

(1987) 09 OHC CK 0023

In the Orissa High Court

Case No : Original Jurn. Case No. 829 of 1978

Dr. Sarojini Pradhan

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 04-09-1987

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 63
Mines and Minerals (Development and Regulation) Act, 1957 — Section 5, 5(2)

Citation : AIR 1988 Ori 96 : (1988) 65 CLT 350

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

Bench : Division Bench

Advocate : R.K. Mohapatra and A.N. Misra, for the Appellant; S.C. Roy, S.K. Mohanty and A.S. Naidu, Standing Counsel (State) and Addl. Standing Counsel (Central), for the Respondent

Final Decision : Allowed

Judgement

R.C. Patnaik, J.—In this writ application under Articles 226 and 227 of the Constitution, the petitioner has sought the quashing of order dt. 8-12-1972 as per Annexure-5 passed by the Central Government refusing to accord approval u/s 5(2) of the Mines and Minerals (Regulation and Development) Act, 1957 for grant of mining lease for iron ore and manganese to her and of order dt. 8-6-1972 as per Annexure-8 passed by the State Government rejecting her application for grant of mining lease for iron ore and manganese and of order dt. 2-5-1978 as per Annexure-11/s passed by the Central Government dismissing her revision filed.

2. Omitting the unnecessary details, it may be stated that an area nearing 438.50 acres in Kalaparbat area in the district of Keonjhar was thrown open by the State Government for regrant on 20-7-1965 under Rule 58 (1) of the Mineral Concession Rules, 1960. The petitioner and six others made applications for grant of mining lease. None of the applications having been disposed of within

the time prescribed were deemed to have been rejected. Against the said order of deemed rejection, the petitioner carried revision to the Central Government. By order dt. 7-4-1967 her revision was allowed and the State Government was directed to reconsider her application. At this stage, it may be noted that the State Government did not refuse to approve grant of mining lease in respect of the area. It may also be stated here that while the revision application of the petitioner was pending before the Central Government, the State Government in its comments had recommended the case of the petitioner, but observed that inasmuch as the minerals were included in the First Schedule to the Act, no mining lease could be granted except with the previous approval of the Central Government as provided in Section 5(2). When the matter came back to the State Government for re-consideration, by order dt. 3-9-1971 it decided to grant mining lease in favour of the petitioner and asked for approval of the Central Government to grant mining lease. By letter dt. 18-2-1972 (Vide Annexure-5), the Central Government communicated its decision refusing to accord approval. The bald and cryptic order was as follows :

"....Central Govt. do not approve of the State Govt.'s proposal for the grant of mining lease for iron ore and manganese to Dr. Sarojini Pradhan."

The State Government informed the Central Government by letter dt. 25-4-1972 that in its previous communications as per Annexures-3 and 4 dt. 10-11-1966 and 3-9-1971 respectively it had informed the Central Government that it was inclined to grant mining lease in favour of the petitioner. On 29-12-1972 the Government of India under the misconception that its earlier decision dt. 18-2-1972 had not been received by the State Government, directed it to reject the application filed by the petitioner for grant of mining lease. By order dt. 8-6-1973, the State Government rejected the application of the petitioner for grant of mining lease indicating that her application was rejected as the Central Government did not approve the proposal of the State Government for grant of mining lease to her. She thereupon moved the Central Government in revision against the order of rejection under Rule 54 of the Minerals Concession Rules, 1960. In the comments, the State Government reiterated that it had recommended the case of the petitioner thrice but had to reject the application of the petitioner in view of the decision of the Central Government as communicated in Annexures-5 and 7. By order dt. 2-5-1973 (Annexure-11/s) the Central Government rejected the revision petition holding that having regard to the refusal of the Central Government to accord approval u/s 5(2), there was nothing unfair and erroneous in the decision of the State Government (Annexure-8).

3. Shri R. K. Mohapatra, the learned counsel for the petitioner, has canvassed two contentions. Firstly, the decision of the Central Government u/s 5(2) refusing to accord approval- offended the principles of natural justice. Secondly, failure of the Central Government to give reasons for the decision refusing to accord approval infringed the principles of justness and fairness.

4. The other applicants, who had filed applications along with the petitioner for grant of mining lease, filed application for intervention. But, having regard to the direction that we are giving, it is unnecessary to deal with their cases individually.

5. The learned Central Government counsel contended that Section 5(2) of the Mines and Minerals (Regulation and Development) Act, 1957 did not require the applicant or the applicants to be given an opportunity of hearing while considering the question of approval, principles of natural justice is not a part of this provision. The order was administrative in nature and hence excluded audi alteram partem rule and "having regard to the nature of the functions, reasons were not necessary to be given.

6. The relevant portion of Section 5(2) of the Mines and Minerals (Regulation and Development) Act, 1957 reads as under;

"5(2). Except with the previous approval of the Central Government no prospecting licence or mining lease shall be granted : --

(a) as respects any mineral specified in the first Schedule, or

(b) to any person who is not an Indian National--"

7. Form "K" appended to the Mineral Concession Rules, 1960 is the model form of mining lease. In one of the preambles of the Indenture of lease, it has to be stated whether the Central Government has approved the grant of lease. Rule 63 of the Mineral Concession Rules, 1960 provides as under;

"63. Previous approval of the Central Government to be obtained through State Government. -- where in any case the previous approval of the Central Government is required under the Act or these rules, the application for such approval shall be made to the Central Government through the State Government."

As regards where minerals specified in the First Schedule, approval of the Central Government was a pre-condition. The Central Government was moved for grant of approval By the bald and cryptic order as communicated in Annexure-5 dt. 18-2-1972, the Central Government refused to accord approval stating, "Central Govt. do not approve of the State Govt's proposal for grant of mining lease for iron ore and manganese to Dr. Sarojini Pradhan." The petitioner has alleged that before refusing to accord approval, no opportunity was given to the petitioner who would be considerably affected by the refusal Hence, principles of natural justice were violated Even though Section 5(2) does not embody any provision providing an opportunity to the applicant, having regard to the nature of the exercise, the consequences that could ensue, it was incumbent on the Central Government to give an opportunity of hearing. A catena of decisions of Supreme Court was pressed into service at the hearing. It is unnecessary to refer to all of them. The principles have been crystallised in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . We draw attention to and rely on a few observations made therein that we consider apposite :

"....Sometimes an unjust decision in an administrative inquiry may have far more, serious consequences than a decision in a quasi-judicial inquiry and hence the rules of natural justice must apply equally in an administrative inquiry which entails civil consequences....."

"....The proliferation of administrative law provoked considerable fresh thinking on the subject and soon it came to be recognised that "fair play in action" required that in administrative proceeding also, the doctrine of natural justice must be held to be applicable....."

Therein, the following observations of Lord Parker, C.J. in *Re ; H. K. (An Infant)* : (1967) 2 QB 617 were referred to with approval :

".....Good administration and an honest or bona fide decision must, as it seems to me, require not merely impartiality, nor merely bringing one's mind to bear on the problem, but acting fairly; and to the limited extent that the circumstances of any particular case allow, and within the legislative framework under which the administrator is working, only to that limited extent do the so-called rules of natural justice apply, which in a case such as this is merely a duty to act fairly....."

Lord Parker was considering the duties of an immigration officer. He observed that if an ; opportunity was given to the immigrant to know what the immediate impression of the immigration officer was, it could be that the immigrant could disabuse him of the impression. The Supreme Court also considered the situations where right to prior notice and opportunity of hearing might be excluded,

".....having regard to the astute of the action to be taken, its object and purpose and the scheme of the relevant statutory provision, fairness in action does not demand its implication and even warrants its exclusion....the audi alteram partem rule would, by experimental test, be excluded, if importing the right to be heard has the effect of paralysing the administrative process or the need for promptitude or the urgency of the situation so demands...."

Their Lordships further observed :

"....The Law must, therefore, now be taken to be well settled that even in an administrative proceeding, which involves civil consequences, the doctrine of natural justice must be held to be applicable."

It cannot be disputed that refusal by the Central Government exercising its jurisdiction u/s 5(2) involves civil consequences of considerable magnitude for the applicant for grant of mining lease. If an opportunity is afforded, the applicant may possibly convince the Central Government why approval should be accorded, to use the words of Lord Parker, to disabuse the Central Government of its impression inclining it not to accord approval. The applicant may show that the grounds on which the Central Government is not inclined to accord approval are unsustainable, erroneous, even absurd. The wisest even is liable to err. The

situation or nature of the exercise is not such as to attract the exclusionary principles. Whereas an opportunity of hearing does not prejudice the Central Government, the denial of it might prejudicially affect the applicant. Even assuming that the exercise u/s 5(2) is of administrative character, what heavens would fall if an opportunity of hearing is given. By grant of lease, there is augmentation of the revenue of the State by way of royalty. Exploitation of minerals leads to economic development of the State and the nation. Refusal to accord approval also affects the State Government where the State Government is inclined in favour of the grant. Therefore, when by the refusal not only the applicant but also the State Government, where it is inclined in favour of the grant, would be so prejudicially affected, in our opinion, the principles of natural justice would supplement the law contained in Section 5(2). Our view gets support from the decision of the Patna High Court in *Ramnik Lal Kothari Vs. Government of India, Ministry of Steel Mines and Metals (Department of Mines and Metals) and Others*, . Therein, Untwalia, J. (as he then was) speaking for the Court observed :

"....The order of the Central Government in exercise of the said power may be executive in character, as contended on its behalf by the learned Government pleader. Yet I am of the opinion that if the exercise of power u/s 5(2) of the Act and the order made thereunder adversely affects or prejudices a person, the trend of the decisions of the Courts in India as also in England is that such a person must be given an opportunity to have his representation or say in regard to the matter which is going to affect him adversely. To put it briefly, the power may be executive, but it has to be exercised in accordance with the principles of natural justice which are generally applicable for the exercise of power in a judicial manner. Reference in this connection may be made to a recent decision of the Supreme Court in the *Union of India v. Anglo Afghan Agencies* AIR 1968 SC 718. I do not mean to suggest that invariably in all cases, the power u/s 5(2) of the Act has got to be exercised by the Central Government keeping in view the principles for the exercise of a judicial power. But by and large it may affect or prejudice the rights or interest of a person; in all fairness, the person concerned must be given a reasonable opportunity to make his representation."

We are in respectful agreement with the aforesaid view. Inasmuch as the petitioner was not afforded an opportunity, and, therefore, the principles of natural justice were violated, the decision of the Central Government as per Annexure-5 is invalid and void.

8. The decision of Central Government is also infected by another vice. No reasons are given why the Central Government refused to accord approval. It has been observed by Lord Denning in *Breen v. Amalgamated Engineering Union* (1971) 1 AllER 1148 :

"The giving of reasons is one of the fundamentals of good administration."

The observation was approved by the Supreme Court in *The Manager,*

Government Branch Press and Another Vs. D.B. Belliappa, . The requirement of furnishing "reason" is a shackle on acting arbitrarily and whimsically. Besides, the reasons disclose to the parties the processes of ratiocination and the way and in the manner the adjudicatory or the administrative process travel. The order of the Central Government is neither infallible nor sacrosanct; nor is it final. When assailed in Courts, from the reasons given it would be adjudged if the authority has acted judicially and fairly or otherwise; if the reasons are germane and relevant or otherwise. The reasons would indicate if the adjudicatory or the administrative authority has acted mala fide. Therefore, we hold that the Central Government must give reasons and communicate the same to the parties including the State Government while refusing to accord approval u/s 5(2). The order of the Central Government as per Annexure-5 not being in accordance with our aforesaid holding, is vulnerable on this ground also.

9. In view of our aforesaid holding that Annexure-5 is void and invalid, the consequential order passed by the State Government as per Annexure-8 and the revisional order as per Annexure-11 are not sustainable and we quash the same. We direct the Central Government to re-consider the question of grant of approval for the grant of lease of iron ore and manganese in respect of the area after giving all parties concerned an opportunity of hearing. The mode and manner of hearing shall be regulated by the Central Government and it shall convey its decision by a speaking order, i.e., by giving reasons for the decision.

10. In the result, the writ application is allowed with the aforesaid observations and directions. But, in the circumstances, there would be no order as to costs.