

(1984) 07 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5080 of 1978

Bindeshwari Jha

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 24-07-1984

Acts Referred:

Mineral Concession Rules, 1960 — Rule 35

Mines and Minerals (Development and Regulation) Act, 1957 — Section 5, 6(1)(c)

Citation : (1985) PLJR 256

Hon'ble Judges : Uday Sinha, J; S.B. Sanyal, J

Bench : Division Bench

Advocate : S. Jha, for the Appellant; L.S. Sinha, for the Respondent

Judgement

S.B. Sanyal, J.—The moot questions involved in this writ petition are; whether under the Mines and Mineral (Regulation and Development) Act, 1957, read with Mineral Concession Rules, 1960 (hereinafter to be referred to as the Act and M.C. Rules 1960), a lease at his option is entitled to first renewal of a mining lease of a non-schedule mineral, as a matter of course, and whether the State Government Can outright reject the prayer for renewal on the ground that the original area sought to be renewed do not fulfil the amended requirement of the Act, and M.C. Rules, 1960, i.e., Section 6(1)(c) and rule 35 of M.C. Rules, 1960. The petitioner obtained mining lease for mineral "slate" on 2.7.1957 for 20 years under Mineral Concession Rules, 1949 read with Mines and Mineral (Regulation and Development) Act, 1948. The lease-hold area comprised of two plots, plot No. 38 D Village-Goraiya measuring 10 acres and plot No. 38 D village-Sakhol measuring 12 acres. The two blocks comprised 22 acres.

2. The application for first renewal of the entire lease hold area for a period of 20 years was made on 7.6.1976. Both the District Magistrate and the Director of Mines recommended renewal. The State Government sought relaxation of Rule 35 of M.C. Rules, 1960 on 12.4.1977 from the Union of India. The Union of India asked for a map of the area which was supplied by the State Government. It

further enquired whether under Rule 38 of M.C. Rules, 1949 (as it then stood) the State Government relaxed the provision of the length of the area at the time of the grant. No reply was communicated by the State Government inspite of repeated reminders by the Union of India, as also expressing regret over the delay caused. Last of the futile reminder sent by the Union of India is dated 14.9.1977 (Annexure-6). The respondent, State, however, rejected the application for renewal on 12.11.1977, vide annexure-"7", on the ground that, the area applied for is not compact as required under amended Section 6(1)(c) and the length of the area is more than statutory requirement as envisaged under Rule 35 of the M.C. Rules, 1960. The petitioner moved the Union of India under Rule 54 of the M.C. Rules, 1960, but the same was dismissed on the sole ground that the renewal will contravene Section 6(1)(c) of the Act, vide annexure "12" dated 8.9.1978.

Petitioner assails annexures "7" and "12" as being illegal and without jurisdiction and further prays for a direction that the respondent be commanded to renew the lease.

3. Dr. Jha, learned counsel for the petitioner, contends that this being first renewal of the mining lease with respect to a mineral not specified in the Ist schedule of the Act, the petitioner is entitled to, as a matter of right, to the grant of renewal in view of Rule 28(3) of M.C. Rules, 1960 read with form "K" part VIII note (3), renewal being at the option of lessee. According to the learned counsel, the renewal is not hit by Section 8(2) of the Act. He further contends that section 6(1)(c), which required compactness and contiguity, was brought about by Amendment Act 56 of 1972. The said section applies only at the time of initial grant and not at the time of renewal and, therefore, the order rejecting the renewal on the ground of compactness and contiguity is wholly without jurisdiction. Learned counsel, in the alternative, submitted that even if it be assumed that section 6(1)(c) of the Act is applicable at the time of renewal, the respondents were duty bound in view of the provisions of section 16(1) of the Act to bring the area in conformity With the amended provisions within six months of the Amendment Act 56 of 1972. The petitioner's renewal of lease cannot be allowed to suffer as the respondents have, failed to discharge their duties enjoined in law under the said section and Mining Leases (Modification of Terms) Rules, 1956, as amended in the year, 1971. As regards requirement of the length of the area of the mining lease not to exceed four times its breadth, learned counsel submits that this was a provision under Mineral Concession Rules, 1949, which was made u/s 5 of the Mines and Minerals (Regulation and Development) Act, 1948, and the second proviso to the said rule conferred power on the State Government to relax the provisions of the said Rules. The very fact-that the lease was granted in the year, 1957, prior to promulgation of 1957 Act and M.C. Rules, 1960, manifest that the State Government must have relaxed the requirement of length being four times the breadth in the case of petitioner's lease, and, therefore, there was no need of further relaxation of a similar rule which finds place in rule 35 of the Mineral Concessions Rules, 1960.

Alternatively, the learned counsel submits that in view of part VIII of Form "K", which is part of 1960 Rule by virtue of Rule 31, the State Government was-empowered to reduce the area applied for in exercise of first proviso to note (3) of Part VIII Form "K" coupled with the power conferred under Rule 26 of the Rules. Lastly, the learned counsel contends that everything said and done the petitioner having invested huge sums of money in the development of the mines and in working the mines the petitioner having not contravened any of the terms and conditions of the lease, the right to renewal, which is a much higher right, should not have been defeated by resorting to "technicalities. Learned counsel also contends that in similar situation some lessees' lease was renewed but the petitioner was meted with discriminatory treatments and, therefore, the orders impugned are fit to be quashed.

4. Mr. L.S. Sinha, learned counsel appearing for the respondent, State, contends that no person has fundamental right to the grant of a mining lease and the State Government has the right to refuse grant and renewal of a mining lease if the application is not in form and/or the mining lease sought for is violative of the provisions of the Act or the Rules. In support of his submission, learned counsel relies upon section 4, section 10, section 19 of the Act and Rule 26 and Rule 28 of the Rules. Learned counsel drew our attention to the omission of rule 28(5) of the Rules by Amendment Act 13.4.1968, which empowered the State Government, while granting the renewal of mining lease to reduce the area applied for. According to him, the application of the petitioner required to be made in Form "J", Serials "X" and "XI" of the said form expressly provide the renewal for the whole or part of the leasehold area. The petitioner, however, in spite of this provision applied for renewal of the whole. The State Government treated the application for renewal of the entire mining area and that having been found to be contrary to rule 35 and section 6(1)(c), it could not have renewed the lease in view of the provisions of section 4 and section 19 of the Act. He contends that section 4 applies both to renewal and grant and sections 4 and 6 have to be read together for the applicability of section 19 of the Act. He also contended that the word "acquired" in section 6 will include acquisition of mineral either by grant of a mining lease or by renewal of the lease. Learned counsel, however, conceded that if the first renewal application for non-schedule mineral is made in accordance with the requirements of the Act and the Rules, it is true that the State Government is bound to grant renewal. In the instant case, the Central Government did not grant any relaxation of the requirements of the Act and the Rules u/s 31 of the Act. In the circumstances, the State Government had no option but to reject the renewal in exercise of the powers conferred under rule 26 of the Rules. Learned counsel also submits that new rule 35 does not contain power of relaxation as was obtainable in rule 38 of 1949 Rules. Mr. Sinha further contends that section 16 of the Act and the Mining Leases (Modification of Terms) Rules 1956 relied upon by the petitioner has no application.

5. From a mere perusal of Section 8(2)(b) of the Act read with rule 28(3) of M.C. Rule, 1960, it is abundantly clear that in respect of non-schedule mineral first

renewal ""shall be granted" by the State Government. The period for renewal, however, shall not exceed twenty years. This also follows from Rule 31 read with Form "K" part VIII note (3), which states "where the mining lease relates to any mineral not specified in First Schedule to the Act, it shall be renewable for one period not exceeding the period specified in sub-section (2) of Section 8 at the option of the lessee. The lessee under the Act and Mineral Rules having been given to understand when he was granted the lease, that renewal would be at his option, non-renewal of the lease would seriously upset his plans and cause him economic loss. Section 19 of the Act, however, requires that grant, renewal or acquisition must, however, conform to the provisions of the Act or the rules, otherwise it would be void and of no effect. This provision is mandatory. Mr. L.S. Sinha, learned counsel for the respondent, State, also fairly concedes to this legal position.

I, therefore, hold that lessee of non-schedule mineral is entitled, as a matter of right, to the first renewal of a mining lease for a period not exceeding 20 years provided the renewal of the lease-hold area is not in contravention of the Act and the Rules made; thereunder and further the lessee continues to be competent to the grant of the mining lease.

6. The next question is whether section 6(1)(c) of the Act will at all apply to the case of renewal of a mining lease. It is" true that this section does not refer to renewal of mining lease. According to learned counsel of the petitioner, "no person" shall acquire will refer to the time of initial grant. Learned counsel submits that expression "grant" and "renewal" have been simultaneously used wherever the legislature intended the applicability of the section to the said two situations. In support of this submission attention is drawn to sections 7, 8, 19 and 31, rule 26 and rule 28 of the Act".

7. It is not correct to, say that renewal can never operate as a grant. A renewal in a given circumstance is also a grant (see *N.S. Sethna v. Vimbhai Hari Lal*, AIR 1967 SC 1036). Further section 6(1)(c) used the expression "No person shall acquire any mining lease". The word "acquire" is of widest connotation. A right "acquired" means some specific right which in one way or another has been acquired by individual (see *Perchinnell J., Starey v. Graham*, (1899) 1 Q.B. 406 at 411). According to the shorter Oxford dictionary "to acquire" means to gain or to get as ones own. The meaning given to the word "acquired" in Murray's New English Dictionary is "to gain; obtain, or get as ones own". The connotation of the word "acquired" from the scheme of Section 6(1) suggest every kind of acquisition either by grant of a mining lease or by renewal thereof.

8. The word "renewal" "does not occur in section 4 which requires a person to carry mining operation in accordance with the requirement of the Act and the Rules. There is no mention of the word renewal "in section 5, which requires holding of a certificate of approval and income tax clearance certificate for obtaining grant of mining lease from the State. Similarly, there is no mention of word renewal" in sections 6, 9, 9A, 10, which deals with maximum area for

which mining lease can be granted, the payment of royalty, payment of dead rent, the procedure for obtaining lease in respect of land in which the minerals vest the Government. These provisions are the key section of the Act. Section 19 clears the position beyond pale of doubt, which runs as follows:

Any prospecting license or mining lease granted or renewed or acquired in contravention of the provision of the Act or any rules or orders made thereunder shall be void and of no effect.

It, therefore, necessary follows that by implication Sections 4, 5, 6, 8, 9, 9A, 10 applies to renewal also.

A similar question arose in the case of *State of Bihar v. Indian Copper Corporation* (1960 B.L.J.R. 105), where their Lordships were considering the expression "mining lease" in section 4 of Act 53 of 1948 would not include renewal of mining lease and, therefore, rule 26 of M.C. Rule, 1949 requiring possession of certificate of approval before renewal of lease is not at all required. It was held in the said case that by "necessary implication all the rules made for mining leases would also apply to the renewal of a lease including the important rules, i.e., rule 6 which requires to whom a certificate "of approval may be granted and Rule 26 which envisages no grant of mining lease to a person who is not possessed of a certificate of approval.

I am, therefore, of the view that Section 6(1)(c) of the Act applies to renewal of a mining lease also, even though there is no mention about it in the said section.

9. It is well settled that a covenant for renewal is collateral to the lease and does not form part of the demise. It is a mere contract, which could only be given effect to in case of refusal to perform by the lessor, (See *Mahendra Nath Srimani v. Kailash Nath Das*, AIR 1929 S.C. 50). Section 4 and Section 19 of the Act read together, it is crystal clear that no mining lease could be granted otherwise than in accordance with the Act and the rules and if granted or renewed contrary to the provisions of the Act and the rules, it would be void and inoperative.

I am, therefore of the view that all mining leases to be granted or renewed after the commencement of the Act and rule must conform to the said provisions of law in force. There is no question of affecting any vested right in the matter of renewal of a mining lease.

10. The argument of Dr. Jha that in view of Section 16(1) of the Act read with the Mining Lease (Modification of Terms) Rules, 1956, the State Government could have modified the lease and granted him renewal, is devoid of any substance. The right to modify is of an "existing lease". The right vests in the Controller.

It is the discretion of the Controller to do so in exercise of Rule 6 of the Modification Rules. He may or may not modify. Question of modification does not arise at all at the stage of grant or renewal. The petitioner did not inform the Controller during the life time of lease to modify it. As a result petitioner enjoyed

the entire area during the whole period of lease. Having enjoyed the benefit of the entire area during the life time of the lease, petitioner cannot be allowed to approbate and reprobate. Further, the State Government has nothing to do with the modification u/s 16 of the Act.

11. Dr. Jha's submission that the State Government should not have outright rejected the renewal application but could have renewed the lease by reducing the area, however, deserves consideration. It is true that Sub-rule 5 of Rule 28 has been committed, vide G.S.R. 703 dated 13.4.1968. The said Sub-rule provided that the State Government while granting renewal of the mining lease under sub-rule (1), (2), (3) or 4 may for reasons to be recorded in writing, reduce the area applied for, Mr. L.S. Sinha submits that the State Government is now, therefore, powerless in this regard. Mr. Sinha further submits that rule 26 which envisages the power of the State Government to re-fuse to grant or renew a mining lease over the whole or part of the area applied for by giving reasons, do not come to the rescue of the petitioner. According to learned counsel, it only means, on having made an application in form "J" for renewal either of the whole or part of the lease hold area (vide item X and XI), the State Government will consider the application as it is. The State Government may grant/renew for the area applied either for whole or part as the case may be. This rule even impliedly according to him, do not confer any right to grant or renew of a lesser area than what has been applied for. He further argues that the petitioner also do not ask for any amendment of the renewal application.

12. I am unable to accept the contention of Mr. Sinha. In my opinion, it is implicit in the power of rejection, the power to restrict the grant or renewal to a lesser area than the one applied for. Rule 26 of is of general application with respect to all applications for mining leases. My interpretation of Rule 26 is also supported by form-K part VIII, Note 3 proviso which is a part of Mineral Concession Rules, 1960. Proviso to note 3 reads as hereunder:--

Provided that the State Government may for reasons to be recorded in writing reduce the area applied for

The view taken by me is also supplied by a Division Bench decision of Madhya Pradesh High Court in the case of Mineral Mining Co. Private Ltd. Vs. State of Madhya Pradesh, Natural Resources Dept. and Another, , The said case arose out of an application for grant of mining lease. The lease was for the whole area for which the applicant had a prospective licence. The State Government required the petitioner to confine the prayer for grant to 20 acres only. The petitioner under process gave its choice, and the State Government accorded sanction for lesser area. Thereafter the petitioner moved an application before the Central Government challenging the power of the State Government to reduce the area than what was applied for. It was held on a conjoint reading of Section 11, rule 26 and rule 34 that the State Government has authority to reject an application or to confine the grant to a smaller area than what has been sought for, The second part of the judgment dealt with-the question of recording of reasons

while rejecting an application for the grant of the whole area applied for. It was held that absence thereof do not vitiate the order particularly when the petitioner preferred a revision before the Central Government where the reasons were disclosed by the State Government and the petitioner v. as afforded an opportunity of making his representations against those reasons by observing that provisions of rule 26 are directory and not mandatory. This part of the judgment to my mind do not seem to be in consonance with the law laid down by the Supreme Court in the case of Bharat Raja Vs. The Union of India (UOI) and Others, . I am, however, not concerned with this part of the judgment. I, therefore, find that from the scheme of the Act and the rules made thereunder the State Government can refuse the whole area applied for at the time of renewal as also reduce the area applied for irrespective of omission of sub-clause (5) of Rule 28.

13. In the instant case, the State Government appears to have rejected the petitioner's application for renewal on a mistaken notion of law that it can either allow or reject the application as a whole and it has no power to reduce the area applied for or call upon the petitioner to modify his application. This vie of law appears to us to be unwarranted. The State Government instead of outright rejecting the application for renewal could have given option to the petitioner to reduce the area of the mining lease to bring it in conformity with section 6(1) of the Act and Rule 35 of the Rules, which came to be in force at the time of renewal of the lease. It was for the petitioner to decide whether to accept a reduced area for renewal. It was also open to the State Government to renew the lease for a reduced area in view of the provisions of section 4 and section 19 of the Act. The petitioner has contended before us that having, invested huge amount in developing the mine with the hope that there would be an automatic renewal of the Tease hold area, the petitioner has even prepared to accept renewal of the mining lease for a reduced area. In that view of the matter, the State Government could have renewed the mining lease for a reduced area to bring it in conformity with Section 6(1) of the Act. I hold outright rejection by the State Government of the renewal application is not in consonance with fair play.

14. I am constrained to observe that the Central Government could not exercise its discretion u/s 31 of the Act in relaxing the provision of the Act and the rules for the failure" of the State Government to communicate to the Central Government as to whether it had actually relaxed the requirement of old rule 38 with respect to length of the area at the time of the grant. Old rule 38 conferred upon the State Government a power to do so. Inspite of several reminders by the general Government in this regard, the State Government kept mum. I am of the opinion that the petitioner has been denied justice and the case of the petitioner did not receive the attention it deserved. The application for renewal was disposed of mechanically without application of quasi-judicial mind. In the result, the order passed by the State Government refusing to renew the lease (annexure-7) and the order dismissing the revision application of the petitioner (annexure-12) by the Central Government are quashed and the respondent,

State is directed to reconsider the application for renewal in the light of the observations made in this judgment and dispose of the petition as expeditiously, as possible, preferably within six months from the date of receipt of the order. There will be no order as to costs.