
(2004) 06 OHC CK 0024
In the Orissa High Court
Case No : O.J.C. No. 12436 of 2001

Gallop Granites Ltd. and Another	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 18-06-2004

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A
Orissa Minor Minerals Concession Rules, 1990 — Rule 14

Citation : AIR 2004 Ori 165 : (2004) 2 OLR 34

Hon'ble Judges : Sujit Barman Roy, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : B.R. Sarangi, P.K. Kar, P.K. Rout, for the Appellant; Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

A.S. Naidu, J.—The petitioner No. 1-Company, a lessee in respect of a quarry for "decorative stones" in the district of Bolangir, inter alia, seeks to assail the order dated 1st August, 2001 rejecting the appeal filed by the petitioner against cancellation of quarry lease in respect of 6.799 hectares and 13.193 hectares in village Gandhargola granted vide lease quarry case Nos. 140 and 141 by the State of Orissa, Petitioner No. 2 is the Power of Attorney holder of petitioner No. 1-Company.

2. The dispute has a chequered career as would be evident from the facts stated below:

On the basis of an application made by the petitioner-company (hereinafter referred to as "the petitioner") in the prescribed form in consonance with the provisions of the Orissa Minor Minerals Concession Rules, 1990 (hereinafter referred to as "Concession Rules") a quarry lease over 6.799 hectares and 13.193 hectares in village Gandhargola under Titilagarh Tahasil in the district of Bolangir for extraction of decorative stones was granted in its favour. It is averred that the application filed by the petitioner was disposed of by the competent authority

after following all paraphernalia and procedure more particularly Rule 10(1) of the Concession Rules and two lease deeds were executed each for a term of ten years commencing from 2nd February, 1993 between the petitioner and the Governor of Orissa through the Mining Officer. Bolangir. The lease deeds specifically stipulated the conditions and obligations to be followed by the lessee. After execution of the said lease deeds, it is averred, with all honesty, the petitioner operated the quarry till July, 1997. But thereafter due to certain unavoidable reason the petitioner was constrained to suspend the quarry work. This fact, according to the petitioner, was intimated to the concerned authorities. While matter stood thus, the petitioner received a show cause notice directing it to show cause as to why the leases would not be cancelled in consonance with the provisions of Rule-14(4) of the Concession Rules. The petitioner being aggrieved by the said notice moved this Court in OJC No. 9231 of 1998. The said writ application was disposed of on 23-7-1998 with a direction to the authorities to consider the show cause submitted by the petitioner and pass a final order, after hearing the petitioner within ten days. Liberty was also given to the petitioner to move this Court if any order was passed against it. After communication of the said order, the concerned authorities by order dated 28-8-1998 intimated the petitioner that as it had failed to carry out the stone quarry operation in a skilled and workman-like manner and discontinued such operation since July, 1997 that revealed that the petitioner had lack of interest to operate the quarry lease and had, thus, violated Rule" 14(4) and (5) of the Concession Rules. The petitioner was directed to show cause as to why the quarry lease would not be cancelled, within one month from the date of receipt of the letter. The said letter, it is alleged, was received by the petitioner on 3-9-1998 and the petitioner submitted a show cause on 11-9-1998 reiterating the stand taken in its earlier letter dated 22-6-1998 and explaining the reasons for which the quarry operation had been discontinued. In the meanwhile, as directed by the authorities, it is averred, the petitioner deposited the dead-rent, surface rent and other legal dues. The petitioner also requested the authorities to drop the cancellation proceeding. It is alleged that without verifying any records and without complying with the principles of natural Justice and equity, the Joint Secretary to the Government by his order dated 4-9-1999, was pleased to cancel the quarry leases by his order dated 4-9-1999. Being aggrieved by the said order, the petitioner once again moved this Court in OJC No. 13759 of 1999. The petitioner also preferred an appeal before the competent authority challenging the order of cancellation dated 4-9-1999. This Court issued notice to the opp. parties and as an interim measure directed that fresh lease, if granted in respect of the disputed quarry would abide by the final result of the writ application. In spite of the said order, fresh lease was granted in favour opp. party No. 4. On the basis of a petition filed by the petitioner-company, this Court on 1-6-2000 directed opp, party No. 4 not to operate the quarry in respect of the areas leased out in favour of the petitioner. The writ application was finally heard and disposed of on 20-4-2001 with the following observations :

"xx xx xx In the interest of Justice, it is directed that till disposal of such appeal. neither the petitioners, nor opposite party No. i4 should be permitted to operate the quarry. It goes without saying that the appellate authority is free to take decision in accordance with law and disposal of the writ application one way or the other should not be taken as expressing any opinion on the merits of the contentions raised by the rival parties. The question as to whether the petitioners or opposite party No. 4 should be allowed to operate the .quarry after disposal - of the appeal would obviously depend upon the decision taken by the appellate authority. xx xx xx."

Thereafter by order dated 1-8-2001 (Annexure-16) the appeal filed by the petitioner-company was dismissed observing that the same merited no consideration. The said order Annexure 16, as stated earlier, is impugned in this case.

3. After receiving the Rule. a counter-affidavit has been filed on behalf of opp. party Nos. 1 and 4. It is stated that though quarry lease was granted in favour of the petitioner as long back as in the year 1993, it failed to commence quarry operation till 1998. Such action was contrary to Rule-14 of the Concession Rules. It is further averred that inaction of the petitioner to start quarry operation clearly revealed that it had lack of interest to operate the quarry. It is further averred that though time was extended more than once for commencement of quarry operation and though five years" period lapsed, the petitioner failed to produce even a single marketable decorative stone block from those areas. When the petitioner failed to carry on operation in a skilled and workman like manner and violated the conditions imposed in the lease-deeds as well as the statutory Rules, the authority was constrained to cancel the quarry leases. It is further averred that the appeal filed before the competent authority was also duly considered and as there was no merit, the same was dismissed. It is further averred that the action of the petitioner itself would reveal that it had violated Rule-14 of the Concession Rule and it is a fit case where the writ application should be dismissed in limine.

4. For the sake of brevity and better understanding, Rule 14(4) is quoted below:

"Quarrying operation shall commence within three months from the date of execution of the lease agreement. The lessee shall thereafter carry on quarrying in a proper, skillful and workman-like manner.

Provided that where the leases are in respect of rocks used for decorative, industrial and export purposes including dimension stones the quarrying operation shall commence within one year of the date of execution of the lease deed and the levy of dead-rent as provided under Rule shall commence only on expiry of the said period of one years."

5. According to the learned counsel for the State, the petitioner failed to operate the quarry in a skilled and workman-like manner and as such, his quarry leases were liable to be cancelled in consonance with Rule 14(4) of the Concession

Rules. This fact was strongly repudiated by the learned counsel for the petitioner. It is submitted that the petitioner commenced the quarry operation in full swing, but then due to certain unavoidable circumstance and the reasons beyond the control of the petitioner, it was constrained to discontinue operation for some time. This fact was intimated to the concerned authorities. According to the petitioner, the authorities appreciated the difficulties and not only accepted the dead-rent, but also extended the period of operation time and again. It is further submitted that the allegation that the petitioner had not commenced quarry operation is blatantly false and there are several documents which would clearly reveal that the petitioner operated the quarry and that too with the knowledge of the concerned authorities.

6. Mr. Sarangi, learned counsel for the petitioners further submitted that Shri P. K. Patnaik while he was holding the post of Joint Secretary to Government had initiated the proceeding for cancellation of the quarry leases granted in favour of the petitioner and after consideration of the show cause had dealt with the file. He having initiated the proceeding for cancellation, was very much interested to see that the quarry leases granted in favour of the petitioner were cancelled. In fact, the order of cancellation was passed at his behest. It is further alleged that the appeal filed by the petitioner challenging the order of cancellation was also dealt with by the said Shri P. K. Patnaik who, in the meanwhile was promoted as Addl. Secretary to Government, as would be evident from Annexures 11 and 16 respectively. Mr. Sarangi forcefully submitted that the authority who had passed the cancellation order had also disposed of the appeal, thereby committing a serious error in violation of the principles of natural Justice and equity and it is a fit case where the cancellation order should be set aside.

7. After hearing learned counsel for the parties and in order to appreciate the arguments, this Court called upon the learned State Counsel to produce the original He dealing with the order of cancellation and the appellate order. The said Hie was produced before this Court. The proceedings of the appeal filed by the petitioner against the order of cancellation of the quarry leases find place at page 194/c of the Government file. The said proceedings clearly reveal that Shri P. K. Patnaik, Addl. Secretary to Government, had passed the order impugned. The file further reveals that initially the order of cancellation of the quarry leases dated 4-9-1999 (Annexure-11) was also passed by the same officer (Shri P. K. Patnaik) while he was holding the post of Joint Secretary to Government.

Law is well settled that no man shall be a Judge in his own cause. Halsbury's Law of England, Fourth Edition. Volume I, paragraphs 64 and 67 read as follows :

"64. The rules of natural justice. Implicit in the concept of fair adjudication lie two cardinal principles, namely, that no man shall be a Judge in his own cause (*nemo iudex in causa sua*). and that no man shall be condemned unheard (*audi alteram partem*). These two principles, the rules of natural justice, must be observed by Courts, tribunals, arbitrators and all persons and bodies having the duty to act Judicially, save where their application is excluded expressly or by

necessary implication.

67. Interest and likelihood of bias. It is a fundamental principle that, in the absence of statutory authority or consensual agreement or the operation of necessity, no man can be a Judge in his own cause. Hence, where persons having a direct interest in the subject-matter of inquiry before an inferior tribunal take part in adjudicating upon it, the tribunal is improperly constituted and the Court will grant an order of prohibition to prevent it from adjudicating, or an order of certiorari to quash a determination arrived at by it. or such other remedy (for instance, an injunction or a declaration) as may be appropriate. The principle extends not only to Courts and tribunals, but also to other bodies, including public authorities, determining questions affecting the civil rights of individuals."

In the case of Metropolitan Properties Co, Ltd. v. Lannon (1983 (3) All ER 304 at p. 310, it was observed as follows :

The Court looks at the impression which would be given to other people. Even if he (the Chairman of the tribunal in that case) was as impartial as could be nevertheless, if right-minded persons would think that, in the circumstances, there was a real likelihood of bias on his part. then he should not sit. And if he does sit. his decision cannot stand The Court will not enquire whether he did, in fact, favour one side unfairly. Suffice it that reasonable people might think he did. The reason is plain enough. Justice must be rooted in confidence; and confidence is destroyed when right-minded people go away thinking; The Judge was biased." "

8. It is needless to emphasise that the principles of natural justice which are meant to prevent miscarriage of justice are also applicable to quasi-Judicial authority. It cannot also be disputed that one of the fundamental principles of natural Justice is that an authority empowered to decide the dispute must be one without bias and there should be no prejudice whether conscious or unconscious towards one side or the other in the dispute.

9. Learned Addl. Government Advocate appearing for the State submitted that the Addl. Secretary to Government, while deciding the appeal was discharging his statutory duties and had neither any bias nor any prejudice and the apprehension of the petitioner is unjustified. It is also submitted that it is not enough that some party to the proceeding had mere apprehension that the authority was biased. There is no cogent material in the present case to reveal bias and the allegations are based on mere suspicion. The allegations, therefore, should not be accepted 10. We have given our careful consideration to the arguments advanced by learned counsel for the parties and have thoroughly perused the records which clearly reveal that the same officer had passed the order of cancellation and also heard the appeal. The principle of Natural Justice is of a wide application and connotes that a judicial or quasi-judicial authority should not only himself be a party, but must also not be interested as a party in the subject-matter of the dispute which he has to decide. A litigant should not

have in his mind a reasonable apprehension that he would not get a fair trial. The decision of the authority is liable to be vitiated by the mere fact that an interested person sat at the hearing. The mere presence of the interested person who takes the initial decision while hearing an appeal from his own decision, violates the principle of Natural Justice and injuncts a stinch of bias.

In the case of Baidyanath Mohapatra v. State of Orissa. 68 (1989) CLT 640 (SC) : (AIR 1989 SC 2218) the Supreme Court while dealing with an original application disposed of by Shri Gian Chand, Chairman of the Orissa Administrative Tribunal observed that as he had recommended against Baidyanath for pre-mature retirement while acting as the Ex-Chief Secretary of the State of Orissa, though there is no allegation of bias against him and he might have acted bona fide, nonetheless the principles of natural Justice, fair play and judicial discipline required that he should have abstained from hearing the case. While administering justice, an authority should not sit in Judgment of his own decision. The Supreme Court was pleased to set aside the order on that ground alone.

11. In the light of the ratio of the decision cited above we have examined the records of the present case. We find that the proceeding for cancellation of the leases was initiated by Shri Patnaik and the cancellation orders were also passed at his behest. The appeal filed by the petitioner vide Annexure 16 was also disposed of by Shri ; Patnaik while holding the post of Addl. Secretary to Government. According to us, the said action of Shri Patnaik constituted an irreparable infirmity uncommon to the principles of natural justice and accordingly Annexure 16 is liable to be quashed on that ground alone.

12. Mr. Sarangi also raised several other grounds in support of his contention that the order cancelling the leases and the order dismissing the appeal were otherwise unjust, illegal and contrary to law. But then as we are disposing of the writ application only on one ground, we refrain from examining the propriety or otherwise of the said submissions advanced by Mr. Sarangi. Such action would also amount to prejudging the issue.

13. In the result, the writ application is allowed, the impugned order dated 1-8-2001 (Annexure 16) is quashed and the matter is remitted back to the appellate authority with the direction that an officer who is unconnected with the matter may hear the appeal, de novo after observing legal paraphernalia and dispose of the same as expeditiously as possible inaccordance with law. Parties to bear their own costs.

Sujit Barman Roy, C.J.

14. I agree.