

(1971) 08 KAR CK 0010
In the Karnataka High Court
Case No : Writ Petition No. 1168 of 1969

P.R. Nayak

APPELLANT

Vs

The Union of India (UOI) and Others

RESPONDENT

Date of Decision : 27-08-1971

Acts Referred:

Mineral Concession Rules, 1960 — Rule 54, 55

Mines and Mineral (Development and Regulation) Act, 1957 — Section 11, 11 (3)

Citation : AIR 1972 Kar 114 : (1971) 2 MysLJ 594

Hon'ble Judges : K. Jagannatha Shetty, J;G.K. Govinda Bhat, J

Bench : Division Bench

Advocate : K.R. Karanth and U.L. Narayana Rao, for the Appellant; M. Papanna, Jr. Standing Counsel, P.K. Shyamsunder, High Court Govt. Pleader and P. Sundaraswamy, for the Respondent

Final Decision : Allowed

Judgement

Jagannatha Shetty, J.—In this petition under Article 226 of the Constitution the petitioner prays for an order of certiorari to quash the Order dated 3-3-1969 made by the Government of India. Ministry of Petroleum. Chemical and Mines and Metals in its revisional jurisdiction under Rule 55 of the Mineral Concession Rules. 1960 (hereinafter referred to as the Rules).

2. Shortly stated, the facts leading to the petition are these: By a notification dated 12-1-1967, the Government of Mysore, invited applications for the grant of a licence for a mining lease in respect of 810 acres of land, out of forest survey No. 2 of Atli village, in Supa Taluka of North Kanara District. The petitioner and respondent 3 among others submitted their applications on the same date, for the grant of a license. After considering the cases of the applicants, the State Government in exercise of its powers u/s 11 of the Mines and Minerals (Regulation and Development) Act. 1957, and after obtaining the approval of the Central Government, issued a notification dated 23-8-1967 sanctioning the grant of & Mining Lease to the petitioner in respect of the said land to the extent of

810 acres. On 12-2-1968, the petitioner executed a registered lease for a period of twenty years and thereafter commenced stripping work to explore the workable deposits investing some capital. It is stated that he also exploited some iron ore and delivered it to the Mines and Metal Trading Corporation.

3. Against the grant of lease in favour of the petitioner, respondent No. 3 which is a private limited Company, preferred a revision application to the Central Government under Rule 54 of the Rules. The copy of the revision application is Annexure "C" to the writ petition. In the grounds of revision, it is stated that the State Government had failed to apply the matters specified in Section 11 (3) of the Act while considering the comparative merits of the applicants. It is further stated that it possesses special knowledge and better experience in the iron ore business; that in the matter of financial resources, it has a paid up capital of five lakhs of rupees, and that it has better qualified technical staff. It appears from the records that in the beginning, the petitioner was not a party to the revision application but was later impleaded. The copy of the revision application was sent to the State Government for their comments which were sent as per Annexure "E" dated 16-1-1968.

The Central Government by their letter dated 13-6-1968 forwarded a copy of the revision application along with the comments of the State Government to the petitioner inviting his comments thereon. On 2-9-1968, the petitioner sent his comments as per Annexure "D". Therein, he has denied the superior special knowledge and experience in mining claimed by respondent No. 3. He has stated that he has got seventeen years of experience in mining in the area in which the lease of land is in question, and that he has more qualified technical staff at his disposal with adequate financial resources. He has further stated that during the last three years he had taken up iron ore mining of An mode Sector I and supplied about 70,000/- tonnes of iron ore to the Mineral and Metals Trading Corporation of India, with a current contract with the Corporation to supply 80,000 tonnes of iron ore. On these among other grounds, he sought to justify the grant in his favour.

4. The Central Government sent copies of the comments by the State Government and the petitioner, to respondent No. 3 for its counter comments. Exhibit I dated 14th March 1968, filed along with the counter-affidavit of respondent No. 3 is the copy of the counter-comment by respondent No. 3 to the comment of the State Govt. It is stated therein, that the petitioner won 30,000 tonnes of iron ore under an arrangement with one Mr. Jagannatha Gupta who was the lessee of the mines and therefore, that cannot be a relevant circumstance in favour of the petitioner, as the lease did not belong to him. Exhibit II dated 7th October 1968. is a copy of the counter comments from Respondent No. 3 to the one sent by the petitioner, reiterating those asserted under Exhibit I. besides containing some other allegations. It may be relevant to state that the copies of these two counter comments were not sent to the petitioner. 5. The Central Government on a consideration of the above stated

comments and counter-comments of the parties, passed the impugned order dated 3-3-1969 setting aside the lease in favour of the petitioner and directing the State Government to grant the lease in question in favour of respondent No. 3. The material portion of the order reads as follows:--

"The Central Government have considered the grounds of revision, the comments of the impleaded party Shri P. R. Nayak. and counter comments of the State Government and the petitioner as required under Rule 55 of Mineral Concession Rules, 1960. It has been observed that the State Government exercised their rights u/s 11 of Mines and Minerals (Regulation and Development) Act, 1957, while granting the mining lease in favour of the impleaded party. They had also administratively taken permission from this Ministry earlier vide letter No. 7 (82)/67-MII. dated 9-8-1967. An opportunity was never given to the petitioners to explain their cases nor any case was taken to compare the merits of the parties concerned. Judging from the facts of the case as given in the comments and counter comments, the petitioners are apparently having the special knowledge and longer experience in mining operations as they being the holder of large areas and big suppliers of the ores to the M. M. T. C. They are also financially and technically better qualified, than the impleaded party. The only ground that the State Government adduced in favour of the impleaded party is that he has good performance to his credit as he has mined 30.000 tons on (in) an adjoining lease and supplied to M M. T. C. The State Government do not seem to have disclosed the fact that the lease did not belong to Shri P. K. Nayak. The performance of the petitioners is more than twice that of the impleaded party. The criteria laid down u/s 13 (Sic. 11 (2)) of Mines & Minerals (Regulation and Development) Act. 1957, has not been correctly applied by the State Government while examining the" two applications presented simultaneously. In the interest of mineral development as also the principles laid down in the above quoted section of the Act of 1957, the Central Government do not agree with the orders passed by the State Government. Therefore, in exercise of their revisional powers under Rule 55 of Mineral Concession Rules, 1960, and of all other powers enabling in this behalf, the Central Government hereby set aside the orders of the State Government contained in their letter No. CI-51-EMT-67. dated 2-9-1967 and further direct the State Government to grant mining lease for Manganese and Iron ores over an area of 810 acres, in Alti and Almod Villages, Supa Taluk, North Kanara District, in favour of Messrs. Karnatak Mining Co. (P) Ltd."

6. The main contention of Mr-K. R. Karanth, learned counsel for the petitioner is that the order of the Central Government is in contravention of the principles of natural iustiee. as the decision of the Central Government rested on matters found in the further or counter comments of respondent No. 3, without affording any opportunity to the petitioner to rebut the same. Mr. Papanna, learned Central Government Pleader while supporting the impugned order contended that Rule 55 of the Rules does not provide that the petitioner should be given an oportunity to rebut the further or counter comments offered by respondent No. 3.

7. It is apparent that the Central Government has taken into consideration the matters stated in the comments dated 14-3-1968 and 7-10-1968. offered by respondent No. 3. The grounds of revision application are very vague and they are Of no assistance to find out either the superior qualifications possessed by respondent No. 3 or the demerits of the petitioner so as to set aside the grant made in his favour. The impugned order states that the performance of respondent No. 3 is more than twice that of the petitioner, and further it finds fault with the State Government for not disclosing the fact that the lease in which the petitioner worked 30,000 tons of iron ore did not belong to him. Both these facts are found only in the above said comments of respondent No. 3 the copies of which admittedly were not given to the petitioner for his counter comments.

8. It is now well settled that the entire scheme of the Rules posits a judicial procedure and the Central Government is constituted as a tribunal to dispose of the revision application (vide *Bharat Raja Vs. The Union of India (UOI) and Others*, and *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*), The question then arises whether the order of the Central Government is in conformity with Rule 55, and. further, whether the rules of natural justice have been violated.

9. Rule 55 provides 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."

**** ** *** As stated by Subba Rao, J. (as he then was), in the case of *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, Rule 55 recognises 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, and that the question 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.

10. Under the rule quoted *supra*, what appears to us is that the applicant must state all the grounds in support of his case and also against the grant made in favour of any impleaded party. Model form of application for revision prescribed under Rule 54 contains a column to state all the grounds of revision. The copy of the revision application must be sent to the impleaded party and the State Government calling upon them to make such comments as they may like to make. It is open to the State Government or the impleaded party not only to give "counter comments on the grounds stated in the revision application but also to state additional facts and circumstances either in favour of the grant already made or against the applicant. The copies of these comments must be given to the applicant or other parties for their further comments. The said Rule does not state that the further comments if any, received by the Central Government may be sent to the impleaded parties calling upon them to make such counter or further comments.

The rule-making authority perhaps intended that the applicant should be allowed only to comment upon the comments and not to state fresh allegations against the impleaded parties, such as those made by respondent No. 3 in the present case. If the Central Government proposes to rely on any fresh allegations made against any impleaded party, all that we need say is, that the Central Government is under an implied duty to give the impleaded party an opportunity of being heard or to comment upon those additional materials.

Our holding so would not frustrate the apparent purpose of the legislation: on the contrary it would ensure "fair play in action." Natural justice requires that the procedure before any Tribunal which is acting judicially shall be fair in all the circumstances and it is our duty to see that this fundamental principle does not degenerate into a set of hard-and-fast rules.

11. The right approach to this question is that laid down in the case of *Wiseman v. Borneman* 1971 AC 297. We would refer to the passage in the judgment of Lord Morris of Borth-y-Gest.

"That the conception of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescription which will lay down exactly what must, in various divergent situations, be done. The principles

and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action". Nor do we wait for directions from Parliament."

12. In the instant case, the petitioner was undoubtedly placed at a disadvantage by depriving him of an adequate opportunity of commenting on the main materials on which the decision of the Central Government is based. Therefore, we hold that the Central Government's order has been made in contravention of the rules of natural justice.

13. In the result, we allow the petition and quash the order dated 3-3-1969 made by the Government of India, Ministry of Petroleum. Chemical and Mines and Metals, Annexure F. to the petition and direct the Central Government to dispose of the revision application filed by respondent No. 3, after giving the petitioner and the State Government an opportunity to make their comments in regard to all the allegations found in the further or counter comments submitted by respondent No. 3.

14. The petitioner is entitled to his costs fi"om respondent No. 3. Advocate's fee is Rs. 100/-.