
(1985) 05 PAT CK 0019
In the Patna High Court
Case No : C.W.J.C. No. 91 of 1982 (R)

Chandan Mal Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-1985

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (1985) 33 BLJR 569

Hon'ble Judges : Udai Pratap Singh, J

Bench : Single Bench

Judgement

Udai Pratap Singh, J.—The petitioner has challenged the order dated 28-8-81 contained in Annexure- 7. This order was passed by the Central Govt. Respondent No. 1, on the revision filed by the petition under Rule 54 of the Mineral Commission Rules, 1960 rejecting the revision application dated 9-6-81 as not maintainable with a direction that for the failure of the State Government to pass orders, the petitioner may, if so advised, seek relief in an appropriate court of law.

2. The relevant facts to dispose of this application are that on 23-8-77, the petitioner applied for mining lease of fire-clay over an area of 656.05 acres of land situated in village Bankita in the district of Palamau. On 29-8-77 the petitioner submitted a revised map for an area of 566.24 acres only since most of the land situated in village Bankita was barren and there was no deposit of fire-clay. In April, 1978, the Deputy Commissioner Palamau after careful scrutiny recommended that out of total area applied for only 192.21 acres was free for settlement. He however stated that further area of 97.75 acres was available for settlement. Since the same could not be granted in favour of the original applicant, M/s. Bharat Mineral Industries and as such the total area which was available for grant of lease in favour of the petitioner was 289.96 acres in village Balu. Notwithstanding the recommendation of the Deputy Commissioner, the State Government rejected the application on 14-8-78 mainly on the ground that

there was likelihood of the presence of coal in the said area. Aggrieved by the said order, the petitioner filed a revision application before the Central Government under Rule 54 of the Mineral Concession Rules.

3. The parties were heard and both the grounds raised by the State Government (a) that the area is not in a contact block, and (b) that there is likelihood of the presence of coal in the area, were rejected by the Central Government considering the first ground that the area was not compact since various Khasra Nos. were not included in the original application, the reasoning of the State Government, was rejected and it was held that even though the block nos, were not included in the original application, the petitioner had after obtaining the consent of the pattadars submitted the same before the Mining Officer long before the order was passed and that details were in fact, available in the records of the State Government. As regards the second reasoning for rejection that there was likelihood of the presence of coal in the area, it was held that the representation of the State Government, admitted that the mining leases have been in this area for fire-clay and it would be unfair to reject the application of the petitioner on the ground as it will amount to discrimination.

4. In this view, by its order dated 25-9-79 the Central Government exercising its power u/s 30 of the M.M. R.D. Act and Rule 55 of the Mineral Concession Rules, set aside the order of the State Government and remanded the application of the petitioner to the State Government to be considered on merit within a period of 100 days.

5. The State Government did not take any action within 100 days as directed by the Central Government and the application was deemed to have been rejected since the order was not passed within the specified time. The petitioner, thereafter, filed a second revision application on 15-1-80 before the Central Government against the deemed rejection within the meaning of the Explanation of Rule 54 of the Mineral Concession Rules 1960. In March 80, the Central Government set aside the deemed rejection of the petitioner's application and directed the State Government to pass orders on merit within 200 days of the communication of the orders. The State Government did not pass the order with the stipulated time and the application was again deemed to have been rejected. The petitioner then preferred a third revision application before the Central Government on 8-12-80 and it was disposed of by the Central Government on 10-4-80 with a direction to the State Government to pass orders on merit within 100 days of the communication of the order. Again no action was taken by the State Government. On 9-6-81, the 4th revision application was filed on which the impugned order contained in Annexure 7 dated 28-2-81 was passed. Relying on a decision of the Andhra Pradesh High Court in the case of Kalki Subbarami Reddy Vs. Government of India and Another, . it was held that failure of the State Government to pass orders within the time stipulated by the Central Government in the aforesaid final order would not provide cause of action to the petitioner to prefer revision before the Central Government and the Central

Government had no jurisdiction to entertain it but for the failure of the State Government to pass orders, the petitioner may, if so advised seek redress in an appropriate court of law. It is under this direction that the petitioner left with no remedy has filed the present writ application.

6. Without going into any other question it was contended on behalf of the petitioner that in the circumstances of this case, the respondents may be directed to consider the application of the petitioner on merit for the grant of mining lease for fire-clay in respect of the area of 289.96 acres in village Balu in pursuance of his application dated 23-8-77.

7. It is most unusual that the application filed by the petitioner in August, 77 for grant of mining lease for fire-clay has not been considered on merit by the respondents although the Central Government thrice directed the State Government to consider the application on merit within the stipulated period of time. It is not stated in the counter affidavit that as to why the application was not considered on merit and was allowed to have deemed rejection within the meaning of Explanation to Rule 54 of the Mineral Concession Rules. The Explanation to Rule 54 of the Mineral Concession Rules does not provide a handle to the authorities concerned not to consider the application for grant of mining lease on merit. Failure to consider the application on merit within the stipulated time must be for some reasonable cause otherwise it would be arbitrary on the part of the authorities to defeat the application under the deeming clause under Explanation to Rule 54 of the Mineral Concession Rules. If an application for grant of mining lease is not considered within the stipulated time, then it is deemed to have been rejected. It does not mean that the application will not be considered on merit at all. Non-consideration within the stipulated time, must be based on reasons and it cannot be allowed to suffer the deemed rejection because of the inaction of the authorities in not considering the application on merit. The present case is a gross example of inaction and the shelter behind the Explanation to clause 2, Rule 54 has been wrongly taken. There is no averment in the counter affidavit as to why the application for grant of mining lease was not considered on merit although the Central Government thrice directed it to be considered on merit by the State Government. Since 1977, the petitioner has been made to run to courts for consideration of his application on merit, A statutory authority vested with public duty has to act in such a manner so as not to defeat the object and purpose of the Act. Such authorities must act fairly. The long silence of the mines department is not considering the application on merit since 1977 is to defeat the claim of the petitioner.

8. By an earlier order of this Court dated 21-1-82 the plot in question was directed not to be settled during the pendency of the hearing of the writ application. In the circumstances, I direct that the State of Bihar and its authorities in the Mines Department would consider the application of the petitioner dated 23-8-77 for grant of mining lease of fire-clay over an area of 28-9-96 acres in village Balu and dispose of the same on merit in accordance

with law. Since the application is pending for a long time, I hope and trust that the State Government and its authorities in the Mines Department, would consider and dispose of the application on merit within 60 days from the date of the communication of this order. The application for intervem on has no merit and is accordingly dismissed.

9. In the result, this application is disposed of with the directions indicated above but there will be no order as to costs.