but only on the ground that at that time the Government felt that the land was needed for a Corporation, has to be considered to be arbitrary and unreasonable and hence the lease granted in favour of respondent No. 3 was liable to be struck down. Learned Counsel further submitted that the grant of privileges or distribution of largess by the Government has to be done by following a fair procedure and after giving an equal opportunity to all interested applicant and since no such opportunity was given to any other citizen or to the appellant, the grant of lease in favour of respondent No. 3 was liable to be struck down.

12. Learned counsel for respondent No. 3 on the other hand contended that since the Act and the Rules concerned did not provide for any procedure to be followed, it was open to the State Government to grant the lease to respondent No. 3, even without any publicity and the Government was not obliged to give an equal opportunity to other aspirants to apply for a mining lease. Counsel further submitted that only when the rules prescribe any specific procedure, the Government was bound to follow that procedure and learned counsel referred a decision of the Madhya Pradesh High Court in *J.C. Rishi Vs. Union of India (UOI) and Others*, in support of his contention.

13. Learned Additional Government Advocate contended that since there was no

specific procedure laid down (since Rules 59 and 60 had no application) it was open to the State to grant a lease even in what may be called, a clandestine manner and that since the application of respondent No. 3 was in order and had been accepted by the State Government, the grant to him could not be struck down on the ground of any violation of natural justice or on the ground of the action being arbitrary or unreasonable. Learned counsel submitted that the principles settled in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, may not have any application.

14. In terms of the Act, minerals underground vest in the State. It is therefore, wealth belonging to the State. The right to exploit that wealth is being conferred on the citizen by the State in view of the relevant provisions of the Act and the Rules. The Rules do not prescribe any particular procedure. But still, the grant of such a privilege has to be done by the Government, only by following a fair procedure. The Government cannot adopt a pick and choose formula. If the area is available for the grant of mining lease, the grant to a particular person in a secretive manner or without any publicity or without giving to all its citizens who are interested, to apply or seek the issue of a licence would not be a fair dealing with the property of the State. It has also to be ensured that the State gets the best return. In other words, while dealing with the public property, the Government is bound to act fairly and only after giving equal opportunities to all those citizens, who are interested in applying for a mining lease. In this context, we may also notice that u/s 5 of the Act, a lease can be granted only to a citizen of this country. We understand the decisions of the Supreme Court in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, and *Tata Cellular Vs. Union of India*, as laying down the principles to ensure fairness in the State action. In such circumstances, fairness in action implies the grant of equal opportunity to all aspirants to apply for the licence and then select the most suitable and advantageous to the State from among them. The recipient has to be ascertained or identified by the Government or the Authority conferred with the power in their behalf after an objective consideration of the offers. We are, therefore, of the view that the State Government was bound to call for applications from all citizens for the grant of a mining lease, once it had decided that land in question was not needed for the purpose of the State owned Corporation and was to be made available for exploitation of the mineral wealth. Of course, there is no material before us to show why it was decided that the land was not needed for the State owned Corporation. But, that aspect is not in issue here. We are not in a position to accept the argument raised on behalf of the State and respondent No. 3 that the Government can pick and choose any person for the grant of a lease provided that, that person who had made an application in terms of the Act and the Rules, was a citizen and had complied with the conditions imposed by the relevant rules. We are also not in a position to accept the argument that the Government can grant such a lease without giving all its citizens an equal opportunity to apply and even by secretly receiving the application from an applicant and for grant of a lease it need not only

consider whether requirements of the relevant rules are met. In our view, acceptance of such an argument would cut at the very root of rule of law which we have given use to ourselves and fairness in dealing in State action. Even if there is no specific provision in the Act or in the Rules concerned, we are of the view that the said omission has been supplied by the rule laid down by the Supreme Court in Ramana Dayaram Shetty's case which has been followed in a number of subsequent cases. Since the Supreme Court, in terms of the Constitution has in appropriate cases even the power to Legislate, we are of the view that the rules laid down by the Supreme Court in the decision referred to above and the subsequent decisions could even amount to insertion of a rule into the Rules dealing with distribution of largess by the State to its citizens. In cases where a preferential claim u/s 11(1) of the Act is involved, the State Government can make a grant only after giving a fair opportunity to all interested citizens to make applications in that behalf and by choosing the most qualified among them or the most favourable offer from the point of view of the State. Entertaining of applications made and granting leases without any publicity or without giving other aspirants even an opportunity to seek the grant would be unfair dealing and hence constitutionally objectionable. Hence, we are of the view that the grant of lease in favour of respondent No. 3 in this case without calling for applications in that behalf and without giving any other citizen an opportunity to seek its grant is liable to be struck down as being arbitrary and unfair.

14. There is yet another aspect in this case. Here, when the appellant applied for the grant of a mining lease, the said application was not entertained on the ground that the land was intended for the use of a State owned Corporation and it was not available for grant of mining lease. But, when respondent No. 3 made an application, the same was kept pending for more than 14 years and a mining lease was given to respondent No. 3 on the basis that the land was not needed by the concerned State controlled Corporation. It must be noted that the application made by the appellant for grant of mining lease was not rejected by the State Government on merits but it was rejected only on the ground that the land was not available for being granted. The application was also not rejected on the ground that the application was not in terms of the Act or the Rules or was not in proper form. The learned Single Judge in our view was not justified in accepting the argument that the appellant not having made a formal or proper application, his claim that he had applied first could not be given any weight. We could have appreciated the position if the application of the appellant had been rejected on merits or as defective and a lease granted to respondent No. 3. That is not the case here. The application of the appellant was not rejected as defective or as not conforming to the Rules. Hence, the grant to respondent No. 3 cannot be upheld on that basis. The State, when it decided to grant a lease should at least have given an opportunity to the appellant to seek the grant of a mining lease and should have dealt with his application as well as that of respondent No. 3 in a fair manner in terms of the relevant provisions of the Act and the Rules. The State cannot discriminate between one citizen and another. It

cannot reject the claim of one by telling him that the land was not available for being leased out and at the same time taken up the position that the land was available and grant the same to another without reference to the first application. We have noted the fact that the application of respondent No. 3 for the grant of mining lease was kept pending for 14 years without being disposed of. It creates a doubt in the mind of the Court about the fairness of the action and the fairness in dealing with the application for the grant of this particular mining lease. Of course, learned counsel for the appellant has pointed out that the application for mining lease made by respondent No. 3 was recommended for rejection by the concerned authority and instead of rejecting the application, the application was kept pending for 14 years and the lease was granted in a clandestine manner thus showing that all was not fair. We do not think it necessary to pursue this aspect in view of our broad view that the dealing by the State Government in the matter of the grant of this particular mining lease has not been fair or that it has not been granted in a fair manner. Therefore, on the facts of this case, the grant of lease in favour of respondent No. 3 calls for interference on the ground that there was impermissible unfairness in the manner in which the State Government granted the mining lease to the respondent No. 3. On the materials, we have no hesitation in holding that the grant of mining lease to respondent No. 3 is liable to be struck down on the ground of want of fairness on the part of the State Government in dealing with the same.

15. In our view, learned Single Judge was not justified in holding that the Government was not bound to follow any fair procedure when it decided to farm out the right of mining since the Rules did not make any specific provision in that behalf. We find that the learned Single Judge has not followed the principles settled by the Supreme Court in *Ramana Dayaram Shetty's* case and reiterated by their Lordships in a number of subsequent decisions. The reasoning and conclusion of the learned Single Judge in that behalf cannot therefore be upheld.

16. In the result, we allow this appeal and set aside the decision of the learned Single Judge. We allow O.J.C. No. 8364 of 1999 and quash the proceedings of the Government dated 27.2.1999 granting a mining lease in favour of respondent No. 3. We direct the State Government to notify the availability of the land for the grant of a mining lease so as to enable all the citizens interested to apply for the grant and process the applications in accordance with the Act, and the Rules and take a decision on the applications on merits and make the grant on terms that are most advantageous to the State. In the circumstances of the case, we make no order as to costs.

A.S. Naidu, J.

17. I agree.