

(1970) 02 OHC CK 0011

In the Orissa High Court

Case No : Original Jurisdiction Case No. 23 of 1966

Om Prakash Choubey and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 03-02-1970

Acts Referred:

Mineral Concession Rules, 1949 — Rule 27

Mineral Concession Rules, 1960 — Rule 54, 55, 55(1), 55(2), 55(3)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30, 5(2), 6(1)

Citation : (1970) 36 CLT 757

Hon'ble Judges : B.K. Patra, J;A. Misra, J

Bench : Division Bench

Advocate : B.M. Patnaik, for the Appellant; G. Rath and S.C. Roy and A.G., for the Respondent

Final Decision : Allowed

Judgement

B.K. Patra, J.—Late H.N. Thakur Choubey had been granted a prospecting license by the State of Orissa over an area of 1403.70 acres on Bhitaramda Hill in the district of Mayurbhanj in respect of iron ore and the prospecting license was duly executed in his favour on 28-11-1950. On 6-7-1957, H. N. T. Choubey applied for a mining lease under Rule 27 of the Mineral Concession Rules, 1949 in respect of the said area. He died on 19-11-1957. In a family settlement, the rights under the prospecting licence and under the application in pursuance thereof for mining lease fell to the share of his sons, the Applicants herein, and this was in due course recognised by the Government of Orissa, who thereafter carried on further correspondence in respect of the application for meaningless with the Applicants on 28-3-1962, Government enquired from the Applicants whether they were willing to accept on lease an area of 602.50 acres out of the total area of 1403.70 acres intimating to them that the balance area was proposed to be worked out in the Public Sector through the Orissa Mining Corporation (Annexure G). In the reply dated 2-4-1962 (Annexure H), the Applicants declined to accept the reduced area and claimed the entire area applied for.

Meanwhile, as the State Government made unusual delay in passing orders on the application for lease, the Applicants filed an application for revision under Rule 54 of the Mineral Concession Rules, 1960 (which by then had come into force) and the Central Government directed the State Government to pass final orders on the Applicants' application for mining lease by 23-2-1965. Accordingly, the State Government passed orders on 21-1-1965 (Annexure J) rejecting the lease application of the Applicants which may be quoted.

Application dated 6-7-1957 filed by late H. N. Thakur for M.L. for iron ore over an area of 1403.70 acres in Bhitaramda Hill in Mayurbhanj Dist.

ORDERS:

Whereas late H.N. Thakur has applied to the State Government for grant of mining lease by his application read above.

Whereas the major portion of the area applied for namely 801.2 acres is required for exploitation in the public sector and cannot be granted to any private Applicant.

Whereas the legal heirs of late H.N. Thakur were asked in the State Government letter No. 3344(2) MG., dated 28-3-1962 to intimate whether they are interested in the balance area of 602.5 acres and the legal heirs in their letter dated 26-11-1963 have intimated the State Government to the effect that they are not interested in the balance area of 602.5 acres and would only like to have the area decided to be kept for State exploitation.

Whereas the Central Government in exercise of their revisional powers under Rule 55 of the M.C. Rules, 1960 and of all powers enabling in that behalf have directed the State Government to pass final orders on the application by 28-2-1965.

Now, therefore, the State Government are pleased to reject the said application.

By order of the Governor Sd/- P. Tripathy Dy. Secretary to Government.

Thereafter, on 8.3.1965, the Applicants filed a revision application (Annexure K) before the Central Government under Rule 54, of the Mineral Concession Rules, 1960 praying for setting aside the order of the State Government rejecting their application for mining lease and for a direction to the State Government to grant them the area applied for. It was further prayed that the Applicants might be given a chance to be heard personally before the revision application was disposed of and pending disposal of the application, an order be issued to the State Government not to lease out the area or any part thereof in favour of the Orissa Mining Corporation. Receipt of this revision application was duly acknowledged by the Central Government on 6.4-1965, and on that very day, the Central Government directed the State Government to send their comments on the revision application filed by the Applicants. Meanwhile, on 22-3-1965, the State Government appears to have addressed the Central Government to grant

mining lease in respect of 400.2 acres out of the disputed area to the Orissa Mining Corporation on 1-4-1905, the Central Government passed orders conveying their approval to the grant of mining lease for iron ore in respect of 400.2 acres of land in favour of the Orissa Mining Corporation. The order may be quoted.

Copy of letter No. MII-162(79)/60 New Delhi, the 12th April, 1965 from Shri H.S. Sahni, Under Secretary to the Government of India, Ministry of Steel and Mines (Department of Mines and Metals), New Delhi to the Secretary to the Government of Orissa, Mining and Geology Department, Bhubaneswar.

Sub: Grant of mining lease for iron ore over an area of 400.2 acres in village Bihitaranda in the district of Mayurbhanj in favour of M/s. Orissa Mining Corporation, Ltd.

Sir,

I am directed to refer to your letter No. III(C)M3/65-2426-MG, dated the 22nd March, 1965, on the above subject, and to convey the approval of the Central Government u/s 5(2) of the Mines and Minerals (Regulation and Development) Act, 1957, to the grant of a mining lease Bhitaraanda in the district of Mayurbhanj in favour of M/s. Orissa Mining Corporation, Ltd.

2. The Central Government in exercise of the powers conferred by Sub-rule (2) of Rule 58 of the Mineral Concession Rules, 1960, hereby relax the provision of Sub-rule (I) of Rule 58 to enable grant of mining lease for iron over an area of 387.2 acres in village Bhitaraanda, in the district of Mayurbhanj, in favour of M/s. Orissa Mining Corporation Ltd., without following the procedure laid down in Sub-rule (1) of Rule 58 of the Mineral Concession Rules, 1960.

3. Further the Central Government in exercise of the powers conferred by proviso to Section 6(1) of the Mines and Minerals (Regulation and Development) Act, 1957, permit M/s. Orissa Mining Corporation, Ltd. in the interests of mineral development to acquire mining lease for iron ore over an area of 400.2 acres in the district of Mayurbhanj in excess of the maximum limit prescribed in Section 6(1)(b) thereof.

4. Furthermore, the Central Government in exercise of the powers conferred by Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957, direct the State Government to take into consideration the application dated 28-5-1959 of M/s. Orissa Mining Corporation, Ltd., and pass orders thereon not later than 31-7-1965.

It may be noticed that this order was passed by the Central Government while the review application filed by the Applicants was pending disposal before them obviously coming to know of this order, the Applicants on 10-6-1965 addressed a letter (Annexure M) to the Central Government to pass an order of stay of further proceedings in the matter of grant of lease of the area in question to the Orissa Mining Corporation. By the letter dated 28-7-1965 (Annexure N), the

Central Government refused to pass any stay order. A subsequent telegram sent by the Applicants on 16-9-1965 (Annexure-O) making the same prayer produced no result on 28-10-1965, the Central Government received from the State Government their comments on the review application filed by the Applicants on 13-1-1966, the Central Government passed final orders on the review application rejecting it and this order was communicated to the Applicants on 15-3.1966. The order may be quoted.

Copy of letter No. MV-I(99)/65. New Delhi, the 15th March, 1966 from Shri H.S. Sahni, Under Secretary to Government of India, Ministry of Mines and Metals, New Delhi to M/s. Om Prakash Choubey, Uma Shankar Choubey, Gouri Shankar Choubey, P.O. Rairangpur, Dist. Mayurbhanj.

Subject: Application under Rule 54 of the Mineral Concession Rules, 1960.

I am directed to refer to your revision application dated 8.3.1965 on the above subject and to say that after careful consideration of the grounds stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Orissa rejecting your application for grant of mining lease for iron ore over an area of 1403.70 acres in villages Bhitaramda, etc., taluk Khadesh and Banki Pirs, dist. Mayurbhanj. Your application for revision, is, therefore, rejected.

5. On 19-1-1966, that is, about two months before the Central Government communicated to the Applicants the final order passed by them rejecting the review application, the Applicants filed the present writ petition in Court complaining against the order passed by the State Government rejecting their application for grant of lease and for directing the State Government to consider the application in accordance with law and to forbid them during the pendency of the writ application to grant a thease in respect of the disputed area in favour of the Orissa Mining Corporation. There was no prayer against the Central Government which has been impleaded as one of the parties therein, as by that time the Central Government's order rejecting the review appellation had not been communicated to the Applicants and they were consequently not aware of the same. After receipt of the final order from the Central Government, the Plaintiffs amended the writ application by adding thereto new grounds and fresh prayers for quashing the order of the Central Government passed on their review application, for quashing the order of the State Government granting a part of the lease area to the Orissa Mining Corporation and for the issue of a writ of mandamus on the State Government directing them to grant mining lease in question to the Applicants.

6. In view of the order we propose to pass in this case, it is unnecessary to refer at length to the several grounds mentioned in the writ application in support of the claim of the Applicants that they are entitled to get a mining lease of the disputed area and to the plea put forth by the State Government opposing the claim. It is now well-settled that the Central Government while deciding an

application under Rules 54 and 55 of the Mineral Concession Rules, 1960 is acting in quasi-judicial capacity. As such, it is incumbent upon it before coming to a decision to give a reasonable opportunity to the Plaintiff to represent his case. This position is further made clear by the amendment to Rule 55 of Mineral Concession Rules, 1960 made in 1965 by which Sub-rule (2) was added thereto Rule 55, as amended, stands as follows:

55. Orders on revision application-(1) on receipt of an application for revision under Rule 54, copies thereof shall be sent to the State Government and to all the impleaded parties calling upon them to make such comments as they may like to make within three months of the date of issue of the communication, and if no comments are received by the Central Government within that period, it shall be presumed that the party which has omitted to make such comments or the State Government as the case may be, has no comments to make and the case may be decided by the Central Government ex parte.

(2) on receipt of the comments from any party under Sub-rule (1), copies thereof shall be sent to the other parties calling upon such parties to make such further comments, as they may like to make within one month from the date of issue of the communication.

(3) The revision application, the communications containing comments and counter-comments referred to in Sub-rules (1) and (2) shall constitute the records of the case.

(4) After considering the records referred to in Sub-rule (3), the Central Government may confirm, modify or set aside the order or pass such other order in relation thereto as the Central Government may deem just and proper.

(5) Pending the final disposal of an application for revision, the Central Government may, for sufficient cause, stay the execution of the order against which any revision application has been made.

It may be seen that whereas the old rule directed the Central Government only to consider the comments of the State Government or other authority on the petition for review, the new rule requires all the parties including the State Government to make their comments in the matter and on receipt of those comments, copies thereof are sent to other parties calling upon them to make such further comment as they may like. In effect, the parties are given the right to bring forth materials which might not have been before the State Government at the time the latter disposed of the lease application. It is, therefore, clear that in exercising its power of revision under Rule 55 of the Mineral Concession Rules, 1960, the Central Government must take into consideration not only the materials which were before the State Government but also the comments and counter comments, if any, which the parties may make regarding the order of the State Government. Thereby a valuable right is given to the parties to show how and where the State Government had gone wrong or why the order of the State Government should be confirmed. A party whose application for mining

lease is turned down by the State Government is thus given an opportunity of showing that the State Government had taken into consideration irrelevant materials or based its decision on grounds which are not justified (See Bharat Raja Vs. The Union of India (UOI) and Others, . In this case, the averments made by the Plaintiffs that a copy of the comment made by the State Government had not been furnished to them and that their counter comments were not asked for, are not denied by the Central Government. Thus the Plaintiffs were deprived of a valuable opportunity to put forth their counter comments on the comments made by the State Government on the other hand, the Central Government passed a mechanical order rejecting the review application without giving any indication therein about the reasons why the application was rejected. An exactly similar order couched in similar language was quashed by the Supreme Court in Bharat Raja Vs. The Union of India (UOI) and Others, , referred to above. Such an order cannot be sustained.

7. In the result, we would allow this application and quash the order of the Central Government communicated to the Plaintiffs by their letter No. NV-1(99)/65 dated the 15th March, 1966 and direct the Central Government to decide the review application afresh according to law and in the light of the observations made above. The Applicants shall recover the costs of the case from opposite party No. 3. Hearing fee Rs. 200/-.

A. Misra, J.

8. I agree.