

(1989) 04 OHC CK 0028
In the Orissa High Court
Case No : O.J.C. No. 1767 of 1981

J.C. Budharaja

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Mineral Concession Rules, 1960 — Rule 29, 59
Mines and Minerals (Development and Regulation) Act, 1957 — Section 4A

Citation : AIR 1990 Ori 6 : (1989) 68 CLT 509

Hon'ble Judges : V. Gopalaswamy, J; D.P. Mohapatra, J

Bench : Division Bench

Advocate : N.C. Panigrahi, for the Appellant; M.R. Mohanty, A.S.C., for the Respondent

Final Decision : Allowed

Judgement

D.P. Mohapatra, J.

In this application under Articles 226 and 227 of the Constitution of India, the petitioner has prayed to quash the order dated 6-5-81 of the State Government in the Mining and Geology Department as per Annexure 6 whereby his mining lease was cancelled. The State of Orissa through the Secretary, Mining and Geology Department, Union of India through the Secretary, Ministry of Steel and Mines (Department of Mines) and Bharat Aluminium Co. Ltd. are impleaded as opposite parties in the petition.

2. Shorn of unnecessary details the facts as set out in the writ application are as follows :--

The petitioner made an application on 12-5-1969 for grant of a mining lease for graphite over an area of 1877.18 acres in village Ambaguda in the district of Koraput. The State Govt. in the Mining and Geology Department after processing the application passed the order 15-11-76 and decided to grant mining lease to the petitioner over an area of 1592.34 acres as per Annexure 3. Thereafter, on

25th May, 1977 the lease was executed between the petitioner and the Governor of Orissa demising an area of 1592.34 acres (644.26 hectares) for a term of twenty years in favour of the petitioner vide Annexure 4. The petitioner by his letter dated 11-1-79 addressed to the Secretary to the Government of Orissa in the Mining and Geology Department (Annexure 5) applied in terms of the second proviso to Rule 29 of the Mineral Concession Rules 1960 for surrender of an area of 1025.34 acres (414 hectares) out of the total lease-hold area of 1592.34 acres held by him since the area in question was practically barren and not economically workable. While the application was pending with the State Government, M/s Bharat Aluminium Company Limited (hereinafter referred to as "BALCO") applied on 13-8-79 for grant of mining lease for Bauxite over an area of 4692.5 hectares in Panchapatmali Central and North Blocks in Koraput district and the Company also sought for a working permission as the area was required by them to feed the Aluminium Complex proposed to be set up at Damanjodi in Koraput District. The area applied for overlapped over the leasehold area of the petitioner to an extent of 445.15 hectares. It is stated by the petitioner that the State Govt. granted a working permission to BALCO to take up exploration work over the area applied for by it except 445.15 hectares which overlapped with the area granted to the petitioner.

It is alleged by the petitioner that all on a sudden he received the letter bearing No.-7334/ MG. Bhubaneswar dated 6-5-81 from the Govt. of Orissa in the Mining and Geology Department intimating him that his subsisting mining lease of graphite was terminated with immediate effect (vide Annexure 6). The petitioner challenges this order of the State Govt. on grounds, inter alia, that it was passed in violation of the principle of natural justice since he was not served with any prior notice to enable him to place his case before the competent authority and that the State Govt. proceeded with the erroneous basis that there was overlapping of an area of 445.15 hectares over the existing lease-hold area of the petitioner. According to the petitioner if his request for surrender of the specified area is accepted there will be practically no overlapping area between the area applied for by BALCO and the leasehold of the petitioner. It is his contention that this material aspect was also not considered by the Government of India while according approval u/s 4-A of the Mines and Minerals (Regulation and Development) Act, 1957 (for short "the Act"). Therefore the order passed by the State Govt. terminating the petitioner's mining lease as per Annexure 6 is unsustainable. On these averments the petitioner sought for the relief noticed earlier.

3. The opposite party No. 1, the State of Orissa through the Secretary to Government of Orissa, Mining and Geology Department, in its counter affidavit refuted the case of the petitioner. While accepting the statements of facts made in the writ application relating to the grant of lease in favour of the petitioner, the request made by him to surrender the specified area out of the leasehold area and the application submitted by BALCO for mining lease over a large area which included an area of 445.15 hectares, the said opposite party has taken the stand

that the petitioner's request for surrender of a part of the leasehold area was under consideration of the State Government at the material point of time. Taking into account the area specified and the application filed by BALCO, the State Govt. thought that the exclusion of the area granted to the petitioner from the applied area of BALCO will create difficulties for the Company in putting up and operating their mechanical installations. Therefore, the State Govt. as in duty bound, rendered all facilities to the BALCO, a Govt. of India undertaking, for establishment of the plant for the best interest of the Industrial development of the State, and prematurely terminated the lease over the unworked area of 644.27 hectares of the petitioner's leasehold u/s 4A(i) of the Act, after obtaining approval of the Govt. of India on 9-4-81. It is further stated in the counter affidavit that the Central Govt. in its order dated 9-4-1981 (Annexure-C) in exercise of the power conferred on it by Sub-rule (2) of the R. 59 (Annexure-C) has relaxed the provision of Sub-rule (1) of R. 59 of N.C. Rules 1960, thereby enabling the State Govt. to grant the mining lease in favour of BALCO without throwing open the area for regrant. It is further stated in the counter affidavit of opposite party No. 1 that when the State Government found that even though three years had passed since grant of lease, the petitioner had not started any mining operation in that area, a notice was served on him in the State Government's letter No. 8307 dated 16-6-80 to show cause as to why the lease should not be determined for non-working of the area. The petitioner submitted his explanation in his letter No. 506 dated 30-6-81. The reason assigned by him in his explanation was considered by the State Govt. as not convincing. The petitioner requested for more time to start mining operation in the area but he had not started operation till the termination of the lease of the petitioner, it is contended by the opposite party, is legal, justified and proper.

The opposite party No. 3, BALCO in a separate counter affidavit supported the action of the State Government in prematurely terminating the lease of the petitioner. According to this opposite party Section 4A(1) of the Act does not provide for issue of any notice to the lessee and therefore the order could not be said to have been vitiated for want of notice to him. The other averments made in the counter affidavit are substantially similar to those made in the counter of opposite party No. 1 as dismissed earlier.

4. Though the counsel for the petitioner raised several contentions, we do not consider it necessary to state all of them, as in our view, the case can be disposed of on the point of non-compliance of the principle of natural justice.

As noticed earlier, the impugned order of premature termination of petitioner's mining lease was passed by the State Govt. in exercise of power vested in it u/s 4A of the Act. The said section as it stood at the time of the impugned order of termination reads as follows :

"4A. Termination of mining leases:-- (1) Where the Central Govt., after consultation with the State Govt. is of opinion that it is expedient in the interest of regulation of mines and minerals development so to do, it may request the

State Govt. to make a premature termination of a mining lease in respect of any mineral, other than a minor mineral, and on receipt of such request, the State Govt. shall make an order making a premature termination of such mining lease and granting a fresh mining lease in favour of such Govt. company or corporation owned or controlled by Govt. as it may think fit.

(2) Where the State Govt., after consultation with the Central Govt., is of opinion, that it is expedient in the interest of regulation of mines and mineral development so to do, it may, by an order, make premature termination of a mining lease in respect of any mineral and grant a fresh lease in respect of such mineral in favour of such Govt. company or corporation owned or controlled by Govt. as it may think fit."

5. From the language of the section, it is apparent that there is no provision therein requiring service of notice on the lessee before passing the order of termination of lease. The question therefore is whether despite absence of specific provision a notice to show cause is a mandatory condition precedent to the order of termination. This very question came up for consideration before a Division Bench of this Court in the case of Bethal Mining Traders v. State of Orissa (1988) 66 CLT 285, in which I had answered the question in the affirmative. In the said decision the Hon"ble Chief Justice had expressed doubt about applicability of the principle of natural justice to the proceeding u/s 4A of the Act. Subsequently the Supreme Court in the case of State of Haryana Vs. Ram Kishan and Others, has specifically ruled that an existing mining lease cannot be terminated merely for the reason that a Govt. Company or Corporation is ready to undertake the work; that the language of S. 4A clearly indicates that the section by itself does not prematurely terminate any mining lease: that a decision in this regard has to be taken by the Central Govt. after considering the circumstances of such case separately; that for exercise of power it is necessary that the essential condition mentioned therein is fulfilled, namely, that the proposed action would be in the interest of regulation of mines and mineral development; that the question of the State Govt. granting a fresh mining lease in favour of a Govt. Company or a Corporation arises only after a decision to terminate the existing mining lease is arrived at and given effect to; that the section does not direct termination of all mining leases, merely, for the reason that a Govt. Company or Corporation has equipped itself for the purpose; that the section was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Govt. and the State Govt. to be held, that the two Governments have to consider whether premature termination of a particular mining lease shall advance the object or not and must, therefore, take into account all considerations relevant to the issue with reference to the lease in question; that in this view the section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development; not to do so will be violative of the principles of natural justice; since there is no suggestion in the

section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right and a final decision to prematurely terminate a lease can, therefore, be taken only after notice to the lessee. The Court further laid down that leases in respect of both major and minor minerals can be prematurely terminated in appropriate cases, u/s 4A of the Act.

6. The aforesaid authoritative pronouncement of the Supreme Court has set at rest the point regarding applicability of the principle of natural justice to a proceeding u/s 4A of the Act. Therefore the position is inescapable that the impugned order in the present case is unsustainable since admittedly no notice was issued to the petitioner before the impugned order was passed. In view of this finding it is not necessary to consider the other contentions raised by the learned counsel for the petitioner.

7. In the result the writ application is allowed, the impugned order as per Annexure 6 is quashed. It is however, open to the competent authority to proceed in the matter afresh in accordance with law, if so advised. Parties are to bear their respective costs of this proceedings.

V. Gopalaswamy, J.

8. I agree.