

**(1969) 11 OHC CK 0008**  
**In the Orissa High Court**  
**Case No : O.J.C. No. 121 of 1967**

Dr. Sarojini Pradhan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

**Date of Decision :** 27-11-1969

**Acts Referred:**

Constitution of India, 1950 — Article 226, 227  
Mineral Concession Rules, 1960 — Rule 11(1), 54, 54(1), 54(2), 54(3)  
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(1), 11(2), 11(3), 11(4)

**Citation :** (1970) 36 CLT 369

**Hon'ble Judges :** G.K. Misra, C.J.; S.K. Ray, J

**Bench :** Division Bench

**Advocate :** D. Narasaraju, N.V. Ramdas and N.B.K. Murthy, for the Appellant;  
A.G., G. Rath, Ranjit Mohanty, R.K. Kar, S.C. Ray and J.K. Mohanty, for the Respondent

**Final Decision :** Allowed

## Judgement

G.K. Misra, C.J.—The Petitioner is medical practitioner and at the same time takes interest in the exploitation of mines and minerals in Orissa. She submitted an application as per annexure A on 17.5-1965 in Form B under Rule 9(1) of the Mineral-Concession Rules, 1960 (hereinafter to be referred to as the Rules) for grant of a prospecting license for iron and manganese ores in respect of 155 acres in Baitarani Reserved Forest in the district of Keonjhar. This application was not disposed of within 9 months from the date of its receipt. Under Rule 11(1) as it stood before amendment, if the application is not disposed of within 9 months from the date of its receipt, it shall be deemed to have been refused. After the expiry of 9 months, the Petitioner filed a revision application before the Central Government in the Ministry of Mines and Metals (opposite party No. 1). While the revision application was pending, the Orissa Mining Corporation (opposite party No. 3) filed an application for prospecting license in respect of the same area on 8-7-1966. In December 1966 the Central Government communicated the

impugned order (Annexure I) rejecting the revision application. The writ application has been filed under Articles 226 and 227 of the Constitution for quashing this order.

2. Mr. Narasaraju on behalf of the Petitioner contends that the impugned order assigns no reasons for refusal and inditee that Central Government did not apply its mind at all. It is accordingly liable to be quashed as being contrary to law.

3. The contention requires careful examination. Under Rule 9(1) an application for prospecting license and its renewal in respect of lands in which the minerals vest in Government, shall be made to the State Government in Form B and Form E respectively to such officer or authority as the State Government may specify in this behalf. Clause (2) of this Rule lays down as to what would accompany such application. Rule 11 deals with disposal of the application for the grant and renewal of prospecting license. An application for grant of prospecting license shall be disposed of within 9 months from the date of its receipt and if it is not disposed of within that period it shall be deemed to have been refused. By an amendment made in 1968 the words "nine months have been substituted by the words "twelve months". This case is however concerned with the pre-amendment stage. The Petitioner filed an application in Form B to the State of Orissa (opposite party No. 2).

4. Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957 (Central Act No. 67 of 1957) runs thus:

11. Preferential right of certain persons:

(1) Where a prospecting license has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person;

Provided that the State Government is satisfied that the licensee has not committed any breach of the terms and conditions of the prospecting license and is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of Sub-section (1) where two or more persons have applied for a prospecting license or a mining lease in respect of the same land, the Applicant whose application was received earlier shall have a preferential right for the grant of the license or lease, as the case may be, over an Applicant whose application was received later;

Provided that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in Sub-section (3), may grant the prospecting license or mining lease, as the case may be, to such one of the Applicants as it may deem fit.

(3) The matters referred to in Sub-section (2) are the following:

(a) any special knowledge of, or experience in, prospecting operations or mining

operations as the case may be, possessed by the Applicant;

(b) the financial resources of the Applicant;

(c) the nature and quality of the technical staff employed or to be employed by the Applicant;

(d) such of the matters as may be prescribed;

(4) Notwithstanding anything contained in Sub-section (2) subject to the provisions of Sub-section (1) the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting license or mining lease to an Applicant whose application was received later, in preference to an Applicant whose application was received earlier.

It would appear from the various sub-sections of the aforesaid section that a person who applies for a prospecting license earlier has ordinarily a preferential right to the grant of such license.

This is, however, subject to the condition that the State Government may grant the prospecting license in favour of a person applying later, after taking into consideration the factors referred to in Sub-section (3). Under Sub-Section (4) the State Government may, any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting license to an Applicant who filed his application later.

5. In this case, the State Government passed no order rejecting the Application of the Petitioner. It did not apply its mind to any of the factors mentioned in Sub-section (3) and Sub-section (4) of the Section 11. The Petitioner had to go up in revision to the Central Government under Rule 54, on the footing that the application was deemed to have been rejected as it was not disposed of within the prescribed period of 9 months. That such a revision lies is clear from the Explanation appended to Rule 54 which runs thus:

Explanation:-For the purposes of this rule, where State Government has failed to dispose of an application for the grant or renewal of a prospecting license 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 or renewal of such a license or lease on the date on which such period expires.

The Explanation, therefore, sanctions the filing of a revision application even though in fact no order has been passed by the State Government refusing the application for a prospecting licence.

6. Rule 55 deal with orders to be passed by the Central Government on a revision application. It runs thus:

55. Orders on revision application:

(1) On receipt of an application for revision under Rule 54, copies thereof shall

be sent to the State Government and to all the impleaded parties calling upon them to make such comments as they may like to make, within three months of the date of issue of the communication, and if no comments are received by the Central Government within that period, it shall be presumed that the party which has omitted to make such comments, or the State Government as the case may be, has no comments to make and the case may be decided by the "Central Government ex parte.

(2) On receipt of the comments from any party under Sub-rule (1) copies thereof shall be sent to the other parties calling upon such parties to make such further comments, as they may like to make within one month from the date of issue of the communication.

(3) The revision application, the communication containing comments and counter comments, referred to in Sub-rules (1) and (2), shall constitute the records of the case.

(4) After considering the records referred to in Sub-rule (3), the Central Government may confirm, modify, or set aside the order or pass such other order in relation thereto as the Central Government may deem just and proper.

(5) Pending the final disposal of an application for revision, the Central Government may, for sufficient cause, stay the execution of the order against which any revision application has been made.

The scheme of Rule 55 indicates that at the revisional stage, the Central Government would give full opportunity to the parties to present fresh materials in their comments and counter comments, upon the facts and grounds stated in the revisional application. It follows, as a necessary logical corollary, that certain facts may be brought into the records of the revision case which were not before the State Government. In fact, when the matter is disposed of by the State Government, the parties do not get an opportunity to present their view points and materials against their opponents. It is for this reason that even though the decision of the State Government may be a reasoned or speaking order, it is still incumbent on the Central Government to pass another speaking order when considering the cases of rival parties and refusing the application of one of the parties. There can be only one exception to this rule. That is in respect of cases where even though the decision of the State Government is a speaking order, in the revision filed before the Central Government no fresh materials or comments are placed except these already given in the decision of the State Government. In such cases, the decision of the Central Government, even though not speaking but is cryptic may not be interfered with. An illustration of this case may be seen in O.J.C. No. 20 of 1966.

7. On the aforesaid analysis, the position of how may be summed up as follows:

(i) In exercising its power under Rule 55, the Central Government exercises a quasi-judicial function.

(ii) As the decision of the Central Government is subject to the supervisory power of the High Court under Article 227, the decision must contain reasons to enable the High Court to come to the conclusion that the decision was arrived at after full application of the mind. Thus, ordinarily both the State and Central Governments should give reasons for their refusal of the application.

(iii) The reasons given must be germane to, and in conformity with, the statutory requirements of Section 11 of the Act and other relevant provisions.

(iv) The fact that the State Government's decision is a speaking order does not dispense with the necessity of the Central Government passing a speaking order inasmuch as, before the Central Government new materials by way of comments and counter-comments are entertained.

(v) It is only where the State Government's order is a speaking order and there are no further materials before the Central Government at the revisional stage that the decision of the Central Government need not be a speaking order, and a decision merely dismissing the application may not be interfered with in such cases. This rider would also vary according to the facts and circumstance of each case.

8. In the light of these principles the impugned order is to be examined. The order runs thus:

Government of India.

Ministry of Mines and Metals.

M.V. 1 (258)/66

New Delhi, the Dec., 1966.

To

Dr. Sarojini Pradhan,

P.O. Joda,

District Keonjhar (ORISSA)

Sub: - Application under Rule 54 of the Mineral Concession Rules, 1960.

Sir,

I am directed to refer to your revision application dated 12-4-1966 and letter dated 9-11-1966 on the above subject and to say that after careful consideration of the grounds stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Orissa to reject your application for grant of prosecuting license for manganese and iron ore over an area of 155 acres in Baitarani Reserved Forest in Keonjhar district.

Your application for revision is, therefore, rejected.

Yours faithfully, Sd. A. Sethumadhavan. Under Secretary to the Govt. of India.

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 & deeming order on the expiry of the prescribed period. It is therefore difficult to, imagine what the Central Government meant by saying 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.

9. An almost identical order came up for consideration in *Bharat Raja Vs. The Union of India (UOI) and Others*, . Their Lordships, after thoroughly analysing the position of law quashed that order and directed the Central Government to decide the revision application in accordance with law.

10. On the aforesaid analysis, we are clearly of opinion that the impugned order is contrary to law and is liable to be quashed. Mr. Rath for opposite party No. 1 and the learned Advocate General for opposite party No. 2 also conceded that the order cannot be supported.

11. A writ of certiorari be issued quashing the impugned order of the Central Government (annexure-I). A writ of mandamus be also issued directing the Central Government (opposite party No. 2) to dispose of the revision application afresh in the light of our observations and in accordance with law.

12. In the result, the writ application is allowed with costs. Hearing fee Rs. 200/- (rupees two hundred only). Costs to be paid by opposite parties 1 and 2 equally.

S.K. Ray, J.

13. I agree.