

(2012) 09 CHH CK 0018
In the Chhattisgarh High Court
Case No : Writ Appeal No. 1024 of 2012

M/s. Indus Smelters Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 27-09-2012

Acts Referred:

Limitation Act, 1963 — Section 5

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

Citation : (2012) 3 CG.L.R.W. 189 : (2012) 4 CGBCLJ 619 : (2013) 3 EFLT 358

Hon'ble Judges : Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Goutam Bhaduri with Mr. Ankit Singhal, for the Appellant; Vivek Shrivastava, Counsel for respondent No. 1/Union of India and Shri UNS Deo, Govt. Advocate for the State, for the Respondent

Final Decision : Allowed

Judgement

Abhay Manohar Sapre, J.—This appeal has been filed by the writ appellant against the order dated 13-08-2012 in W.P. No. 1328/2012, passed by learned Single Judge whereby the writ petition filed by the appellant herein has been dismissed. By the impugned order learned Single Judge dismissed the appellant's writ petition and affirm the order dated., 10-04-2012 (Annexure P-1), passed by the Central Government in revision application No. 12/31/2011-RC-II u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act, 1957") read? with 55 of the Mineral Concession Rules, 1960 (for short "Rules 1960").

2. Facts of the case in nutshell are that the appellant had suffered one adverse order dated 18-11-2009 passed by the State Government on an application made by them for grant of prospecting licence under the Act, 1957 in respect of one area in the village Kalwar, Tahsil Bhanu Pratappur, District North Bastar-Kanker. The appellant filed a revision u/s 30 of the Act, 1957 being Revision Petition No. 12/31/2G11-RC-11 before the Central Government questioning the

legality and propriety of the order dated 18-11-2009. According to Central Government, this revision was not filed within three months as required u/s 30 of the Act, 1957 and therefore, it was liable to be dismissed on the ground of limitation. The revisionary authority therefore, dismissed the revision application filed by the appellant as being barred by limitation by around two years. It was held that the appellant was not able to plead and satisfy the sufficiency of cause in filing the revision beyond the period of limitation. It is against this order the appellant filed a writ petition out of which this appeal arises. The learned Single Judge dismissed the writ petition and affirmed the order passed by the Central Government.

3. Submission of the learned counsel for the appellant was that since the order impugned in the revision was never communicated to the appellant as required under Rule 54 of the Rules, 1960 and, therefore, their revision could not have been dismissed on the ground of limitation. It was his submission that so long as the order impugned is not communicated to the appellant, the limitation will not begin to run. He therefore, submitted that there was no finding rendered by the revisionary Court nor by the writ Court that on what date the order in question was communicated to the appellant so as to compute the limitation for filing the revision under Rule 54 of the Rules, 1960 against the said order.

4. In reply, learned counsel for the respondents supported the impugned order.

5. Having heard learned counsel for the parties and on perusal of the record we are inclined to allow this appeal and set aside the order passed by the Central Government (Revisionary Court) and also of the writ Court, and in consequence remand the case to the Central Government for deciding the revision on merits, in accordance with law.

6. Rule 54 of the Rules, 1960 which is relevant for the purpose of disposal of this appeal reads as under:

54. Application for revision.- (1) Any person aggrieved by any order made by the State Government or other authority in exercise of the powers conferred on it by the Act or these rules may, within (three months) of the date of communication of the order to him, apply to the Central Government in triplicate in Form N, for revision of the order. The application should be accompanied by (a Bank Draft for [five thousand rupees] on a nationalized bank in the name of Pay and Accounts Officer, Department of Mines, payable at New Delhi or through a treasury challan for [five thousand rupees under the; Head of Account-0853- Non-ferrous Mining and Metallurgical Industries- 102 Mineral Concession Fees, Rents and Royalties:].

Provided that any such application may be entertained after the said period of [three months] if the applicant satisfies the Central Government that he had sufficient cause for not making the application within time.

(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.

(3) Along with the application under sub-rule (1), the applicant shall submit as many as copies thereof as there are parties impleaded under sub-rule (2),

(4) On receipt of the application and the copies thereof, the Central Government shall send a copy of the application to each of the parties impleaded under sub-rule (2) specifying a date on or before which he may make his representations, if any, against the revision application.

[Emphasis supplied]

7. Mere perusal of the Rule 54 quoted supra would go to show that limitation to file a revision would start only from the date of communication of the order to an aggrieved. If it is proved that order was served upon the aggrieved on a particular date then, he is under obligation to file a revision within three months from the date of communication of the said order and if there is a delay in filing the revision within three months from the date of such order then in terms of proviso to Rule 54 he is required to make out sufficient cause for not making the application within time. The proviso to Rule 54 is akin to Section 5 of the Limitation Act which enables the authority to condone the delay if the revision is not filed within time prescribed.

8. In our considered opinion what is therefore, required to be seen while entertaining the revision under Rule 54 is whether it is filed within three months "from the date of communication of the order impugned in the revision or not". So long as this inquiry was not undertaken by the revisionary authority, the revision could not be dismissed on the ground of limitation.

9. As rightly urged by learned counsel for the appellant neither the revisionary authority and nor writ Court recorded any finding as to on what date the order dated 18-11-2009 impugned in the revision was served upon the appellant. Since this finding was not recorded by the two Courts below, in our opinion, the order passed by the Central Government and upheld by the writ Court was not legally sustainable. In other words, the revisionary Court could have dismissed the revision as being barred only after holding that despite the order having been communicated to the appellant, they failed to file the revision within the time specified in Rule 54 and hence for want of any sufficient cause pleaded in the application, the revision was liable to be dismissed on the ground of limitation. It was not done in this case. It is for this reason, both the orders (Central Government and writ Court), in our view, are liable to be set aside.

10. In view of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside. It is held that the revision filed by the appellant was within limitation. As a consequence, the revision petition filed by the appellant is restored to the file of Central Government for being heard on its own merit. Parties are directed to appear before the revisionary authority on 29-10-2012

and produce a copy of this order to enable them to hear the revision in accordance with law.