

(1982) 04 CAL CK 0013
In the Calcutta High Court
Case No : C.R. No. 2348 (W) of 1979

Serajuddin and Co.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-04-1982

Acts Referred:

Mineral Concession Rules, 1960 — Rule 22

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30, 8

Citation : AIR 1982 Cal 400 : 86 CWN 772

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Advocate : R.C. Deb, Balai Chandra Roy, for the Appellant; Dipankar Gupta, L. Mukherjee, (for No. 2), G.L. Sanghi, S. Mudaliar, A.K. Dey, (for No. 6), Bhaskar Gupta, Samar Banerjee and S.K. Kundu, for the Respondent

Final Decision : Dismissed

Judgement

G.N. Ray, J.—This writ petition is directed against refusal by the Government of India to accord approval for the renewal of a Mining Lease of the petitioner Company by the Government of Orissa under the provisions of Mines and Minerals (Regulation and Development) Act, 1957 read with the Mineral Concession Rules, 1960. It appears that sometime in the year 1944, the petitioner applied to the then Raja of Keonjhar Estate for grant of a Mining Lease in respect of Manganese Ore over an area of about 3329.40 acres in several mouzas in Champua Sub-Division of the said Estate. On 29th Dec, 1947, the Raja of Keonjhar granted a Mining Lease for the Manganese Ore to the petitioner for a period of to years commencing from 1st Nov. 1946 with an option of renewal for a further term of 15 years. On 8th June, 1949, the Government of Orissa annulled the said Mining Lease. On 14th July, 1949, the Government, however, allowed the petitioner to continue mining operations in the said area on payment of rates and royalties in accordance with the terms and conditions of the said Mining Lease and promised to grant a new Lease to the petitioner in accordance with the policy to be laid down by the Government of India for

leasing out Mines. It, however, appears that subsequently by an order dt. 3rd July, 1951, the State Government of Orissa withdrew and cancelled the said order. The petitioner company however submitted to the State Government of Orissa its terms and conditions of compromise and to settle the dispute mutually. On 12th June, 1952, the State Government of Orissa intimated its acceptance of the said terms and conditions of the Mining Lease and the said terms and conditions were also reduced and embodied into a written agreement known as Subsidiary Agreement. In Dec. 22, 1952, the said Subsidiary Agreement was executed and registered at Keonjhar and under the terms of the said Agreement, the petitioner company surrendered about 830 acres out of the demised area of 3329.40 acres and the petitioner company became lessee for the balanced area viz. 2499.40 acres for a term of 20 years with effect from November 1, 1946 with a stipulation that the State Government would grant and the petitioner company would take a renewed lease for a further period of 20 years. As the period of lease was not consistent with the existing law the Controller of Mining Lease for India directed that the petitioner's Mining Lease should be for a period of 20 years from 1st Nov. 1946 and the renewal of the said lease could be regulated according to the law and rule in force at the time of such renewal. On 28th Oct. 1965, the petitioner company made an application for first renewal for 20 years from 1st Nov. 1966 under the provisions of Rule 22 (2) of the Mineral Concession Rules, 1960. As within the stipulated period such application of the petitioner company, was not considered by the State Government, it was deemed under the provisions of the said Mineral Concession Rules that the said application of the petitioner had been rejected by the State Government of Orissa. The petitioner company thereafter made an application for revision before the Central Government under the said Mineral Concession Rules, 1960 against the deemed rejection of the application of the petitioner for renewal of the said lease by the Government of Orissa. It appears that the said revision application was allowed by the Central Government and by an order dated 26th June, 1968, the Central Government passed an order remanding the petitioner company's application for renewal to the State Government of Orissa directing the State Government to consider the petitioner company's application for renewal on merits and to pass suitable orders thereon at an early date. It appears that after consideration of the case of the petitioner company on merits for renewal of the said lease, the Government of Orissa by its Memo dated 1st October, 1969 informed the Central Government that the State Government of Orissa had decided to grant renewal of the said Mining Lease for Manganese Ores to the petitioner company and the State Government sought for approval for such renewal of the Mining Lease by the Central Government. It also appears that on 27th March, 1973 the petitioner company submitted a petition to the Central Government through the State Government under Rule 63 of the Mineral Concession Rules, 1960 requesting the Central Government to consider the merits of the petitioner company's case for grant of renewal of the said Mining Lease and to accord necessary approval and/or sanction for the same. On 26th Oct. 1973 the State Government passed an order rejecting the application of the

petitioner company for renewal of the Said lease on the ground that the Central Government had advised the State Government to reject the said application for renewal as the area in question was required for public sector exploitation. The petitioner company thereafter challenged the said order of rejection of the petitioner's application for renewal of lease under Article 226 of the Constitution in this Court and a Rule being Civil Rule No. 3608 (W) of 1973 was issued by this Court on the said application under Article 226. It appears that the said Rule was made absolute by this Court and the impugned order dated 26th Oct. 1973 passed by the State Government of Orissa and also the order passed by the Central Government refusing to grant approval were quashed by this Court. It was directed by this Court in the said order that the Central Government should hear the petitioner within two months from the date of the order after giving notice Of hearing to the petitioner and in the mean time, parties would maintain status quo. It appears that on 10th Sept. 1977 the petitioner company made a representation to the Central Government inter alia explaining the background of the application of renewal of the said Mining Lease and the petitioner company also requested that pursuant to the order passed by this Court a suitable date might be fixed for giving the petitioner a personal hearing. But the petitioner contends that the Central Government, however, failed to comply with the direction of this Court and did not give the petitioner any hearing within the specified date. It also appears that in the representation, the petitioner company also pointed out that when the State Government of Orissa, on consideration of the merits of the application, intended to grant the first renewal of lease for 20 years it was not open to the Central Government to deny any approval which it had granted by necessary implications at an early stage. In Nov. 1977, the petitioner company was given a hearing before the Joint Secretary, Department of Mines, Central Government and by a communication dated 26th March, 1979 the Central Government regretted its inability to accord approval for the renewal of the said lease as the area was required for development in the public sector. The petitioner company thereafter again moved this Court under Article 226 of the Constitution of India against the said decision of the Central Government refusing to grant approval to the renewal of the said Mining Lease as desired by the Orissa Government and the instant Rule has been issued by this Court.

2. It appears that during the pendency of the Rule, the Manganese Ore (India) Limited, a public sector undertaking, made an application for addition of party and by an order dated 22nd Aug. 1979, the said Manganese Ore (India) Limited (hereinafter referred to as MOIL) was added as a party respondent to the Rule.

3. Mr. Deb being ably assisted by Mr. Balai Chandra Roy appearing for the petitioner company contends that against the deemed refusal by the Government of Orissa to consider the application of the petitioner company for renewal of the said Lease in accordance with the provisions of the Act and the Mineral Concession Rules, 1960, the petitioner company made an application for revision before the Central Government and the Central Government allowed the said application for revision and directed the State Government of Orissa to consider

the application for renewal made by the petitioner company on merits. Mr. Deb submits that it is, therefore, quite evident that the Central Government had no objection of its own against the grant of renewal of the said lease in favour of the petitioner company and it only gave a green signal to the State Government of Orissa to consider the case of the petitioner company on merits and to take a decision as to whether or not the State Government of Orissa was inclined to grant the renewal of the lease as prayed for. Mr. Deb submits that the State Government of Orissa thereafter considered the case of the petitioner company on merits and decided to grant renewal of the said lease subject to accord of formal approval by the Central Government in accordance with the provisions of Mines and Minerals (Regulation and Development) Act, 1957 read with Mineral Concession Rules, 1960. Mr. Deb submits that In the facts of this case, the accord of approval by the Central Government was only a formality under the said Act and the Rules and in the backdrop of events there was no scope for the Central Government to refuse approval when the State Government had agreed to grant the renewal. Mr. Deb contends that in the facts of the case it must be held that by directing the Government of Orissa to consider the case of the petitioner on merits against an earlier order of deemed rejection by the State Government, the Central Government, by necessary implication, made it quite clear that subject to the willingness of the State Government to grant renewal, the Central Government had the required approval for the renewal of the said Mining Lease. Mr. Deb submits that in the circumstances, the Central Government was not entitled to hold back its approval on any ground whatsoever at 3 later stage. Mr. Deb also submits that under Rule 58 of the Mineral Concession Rules, a reservation for public sector undertaking or for Government Company can be made after giving notification in the official gazette for the said purpose, Such power is also circumscribed by Rule 49 of the Mineral Concession Rules, 1960. This Rule 58 of the Mineral Concession Rules has, however, come by amendment and at the relevant time when the Central Government refused to accord approval on the ground of reservation of the area for public sector exploitation the said Rule 58 was not in force. Mr. Deb also contends that u/s 17 of the Mines and Minerals (Regulation and Development) Act, the Central Government after consultation with the State Government may undertake prospecting or mining operation in any area not already held under any lease or prospecting licence, and if the Central Government proposes to do such prospective and mining operation it shall, by notification in the official gazette, specify the boundaries and/or areas of operation. In the instant case, no such notification has been made and as such there cannot be any reservation for any public sector exploitation. Mr. Deb also submits that the petitioner company has been carrying out mining operations for a pretty long time and there has not been any complaint whatsoever against the petitioner company for such mining operations and the Government of Orissa has also expressed its satisfaction for the manner in which the petitioner company has been working out the mining operations. The petitioner company has also paid rates and royalties to the State Government regularly and the Orissa Government has also expressed its

willingness to grant renewal of Mining Lease in favour of the petitioner company. Mr. Deb has also pointed out that previously other areas were made available to MOIL for exploitation of the Manganese Ores but MOIL failed to utilise such offer and the Orissa Government is not, therefore, interested in getting the area in question exploited by MOIL. It is also contended by the learned counsel for the petitioner company that the Manganese Ores are principally consumed by the public sector undertakings including the Steel Authority of India and the export of Manganese Ores are also controlled by the Central Government in various ways. It is also contended by the learned counsel for the petitioner that there is no allegation against the petitioner company that the petitioner company is not carrying out the Mining operations scientifically or effectively thereby causing losses of the material resources of the country. In the circumstances, the refusal by the Central Government is absolutely arbitrary and without any valid reason and for extraneous reasons not authorised under the Act and the Rules. Mr. Deb has also submitted that this Court in exercise of powers in the writ jurisdiction can direct the Central Government to grant approval of lease and it is no longer necessary to direct the Central Government to consider afresh the petitioner's application for renewal. In support of the contention that in appropriate case this court can straightway direct the Central Govt. to accord approval for renewal of Mining Lease, Mr. Deb has referred to the decisions of the Supreme Court made in the case of P. Bhima Reddy Vs. State of Mysore and Others, and Union of India (UOI) and Others Vs. Indo-Afghan Agencies Ltd., .

4. Mr. Dipankar Gupta, the learned counsel appearing for the Government of Orissa, has also contended that against the deemed refusal by the State Government of Orissa the petitioner company made an application for revision and the Central Government allowed the said revision application of the petitioner company and directed the State Government to dispose of the petitioner company's application on merits and when on such consideration of merits, the State Govt. was inclined to grant renewal it was not open to the Central Govt. to refuse permission to grant such renewal of lease, Mr. Gupta contends that the Supreme Court in the case of Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another, has clearly held that the State Government being the owner of Mines has inherent right to exploit the Mines within its territory and for the said purpose the State Government can reserve any land. Mr. Gupta submits that apart from the fact that the State Government is the owner of the Mines and Minerals lying within the boundary of the State, the State Government has also primary interest to see that the Mining Lease and/or renewal of the same is given to a proper party. The State Government has direct interest in the dead-rent, royalty, sales tax relating to the transactions of the Minerals and the State Government has also share in the Income Tax realisation from the operators of mines. It has also a direct interest in the proper development of Mines and Minerals in the State as such development will open a venue of employment of the residents of the State, The State Government has also a secondary interest in the general prosperity of the

country and earning of foreign exchange by export of Minerals, Mr. Gupta submits that omnibus reservation for exploitation by public sector undertaking and/or Government Undertakings cannot be made by the Central Government u/s 8 of the Mines and Minerals (Regulation and Development) Act, several guidelines have been laid down for the purpose of granting lease by the State Government. He submits that it cannot be contended that although the power of the State Government to grant a mining lease is controlled or circumscribed by the guidelines, the power of the Central Government to refuse approval or to accord approval is unfettered. Mr. Gupta submits that the only reasonable interpretation of Section 8 will be that in exercising its power to accord or to refuse approval, the Central Government will only ensure that the State Government has followed the guidelines in basing its decision and no extraneous consideration has been made by the State Government. Mr. Gupta submits that where the State Government has followed the guidelines and has not contravened any provision of the Act and the Rules and has not also taken into consideration of any extraneous matter and has come to a decision either in favour or against the grant or renewal of a mining lease, then there will be no occasion for the Central Government to interfere with the decision of the State Government. As in the instant case, the State Government has not taken into consideration any extraneous matter and on consideration of the merits of the case as directed by the Central Government earlier, has agreed to grant renewal, there was no occasion for the Central Government to refuse approval of the same.

5. Mr. Bhaskar Gupta, the learned counsel appearing for the Union of India, has drawn the attention of this court to the directive principles as embodied in Article 39 of the Constitution. He submits that under Article 39(b) the ownership and control of the material resources of the community will be so distributed that the common good is best served. Article 39(c) provides that the operation of the economic system should be done in a way that it does not result in the concentration of wealth and means of production detrimental to the common interest. Mr. Gupta contends that under Entry 23 of List II of the Seventh Schedule to the Constitution, regulation of mines and mineral development can be made by the State Legislature subject to the provisions of List I and under Entry 54 of List I of the Seventh Schedule, regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest, is to be made by the parliament. u/s 2 of the Mines and Minerals (Regulation and Development) Act, such declaration has been made by the Parliament. Mr. Gupta has placed various sections of the Mines and Minerals (Regulation and Development) Act for the purpose of showing that it was the clear intention of the Parliament to have ultimate control of the Central Government over the Mines and Minerals in different States. He refers to the provisions of Section 4A of the said Act and contends that in the matter of termination of Mining Lease, the opinion of the Central Government is final and it has only been provided for that before forming the opinion, the Central

Government will consult with the State Government. It also appears from Section 5 of the said Act that even in the matter of prospecting licence, the approval of the Central Government is necessary. The proviso to Section 6(1) also lays down that if the Central Government is of the opinion that in the interest of development of mineral it is necessary so to do, the Central Government may for reasons recorded in writing, permit any person to acquire one or more prospecting licence. Section 7 deals with the prospecting licences and Section 8 deals with the mining lease and both the provisions are similar. Even in the matter of prospecting licence, it appears from the proviso to Section 7(2) that no renewal of prospecting licence can be made except with the approval of the Central Government. Similarly in the matter of grant of mining lease, a similar proviso has been added to Section 8(2) of the Act. Mr. Gupta also draws the attention of the Court to Sub-section (3) of Section 8 and submits that the Central Government may authorise renewal if in the interest of mineral development such renewal is necessary u/s 13, power has been given to the Central Government to make rules in respect of mines and minerals. u/s 17, the Central Government has been given special power to undertake prospective and mining operations in certain land. Section 18(1) lays down that it will be the duty of the Central Government to take such steps as may be necessary for the conservation and development of minerals in India. Sub-section (3) of Section 18 provides that all rules made under the said Section shall be binding on the State Government. Section 13 gives the power to the Central Government to refuse any order which has been passed by the State Government under the said Act and Section 31 empowers the Central Government to relax the provisions of the Act and the Rules in special cases if in its opinion, the Central Government holds that in the interest of mineral development it is necessary to relax the provisions of the rules. The Central Government has also the right to grant or renewal of lease, on terms and conditions different from the terms and conditions laid down in the Rules made u/s 13 of the Act. Mr. Gupta, therefore, submits that if the scheme of the Act is scrutinised, it will be quite evident that the Parliament has intended that the Central Government will have the absolute right or control over the mines and minerals in the country. The power of the Central Government under the Act is very wide and the same is not fettered by the desire or decision of the State Government. Mr. Gupta contends that under Rule 54 of the Mineral Concession Rules, the Central Government acts as a revisional tribunal against any order passed by the State Government. The order of the Central Government in exercise of power of revision therefore leaves no discretion to the State Government either to refuse or to grant the mining lease to an applicant. In this connection, Mr. Gupta refers to the decision of the Supreme Court made in the case of *Dharam Chand Jain Vs. The State of Bihar*, . Mr. Gupta submits that if the power of revision or control can be passed by the Central Government after the order is passed by the State Government it will not be amenable to any reason that similar power cannot be exercised by the Central Government before any order is passed by the State Government. Mr. Gupta submits that if in its wisdom, the Central Government feels that for proper development of mines and

minerals and better utilisation of the same it will be desirable that exploitation of such mines and minerals should be made by the public sector, the Central Government can certainly refuse approval of grant of any lease in favour of any other person and in the scheme of the Act, the Central Government certainly has unfettered discretion and power and no challenge can be made against the exercise of such power by the Central Government. He also submits that the decision of the Central Government that the area in question should be exploited by the public sector undertakings is also in conformity with the directive principle of the Constitution.

6. Mr. Sanghi, the learned counsel appearing for the MOIL, supports the aforesaid contentions of Mr. Gupta appearing for the Union of India, It may be noted here that Mr. Roy, the learned counsel appearing for the petitioner company has contended that when the Orissa Government has expressed its intention not to grant any lease in favour of MOIL, the MOIL cannot have any interest in the area in question and consequently the MOIL cannot have any locus standi in the instant Rule. Mr. Sanghi however submits that in a dispute raised by the petitioner company and also by the Government of Orissa, that no reservation can be made for a public sector undertaking, MOIL who has been identified as the public sector undertaking for which such reservation has been made, has certainly an interest in the litigation before this Court and as such it cannot be contended that the MOIL has no locus standi. He also submits that MOIL has been added as party respondent by this Court and the party respondent being bound by the adjudication to be made, must have a right to place its case before the Court. Mr. Sanghi contends that Mines and Minerals (Regulation and Development) Act and the Mineral Concession Rules contain a complete code in respect of grant or renewal of a prospecting licence as well as a mining lease. He submits that there is no fundamental right to carry out mining operations but the rights to carry out mining operations are created and controlled by the aforesaid Statutes and no person can claim any right in mines or minerals except those created or conferred by the Statute. He submits that renewal of lease is nothing but grant of lease for a further period and for the said contention, he refers to a decision of the Supreme Court made in the case of Kangra Valley State Co., Ltd. Vs. State of Punjab and Others, Mr. Sanghi submits that reservation need not be made expressly, and if an area is not included in the register as referred to in Rule 58 or 59 of the Mineral Concession Rules, such non-inclusion in the register will only mean that the area is not open to public. Mr. Sanghi submits that simply because the State Government was directed to consider the case of the petitioner company on merits, it cannot be contended that by necessary implication, the Central Government agreed to accord approval if the State Government was inclined to grant a renewal. Mr. Sanghi submits that initially the State Government did not express any view and did not reject the application for renewal made by the petitioner company on merits but such rejection was only a deemed rejection because of non-consideration of the said application within the stipulated time. The Central Government intended to have

the views of the State Government on merits of the case and for the said purpose directed the State Government to consider the case of the petitioner company on merits. Mr. Sanghi submits that the Central Government had certainly the right to grant or refuse approval after getting the views of the State Government and he refutes the contention of Mr. Dipankar Gupta appearing for the State of Orissa that if on consideration of relevant facts and circumstances and following the guidelines contained in Section 8 of the Act, the State Government either agrees to grant or refuse to grant a mining lease, the Central Government cannot override the decision of the State Government. Mr. Sanghi submits that under the scheme of the Act, the Central Government has been made final authority in the matter of grant or renewal of a mining lease and/or prospecting licence and if such exercise of the ultimate discretion of the Central Government is not made maliciously or capriciously, then no objection can be raised against the exercise of power by the Central Government. Mr. Sanghi submits that in its wisdom the Central Government has thought it desirable that Manganese Ores in the area in question should be exploited by the public sector undertaking and not by any private individual or a company. The Court cannot question the wisdom of the Central Government in this regard and it cannot also be contended that the reason for not allowing the petitioner company to exploit the Manganese Ores from the area in question is wholly capricious and unamenable to any reason whatsoever. Accordingly, no interference is called for by the writ court and the Rules should be discharged.

7. After considering the respective submissions made by the learned counsels appearing for the parties, it appears to me that under the Act and the Rules framed thereunder, the Parliament has ensured that in the matter of development of mines and minerals in the country the Central Government will have an ultimate control and such control is not fettered by the decision of the State Government. In my view, Mr. Bhaskar Gupta is justified in his contention that the power of the Central Government under the Act and the Rules is very wide and the same is not fettered by the desire and or the decision of the State Government. It cannot be contended that if the State Government has followed the guidelines as referred to in Section 8 and has not taken into consideration any extraneous matter and thereafter comes to any decision either in favour or against the grant of a lease, the Central Government is to accept such decision as a matter of course. In my view, the Central Government for proper reasons, may not accept the decision of the State Government although such decision was taken on proper consideration of the relevant facts after following the guidelines. There is no manner of doubt that the decision of the State Government cannot be lightly brushed aside by the Central Government and it is reasonably expected that such decision of the State Government which is the owner of the Mines, must have an anxious consideration by the Central Government for a harmonious relation of the States and the Centre. If, however, the Central Government does not agree with the decision of the State Government and overrides its decision for a valid reason, it cannot be contended that the Central Government has over-

stepped its limit. In the instant case, the Central Government has refused to grant approval on the ground that the area in question should be better utilised by the public sector undertaking, and it cannot be contended that such consideration is not amenable to any reason. Whether such exploitation by a public sector undertaking will be more useful in the greater interest of the country or not, is not to be considered by this Court and the Court should not embark upon the uncharted ocean of public policy. In my view, the Central Government was quite within its right in refusing to accord approval for the renewal of the mining lease in favour of the petitioner company although the State Government of Orissa had decided to grant such lease in favour of the company. Mr. Sanghi, in my view, is justified in his contention that by directing the State Government to consider the case of the petitioner company on merits, the Central Government did not express any opinion by necessary implication that it had agreed to grant renewal in favour of the petitioner company, provided the State Government was willing. In my view, after getting the views of the Orissa Government on merits the Central Government could take one view or the other and if it had taken a decision against the renewal of the mining lease in favour of the petitioner company because the Central Government was of the view that the Manganese Ores in the area in question should be better exploited by the public sector undertakings, no illegality has been committed by the Central Government. Accordingly, no interference is called for by the writ court and the Rule is discharged. There will be no order as to costs. All interim orders passed in the Rule, stand vacated.