

(1986) 08 PAT CK 0023

In the Patna High Court

Case No : Letters Patent Appeal No's. 126, 128 to 131 of 1985 with Civil Writ
Jurn. Case No's. 3363 and 3452 of 1981

Chhatturam Horilram Pvt. Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 14-08-1986

Acts Referred:

Minor Mineral Concession Rules, 1960 — Rule 24, 24(3), 54

Citation : AIR 1988 Patna 178

Hon'ble Judges : S.S. Sandhawalia, C.J.; Sushil Kumar Jha, J

Bench : Division Bench

Advocate : K.D. Chatterjee, Rameshwar Prasad and Amarendra Kumar Sinha, for the Appellant; Yaduvansh Giri, Barmeswar Tiwary, Lakshman Sharan Sinha and Birendra Sinha, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—The true import of the stringent period of limitation prescribed for the preferring of a revision petition under Rule 54(1) of the Minor Minerals Concession Rules, 1960, is the significant and some what intricate common question in this set of five connected Letters Patent Appeals and two Civil Writ Jurisdiction Cases.

2. The representative matrix of facts may be noticed from Chhatturam Horilram Private Limited v. The Union of India and another Letters Patent Appeal No. 128 of 1985.

3. The appellant company had been granted certain mining leases for mica mines. Before the expiry of the period of the leases, the appellant applied for renewal of the mining leases to the State of Bihar under Rule 28 of the Minor Minerals Concession Rules, 1960 (hereinafter referred to as the Rules), in the prescribed form on different dates. Barring one case, the State Government did not pass any order whatsoever on the applications aforesaid. However, in the matter covered by Civil Writ Jurisdiction Case No. 1109 of 1981, the Government

passed order on the 25th of July, 1981, vide Annexure "1" thereto, after the expiry of the period of 11 months and 29 days of the making of the renewal application. Aggrieved thereby the appellant company filed revision applications in all the cases before the Central Government Barring Civil Writ Jurisdiction Case No. 1109 of 1981, the revision applications were directed against the deemed refusal of the renewal applications, as provided by the relevant rules, to which reference would follow hereinafter. In Civil Writ Jurisdiction Case No. 1109 of 1981, obviously, the revision application was directed against the express order of refusal dt. the 25th July, 1981 (Annexure "1").

4. The Central Government dismissed all the revision applications of the appellant company on the ground of limitation. Excepting the case covered by Civil Writ Jurisdiction Case No. 1109 of 1981, the view taken was that because of the relevant rules, the State Government having not disposed of the renewal applications within the prescribed period of six months, the renewal applications having been deemed to be refused, the petitioner should have filed the revision application within a period of three months from the date of such deemed refusal. With respect to the matter in Civil Writ Jurisdiction Case No. 1109 of 1981, it was held that although a speaking order was passed, but the same was done beyond the statutory period of six months, and, it was without jurisdiction, as after the expiry of the said period, the State Government could not have passed such orders. Therefore, the period of limitation in filing the revision application in this case was also to be reckoned from the deemed date of refusal and this revision application was also dismissed on the ground of limitation alone. Aggrieved thereby the appellant Company preferred five separate civil writ jurisdiction cases, to challenge the order of the Central Government on the ground that it had committed an apparent error of law in applying the period of limitation to the revision applications preferred by the petitioners. The learned single Judge, noticing that the question arising for consideration in all the cases being almost identical, disposed of them by a common judgment. Repelling contentions raised on behalf of the writ petitioners, he dismissed all the petitions by his considered judgment, which is under appeal.

4A. Perhaps, at the very outset, it is apt to refer somewhat briefly to the legislative background of Rules 24, 28 and 54 of the Rules, which fall for construction herein, and, indeed, it is necessary to do so in view of the particular arguments sought to be raised on behalf of the appellants. It would appear that from the date of its promulgation, Sub-rules (1) and (2) of Rule 24 had in terms provided a period within which applications for the grant of a mining lease and that for the renewal thereof, respectively, were to be disposed of Prior to 1963, Sub-rule (3) provided that in case the respective applications for the grant or renewal of a mining lease under both the aforesaid rules were not disposed of within the time prescribed, they would be deemed to have been refused. However, by an amendment of Sub-rule (3), vide Notification No.GSR-843 dt. the 6th May, 1963, the reference to Sub-rule (2) was deleted from Sub-rule (3), and, it remained applicable only with regard to Sub-rule (1). It is, however, significant

to notice that Sub-rule (1) of Rule 54 remained untouched, barring some marginal changes brought in for filing a revision within a period of three months and the minor procedural matter pertaining to the deposit of the fees.

5, Having noticed the aforesaid background, one may now proceed to read the relevant parts of Rules 24, 28 and 34 for facility of reference, since it is around them that the whole controversy revolves.

"24. Disposal of Application for Mining Lease -

(1) An application for the grant of a mining lease shall be disposed of within twelve months from the date of its receipt.

(2) An application for the renewal of a mining lease shall be disposed of within six months from the date of its receipt.

(3) If any application is not disposed of within the period specified in Sub-rule (1), it shall be deemed to have been refused.

.....

"28. Renewal of Mining Lease-- (1) An application for the renewal of a mining lease shall be made to the State Government in Form J at least twelve months before the date on which the lease is due to expire through such officer or authority as the State Government may specify in this behalf.

.....

"54. Application For Revision -- (1) Any person aggrieved by any order made by the State Government or the authority in exercise of the powers conferred on it by the Act or these rules may, within three months of the date of communication of the order to him, apply to the Central Government in triplicate in Form N, for revision of the order. The application should be accompanied by a treasury receipt showing that a fee of Rs. 100/-has been paid into a Government Treasury or in any branch of the State Bank of India doing the treasury business to the credit of Central Government under the Head of Account "128 Mines and Minerals Mines Department Minerals Concession Fees and Royalty."

Provided that any such application may be entertained after the said period of three months, if the applicant satisfies the Central Government that he had sufficient cause for not making the application within time.

.....

Explanation -- For the purposes of this rule, where a State Government has failed to dispose of an application for the grant or renewal of a prospecting licence or a mining lease within the period specified in respect thereof in these rules, the State Government shall be deemed to have made an order refusing the grant of renewal of such licence or lease on the date on which such period expires."

6. In construing the aforesaid provisions, the somewhat stringent and peculiar

provisions of the deeming fiction that the application would be deemed to have been refused in Rules 24 and 54 have to be kept pointedly in mind. The larger principle and rationale underlying the same, though not in terms expressed, is somewhat patent. Yet it needs some elaboration. It was rightly urged that in the matter of the grant of mining leases and their renewal there would be a national loss and waste, if such matters were kept pending and inordinately delayed. The creation of wealth from the dormant raw materials in the mines cannot, perhaps, be allowed to wait or go waste by delay in a poor country like ours. To cut at the Gordian knot of the loss of time and procedural delays, the framers of the Rules have themselves accepted a statutory principle of first prescribing and mandating an inflexible time frame within which applications for the grant of a mining lease or its renewal have to be decided. Probably, aware that such mandate may be flouted, it has then been provided as a matter of law that if they are not so decided, they shall be deemed to have been refused on the expiry of such a time limit. Indeed, it is in furtherance of this larger rationale and the inarticulate premise underlying this legislation that the aforequoted provisions of law have to be construed.

7. Against the aforesaid background, the basic contention of Mr. K. D. Chatterjee, on behalf of the appellants, may now be noticed. Learned Counsel had assiduously (though, in our view, somewhat tenuously) attempted to argue that despite the expressed deletion of the reference to Sub-rule (2) in Rule 24(3) by the notification of the 6th of May, 1963, it still was applicable to and governed the provisions of Sub-rule (2). Indeed, somewhat ingenuously it was sought to be argued that the amendment in Sub-rule (3) of Rule 24 was intended to have a uniform rule of limitation for both Sub-rule (1) and Sub-rule (2). On that slippery premise it was contended that though an application for renewal of a mining lease was mandated to be disposed of within six months from the date of its receipt, its deemed refusal under Sub-rule (3) was to take place after a period of 12 months, as in the case of an application for the grant of a mining lease under Sub-rule (1) of Rule 24.

8. Before one inevitably adverts to Rule 24, in view of the persistent reliance of the learned Counsel for the appellants, it appears to me that herein, in the context of the limitation for an application for revision, the special provisions of Rule 54 are in a way a self-contained Code for the purpose of determining the limitation for preferring a revision petition. The very scheme of the Act and the Rules framed thereunder leaves little doubt in this regard. Indeed for a true perspective of the issue, the relevant statutory provisions have to be read together and harmoniously. Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the Act), itself provides for a revision application within the prescribed time and thus visualises the period of limitation therefor. The use of these words is significant, because the statute expressly mandates a rule therefor. A reference may then be made to Section 3(f) of the Act, which is in the following terms : --

""Prescribed" means prescribed by rules made under this Act."

Section 13(2)(q) then in terms warrants the framing of rules for providing the period of limitation for revisions, etc. Undoubtedly, the Mineral Concession Rules, 1960, have been framed under the power conferred by Section 13 of the Act and, it is in pursuance of the aforesaid provisions that the specific Rule 54 has been framed. What is equally and indeed of greater significance is the fact that Rule 54(1) itself mandates that the revision petition should be in Form N, duly prescribed.

9. Now a reference to Form N would show that Paras 8 and 9 thereof expressly require an averment whether the revision is filed within the time prescribed, and, it not, the reasons for not presenting it within the time limit, as provided in the proviso to Sub-rule (1) of Rule 54. Herein, the framers of the Statute have to be complimented for the meticulous detail with which they have spelt out these provisions. It undisputably follows therefrom that the burden herein is on the petitioner preferring the revision to file the same within the time prescribed and, in case he does not, to forthwith spell out his reasons for failing to comply with the statutory mandate. It thus seems manifest that the aforesaid detailed and meticulous provisions are a self-contained Code, so far as the filing of the revision under Rule 54 of the Rules is concerned. To look elsewhere for analogies and inferences is thus unwarranted. Herein plainly enough the law is unequivocal with regard to the prescribed period of limitation. Other things apart, Rule 54 is thus the special and only provision with regard to the filing of the application for revision, the limitation within which the same is to be done, the termini for determining the period thereof and the form in which it has to be preferred. Therefore, as a term of art, Rule 54 is the special provision governing the issue as against any other general ones, and, consequently entitled to primacy and to override all others. What is, perhaps, of particular significance is the explanation unequivocally added to Rule 54. This expressly specifies the terminus a quo from which the prescribed period of limitation is to run. It is a legal platitude that a limitation statute must be precise and have a fixed terminus a quo and a terminus ad quem. The very purpose of prescribing the period of limitation is frustrated and becomes meaningless, if either of the two termini are nebulous or ambivalent. Apparently, to effectuate that well settled purpose, the explanation to Rule 54 in no uncertain terms lays down that the period of limitation, in the case of a revision, where the State Government has failed to dispose of the application within the period specified in respect therewith, shall run from the date on which such period expires.

10. Once it is held as above, it would necessarily follow that by virtue of the special provisions of Rule 54, and, in particular the explanation thereto, no reference at all is called for to Rule 24 by way of analogies or inferences. In the context of a revision, (or a deemed refusal to renew a mining lease, one has only to turn to the self-contained provisions of Rule 54 for determining the period of limitation. The explanation, as a special provision, provides that limitation will

start and run from the deemed date of the refusal of the application for renewal. Consequently, in strictitude Rule 24 or Sub-rule (3) thereof is not at all attracted to the situation. It may well have reference to other fields, but has little or none, as regards the statutory period of a revision application under Rule 54. It bears repetition that Rule 54 stands as a complete and self-contained Code in this regard, and, on the settled rule of special excluding the general, it would be obvious that it has primacy and would exclude anything purporting to be contrary in the provisions of Rule 24. Consequently, the contention of the learned Counsel for the appellants, resting entirely, as it does, on Rule 24, must be rejected on this score alone,

11. Now, assuming entirely for the sake of argument (without in any way holding so), that Rule 24 is attracted, even then, the stand on behalf of the appellants has to be necessarily rejected. As has been noticed already in the context of the legislative background, it is undisputed that prior to the amendment of the 6th of May, 1963, Sub-rule (3) had expressly application to both the provisions of Sub-rule (1) and Sub-rule (2). However, the framers, in their wisdom, expressly took out Sub-rule (2) from its purview by deleting all reference to it from Sub-rule (3), by way of amendment. If despite the said deletion, Sub-rule (2) is again to be read into Sub-rule (3), this would render the whole exercise of the amendment totally nugatory. Any such interpretation even after the amendment, would be patently contrary to the sound canons of construction. Accepting the stand of the appellants would thus render the amendment made in Sub-rule (3) totally otiose. The contention of Mr. Chatterjee that even after the amendment Sub-rule (3) of Rule 24 still provides a uniform period of limitation of one year for the deemed refusal, both under Sub-rule (1) for an application for the grant of a mining lease and equally for an application under Sub-rule (2) for the renewal of a mining lease, must, therefore, be rejected as patently untenable, both on principle and on the language of the statute.

12. Now, apart from the above, it equally appears to me that the matter is otherwise concluded against the appellants in this context by binding precedent. In *Nookala Setharamaiah Vs. Kotaiah Naidu and Others*, , their Lordships were construing the earlier, yet virtually in *pari materia* provision of the Mineral Concession Rules of 1949. Reversing the contrary view of the High Court, it was observed as follows : --

"If we read Rule 28(1-A) and Rule 57(2) together, there is hardly any doubt that after the period prescribed, the State Government is incompetent to deal with the applications pending before it. According to Rule 57 (2), where a State Government has failed to dispose of an application for the grant of a mining lease within the period prescribed therefore in the rules, such failure shall for the purpose of the rules be deemed to be refusal to grant the lease. The rules referred therein include Rule 28 as well- This deemed refusal, if read with the mandate given to the State Government under Rule 28 (1-A) requiring it to dispose of the applications within 9 months of the receipt of those applications,

there can be hardly any doubt that if the State Government does not dispose of the applications within the time prescribed, it is deemed to have refused those applications for the purpose of Rule 28 as well as Rule 57."

More directly on the point is the State of Assam and Others Vs. Om Prakash Mehta and Others, , on which basic reliance has rightly been placed on behalf of the respondents. The judgment is an exhaustive one, bearing directly on Rules 24 and 54 of the Rules, with particular reference to the explanation to the latter provision. It is significant that the High Court had somewhat pedantically struckdown the explanation to Rule 54 and Sub-rule (3) of Rule 24 of the Rules. Reversing the High Court's judgment, their Lordships of the Supreme Court noticed the import of the amendment in Sub-rule (3) of Rule 24 and observed as follows : --

"A later amendment omitted the words or Sub-rule (2) found in that sub-rule with the result that the Sub-rule (3) now reads as follows :--

"If any application is not disposed of within the period specified in Sub-rule (1) it shall be deemed to have been refused."

"This might seem a little confusing. Does it mean that the period specified in Sub-rule (1) applies not merely to the grant of a mining lease mentioned in Sub-rule (1) but also to the renewal of a mining lease mentioned in Sub-rule (2)? But, we think that it will be a reasonable interpretation to hold that the effect of this amendment would be that while the provision regarding disposal within 90 days of an application for renewal still stands, the provision for deeming it to have been refused is no longer there. But this does not dispose of the matter because the explanation to Rule 54 lays down that for the purposes of that rule, where a State Government has failed to dispose of an application for the grant or renewal of a prospecting licence or a mining lease within the period specified in respect thereof, the State Government shall be deemed to have made an order refusing the grant or renewal on the date on which such period expires. So the explanation has two purposes (i) to state the effect of the failure to dispose of the applications referred to in Rule 24, Sub-rules (1) and (2) within the periods specified in those sub-rules, as also (ii) to provide the starting point for the purpose of computing the period of two months within which an application for revision under Rule 54 must be preferred."

13. In the light of the aforesaid authoritative enunciations, it must be held that the matter on this point is concluded against the appellants and the purported reliance on Rule 24(3) of the Rules must fail on precedent.

14. Repelled on his basic stand, learned Counsel for the appellants had also raised what appears to us as a somewhat hypertechnical argument. Mr. Chatterjee sought to contend that under Rule 54 (1) the limitation of three months runs from the date of the communication of the order and, since, in the present context, no such communication was made, the period of limitation had not at all started to run. To my mind, this contention has only to be noticed to be

rejected. A plain reading of Rule 54 can leave no manner of doubt that the reference with regard to the communication of the order applies only to actual orders alone. It is only where the authority has duly recorded an order that the question of forwarding a copy thereof or communicating or serving the same on the parties could arise. Where there is, in fact, no order, there could in fact never be compliance with regard to the communication of the same. Consequently, such a provision can have no applicability to a deemed refusal by a fiction of the law. It seems somewhat elementary to hold that a legal fiction, like a deemed refusal by efflux of time, is not to be communicated. By the very nature of things it is so. Even more picturesquely it was rightly said that the legal fiction is a ghost visible only to the subtle eye of the law and it would be incongruous to mandate or express that a ghost be communicated. It is thus manifest that the principle of communication has no application to cases falling within the explanation and pertaining to a deemed refusal on the expiry of the date or the period specified for the decision of the applications for the grant or renewal of mining leases. Indeed, the explanation in terms lays down that in case there is no order passed on the application within the prescribed time, it must be deemed to be a refusal, and, where the situation is one of no order having been passed, to say that the date of the absence of an order be communicated is, to my mind, too far-fetched an argument to merit any detailed refutation. The contention must, therefore, be rejected on principle.

15. The last contention (and indeed the least tenable) on behalf of the appellants was that even though there was no application for the condonation of the delay in filing the revision petition, it was incumbent on the Central Government to itself examine that there was sufficient cause for not making the application within time and to afford the appellants an opportunity to establish the same. Reliance was sought to be placed on the orders in *Nand Lal Jain v. State of Bihar* : (1980)3SCC317 , and *Harkaran Das Mangilal and Another Vs. Union of India (UOI) and Others* , .

16. What herein deserves pointed notice is that admittedly no application whatsoever was moved at any stage for the condonation of delay in filing the revision petition. Rule 54 requires such a revision application to be made to the Central Government in triplicate in Form N. The records of these applications were produced before us and, on the appellants' own showing, they were filed in accordance with the prescribed Form N. The stand taken on behalf of the appellants in paras 8 and 9 of the said applications was that the revision petitions were in time and that there was no delay in filing the same, and, therefore, it required no explanation, nor was any even remotely offered. Now, the proviso to Sub-rule (1) of Rule 54 in terms envisages an application for the condonation of the delay and the satisfaction of the Central Government thereon that there was sufficient cause for not making the application within time. It is not even the case of the appellants that at any stage, even later, did they make any written application seeking condonation or explaining the reasons for the delay in preferring the revision applications beyond the time prescribed by law. Therefore,

on principle to expect that the authorities should first gratuitously assume that there is some explanation for the delay, where none is even suggested, and, thereafter, to afford opportunity for establishing any such hypothetical stand, appears to us as patently doctrinaire.

17. Learned Counsel for the Respondent Union of India, Mr. Y.V. Giri, rightly pointed out that the proviso to Sub-rule (1) of Rule 54 is in terms in pari materia with Section 5 of the Indian Limitation Act. Therefore, the principles and the rules of construction applicable to Section 5 of the Limitation Act would be equally attracted to the proviso to Rule 54(1) of the Rules. It was rightly contended that the burden is squarely on the applicant or the person who has beyond the prescribed period of limitation to apply and satisfy the Court in order to secure condonation and bring himself within the sufficiency of cause for not making the application within time. It is not a burden which can be reversed and passed on to the Court or the authority to call upon and insist for an explanation on its own and to gratuitously afford an unlimited opportunity for establishing such a stand, where the application is beyond the prescribed period of limitation. There is thus no legal entitlement that even where a petitioner is seeking relief for condonation of time beyond the period of limitation, then dehors any application for such condonation or even a prayer therefor, the authority or the Court must, on its own, extend an opportunity for satisfying itself that there might have existed some cause for not approaching it in time. To put it categorically, the burden squarely is on the applicant and not on the Court or the authority entertaining the revision petition. Therefore, the legality of the order of the Central Government holding the revision petition beyond the prescribed time under Rule 54 cannot be questioned on the final ground that even in the absence of any application for condonation or preferring of any explanation, the authority should have allowed an opportunity for establishing that there existed some cause for not making the application within time.

18. The reliance of the learned Counsel for the appellants on the order in *Nand Lal Jain v. State of Bihar* : (1980)3SCC317 is not well merited. On behalf of the Respondent Union of India, Mr. Y.V. Giri rightly took up the stand that this was in the nature of a preliminary order apparently passed ex parte and thus not a judgment *stricto sensu*. Reliance on behalf of the respondents was, therefore, placed in this context on the observations in the recent Full Bench judgment in *Commissioner of Income Tax Vs. Sheo Kumari Debi*, to which no serious challenge was posed on behalf of the appellants. Perhaps, on that score alone it is vain on behalf of the appellants to rely on such an order. But, this apart, the same is plainly distinguishable. A bare reading of the order would indicate that it was apparently beyond the period prescribed for the renewal of a mining lease under Rule 28(1) or possibly under Rule 24. It was certainly not one under Rule 54 of the Rules, and, thus, is not attracted to the present case. As has been noticed earlier, the issue herein is the special period of limitation for revision prescribed by Rule 54, read in the light of the explanation thereto. Consequently, the observations in the order in *Nand Lal Jain v. State of Bihar* : (1980)3SCC317

(supra) are entirely distinguishable. Their Lordships in the said order merely referred to the specific instances where the Central Government had condoned the delay in applying for the renewal of the lease. All that was observed was that the petitioners therein should be similarly treated.

19. What has been said above applies *mutatis mutandis* to the observations in the order in *Harkaran Das Mangilal and Another Vs. Union of India (UOI) and Others*, . Indeed there are indications that their Lordships merely followed the earlier order in *Nand Lal Jain's case (supra)*. Therein again it was observed that in another analogous case the Central Government had condoned the delay in the application for renewal, apparently under Rule 28, and, there was no adequate ground for treating the petitioners invidiously. This order is thus equally distinguishable for the reasons aforementioned. Even otherwise, it appears that what is sought to be projected on behalf of the appellants runs counter to the authoritative and exhaustive judgment of larger Benches in *Nookala Setharamaiah Vs. Kotaiah Naidu and Others*, and *State of Assam and Others Vs. Om Prakash Mehta and Others*, . Apparently these were not brought to the notice of their Lordships in passing the orders in the Special Leave Petitions. If at all there is any conflict of authority of the Final Court itself, then we are compelled to follow the exhaustive, accurate and considered earlier judgments of larger Benches of their Lordships.

20. All the contentions on behalf of the appellants having been rejected, as above, I find no merit in this set of cases, and, accordingly, affirm the view of the learned single Judge. We dismiss the letters patent appeals and the civil writ jurisdiction cases. There will, however, be no order as to costs.

S.K. Jha, J.

21. I entirely agree with the judgment and order of the learned Chief Justice. But in deference to his elaborate and painstaking judgment I wish to add a few observations of my own. Rule 24 Sub-rule (3) of the Mineral Concession Rules being a special provision must be construed *strictissimi juris*. That apart, testing the case either upon the touchstone or the bed-rock (as one may choose to call it) the two well settled canons of construction of statutes, namely, *generalia specialibus non derogant* or *generalibus specialia derogant*, the appeals and the writ applications cannot succeed on this ground alone.

22. In so far as the legal fiction is concerned the appellants' stand cannot be said to be tenable as the appellants cannot create a ghost to kill it.

Therefore, in the absence of any application for condonation of delay the appellants are not entitled to succeed on the construction of the relevant statutory provisions already referred to in the elaborate judgment of the learned Chief Justice, they are not entitled to throw the ball in the other court for the purpose of the Central Government *suo motu* to apply its mind as to whether there could be any justifiable ground to condone the delay and thus providing any opportunity to the appellants to show cause as to why their applications be

not held to be time barred and to invite them to file any application for the purpose of condonation of delay in filing the revision petitions.