

**(1994) 01 DEL CK 0016**

**In the Delhi High Court**

**Case No : Civil Writ Appeal No. 1842 of 1989**

Misrilal Dharamchand (P) Ltd.

APPELLANT

Vs

Union of India and Another

RESPONDENT

---

**Date of Decision :** 18-01-1994

**Acts Referred:**

**Citation :** AIR 1994 Delhi 361 : (1994) 53 DLT 364 : (1994) 28 DRJ 317

**Hon'ble Judges :** A.D. Singh, J

**Bench :** Single Bench

**Advocate :** Geetanjali Mohan and R.K. Mehta, for the Appellant;

---

## **Judgement**

Anil Dev Singh, J.

(1) The facts leading to this petition are as under:- the petitioner, which is a Private Limited Company, filed an application on June 13, 1959 for the grant of a prospecting license for Lime Stone and dolomite over an area of 6 sq. miles in village Gosguda Sunder Garh, District(Orissa). This application remained pending with the State Government without any tangible result. Under Rule 11 of the Mineral Concession Rules, 1960 (for short "Rules") the State Government was required to dispose of the application within a period of 12 months, failing which it was to be deemed to have been rejected. The petitioner filed a revision petition before the Central Government which was also rejected on March 17, 1962. This order of the Central Government was successfully challenged by the petitioner in a writ petition preferred before this Court. While accepting the writ petition on November 9, 1971, the order of the Central Government dated, March 17, 1962 was set aside and the Central Government was directed to dispose of the application of the petitioner for prospecting license in accordance with law. Pursuant to the said order the Central Government on June 24, 1975 set aside the deemed rejection of the petitioner's application for prospecting license and directed the State Government to consider the application for a reduced area of 3 sq. miles by September 30, 1975. The State Government, however, failed to decide the matter within the stipulated period on the ground that the requisite

documents were not filed by the petitioner. This resulted in filing of a fresh petition by the petitioner under Article 226 of the Constitution before the Orissa High Court. On March 18, 1982 the Orissa High Court while disposing of the writ petition, directed the State Government to consider the application of the petitioner within a period of two months after the receipt of the documents from the petitioner. This direction of the Orissa High Court seems to have moved the State Government and consequently it passed an order on June 18, 1982 in the matter, though not favorable to the petitioner. By this order the State Government rejected the application of the petitioner on the ground of the area being reserved for State exploitation as per notification dated January 20, 1981. The petitioner not loosing heart by the adverse order of the State Government again filed an application for revision against the same before the Central Government by invoking section 30 of the Mines and Minerals (Development & Regulation) Act, 1957 (for short "Act") and Rule 54 of the Rules. The Central Government on February 16, 1984 allowed the revision petition and directed the State Government to consider the application of the petitioner afresh on merits. Thereupon the State Government on January 9, 1986 considered the matter but again rejected the application of the petitioner on the grounds inter-alia that in the past number of mining leases had been granted in favor of the petitioner and its sister concerns and the petitioner also did not take any steps for setting up any industry in the State. Against this order of the State Government, the petitioner again moved the Central Government in its revisional jurisdiction. The Central Government asked the State Government to file its comments to the revision petition which it did. An opportunity was then given by the Central Government to the petitioner to file its counter-comments, which were filed by the petitioner on February 25, 1986. After completion of the pleadings in accordance with Rule 55 of the Rules, the Central Government fixed January 31, 1989 as the date of hearing of the revision application. The information about the fixation of the date was given to the petitioner. On January 23, 1989 the petitioner by means of a letter addressed to the Joint Secretary, Department of Mines requested for adjournment of the case on the ground of non-availability of its counsel on January 31, 1989. On the date of hearing before the Central Government, the petitioner was represented by Mr.P.S.Ahluwalia, Adviser who repeated the request of the petitioner for adjournment of the matter but the request was not considered reasonable by the Government and the same was accordingly rejected. The Central Government on a consideration of the matter, rejected the revision application of the petitioner by a detailed order dated February 7, 1989. This order of the Central Government as also the order of the State Government dated January 9, 1986 have been challenged before me.

(2) Ms. Gitanjali Mohan, learned counsel appearing for the petitioner submits that the impugned orders are vocative of the principles of natural justice in as much as at no stage the petitioner has been granted oral hearing by the authorities. She has drawn my attention to the order of the State Government dated January 9, 1986 and points out that this order was based on the grounds

that number of mining leases had been granted in favor of the petitioner and its sister concerns and the petitioner has also not taken any step to set up any industry in the State. Learned counsel urges that these were new grounds on which the application of the petitioner was rejected. She submits that the earlier rejection of the application of the petitioner by the State of Orissa on June 18, 1982 was grounded on the fact that area was reserved for State exploitation. Elaborating her submission, learned counsel points out that the petitioner should have been given an opportunity of oral hearing by the State Government before passing the impugned order as the petitioner had no notice of the fact that its application would be rejected on a different ground. According to the learned counsel, the petitioner has been greatly prejudiced by the lack of opportunity in explaining its case to the State Government. With regard to the order passed by the Central Government in revision, her submission is that even at that stage the Central Government did not provide the petitioner with a reasonable opportunity of an oral hearing despite the fact that a specific request was made to the Central Government to adjourn the matter as on January 31, 1989 the counsel for the petitioner was not available. She submits that in any case the defect in the order of the State Government cannot be cured by the order passed by the Central Government, which itself stands vitiated for not granting proper and adequate opportunity of hearing to the petitioner.

(3) On the other hand, Mr. Mehta ,learned counsel for the respondent submits that there is no legislative direction in sections 10 and 30 of the Act and Rules 12, 54 and 55 of Rules for affording an oral hearing to a party who has applied for grant of prospecting lease. Despite this position the Central Government gave adequate and reasonable opportunity of hearing to the petitioner by fixing the date of hearing of the revision application in advance with due notice to the petitioner. Therefore, there is no violation of the principles of natural justice and the orders passed by the State Government and the Central Government are in confirmity therewith urges the learned counsel. It is the case of the State that the petitioner and its sister concerns were granted nine mining leases including a mining lease for Graphite over an area of 34.44 acres in village Bargaon in Bolangir District, which was surrendered after the mineral was exhausted and yet no industry was established by the petitioner. Learned counsel points out that the State Government in pursuance of the directive principles of the State policy rejected the application of the petitioner in order to prevent concentration of wealth in a few hands. Besides the State Government gives preference to parties who have set up mineral based industry in the State as the State, though rich in minerals, flagging behind in the field of industrialization .

(4) I have considered the respective submissions of the learned counsel for the parties. It is well settled that principles of natural justice have to be observed by administrative authorities while passing orders affecting the interests of the parties. There is also no doubt that principles of natural justice have taken deep roots in our country as would be evident from a large number of judgments of the Supreme Court and High Courts. (See: Madhya Pradesh Industries Ltd. Vs.

Union of India and Others (UOI), , Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, , Ramana Dayaram Shetty vs. The International Airport Authority of India and others 1979 (3) Scr and E.P. Royappa Vs. State of Tamil Nadu and Another, . But it is also well settled that the principles of natural justice cannot be put in a strait jacket and they must retain their elasticity so as to be molded to suit a given tact situation for doing justice. In the present case the situation is that the petitioner applied turn the grant of a prospecting license for Lime Stone and Dolomite over an area of 6sq. miles. The State Government considered the request but ultimately rejected the application on the ground that the petitioner and its sister concerns were granted several leases but they did not set up any industry in the State. By this order the petitioner felt aggrieved and filed a revision before the Central Government. Admittedly the petitioner was not granted any hearing by the State Government but it is also a fact that the petitioner never claimed any oral hearing from the State Government till such time the order was passed by the State Government on January 9, 1986. This position is not disputed by learned counsel for the petitioner. Again there is no controversy that the Central Government in conformity with Rule 55 of the Rules sought the comments of the State Government in regard to the revision application of the petitioner and on receipt of the comments from the State Government, a copy of the same was sent to the petitioner for its counter comments. On receipt of the comments of the State Government, the petitioner submitted its counter comments to the Central Government by its letter dated February 26, 1987. Thereupon "he Central Government gave an opportunity of oral hearing to the petitioner by fixing the date of hearing as January 31, 1989 well in advance. On the date of hearing, the petitioner was represented by its adviser Mr.P.S.Ahluwalia but it is another matter that the advocate of the petitioner was not present and a request was made for an adjournment on that ground. The Central Government, however, did not consider the request to be reasonable and proceeded with the matter. The Central Government after perusing the record and noticing the pleas of the petitioner as contained in the revision application and the counter statement, came to the conclusion that there was no justification to interfere with the order of the State Government. In any event, oral hearing is not always a concomitant of the principles of natural justice. In Madhya Pradesh Industries vs. Union of India and others (supra) the Supreme Court while dealing with Rule 55 of the Rules (as they then stood) held that the said Rule did not require granting of personal hearing to a party and the Rule would be satisfied incase an opportunity to make an adequate representation is given to him. In this regard, the Supreme Court observed as follows:-

"IT is no doubt a principle of natural justice that a quasi-judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, R.55 of the Rules, quoted supra, recognizes the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make

his representation against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity . should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of the tribunal. The facts of present case disclose that a written representation would effectively meet the requirements of the principles of natural justice."

(5) Thus, the principles of natural justice do not require that in every case oral hearing must be provided to a party by the executive authority. What is required is that the party should be given a chance to represent and that opportunity was given to the petitioner by the Central Government by inviting the counter comments of the petitioner to the case of the State. Learned counsel for the petitioner relying upon the decision of the Orissa High Court in the case of Dr. Sarojini Pradhan Vs. Union of India (UOI) and Another, has argued that the respondents were required to afford an opportunity of personal hearing to the petitioner. I am afraid this judgment does not help the petitioner. The Orissa High Court relying upon the decision of the Supreme Court in Maneka Gandhi's case held that a person must be given opportunity to have his representation or say in regard to the matter which is going to affect him adversely. In the present case as already observed, the petitioner did have an opportunity to file his representation in the form of the counter comments. Besides the Central Government also afforded an opportunity of hearing to the petitioner which was not availed of on the ground that the lawyer of the petitioner was not available on that date. The mere fact that the Central Government did not accede to the request of the petitioner to the grant of an adjournment can not vitiate the order of the Central Government. To grant or not to grant an adjournment was a matter in the discretion of the Central Government, which cannot be interfered with.

(6) Learned counsel submits that in case an opportunity of hearing had been granted to the petitioner by the State Government, the petitioner would have shown that it was ready and willing to setup an industry in the State based on Lime Stone and Dolomite. This stand of the petitioner is not borne out from the reading of the revision petition and the counter statement. What is stated in the revision petition is that if ultimately it was found after prospecting the area that the reserves and the quality of mineral is suitable for setting up of a mineral based industry, the applicant would take necessary steps and apply for grant of mining lease. There is no categorical plea of the petitioner, either in the revision petition or the counter statement, that the petitioner would set up a mineral based industry. According to the counter affidavit of the second respondent nine leases were granted to the petitioner but no industry was set up in the State. According to the counter-affidavit, the State as a matter of policy is giving preference to persons who are desirous of setting up mineral based industry. It is further averred in the counter-affidavit that the State of Orissa is lagging behind in the field of industrialisation and being the owner of all mines and minerals in

the State, has decided to exploit the mineral resources with due regard to the rapid industrialisation in the State. It is also stated that neither the petitioner nor its associates took any step to set up a mineral based industry in the State although they were granted as many as nine leases in the State. Learned counsel for the petitioner submits that out of nine leases only five lease agreements were executed till the order of the State Government was passed. Again this plea is not raised either in the revision application or in the counter statement. Learned counsel for the respondent points out that after the grant of the lease it takes some time to execute the formal lease agreements.

(7) Learned counsel for the petitioner also contends that the petitioner was a distinct entity from the so called sister concerns and the State Government was not entitled to lift the corporate veil to see as to who were the shareholders of the company in order to arrive at the conclusion that in the past nine leases were given to the petitioner and its sister concerns. The submission of the learned counsel for the petitioner is not well founded. In its counter statement, the petitioner has admitted that the Government had granted leases to the petitioner as also to its sister concerns. Apart from this admission, it is well settled that lifting of a corporate veil of a company can be resorted to in public interest. The Supreme Court in *State of U.P. and Others Vs. Renusagar Power Co. and Others*, held as follows:-

" MR. Justice O. Chinnappa Reddy speaking for this court in *Life Insurance Corporation of India Vs. Escorts Ltd. and Others*, had emphasised that the corporate veil should be lifted where the associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to remunerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected. After referring the several English and Indian cases, this Court observed that ever since *A. Salomon & Co. Ltd's case* 1897 AC 22 (supra), a company has a legal independent existence distinct from individual members. It has since been held that the corporate veil may be lifted and corporate personality may be looked in. Reference was made to *Pennington and Palmer's Company Laws*. It is high time to reiterate that in the expanding horizon of modern jurisprudence, lifting of corporate veil is permissible. Its frontiers are unlimited. It must, however, depend primarily on the realities of the situation. The aim of the legislation is to do justice to all the parties. The horizon of the doctrine of lifting of corporate veil is expanding. Here, indubitably, we are of the opinion that it is correct that Renusagar was brought into existence by Hindalco in order to fulfill the condition of industrial license of Hindalco through production of aluminium. It is also manifest from the facts that the model of the setting up of power station through the agency of Renusagar was adopted by Hindalco to avoid complications in case of take over of the power station by the State or the Electricity Board. As the facts make it abundantly clear that all the steps for establishing and expanding

the power station were taken by Hindalco, Renusagar is wholly owned subsidiary of Hindaico and is completely controlled by Hindaico. Even the day-to-day affairs of Renusagar are controlled by Hindaico. Renusagar has at no point of time indicated any independent volition. Whenever felt necessary, the State or the Board have themselves lifted the corporate veil and have treated Renusagar and Hindaico as one concern and the generation in Renusagar as the own source of generation of Hindaico. In the impugned order the profits of Renusagar have been treated as the profits of Hindaico."

(8) Again in *U.K.Mehra vs. Union of India and others* 1993 (3) DL 275, this Court held that where a subsidiary is wholly owned by the Principal company which has a pervasive control over it and the former acts as the hand and voice of the latter, the subsidiary in that event would be nothing but an instrumentality, rather a part of the principal company and the two would have to be treated as one concern. Noting the contemporary trend it was laid down that lifting of the corporate veil was permissible in public interest so that the real face of the persons forming the company could be seen in the interest of justice .

(9) MS.MOHAN, learned counsel then contended that the amendment in Rule 12 of the Rules, which was carried out on February 10, 1987 specifically provides that the State Government may after giving an opportunity of being heard, pass an order in regard to the application of a party for a prospecting license. The contention of the learned counsel is that the legislative intent has been made explicit in 1987 amendment and must be given effect to even in regard to the matters arising before February 10, 1987. I am not impressed by the contention of the learned counsel. Prior to the amendment of Rule 12 of the Rules, the State Government was not obliged to grant an oral hearing to a party whose request for grant of prospecting license was being rejected. The amendment cannot be given a retrospective effect. In any event the Central Government provided an adequate opportunity to the petitioner to have its say in the matter and it is enough if at the final stage the party was afforded an opportunity to represent.

(10) Having regard to the above discussion, I am of the view that the impugned orders do not suffer from any illegality or infirmity. Accordingly the writ petition fails and the same is dismissed without any order as to costs.