
(1982) 03 OHC CK 0025

In the Orissa High Court

Case No : Original Jurisdiction Cases No"s. 1286 and 1287 of 1978

Dharam Chand Jain

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 24-03-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 58(1), 59

Citation : AIR 1982 Ori 176 : (1982) 54 CLT 315

Hon'ble Judges : R.N. Misra, C.J.;B.K. Behera, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; Standing Counsel (Central) and Addl. Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Misra, C.J.—The State Government by a Notification dated 5th March, 1974 dereserved an area of 749.32 hectares as also another area of 142 hectares within the Tomka-Daitari area and following such dereservation the petitioner made two separate applications under the Mineral Concession Rules of 1960 (hereinafter referred to as the "Rules") for grant of mining leases in his favour for the entire dereserved area on 16-4-74. When the State Government failed to pass any order within the statutory period contemplated under Rule 24 of the Rules, the petitioner filed revisions against such deemed rejection under Rule 54. On 29-9-75 the revision applications were allowed in the following terms:--

"(a) The deemed rejection by the State Government of the application for mineral concession that the petitioner had made is hereby set aside only so as to enable the State Government to pass final and speaking orders on merits thereupon;

(b) The State Government is hereby directed to pass such final orders within a period not exceeding 100 days from the date of issue of this order provided that if the prior approval of the Central Government is required for any reasons before

the passing of such final orders by the State Government their requisite reference shall be made to the Central Government within 60 days from the date of issue of this order."

On 1-12-1976, long after the period indicated in the revisional order, the State Government rejected both the applications by saying:--

"Whereas the application has been made in response to the State Government Notification No. 2041-III (C) MC-38/73 dated 5-3-74 published in the Orissa Gazette in S.R.O. No. 174/74 which has not been done following the procedure laid down in Rule 58 (1) of the Mineral Concession Rules, 1960 inasmuch as the date from which the area shall be made available for grant has not been stated therein and as such no area can be considered for grant in response to the said Notification;

Whereas the application is premature under Rule 60 of the Mineral Concession Rules, 1960;

Whereas the area is covered by a prior M. L. application of M/s. Orissa Mining Corporation Ltd. which is a public sector Corporation;

Whereas the State Government have decided to exploit the entire applied area for chromite only in the public sector through the Orissa Mining Corporation Ltd.;

Now, therefore, the State Government are pleased to reject the said application,"

On 29-1-77 the petitioner again moved the Central Government in revision challenging the rejection. On 3-8-77, during the pendency of the revision, the State Government made an order of reservation of a large patch of area including the two areas applied for by the petitioner. On 3-8-78 the Central Government dismissed both the revisions holding that the Notification of dereservation made under Rule 58 (1) (b) of the Rules was not in conformity with the requirement and, therefore, the State Government had rightly rejected the applications by treating them as premature. Two separate writ applications have been filed in this Court challenging the rejection of the two applications as also the confirmation thereof by the Central Government in the two revisions carried by the petitioner. O.J.C. No. 1286 of 1978 relates to 142 hectares while O.J.C. No. 1287 of 1978 is in relation to the application relating to 749.32 hectares. Since both the writ applications raised common questions of fact and law, both were heard together and this common judgment governs both.

2. The State Government has filed a counter-affidavit supporting the order of rejection and the petitioner has thereafter filed a rejoinder.

3. Three questions actually arise for determination in these cases, namely:--

(i) The procedure under Rules 58 and 59 of the Mineral Concession Rules is not mandatory and the Notification of the State Government dereserving the area was really not vitiated;

(ii) The State Government cannot take advantage of its own mistake and reject the applications lawfully made; and

(iii) Reservation during pendency of the revision applications was bad and contrary to the instructions issued by the Central Government in Annexure 3-B.

4. Rules 58 and 59 as far as relevant may be extracted here:--

"58. Availability of areas for re-grant to be notified-

(1) No area which was previously held or which is being held under a prospecting licence or a mining lease, as the case may be, or in respect of which the order granting licence or lease has been revoked under Sub-rule (1) of Rule 15 or Sub-rule (1) of Rule 31, shall be available for grant unless-

(a)

(b) the date from which the area shall be available for grant is notified in the official Gazette at least 30 days in advance.

(2) The Central Government may, for reasons to be recorded in writing, relax the provision of Sub-rule (1) in any special case.

59. Availability of certain areas for grant to be notified.

In the case of any land which is other wise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose the State Government shall, as soon as such land becomes again available for the grant of prospecting licence or mining lease, grant the licence or lease after following the procedure laid down in Rule 58."

Though in the instant case Rule 58 as such has no application, since Rule 59 lays down the same procedure to be followed, the provision thereof becomes relevant. Admittedly, in the dereservation Notification dated 5th March, 1974, the date from which the area shall be available for grant was not notified in the Official Gazette. It may be, as contended on behalf of the petitioner, that the requirement of the Rule is not mandatory inasmuch as Sub-rule (2) of Rule 58 vests discretion in the Central Government, for reasons to be recorded, to relax the requirement in a special case. There can, however, be no doubt that the Rule makes a very wholesome provision and puts the world at large to notice that the area would be available for grant and intending applicants were free to apply in accordance with law. Sub-rule (2) of Rule 58 vested jurisdiction in the Central Government to exercise the discretion contemplated therein.

The Central Government has not relaxed the requirement of Sub-rule (1) and it is not for the Court to go into that aspect of the matter. Mr. Mohanty for the petitioner relied upon the decisions of the Madhya Pradesh High Court, one being the case of J.C. Rishi Vs. Union of India (UOI) and Others, , and the other being

the case of Jayanti Mishra Vs. The Union of India (UOI) and Others, , in support of his contention that even if the date from which the grant would be available is not notified, if applications are made beyond 30 days from the date of the dereservation Notification, they were available to be considered. We do not think, the question for consideration should be examined from that angle.

These are certiorari proceedings and the Court has to consider whether the impugned orders are in accordance with law. Undoubtedly, in the Notification of dereservation in question no date was indicated though the Rule required a date to be indicated. Though power was vested in the Central Government to relax the requirement, no relaxation has been asked for or made. In such circumstances, it was open to the State Government to hold that there was no appropriate Notification of dereservation and consequently the two applications made by the petitioner were premature. As the conclusion of the State Government which has been affirmed in revision by the Central Government cannot be said to be irrelevant or not germane to the provisions of law, we do not think it is appropriate for the Court to expand the scope of interference as in appeal and entertain other considerations for examining the merit of the matter.

5. Once, upon the aforesaid analysis, the conclusion of the State Government that the applications were premature is upheld, the other contentions advanced on behalf of the petitioner do not require examination. Even if the dereservation is considered to be inappropriate when revisions before the Central Government were pending, the rejection of the applications for grant as upheld in revision being found not to be bad, the question of propriety of reservation need not be examined.

6. On the analysis indicated, both the applications must fail. We make no order for costs.

Behera, J.

7. I agree with My Lord the Chief Justice.