
(1983) 01 OHC CK 0018
In the Orissa High Court
Case No : O.J.C. No. 502 of 1978

Jajati Mineral Traders

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 17-01-1983

Acts Referred:

Mineral Concession Rules, 1960 — Rule 24(3), 54, 55

Citation : AIR 1983 Ori 179 : (1983) 55 CLT 193

Hon'ble Judges : R.N. Misra, C.J.; R.C. Patnaik, J

Bench : Division Bench

Advocate : S.K. Dey, for the Appellant; Standing Counsel (Central) and Additional Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.N. Misra, C.J.—The petitioner applied to the State of Orissa for grant of a mining lease of graphite of about 300 acres of land within Bendar reserve forest. No. 2 in the district of Bolangir on 9-11-1972. As the application was not disposed of for over a period of 12 months from the date when it was made, a revision was carried to the Central Government under Rule 54 of the Mineral Concession Rules, 1960 (hereafter referred to as the "Rules") against its deemed rejection as provided under Rule 24 (3) of the said Rules. On 5-6-1974, the Central Government allowed the revision and directed :--

"The Central Government in exercise of their revisional powers under Rule 55 of the Mineral Concession Rule, 1960 and of all other powers enabling in their behalf, have allowed your revision application to the extent that the deemed rejection of your application referred to above has been set aside and the State Government has been directed to consider and pass appropriate orders on merits within a period of four months after obtaining approval of the Central Government wherever necessary."

The State Government did not dispose of the matter within four months but

made an order rejecting the application on merit on 26-5-1977 vide Annexure 2. The petitioner carried a revision against the order of rejection under Annexure 2 to the Central Government. By order dated 7-2-1978, the Central Government rejected the revision by saying:--

".....The Central Government vide order No. MV-1 (23)/74 dated 5-6-1974, allowed the revision application by setting aside the deemed rejection and directing the State Government to pass appropriate orders on merits within a period of 4 months.

2. The State Government did not pass any orders within the period allowed by the aforesaid order of the Central Government, but by their order No. III (E) MG/38/77-5410/MG dated 26-5-1977, rejected the mining lease application of the petitioners. The present revision has been filed against this order.

3. The State Government had been directed to pass orders within a period of four months from 5-6-1974 as mentioned above. The impugned order of the State Government having been passed after the expiry of this period is, therefore, without jurisdiction.

4. The Central Government, therefore, in exercise of their revisional powers u/s 30 of the M. M. (R. & D) Act and Rule 55 of the MCRs, hereby set aside the impugned order. Since deemed rejection of the M. L. application of the petitioners still stands, it is not necessary for the State Government to pass fresh orders on the application."

Challenge in this writ application is to this order of the Central Government.

2. We are inclined to agree with the petitioner's submission that when the State Government did not pass orders within the period stipulated in the Central Government's direction, the application of the petitioner could not be deemed to have been rejected. "Deemed rejection" as stipulated under Rule 24 (3) of the Mineral Concession Rules covers cases where no orders are passed within 12 months from the date of making of the application. Admittedly, by the time the Central Government had stipulated the State Government's order to be made, much longer time than 12 months had elapsed from the date of making of the application. To such a situation, Rule 24 (3) of the Rules would have no application. That is the view expressed by a Division Bench of the Patna High Court in the case of Dey Gupta and Co. Vs. State of Bihar and Another, , the Division Bench indicated (at p. 488):--

"It is contended that when no order was passed on the application of respondent No. 2 within nine months from the 4th of March, 1959, her application must be deemed, under these rules, to have been refused. It may be noted that it is under these rules that the petitioner filed an application for review before the Central Government. The State Government had failed to pass any order on its application within nine months from the 30th of March, 1959, and, therefore, on the 17th of Feb., 1960, it applied for review to the Central Government.

The contention put forward is that the application of respondent No. 2 also stood rejected, and the State Government could not legally pass any order thereafter granting a mining lease to her. In my opinion, the argument is based on confusion. No doubt, reading Rule 28 (1-A) with Rule 57 (2) of the Rules, it is clear that, if the State Government fails to dispose of an application for the grant of a mining lease within nine months, it must be deemed to have been refused by it.

But this provision is made, in my opinion, only for the purpose of filing a review application before the Central Government, so that an applicant desirous to have a mining lease may not have to wait unnecessarily for a long period without any order being passed on his application. That, however, does not mean that after the lapse of nine months from the date of receipt of the application, the State Government ceases to have jurisdiction over the matter so as not to pass any order on any application after the lapse of nine months from the date of its receipt.

The expression "deemed to be a refusal" in Rule 57 (2) is only for the purpose of a review application to be filed before the Central Government, and it is not a part of Rule 28 (1-A)."

3. The observations of a Division Bench of the Mysore High Court in the case of Kolagada Chennabasappa v. State Government of Mysore AIR 1966 Kar 167 support the conclusion of the Patna High Court. Learned Standing Counsel for the Central Government placed reliance on a single Judge decision of the Andhra Pradesh High Court in the case of Kalki Subbarami Reddy Vs. Government of India and Another, . There, an application for a mining lease had not been disposed of within 12 months as required under Rule 24 and a revision had been carried to the Central Government and the revisional authority directed disposal of the application within 100 days. When that order was not complied with, a second revision was filed before the Central Government and the Central Government directed grant of a lease. The question arose as to whether the revision before the Central Government was maintainable and the Court held (Para 3):--

"As I have already noted, while Rule 22 of the Mineral Concession Rules, 1960, contemplates receiving of applications from parties and Rule 24 deals with the question of disposal of those applications, it is only the Explanation to Rule 54 that provides for what may be called "a deemed rejection of the applications" filed under Rule 22 if the Government fails to dispose of under Rule 24. For the reasons which we need not hazard to guess, the law does not provide for any other situation of a deemed rejection. The law provides for a right of revision under Rule 54 only against the first "deemed rejection". It follows, therefore, that the Statute did not provide for the entertainment of a second revision against a second deemed rejection by the State Government. It is well known that a revision, like an appeal, is a creature of the Statute and such a right if it were to be available, must be provided for by the law. Inasmuch as the Statute

has not contemplated a second deemed rejection and has therefore deliberately failed to provide for a revision in such a situation, the petitioner's second revision dated 4-4-1977 and the orders passed by the Central Government on it on 21-7-1977 are null and void.

4. As the State Government had disobeyed the orders of the Central Government dated 5-10-1976 directing the State Government to dispose of the petitioner's application within hundred days, the petitioner instead of going to the Central Government ought to have asked this Court to compel the State Government to obey the directions of the Central Government." This decision, if properly analysed, supports the petitioner's stand and goes against the stand of the Central Government. This is an authority for the proposition that there is no deemed rejection and the order of the Central Government in the instant case must, therefore, on the reasoning in this decision, be vacated. The decision of the Andhra Pradesh High Court is also not an authority for the contention that the original application must be deemed to have no more been existing after the period stipulated in the revisional order expires. If that were so, the learned single Judge would not have observed that when there was failure to comply with the direction, the High Court could have been moved under Article 226 for a mandamus to direct disposal of the application. Such a view could only go with the position that the application was pending before the State Government and a binding direction of the revisional authority was being disobeyed and, therefore, a command could go from the Court to the State Government to comply with the revisional direction. This would be on the basis that a valid application is pending and there is no compliance with the Central Government's direction. The decision of the Andhra Pradesh High Court, therefore, entirely supports the petitioner's stand and goes against the contention of the Central Government. Learned Standing Counsel for the Central Government should not have relied upon such an authority to support his stand.

4. The fallacy of the stand of the Central Government should be apparent from a common illustration where a title suit is pending for several years in the subordinate courts, this Court usually gives a direction for its disposal within a specified time. For some unforeseen reason or the other, notwithstanding every attempt by the subordinate court the suit is not disposed of within the time indicated. Would it mean that after the time has expired, the suit gets automatically dismissed? During hearing of the application, we posed this question to learned Standing Counsel for the Central Government. Though he made no answer, we gathered the impression that he was not able to support the proposition that the trial court had lost jurisdiction. If that be the position, the same would be the fate of the application before the State Government under the Mineral Concession Rules.

5. When the application was disposed of on merit long after the period stipulated in the revisional order, it was still a valid disposal and a revision against that order lay as it was amenable to the revisional powers under Rules 54 and 55 of

the Mineral Concession Rules. The Central Government has clearly gone wrong in rejecting the application of the petitioner by saying that it was not maintainable.

6. We accordingly quash the order of the revisional authority and direct the revision application to be disposed of in accordance with law.

7. Parties are directed to bear their own costs.

Patnaik, J. :--I agree.