

**(1959) 03 P&H CK 0003**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Case No. 134 of 1956**

J.A. Trivedi Brothers

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

**Date of Decision :** 18-03-1959

**Acts Referred:**

Constitution of India, 1950 — Article 226  
Mineral Concession Rules, 1949 — Rule 27, 28, 29, 32, 57  
Mines and Minerals (Regulation and Development) Act, 1948 — Section 4

**Citation :** AIR 1959 P&H 589

**Hon'ble Judges :** Bishan Narain, J

**Bench :** Single Bench

**Advocate :** G.S. Pathak, K.G. Chendke, J.B. Dadachanji, Rameshwar Nath and Yogeshwar Dayal, for the Appellant; S. Jindralal, D.D. Chawla, C.K. Daphtary, D.K. Kapur and I.N. Shroff, for the Respondent

**Final Decision :** Dismissed

## Judgement

Bishan Narain, J.—The State Government of Madhya Pradesh ordered that a lease for twenty years be granted to Trivedi Brothers, Mining Proprietors of Balaghat for exploiting manganese ore over 47.73 acres in village Manegaon and 6.44 acres in village Ramrama. Both these villages are situated in Balaghat District. On the review application of E. P. Byramji and Company the Central Government by order dated 1-2-1954 cancelled the order of the State Government and granted lease to the Company over the entire area in village Manegaon given previously to Trivedi Brothers and over 4.22 out of 6.44 acres in village Ramrama. Trivedi Brothers dissatisfied with this order have filed this petition under Article 226 of the Constitution challenging the validity of the orders of the Central Government on various grounds.

2. The facts relevant for the decision of this petition are not in dispute. Byramjee & Company has been carrying on the business of mining since 1905. It was granted mining lease for manganese ore over 34.63 acres in village Manegaon

and over additional area of 13.10 acres in 1928. On renewals the lease of the Company over 47.73 acres continued till 1943. Similarly in 1912 they were given 30 years' lease over 52.36 acres in village Ramrama and in 1927 additional area of 2.29 acres in the same village was given to the firm.

It is alleged that before the expiry of these leases the lessees applied for their renewals but their applications were refused in view of the Government's order dated 7-10-1940 which prohibited grant of mining leases in this area. On 8-4-1947 the respondents again applied for renewal of these leases or for grant of fresh leases if and when these areas are thrown open. The then Provincial Government in letter dated 28-7-1947 stated that the application will be taken into consideration when these areas are thrown open for regrant of lease.

3. The Central Legislature then enacted the Mines and Minerals (Regulation and Development) Act, 1948. It came into force with effect from 8-9-1948, The Central Government then framed rules u/s 5 of the Act which came into force on 18-10-1949. Under these statutory provisions it became necessary for all those who carried on mining business to obtain certificate of approval. Byramjee and Company obtained this certificate on 26-6-1950.

4. In the meanwhile the Manegaon area and Ramrama area were thrown open for regrant. Trivedi Brothers (hereinafter called the petitioners) applied for grant of mining lease over 13.69 acres in village Ramrama on 7-6-1948. The area mentioned in the application was subsequently reduced to 6.44 acres. After the rules had come into force on 18-10-1949 the application was amended and was brought in consonance with the form prescribed in the rules besides complying with other provisions laid down in these rules. On 14-11-1949 the petitioners applied for mining lease over 47.73 acres in village Manegaon in accordance with the rules. There were other applicants also. The State Government took into consideration all these applications. It rejected the other applications and granted mining lease to the petitioner over 6.44 acres in village Ramrama and over 47.73 acres in village Manegaon.

5. Before the State Government had granted these leases to the petitioners, Byramjee and Company (hereinafter called the respondent company) wrote to the State Government on 24-4-1950 that it had recently come to know that some persons had applied for mining leases over certain areas held previously by the Company. In this letter they asked for leases over various lands including the lands now in dispute on the ground that they had worked these areas previously and had invested considerable amounts there.

The respondent company expressed willingness to pay all the fees etc., due under the Rules. On 6-9-1951 the State Government referred this application to the Central Government and pointed out that the Company had not yet made any regular application and stated that if the Central Government was willing to relax the rule of priority (Rule 32) then the Company may be asked to make such an application now. The State Government by this letter also informed the

Central Government that lenses over 47.73 acres in village Manegaon and over 6.44 acres in village Ramrama had already been granted to Trivedi Brothers and that these grants can be set aside only by the Central Government under its powers of review.

The Central Government in reply on 15-10-1951 informed the State Government to call upon the respondent company to make regular applications for leases over areas other than the areas now in dispute. The State Government by letter dated 25-10-1951 informed the Company accordingly that it would not consider its application for mining leases over areas now in dispute. Thereupon the respondent company on 31-10-1951 made an application for review to the Central Government challenging the order of the State Government wherein it had rejected the company's claim for mining lease over the areas now in dispute.

This review application was filed under Rule 52 which is now numbered as Rule 57. The State Government sent its explanation on 30-7-1953 and then the Central Government passed on 1-2-1954 the order which had the effect of cancelling the leases granted to the petitioners by the State Government in 1950 and had the effect of granting the same to the respondent Company. By this order the Central Government also directed relaxation of the rule of priority in favour of the respondent company. It is this order which is challenged by Trivedi Brothers by the present petition.

6. Shri G. Section Pathak the learned counsel for the petitioners has challenged the validity of the order of the Central Government on the following grounds:

(1) That the application of the respondent company for leases over areas now in dispute was not in conformity with the rules and was therefore void.

(2) That as the application was void no question of priority arose between the petitioners and the respondent company.

(3) That the respondent company allowed the order granting leases in favour of the petitioners to become final and therefore it could not be set aside subsequently in other independent proceedings.

(4) That the review application filed against the communication made by the State Government on 25-10-1951 was incompetent.

(5) That by grant of leases in May and June 1950 the petitioners got a right to carry on the business of exploiting manganese on the area in dispute and this right could not be taken away by filing a review application under Rule 57.

(6) That Rule 59 is invalid as it violates principles of natural justice and imposes unreasonable restrictions on the petitioners' fundamental rights. It is now necessary to examine these contentions of the learned counsel.

7. It is common ground that the State Government did not take into consideration the case of the respondent company before the order granting leases to the petitioners over the areas now in dispute was made although the

latest application, to the State Government had been filed on 24-4-1950 i. e. about two months before the order in favour of the petitioners was passed. The first point that requires to be considered in this case is whether or not the respondent company can be said to have made an application upon which mining leases could be granted to it. Now section 4 reads:

"(1) No mining lease shall be granted after the commencement of this Act otherwise than in accordance with the rules made under this Act,

(2) Any mining lease granted contrary to the provisions of Sub-section (1) shall be void and of no effect."

Chapter IV of the Rules deals with grant of mining leases. Rule 26 lays down that no lease shall be granted unless certain conditions specified therein are satisfied. Rule 27 gives the particulars which must be included in an application for a mining lease. Rules 28 and 29 prescribed that such an application shall be accompanied by a fee of Rs. 200/- and by a deposit of a sum not exceeding Rs. 500/- for preliminary expenses.

8. The petitioners' case is that the respondent company never made any application in 1947, in 1950 or even at any later stage which was in conformity with rules 27, 28 and 29 and, therefore, the State Government was justified in ignoring the company's case as u/s 4 of the Act a lease granted in contravention of the Rules would be void. There can be no doubt that the company had applied for grant of mining leases but that these applications did not comply with rules 27 to 29.

The applications were therefore defective. It was argued on petitioners' behalf that if a defective application is acted upon then the lease granted in pursuance thereof would be void u/s 4 of the Act. I regret I am unable to accept this argument. The object of the Act is to give a mining lease to a person who can best carry out the public interest for the time being in the matter. Rules have been framed to regulate the proceedings under the Act so as to achieve this object. The particulars mentioned in Rule 27 are intended to give information to the Government as to the qualifications of the applicant.

Besides the Government concerned has to take into consideration the technical knowledge and experience of the applicants and also their financial capacity to undertake the work because otherwise the object underlying mining leases may be defeated. Rules 27 to 29 are in substance intended to prevent frivolous applications. In this context it is not possible to hold that deviation from these rules how-ever serious or slight at the time of making of the applications would necessarily preclude the State Government from entertaining them. It is for the Governments concerned to decide whether or not a given application is defective and if so whether it has to be ignored as invalid. In the present case the State Government in the circumstances of the case came to the conclusion that the company's application could not be acted upon. On the other hand the Central Government decided to act upon it.

It is impossible for this Court to interfere with the order of the Central Government in these circumstances as after all it is for the lessors to decide whether a particular application for mining leases should be entertained or not and the lessors alone know all the circumstances which are relevant for the purposes of deciding this matter. For these reasons I am of the opinion that the Central Government was within its authority while exercising its powers of review to treat the applications of the Company as valid. It follows therefore that the question of priority arose in the case. The Central Government was within its powers to relax the rule laid down in Rule 32 and give the lease to the respondent company. This disposes of the first two points raised on behalf of the petitioners.

9. It was then contended that in substance the respondent company had a grievance against the order of the State Government granting leases to the petitioners in 1950 and therefore it should have filed a review petition against that order. By failing to do so the company had allowed the order of the State Government to become final.

10. In the present case it is true that the State Government granted leases to the petitioners in 1950 but at that time the applications of the respondent company were not considered. The State Government did not reject the applications either. Instead it sought the advice of the Central Government as to what was to be done. It follows that the State Government kept the application of the respondent company dated 24-4-1950 or the earlier one pending and yet passed an order granting leases to the petitioners.

The result was that the applications of the respondent company remained pending before the State Government. It is true that ordinarily grant of lease to one applicant on consideration of all the applications filed involves refusal to grant lease to other applicants. It is also true that the applicants other than the one in whose favour the order has been made can challenge the order under Rule 57.

It must, however, be remembered that review under Rule 57 does not lie against the order granting lease to another person but lies only against the order refusing to grant lease to the person who files a review petition. It follows that in the present case the company could not challenge the grant of leases to the petitioners under Rule 57. In these circumstances it cannot be said that the grant of leases became final inasmuch as the respondent company had not filed a revision against that order. This contention therefore fails and is rejected.

11. It was argued on behalf of the petitioners that the order of the State Government dated 25-10-1951 did not amount to refusal to grant a lease within Rule 57 and therefore the Central Government had no jurisdiction to intervene under that Rule. The contention is that the State Government wrote this letter merely to carry out the wishes and mandate of the Central Government and that it was not its decision. The letter of the State Government to the Central

Government is dated 6-9-1951. This letter shows how the matter proceeded after the receipt of the letter of the company dated 24-4-1950.

On receipt of this letter from the company the State Government took the legal opinion which was against the company. Both the petitioners and the respondent company sent representations on the matter to the State Government. Thereupon the State Government with its letter dated 6-9-1951 sent these representations to the Central Government re-Requesting it to relax the rule of priority in favour of the company for all areas other than the areas now in dispute. Further it was stated in the letter that the Central Government if it so desired might set aside the grant of leases in favour of the petitioners so that the company may be granted leases over, this area.

The Central Government in reply agreed to relax the rule of priority in favour of the company (vide Rule 32) and approved of the State Government's proposals that the company may be asked to file regular applications for leases over areas other than the areas now in dispute. The Central Government also noted by this letter that the leases over the disputed areas had been granted to the petitioners. I see no mandate of the Central Government in this letter. In substance the Central Government approved of the suggestions made by the State Government.

On receipt of this letter the State Government wrote to the company on 25-10-1951 calling upon it to apply for the areas other than the areas now in dispute. This letter does not purport to be conveyance of the orders of the Central Government. Indeed it makes no mention of the Central Government. The letter contained an order refusing to grant lease over the areas now in dispute and therefore review application under Rule 57 was competent, I reject this contention also.

12. This brings me to another line of attack on the order of the Central Government. It is urged that in pursuance of the order granting lease the lessors have executed the necessary lease deeds in May 1953 and have given possession to the petitioners. Thereafter it is not open to the Central Government to cancel the lease as thereby the petitioners' right to carry on the mining business is denied to them. This argument has no force whatsoever. The agreement under which the petitioners got possession is subject to clause which reads:

"The permission granted hereunder is subject to such orders, as the Central Government may pass on a review application, if any under Rule 57 of the Mineral Concession Rules, 1949."

It follows therefore that the grant of provisional possession is subject to the decision of the Central Government under Rule 57. If the order under Rule 57 is valid then the grant of provisional possession will not affect the position. Obviously the order under Rule 57 in the present case does not and cannot affect any right of the petitioners to carry on any business as it has the effect of cancelling only the particular lease and has no other effect on petitioners"

business. This contention therefore also fails.

13. It was suggested in the course of arguments that although the respondent company had applied in 1947 for grant of lease over 34.6 acres in village Manegaon the Central Government has granted lease over 47.73 acres. This point was not raised in the petition. It is true that in the reminder sent by the respondent company in 1947 the lease relating to 34.63 acres is mentioned and no mention is made of the 1928 lease over 13.10 acre.5 in the same village. Similar mistake has been made in the application dated 24-4-1950. These mistakes are obviously clerical mistakes.

These applications request grant of lease over all areas held primarily. It is not contested that previously the respondent company held 47.73 acres in this village. In the letter dated 31-10-1951 and in the review petition the respondent company mentioned the correct area. In the circumstances it must be held that the Central Government in the order accepting the review petition did not grant any lease in respect of any area not claimed by the respondent company.

14. The ground is now clear to discuss the main question argued in the case. Shri G. Section Pathak strenuously argued that Rule 59 is invalid as it enables the Central Government to cancel a lease already granted without hearing the lessees. It was also urged that Rule 59 imposes unreasonable restrictions on the petitioners' fundamental rights.

15. To decide this contention it is necessary to discuss the nature and scope of the proceedings taken on the review petitions. Now the background which led to the proceedings under Rule 57 is this. The State Government owns the land in the present case. It is to be exploited for minerals. This operation involves economic interest of the country as a whole. To achieve this public purpose the legislature has enacted The Mines and Minerals (Regulation and Development) Act. Detailed rules have been framed thereunder. The purpose of these statutory provisions is to safeguard the economic interest of the country.

The State Government has to follow the procedure laid down in these rules before any land is leased for mining purposes to any person. It is very important to remember in this context that the State Government is under no obligation to lease it to any person at all or to lease it to any particular person. No person has any right to the grant of any mining lease. When the State Government decides to give certain lands on lease then it invites applications. The detailed rules do not lay down any procedure for hearing the applicants. The reason is simple. In the choice of a tenant the State Government is to consider also the technical knowledge and financial stability of each applicant,

Moreover it has to be seen if a particular applicant can operate efficiently on a particular piece of land. After all each piece of land has its own peculiarities and each lease may involve special problems. In short only the State Government has in its possession the over all picture of the condition of land and the experience and capacity of each applicant. It has also to rely on the policy laid

down for the time being relating to mining of a particular mineral. In this context it must be held that the State Government does not determine any competing rights of the applicants nor does it adjudicate upon any dispute between the various applicants.

In proceedings under this Act and the statutory rules neither the State Government nor the Central Government determines rights of any applicant and therefore it is not incumbent on the authorities concerned to hear any applicant in person: vide *Raman and Raman Ltd. v. State of Madras*, (S) AIR 1958 SC 463 at p. 467. All that it does is to observe the statutory provisions and within the restrictions laid down therein to decide which applicant if any will best serve the public object of mining a mineral at a given time and place. The exercise of this power however is subject to supervisory power of the Central Government.

Under this power the Central Government subject to Rules has absolute power to deal with the matter by collecting if necessary the necessary data from the State Government and the aggrieved party. In this view of the matter the State Government is under no obligation to hear the parties before deciding the matter and it is for this reason that the Rules do not provide for such a procedure. That being so the procedure laid down in Rule 59 before the Central Government cannot be considered to be unsuitable to achieve the object of the statute. On receiving review petition the Central Government may call for the relevant records and other information from the State Government, and after considering any explanation that may be offered by the State Government pass any order that it considers just and proper (R. 59).

It is true that the petitioners in whose favour the order had been passed were not heard by the Central Government out this was not necessary as it is the State Government alone which is in possession of the complete picture relating to the case and no useful purpose could have been served by hearing the petitioners or any other applicant. It is not necessary for me to further elaborate this matter as a Division Bench of this Court in *Shivji Nathubhai Vs. Union of India (UOI) and Others*, has recently held Rule 59 to be valid and intra vires. In that case also a lease was cancelled in a review petition under Rule 57 without hearing the person to whom the State Government had granted the lease. I am in respectful agreement with this decision and following it I reject this contention of the petitioners.

16. For all these reasons I dismiss this petition with costs. Counsel's fee Rs. 200/-.