
(1973) 04 OHC CK 0027

In the Orissa High Court

Case No : Original Jur. Case No. 739 of 1971

Dr. Sarojini Pradhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-04-1973

Acts Referred:

Mineral Concession Rules, 1960 — Rule 59, 60

Citation : AIR 1974 Ori 44 : (1973) 39 CLT 713

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

Bench : Division Bench

**Advocate : S. Chatterjee, N.V. Ramdas and B.K. Murty, for the Appellant;
Additional Government Advocate, S.C. Roy, R. Mohanty, R.K. Kar and Mira Das,
for the Respondent**

Final Decision : Allowed

Judgement

R.N. Misra, J.—This is an application for a writ of certiorari to quash the order of the Central Government dated 19-5-1971 rejecting the revision under the Mineral Concession Rules of 1960 filed by the petitioner and for a writ of mandamus for issuing a prospecting licence for manganese and iron Ores to the petitioner in respect of 155 acres of land in the district of Keonjhar.

2. On 17-5-1965, the petitioner had applied in the prescribed form under Rule 9 (1) of the Mineral Concession Rules of 1960 (hereinafter referred to as the Rules) to the opp. pARTY No. 2 -- State through the Collector of Keonihar for the grant of a prospecting licence for iron and manganese ores in respect of the area referred to above. As no orders were passed and communicated to the petitioner on the said application within nine months from the making of it, the petitioner filed a revision under Rule 54 of the Rules before the Central Government on 12-4-1966 against the deemed rejection of her application. On receipt of the said application of the petitioner, the State Government was called upon by the Central Government to offer its comments. The Central Govt. sent copies of the State Government's comments to the petitioner and the petitioner also offered

her own comments. In December, 1966, her revision petition was rejected. Aggrieved by such rejection the petitioner moved this court for a writ of certiorari in O. J. C. No. 121 of 1967 and this Court by its decision dated 27-11-1969: (1970) 36 Cut LT 369 came to hold:--

"On the very face of it, the impugned order shows that there was no application of the mind by the Central Government. It is to be noted that in this particular case the State Government gave no decision and the revision was filed against a deeming order on the expiry of the prescribed period. It is therefore difficult to imagine what the Central Government meant by saving that there was careful consideration of the grounds stated in the application. That apart, the impugned order gives absolutely no reason. It does not refer to the comments and counter comments. The order is therefore wholly indefensible."

A writ of certiorari was accordingly issued quashing the order of the Central Government and a writ of mandamus was also issued directing the Central Government to redispense of the revision in the light of the observations contained in the judgment and in accordance with law.

Thereafter it is stated that further comments were received from the State Government and without communicating the same to the petitioner, the revision application was dismissed by order dated 19th of May, 1971 (Annexure-8). The relevant portion of the order reads thus:--

"The Central Government have carefully re-considered the grounds of revision, comments of the State Government and your counter comments and also the additional comments of the State Government and those sent by you after the High Court has passed the above judgment. It is also observed that M/s. Balasore Mineral Co. applied for a prospecting licence and a mining lease for the same area. Both the applications were rejected on the ground that the area was reserved for working in the public sector. Once it is established that the area was refused on the ground that the land in question should be reserved for any purpose. Rule 59 of the Mineral Concession Rules, 1960, becomes applicable and no other applications can be considered unless the area is thrown open by a notification. As the area has not yet been thrown open, it is difficult to support your claim, even if the Orissa Mining Corporation had not applied or had a lower priority as compared to you. In these circumstances, the Central Government hereby reject your application for revision."

This order of the Central Government is impugned before us.

3. According to Mr. Chatterjee appearing for the petitioner, there was no order of reservation and reservation for exploitation by the Mining Corporation --a Government of Orissa undertaking --is not contemplated by the Rules. In support of his contention, he relies upon a Division Bench decision of this Court in the case of State of Orissa Vs. Union of India (UOI) and Others, .

4. There is no dispute in this case that the application of the petitioner is more

than a year before the application made by the Mining Corporation (Opp. party No. 3) and if both the applications -- that of the petitioner and of the OPD. party No. 3 -- were to be disposed of on merit u/s 11 of the Mines and Minerals (Regulation and Development) Act of 1957, the petitioner would have the preference. The question, however, for consideration is whether in view of a valid reservation the area is not available to be granted and, therefore, the petitioner's application has to be rejected as premature. The relevant provisions of the Rules are contained in Rules 58, 59 and 60, which may be extracted below:--

"58. (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) an entry to the effect is made in the register referred to in Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40, as the case may be, in ink. and

(b) the date from which the area shall be available for grant is notified in the Official Gazette at least thirty 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. In the case of any land which is otherwise 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.

60. Applications for the grant of a prospecting licence or a mining lease in respect of the areas in which-

(a) no notification has been issued under Rule 58 or Rule 59: or

(b) if any such notification has been issued the period specified in the notification has not expired:

shall be deemed to be premature and shall not be entertained and the fee if any paid in respect of any such application shall be refunded."

This is not a case where Rule 58 has any application. The scope of Rule 59 came to be interpreted in this Court in *State of Orissa Vs. Union of India (UOI) and Others*, . In paragraph 15 of the judgment, the learned Chief Justice said:--

"It was also contended by the learned Advocate-General that the impugned order directing grant of mining lease was in contravention of Rule 59 inasmuch as the State Government had not declared that the land was available for grant and on the contrary with the concurrence of the Central Government the land had been

reserved for being exploited in the public sector by the State of Orissa when Tulloch's application for renewal was rejected.

The expression in Rule 59:

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".

would include a purpose consistent with the provisions of the Act and the Rules. For instance a particular area may be reserved for geological survey and on that ground the area might not be granted for mining lease. Reservation of a particular area for being exploited in public sector by the State cannot be said to be a purpose for which it is to be reserved under Rule 59. Even though the State has a proprietary title in the mines, by the passing of the Act the subject of the legislation becomes an exclusive subject for legislation by Parliament as has already been stated in paragraph 6 of this judgment. Under the Act the State has no residuary power of working out mines and minerals without observing the conditions prescribed in the Act and the Rules. In other words, even if the State desires to reserve a particular area for being exploited in the public sector, it must make the necessary application under the Act and the Rules and in exercise of its revisional power it is open to the Central Government to set aside the decision of the State Government and direct grant of the same to other applicants to the exclusion of the State Government."

Learned Additional Government Advocate appearing for the opposite party No. 2 contends that the decision of this Court has not properly construed Rule 59 of the Rules and there can be reservation for the purpose of exploiting minerals. We are of the view that this Court has correctly interpreted the scope and ambit of Rule 59 and the contention of Mr. Chatterjee is well-founded on the basis of that decision. It is conceded by counsel for both sides that no mode of reservation has been prescribed under the Rules. Mr. Chatterjee contends that the consequence of reservation being that prospecting licences or mining leases would not be available for grant and such applications are liable to be rejected as being premature, the State Government is bound to notify such reservation. In Rule 59, the word "notification" does not occur: but from Rule 60. Clause (a), it appears that there is scope for a notification under Rule 59- We are inclined to accept the contention of Mr. Chatterjee that the notification referred to in Rule 60, with reference to Rule 59, is actually the notification of reservation. The Central Act 67 of 1957 and the Rules made thereunder are a complete Code providing the law in relation to minerals. When detailed provisions have been made in the statute and the Rules for so many purposes we do not find any scope for the contention that reservation could be at the whim of the State Government and even without notifying the fact of reservation. More so when the effect of such a notification is that applications for grant of prospecting licence and mining leases would not be entertainable. To accept the contention of the learned Additional Government Advocate (in answer to Mr. Chatterjee's argument.) that the fact of reservation can be gathered, from mere refusal by the State Government in case

of others for the same land to grant a prospecting licence or mining lease on the ground that land should be reserved, would be the very antithesis of Rule of law.

5. It, therefore, follows that the sole reason given by the Central Government in rejecting the application of the petitioner is not a valid one in law and was not germane for the purpose. Statutory jurisdiction vested in the Central Government has, therefore, not been properly exercised and the conclusion is vitiated. We accordingly direct a writ of certiorari to issue to quash the said order. The revision application consequently requires a fresh disposal in accordance with law. On account of improper disposal of the revision application, on two occasions, this Court has been moved by the petitioner and a lot of time has been wasted. We, therefore, while calling upon the Central Government by issuing a writ of mandamus to dispose of the revision application afresh, direct that the same be disposed of within a total period of four months from the date of receipt of the writ from this Court.

We allow the writ application with costs. Hearing fee is assessed at rupees one hundred.

B.K. Ray, J.

6. I agree.