

(2009) 08 DEL CK 0265

In the Delhi High Court

Case No : Writ Petition (C) 10756 of 2009

Jayaswal Neco Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Mineral Concession Rules, 1960 — Rule 54, 54(1), 54(2), 59, 60

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (2009) 08 DEL CK 0265

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : P.S. Patwalia, Devashish Bharuka and Jaya Bharuka, for the Appellant; A.S. Chandhiok, ASG, Maneesha Dhir and Preeti Dalal for UOI, Atul Jha, for Respondent No. 2, A.M. Singhvi and Ravindra Srivastava, R.N. Karanjawala, Gopal Jain, Mandini Gore, Sonia Nigam, Lakshmi Ramachandran and Kartik Bhatnagar for Respondent No. 3-Tata Steel Limited., for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioner, Jayaswal Neco Industries Limited, has filed two revision applications u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957 read with Mineral Concession Rules, 1960. The revision applications pertain to rejection of their two mining lease applications in respect of 1601.47 hectares and 205 hectares of land in Rawghat Deposits. The rejection orders were passed by the State of Chhattisgarh on 31st January, 2007.

2. Private respondent No. 3, M/s Tata Steel Limited, has also filed a revision application against the order dated 31st January, 2007 passed by the State of Chhattisgarh rejecting their applications for mining lease in respect of 4140.17 hectares in Rawghat Deposits.

3. By the impugned order dated 24th July, 2009, learned tribunal has allowed the

impleadment application of the third respondent in revision applications filed by the petitioner herein. This direction/decision of the learned tribunal is challenged by the petitioner by way of the present writ petition. By the same order, the petitioner has been impleaded as a respondent in the revision application filed by the third respondent.

4. Reliance placed by the learned Counsel for the petitioner on Rule 54(2) of the Mineral Concession Rules, 1960 is misconceived. The said Rule reads as under:

Rule 54. Application for revision.

(1) XXXXX

(2) In every application under Sub-rule (1) against the order of a State Government refusing to grant a prospecting licence or a mining lease, any person to whom a prospecting licence or mining lease was granted in respect of the same area or for a part thereof, shall be impleaded as party.

5. The said Rule stipulates that a party challenging an order refusing grant of prospecting licence or mining lease should implead the party in whose favour prospecting licence or mining lease has been granted. The said Rule is a positive provision and mandates that the successful party in whose favour prospecting licence or mining lease has been granted, should be impleaded as a party to the revision application, when grant of prospecting licence or mining lease is challenged. The aforesaid Rule is not couched in a negative language and does not prohibit impleadment of a private party in cases where learned tribunal feels that for a just and fair decision, a private party should be impleaded. Rule 54(2) of the Mining Concession Rules, 1960 does not by implication or implied intendment prohibit and bar impleadment in cases of the present nature. In the present case, three orders dated 31st January, 2007 passed by the State of Chhattisgarh are challenged before the learned tribunal. By the said orders, two applications made by the petitioner and the applications made by the respondent No. 3 have been rejected. There is no successful party, who has been granted a mining lease. It is difficult to accept the contention of the petitioner that Rule 54(2) of the Mining Concession Rules, 1960 prohibits and bars learned tribunal from impleading respondent No. 3 as a party in the revision applications filed by the petitioner or from the petitioner being impleaded as a party to the revision application filed by the respondent No. 3. Rule 54(2) does not expressly or impliedly prohibit impleadment in such cases. Of course, whether a private party should be impleaded is a matter of discretion, which is to be exercised by the learned tribunal in the facts and circumstances of each case.

6. It is fairly well settled that quasi judicial tribunals on procedural matters are entitled to adopt a procedure, which it feels is just and fair unless there is a specific or implied bar and prohibition, which prevents the tribunal from following the said procedure. Every procedure is permitted and is permissible, until it is shown to be prohibited by law (See AIR 1940 390 (Nagpur) following Narsingh Das v. Mangal Dubey ILR 1882 All 163).

7. In the present case, learned tribunal has noticed that the area, which is subject matter of the three revision applications; two filed by the petitioner and one filed by the respondent No. 3, overlap. Therefore, learned tribunal has held that in the interest of justice and with a view to afford opportunity of hearing to both parties, they should be impleaded in the revision applications filed by the other side. The order passed by the learned tribunal is a discretionary order and is in the interest of justice as it ensures that there will be effective and complete adjudication of the subject matter. It will prevent conflicting decisions, which is possible if the revision applications filed by the petitioner and the respondent No. 3 are heard and decided separately without hearing the petitioner or the respondent No. 3, as the case may be.

8. The discretion exercised by learned Tribunal in the present case does not require interference in a writ petition under Article 226 of the Constitution of India, as the learned Tribunal is entitled to follow its own procedure and proceed in a manner it feels is just, fair and equitable. There has to be effective and complete adjudication after hearing the parties. Attempt should be to prevent further litigation.

9. Further, quasi judicial tribunals have ancillary and incidental power to ensure that there is effective adjudication and decision. In the case of *Suresh Jindal Vs. BSES Rajdhani Power Limited and Others*, , the Supreme Court has observed that a statutory authority while exercising statutory power may do all things, which are necessary for giving effect thereto.

10. The Supreme Court in the case of *Income Tax Officer, Cannanore v. M.K. Mohammed Kunhi* AIR 1969 SC 430 had examined the question whether Income Tax Appellate Tribunal has the right to grant stay of the impugned demand during pendency of an appeal before them. It was observed by the Supreme Court:

...It is a fairly established rule that an express grant of statutory power carries with it by necessary implication the authority to use all reasonable means to make such grant effective (*Sutherland Statutory Construction*, Third Edition, Articles 5401 and 5402). The powers which have been conferred by Section 254 on the Appellate Tribunal with widest possible amplitude must carry with them by necessary implication all powers and duties incidental and necessary to make the exercise of those powers fully effective. In *Domat's Civil Law*, Cushing's Edition, Vol. 1 at page 88, it has been stated:

It is the duty of the Judges to apply the laws, not only to what appears to be regulated by their express dispositions but to all the cases where a just application of them may be made, and which appear to be comprehended either within the consequences that may be gathered from it.

Maxwell on Interpretation of Statutes, Eleventh Edition contains a statement at p. 350 that "where an Act confers a jurisdiction, it impliedly also grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution. *Cui jurisdiction data est, ea quoque concessa esse*

vindentur, sine quibus jurisdiction explicari non potuit." An instance is given based on *Ex Parte, Martin*, (1879) 4 QBD 212 at p.491 that "where an inferior court is empowered to grant an injunction, the power of punishing disobedience to it by commitment is impliedly conveyed by the enactment, for the power would be unless if it could not be enforced.

11. In a subsequent portion of the said judgment, it was further observed as under:

8. Section 255(5) of the Act does empower the Appellate Tribunal to regulate its own procedure, but it is very doubtful if the power of stay can be spelt out from that provision. In our opinion the Appellate Tribunal must be held to have the power to grant stay as incidental or ancillary to its appellate jurisdiction. This is particularly so when Section 220(6) deals expressly with a situation when an appeal is pending before the Appellate Assistant Commissioner but the Act is silent in that behalf when an appeal is pending before the Appellate Tribunal. It could well be said that when Section 254 confers appellate jurisdiction, it impliedly grants the power of doing all such acts, or employing such means, as are essentially necessary to its execution and that the statutory power carries with it the duty in proper cases to make such orders for staying proceeding as will prevent the appeal if successful from being rendered nugatory.

12. Learned Counsel for the third respondent has submitted that the impugned order ensures fair hearing and is in consonance with the principles of natural justice. There is merit in the said submission. In *Mangilal Vs. State of Madhya Pradesh*, , while referring to the principles of natural justice, it was observed as under:

10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. (See *Swadeshi Cotton Mills v.*

Union of India). Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves. The principles of natural justice have many facets. Two of them are: notice of the case to be met, and opportunity to explain.

13. Similar observations have been made by the Supreme Court in the case of The Scheduled Caste and Weaker Section Welfare Association (Regd.) and another Vs. State of Karnataka and others, holding, inter alia, that if there is power to decide and determine an issue to the prejudice of a person, duty to act judicially is implicit for the said decision and the rule of natural justice operates in areas not covered by any law validly made. What particular rule of natural justice should apply in a given case depends upon the facts and circumstances of each case, the framework of law under which the enquiry is to be held and the body of persons appointed for the said purpose. Learned tribunal has held that opportunity and hearing should be granted to the third respondent and the petitioner in the revision filed by the other side.

14. Learned Counsel for the petitioner has relied upon decision of the Supreme Court in the case of Swadeshi Cotton Mills Vs. Union of India (UOI), observing that rules of natural justice can operate only in areas not covered by any law validly made. The contention of the petitioner is based upon Rule 54(2) of the Mineral Concession Rules, 1960 and the said Rule bars or prohibits the learned tribunal for impleading any third person as a party to a revision application. The said Rule has been considered and interpreted above. It has been held that the said Rule does not prohibit and bar impleadment of respondent No. 3 in two revision applications filed by the petitioner.

15. A favourable decision on the revision applications filed by the petitioner or the respondent No. 3 will result in prejudice to the other side. There is a direct contest and contradictory claim of the two parties. There is a possibility of conflicting decisions, which should be avoided. Further, in case the petitioner's or the respondent No. 3's revision application is allowed, the losing side will invoke writ jurisdiction questioning the decision of the learned tribunal. In fact, it may be noticed that the respondent No. 3 had earlier filed W.P. (C) No. 9260/2007 against the petitioner herein and the State of Chhattisgarh after order dated 28th September, 2007 was passed in favour of the petitioner allowing the revision application. The State of Chhattisgarh too filed a writ petition against the said order dated 28th September, 2007. The writ petition filed by the State of Chhattisgarh was allowed and the matter was remanded back to the learned Tribunal.

16. The second decision relied upon by the petitioner in the case of Mohammed Hasnuddin Vs. State of Maharashtra, holds that every tribunal of limited jurisdiction is bound to exercise its jurisdiction within limits of its special jurisdiction. It is the duty of a special tribunal to examine whether the

jurisdictional facts exist before it assumes jurisdiction. The said judgment is not relevant to the legal issue raised. It is admitted that the learned tribunal has jurisdiction to entertain the revision applications. The question raised is whether the third respondent should be heard in the revision applications filed by the petitioner. As held above, there is no specific bar in the Act or the Rules which prohibits or stipulates that a private party cannot be heard in the revision application. Rule 54(2) of the Mineral Concession Rules, 1960 provides for a positive mandate that a successful party in whose favour prospecting licence or mining lease has been granted, should be made a party to the revision application filed by an unsuccessful party. There is no express or implied provision or bar which is applicable to the factual background of the present case. Applications of the petitioner as well as the respondent No. 3 for grant of mining lease have been rejected. There is no successful party as such.

17. As noticed above, the impugned order dated 24th July, 2009 has allowed impleadment application filed by the petitioner in the revision application filed by the respondent No. 3. Learned Counsel for the petitioner submitted that the petitioner had a prospecting licence and, therefore, in terms of Rules 59 and 60 of the Mineral Concession Rules, 1960, their claim for impleadment stands on a different footing and it cannot be treated at par with the claim of impleadment made by the respondent No. 3. This argument does not rely upon Rule 54(2) of the Mineral Concession Rules, 1960 and is contrary to the interpretation propounded by the petitioner that only a successful party can be impleaded and has right to be heard in a revision application filed before the tribunal. The revision applications are for grant of mining leases and not prospecting licences. The respondent No. 3 has filed a revision application for grant of a mining lease. Whether the said claim should be rejected under the Mineral Concession Rules, 1960 is a question relating to merits and not Section 54(2) of the Act.

18. Learned Counsel for the petitioner submitted that the revision applications can be taken up simultaneously but the revision application filed by the respondent No. 3 should be decided first. It is open to the petitioner to make a request before the learned tribunal and if any such prayer is made, the same will be considered and decided by the said tribunal. It may not be appropriate for this Court to regulate the procedure, manner and mode of hearing before the learned tribunal. This is entirely a matter of discretion for the tribunal. No directions or orders are required. Of course, it will be open to the respondent No. 3 to contend that the arguments in the three revision applications should be heard simultaneously. This Court need not express any view on the said aspect in the present writ petition.

19. The writ petition is accordingly dismissed with the observations made above.