

(1988) 05 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 201 of 1980

Bethal Mining Traders and Others

APPELLANT

Vs

The State of Orissa and Others

RESPONDENT

Date of Decision : 04-05-1988

Acts Referred:

Essential Commodities Act, 1955 — Section 6A

Mineral Concession Rules, 1960 — Rule 60, 63

Mines and Minerals (Development and Regulation) Act, 1957 — Section 4, 4A

Citation : (1988) 66 CLT 285

Hon'ble Judges : H.L. Agrawal, C.J;D.P. Mohapatra, J

Bench : Division Bench

Advocate : J. Das and B.S. Tripathy, for the Appellant; Additional Government Advocate (1), Standing Counsel (Central) and G. Rath, for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.—The order of the-State Government in the Mining and Geology Department cancelling the mining lease of the Petitioners purportedly under" Section 4-A (1) of the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Act") as per Annexure-3 is sought to be quashed in this writ petition.

2. The gist of the facts set out in the writ petition is as follows:

The Petitioner No. 1, a partnership concern and Petitioners 2 and 3, its partners, were granted mining lease in respect of an area of about 106.218 hectares (262.47 acres) situated in village Kandaimunda, Bhogra, Kiringsira and Dahijora in the district of Sundargarh, for a term of twenty years from 21st, November 1978. After execution of the lease the Petitioners spent substantial amount of money for making preliminary arrangements, for exploitations of the minerals, limestone and dolomite. They commenced mining operations with effect from 7-5-1979. All on a sudden the Petitioners were communicated the order of the State Government on 19-11-1979 (Annexure-3) intimating them that their

mining lease has been prematurely terminated in purported exercise of powers u/s 4-A of the Act. The purpose of such termination as stated in the above letter is that the Industrial Development Corporation of Orissa, a State Government undertaking, has obtained D.G.T.D, registration to set up a mini cement plant at Kiringsira village in Sundargarh district and an area of 38sq, Kms. including the Petitioners' lease-hold area is proposed to be reserved for providing raw material for the mini cement plant. It is the contention of the Petitioners that the order is vitiated having been passed in contravention of the principles of natural justice since they were not given any opportunity of hearing before their lease was prematurely terminated. They further allege that the order is discriminatory since the Petitioners have been singled out for such treatment while other mining lessees in the area have been left out.. The Petitioners also contend that the order was not passed in the manner prescribed u/s 4-A of the Act, inasmuch as, while the Central Government had the exclusive authority to pass the order, the State Government passed it- with approval of the Central Government as stated in the order itself. On these averments the Petitioners pray for quashing the order of termination and to issue necessary directions to the opposite parties to restore the area to them.

3. Opposite parties 1, 2 and 3, that is, the State of Orissa represented through the Secretary, Mining and Geology Department, the Collector, Sundargarh and the Senior Mining Officer, Rourkela Circle, in the return admitted the relevant factual averments made in the writ application but denied the contentions raised by the Petitioners that the order is vitiated on any ground. According to the opposite parties, the Act does not provide for any notice before passing an order u/s 4-A of the Act and therefore the principles of natural justice cannot be said to have been violated for want of notice or opportunity of hearing. They also contended that the order is not vitiated by any illegality since the proposal of the State Government for termination of the Petitioners' lease was approved by the Central Government and thereafter the decision was communicated to the Petitioners.

In the rejoinder filed by the Petitioners it, has been asserted that the Industrial Development Corporation of Orissa Limited, Opposite party No. 5, has in the meanwhile surrendered the lease executed in its favour (which excluded the area covered by the lease deed of the Petitioners in view of the interim order of this Court) since it did not find it viable to establish a mini cement plant in the area. This development, according to the Petitioners, clearly establishes that the order of termination was passed without due application of mind and for non-existent purposes.

4. Shri Jayant Das, learned Counsel for the Petitioners mainly raised two contentions in support of the writ application . That the order is vitiated due to non-compliance with the principles of natural justice and that in view of the changed circumstance indicated in the rejoinder the order ought to be quashed and the property restored to the lessees. The learned Advocate General

appearing for opposite parties 1 to 3 reiterated the stand taken in the counter affidavit discussed earlier. He further submitted that the I. D. C. has surrendered the lease expressing its inability to proceed with the project of the mini cement plant and the State Government intends to throw the area open for grant of lease.

5. On careful consideration I am of the view that both the contentions raised on behalf of the Petitioners have merit. There is no controversy that the Act does not expressly provide for notice to be given before a mining lease is terminated u/s 4-A of the Act. The section provided for premature termination of lease in the circumstances specified therein. A person in whose favour a mining lease is granted is in normal, course entitled to enjoy the property for the stipulated period. Of necessity the lessee has to invest substantial sums of money for exploitation of the mineral.. Therefore important civil consequences flow from the, order passed u/s 4-A. In such circumstances it is fair just and proper that the lessee should be given an opportunity to show cause before termination of his lease. Indeed, such a procedure has to be read into the provisions under section- 4-A (1) of the Act for the sake of fair play in administrative matters. This view gains support from the decision of this Court in the case of Dr. Sarojini Pradhan Vs. Union of India (UOI) and Another, wherein it was held that the Central Government while rejecting the petition u/s 5 of the Act and under Rules 60 and 63 of the Mineral Concession Rules, 1960 is required to give an opportunity to the applicant for hearing. In the case of Paramhans Traders Vs. Collector and Others, it was held that the requirement of giving opportunity for hearing though not mentioned in Section 6A of the Essential Commodities Act, 1955 yet it must be read into it. In the case of S. L. Kapoor v. Jagmohan and Ors. AIR 198LS. C. 136, construing the provisions of Section 238 (1) of the Punjab Municipal Act which provides for supersession of Municipal Committee, the" Court observed that merely because an opportunity is expressly provided in Section 16 of the Act which deals with disqualification of an individual member and not so provided in Section 238 (1) it cannot be inferred that, the principle audi alteram partem was excluded from Section 238 (1). The Court further observed that the demands of natural justice are not met even if the very person proceeded against has furnished the information on which the action is based, if it is furnished in a casual way or for some other purpose. The person proceeded against must know that he is being required to meet the allegations which might lead to a certain action being taken against him. If that is made known the requirements are met.

6. On the principles decided in the aforesaid cases there can be little scope for doubt that the principles of natural justice apply to the provisions u/s 4-A of the Act and the Petitioners were entitled to a, show cause notice and an opportunity of hearing before the order prematurely terminating their lease was passed. This is particularly so in the present case since one of the reasons stated in the order under Annexure-3 was that M/s. Bethal Mining Traders had no plan to utilise the said minerals in any industry owned by them. This reason directly concerned the

Petitioners and they could have explained the position relating to it. The conclusion that follows from the aforesaid analysis is that the order under Annexure-3 is vitiated due to non-compliance with the principles of natural justice.

7. The second contention, as noticed earlier, relates to the subsequent development that took place during pendency of the writ application. The Industrial Development Corporation of Orissa Limited for whose benefit the Petitioners' lease was prematurely terminated, surrendered the lease expressing its inability to utilise the area since the project to set up a mini cement plant was not found to be feasible one. The learned Advocate General while accepting this factual position submitted that the State Govt. intends to throw the area open for grant of lease. Such action to say the minimum, will amount to abuse of statutory power u/s 4-A. It will be tantamount to permitting granting fresh lease of the area under the garb of action u/s 4-A (1) Such unjust and unfair exercise of power to the prejudice of the previous lessees, in my view, ought not to be permitted. In the situation, indicated above, it is just and proper that the property should be revisited in the Petitioners, the previous lessees.

8. Another point which was discussed in course of argument of the case needs to be noticed. On reading the order in Annexure-3 it is manifest that the proposal to prematurely terminate the Petitioners' mining lease emanated from the State Government and it is stated in the order that the said proposal was approved by the Central Government. However, no material has been produced before us to show what exactly was the suggestion made by the State Government and the form and the manner in which the approval was accorded by the Central Government. These materials are necessary to consider whether the Central Government applied its mind to the relevant criteria provided in the section while according the alleged approval to the proposal of the State Government. Further, on reading of the provisions u/s 4-A (1) it is clear that the action under the said section is to be taken by the Central Government after consultation with the State Government and the opinion that it is expedient in the interest of regulation of mines and minerals development to prematurely terminate the mining lease is to be formed by the Central Government, in the present case, the process appears to have been in the reverse direction.

9. On the analysis in the foregoing paragraphs and for the reasons discussed therein, the Writ application is allowed and the impugned order as per Annexure-3 is quashed. As a necessary consequences thereof the notification dated 30th of November, 1979 as per Annexure-6 is also quashed. Parties are to bear their respective costs of this proceeding.

H.L. Agrawal, C.J.

I have carefully perused the judgment prepared by brother Mohapatra. But since I feel a little dubious regarding the application of the principles of natural justice to the provisions of Section 4-A, I would rest my decision, in agreement with my

learned brother, on the other, two points considered by him. Section 4-A (1) of the Mines and Mineral (Regulation and development) Act introduced by Act 56 of 1972 empowers the Central Government for terminating a mining lease on when it is thought expedient in the interest of the regulation of the mines and minerals for granting a fresh lease in favour of any Government company or Corporation owned or controlled by Government and not for any other purpose. The Supreme Court in *Union of India and Another Vs. Tulsiram Patel and Others*, after a survey of various authorities of the Supreme Court itself, in paragraphs 100 and 101 of the judgment has clearly laid down that not only the principles of natural justice can be modified, but in exceptional cases they can even be excluded, and one of the circumstances where it may be deemed to be excluded is where the conflict is between public interest and private interest. In the facts and circumstances of the case, the power of premature termination of a lease can be exercised only in public interest and in my view there can hardly be much scope for objection by the lessee if the principle of *audi alteram partem* is applied.

10. At this place, I may also refer to the observations of the Supreme Court in the case of *Union of India (UOI) Vs. Sankalchand Himatlal Sheth and Another*, In the case of *Chairman. Board of Mining 1977 (2) S.C. R. 904*, on consideration of the facts and circumstances, it was observed that unnatural expansion of natural justice without reference to the administrative realities and other features of a given case can be exasperating. Similarly in *Sankalchand Himatlal Sheth's case*, it was observed that the court has to decide with reference to the circumstances of a given case whether observance of a particular rule of justice was necessary for a just decision. If the Petitioner is not placed to suffer any prejudice, then the rules of natural justice will not be brought in.

11. As already stated above the powers of the Central Government u/s 4-A (1) are based on public policy and in the larger interest of the State. If the Government, being the owner of the surface land containing mines and minerals, decides to get it worked by its own company or the like, then a person interested in exploiting the mines or minerals would have hardly any voice in the matter, i.e., in the decision making process of the Government. I, therefore, hold that the principles of natural justice need not be stretched as a matter of routine to this case.

12. It is however a different matter that at the time when the case was being finally heard in the year 1988, i.e., after about 8 years of its filing, Annexure-12 dated 20-9-1984 came into existence and the cement factory intimated the District Collector to surrender a part of the lease hold area. I find that by order dated 8-2-1980 when the case was admitted for final hearing by this Court, status quo as obtaining on that day was ordered to be maintained and on that account no further action has been taken by the Government with respect to the Petitioner's lease-hold. Therefore in view of the fact that the foundation for passing the impugned order in exercise of the powers u/s 4-A of the Act has disappeared, the Court would do better to lean in favour of the Petitioner as the

area is being unemployed and the Court was not informed, though time was allowed to the State, as to whether the Government has any other plan to utilise the area in question.

I would, therefore, in agreement with brother Mohapatra quash the impugned order in Annexure-3.