
(2007) 03 OHC CK 0029
In the Orissa High Court

Serajuddin and Co.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-03-2007

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 17, 19, 30

Citation : (2007) 103 CLT 639 : (2007) 1 OLR 662

Hon'ble Judges : A.K. Ganguly, C.J.;N. Prusty, J

Bench : Division Bench

Final Decision : Allowed

Judgement

A.K. Ganguly, C.J.—The subject-matter of challenge in this writ petition is an order dated 13.11.2001 passed by the Central Government-opposite party No. 1 on the revision application filed by Shri Ganapati Raj Jain- O.P. No. 4. By the said order, opposite party No. 1 quashed the renewal of the petitioner's mining lease for iron ore over an area of 335.896 hectares which is about 830 acres and by the same order opposite party No. 1 directed the State Government to grant the mining lease for iron ore over an area of 60.70 hectares in favour of opposite party No. 4.

2. The material facts of the case are as follows:

Way back in 1955, the petitioner applied for the grant of mining lease for manganese ore over an area of 830 acres for Balda Block in Keonjhar district for a period of 20 years. On such application, the State Government on or about 16.11.1956 granted mining lease to the petitioner for 20 years for the aforesaid area. Then the mining lease for manganese ore was executed in favour of the petitioner for a period of 20 years from 3.12.1957 and the same was valid up to 3.12.1977. During the validity period of the said lease the petitioner applied on 2.9.1958 for mining lease for iron ore for 30 years in respect of the same area and the State Government on 15.11.1960 granted a separate mining lease in respect of iron ore in favour of the petitioner for the period up to 3.12.1977.

Thereafter, sometime on 17th August, 1973 the petitioner gave a written notice of 12 calendar months to the State Government for surrender of its mining lease for Manganese ore only in terms of paragraph-4 of part-VIII of the lease deed to the extent that the said lease would stand surrendered and would be absolutely determined after 12 calendar months as the petitioner found that there is no reserve for manganese ore in the said area.

3. It is clear from what is stated above that the said notice was given in terms of the lease deed. The relevant clause of the lease deed provides for the lessee to determine the lease by 12 months' notice. The State Government accepted the surrender of manganese lease with effect from 17.8.1984 for the entire area. Then by an order dated 15.11.1975 the State Government issued a notification under Rule 58(1) of the Mineral Concession Rules, 1960 purportedly throwing open an area of 60.70 hectares out of 830.00 acres (335.896 hectares) for manganese lease and pursuant to the said notification opposite party No. 4 applied for manganese lease in respect of that area of 60.70 hectares on 25.1.1976. Similar other applications were also made by other parties.

4. The petitioner on 25.11.1976 applied to the State Government for renewal of lease for iron ore over the entire area of 830.00 acres as the same was to expire on 3.12.1977. However, as the application filed by opposite party No. 4 on 25.1.1976 for manganese lease was not disposed of by the State Government within a period of 12 months, it treated the same to be a deemed refusal and opposite party No. 4 filed a revision petition before the Central Government against such deemed refusal. The Central Government on 29.3.1977 passed an order directing the State Government to pass a final order on the application of opposite party No. 4 within 100 days from the date of the order. As the State Government failed to dispose of the said application of opposite party No. 4 within a period of 100 days, opposite party No. 4 filed a second revision application before the Central Government u/s 30 of the Mines and Minerals (Development & Regulation) Act, 1957 (hereinafter called the "said Act") read with Rule 54 of the Mineral Concession Rules, 1960 (hereinafter called the "said Rules").

5. The Central Government then passed an order dated 10th May, 1978 disposing of the second revision application of opposite party No. 4 purportedly directing the State Government to grant a mining lease in favour of opposite party No. 4 over the said area of 60.70 hectares.

6. On the other hand as the State Government was not taking steps on the application for renewal filed by the petitioner, a revision petition was filed by the petitioner on 4.8.1977 before the Central Government alleging inaction on the part of the State Government. On 29.8.1977 the Central Government rejected the revision filed by the petitioner in the matter of renewal by holding that the application was premature under the Rules since the lease is deemed to be extended for six months more till the State Government disposes of the petitioner's application for renewal. Thereafter, the State Government considered

the petitioner's application for renewal and on 17.11.1977 with its recommendation for renewal sent the same for approval to the Central Government. In the meantime the order dated 10.5.1978 passed by the Central Government on the second revision application of opposite party No. 4 was challenged by the State of Orissa by filing a writ petition before this Hon'ble High Court (OJC No. 717 of 1979). However, in so far as the petitioner's application is concerned, the Central Government by its order dated 25.5.1979 refused to grant approval to the proposal of the State Government dated 17.11.1977 for the first renewal of its lease for iron ore applied for on 25.11.1976.

7. The State Government communicated the said order of the Central Government dated 25.5.1979 to the petitioner at its Calcutta Office on 5.7.1979. On 20.8.1979 the petitioner filed a writ petition in Calcutta High Court challenging the Central Government's order dated 25.5.1979 and the communication of the State Government dated 5.7.1979. The Calcutta High Court was pleased to direct the Government of Orissa to maintain status quo in respect of the operation of the iron ore mining lease by the petitioner.

8. In the meantime, the Orissa High Court on 18.8.1988 dismissed the writ petition filed by the State Government being O.J.C. No. 717 of 1979 as not maintainable. Thereupon, the State Government filed an SLP before Hon'ble Supreme Court challenging the order of the Orissa High Court. Ultimately, on 13.12.1994 the Hon'ble Supreme Court allowed the appeal filed by the State Government and remitted the matter back to the Orissa High Court for adjudication.

9. In the meantime the Calcutta High Court on 1.3.1996 rejected the preliminary objection raised by the Government of Orissa and the Central Government and held that it has the jurisdiction to hear the writ petition filed by the petitioner. As in the meantime about 20 years elapsed since the petitioner's first application for renewal of licence, the petitioner applied again for renewal of mining lease on and from 3.12.1997 for a further period of 20 years. On 27.9.1996 the Hon'ble Calcutta High Court allowed the writ petition filed by the petitioner and quashed the order dated 25.5.1979 of the Central Government and the State Government's order dated 5.7.1979 whereby the petitioner's application for renewal of lease was rejected. The Calcutta High Court directed the authorities to consider the petitioner's application once again in accordance with law. Thereafter, on 6.11.1997 the State Government recommended renewal of the petitioner's mining lease for the period from 3.12.1997 to 3.12.2017 to the Central Government.

10. In the meantime, pursuant to the aforesaid direction of the Hon'ble Supreme Court, the Hon'ble Orissa High Court disposed of the writ petition filed by the Government of Orissa by observing, inter alia, that "since nearly twenty years have elapsed from the date on which an application for renewal was made by M/s. Serajuddin and Co... and considering the fact that two decades have elapsed in the meantime and that the period of renewal claimed was from 4.12.1977 to

3.12.1997, we are of the view that it becomes necessary for the State Government to take appropriate steps afresh for grant of a mining lease over the area in question in accordance with law ensuring that another two decades do not pass in finalizing the matter". The Hon"ble Orissa High Court also observed "it is fairly accepted by the learned Counsel for the parties that nothing more needs to be done in this writ application as it has become infructuous which is accordingly disposed of as such". Thereafter, on 13.5.1998 the Central Government accepted the recommendation of the State Government dated 6.11.1997 for renewing the mining lease of the petitioner from 3.12.1997 to 3.12.2017. But on 23.5.1998 the State Government rejected the original application dated 25.1.1976 for grant of mining lease of opposite party No. 4, inter alia, on the ground that " the area has been recommended on 6.11.1997 for second renewal in favour of the petitioner."

11. Against that order of the State Government, Opposite party No. 4 filed a revision application on 15.7.1998 before the Central Government. It also filed an application for stay.

12. However, it may be noted that the second renewal of iron ore lease in favour of the petitioner was not challenged by opposite party No. 4 in the revision application.

13. In the meantime, pursuant to exchange of certain correspondence between the petitioner and the State Government a lease deed was executed by the State Government in favour of the petitioner for iron ore and the said lease deed is valid till 2017.

14. Then the petitioner was asked to give its comment on the revision application of opposite party No. 4 by communication dated 3.12.2000 and the petitioner sent its comments.

15. In the background of these facts, the Central Government by the impugned order allowed the revision application filed by opposite party No. 4 and passed several directions.

16. While assailing the said impugned order dated 13.11.2001 the learned Counsel for the petitioner pointed out that as a Revisional Authority, Central Government framed two issues. They are as follows:

(1) Whether the application of opposite party No. 4 for mining lease of 60.70 hectares had rightly been rejected by the State Government on the ground of directions given by Orissa/Calcutta High Court ? If not, whether the petitioner's right for the grant of the said lease still survives ?

(2) Whether the impleaded party i.e. the petitioner has rightly been granted the renewal of lease in spite of the fact that the lease period was already over and no specific directions seems to have been made by either the Calcutta High Court or the Orissa High Court ?

17. On those two issues the findings which have been reached in the impugned order are as follows.:

(1) In respect of the first issue in the impugned order there is a finding that the order dated 10th May, 1978 still survives as neither the Orissa High Court nor the Supreme Court had ever commented on that order and the State should have granted the mining lease to opposite party No. 4 on the basis of its mining lease application dated 25.1.1976.

(2) On the second issue there is a finding that the Calcutta High Court, having no jurisdiction passed its order. On a wrong interpretation of the orders of the Calcutta High Court as well as of the Orissa High Court, the State of Orissa had granted the renewal of the lease in favour of the petitioner and as such the said lease was cancelled with a direction that the State Government should take possession of the disputed area.

18. In connection with the second issue two further directions were also given in the impugned order:

(a) As the petitioner was working without any authority from the State Government for almost 20 years, the State Government should have treated the same as unauthorized and irregular and certain directions were given regarding penalty etc.

(b) In the impugned order there is also a direction to find out how the order of the Calcutta High Court, which was having no jurisdiction could be the basis of allowing the petitioner to take the benefits of such an order.

19. The learned Counsel for the petitioner submitted that the impugned order proceeds on the assumption of a non-existent fact, namely, on 17th August, 1974 the petitioner had surrendered an area of 60.70 hectares and in fact there was no such surrender. According to the petitioner the surrender was of the lease for manganese ore only for the entire area. It was also submitted that the lease dated 3rd December, 1957 for manganese ore was a mineral specific lease and the subsequent lease dated 2nd June, 1962 for iron ore was an independent and a separate lease. Both the leases were having a separate tenure. The lease for manganese ore was for a period of 20 years whereas the lease of iron ore was for a period of 15 years.

20. So far as the finding of the revisional authority on the second issue is concerned, it was submitted that comments of writ petitioner were not invited on the legality or otherwise of the renewal of the petitioner's lease. Rather comments from the petitioner were only invited as to why rejection order dated 23rd May, 1998 of the application of opposite party No. 4 should not be set aside. As such the petitioner's comment was confined to that only. It was also submitted that in the revision application filed by opposite party No. 4 there are no prayer for rejection of the renewal of iron ore lease of the petitioner. Therefore, the entire finding on the second issue is a perverse finding and is

vitiated by the violation of the principle of natural justice.

21. The learned Counsel for opposite party No. 4 submitted that the petitioner in fact had surrendered the entire lease hold area of 335.89 hectares held for manganese ore by its, notice dated 17.08.1973 and the State Government also accepted the surrender of mining lease for the said entire area for Manganese ore only. In so far as the iron ore lease is concerned, according to the learned Counsel for opposite party No. 4, there are two relevant facts, namely, Clause-iv of the order granting iron ore lease which states that the same will expire along with the mining lease already executed by the petitioner in respect of the area noted above for manganese ore. The second fact, which is a corollary of the first is that upon the surrender of the mining lease of manganese ore, the lease for iron ore which is co-terminus, also expired and stood terminated in accordance with Clause-iv of the order dated 15/17.11.1960.

These are the rival contentions.

22. Now coming to the question of legality of the impugned revisional order dated 13.11.2001 passed by the Central Government, the Court is to consider whether the notification of the State Government dated 15.11.1975 under Rule 58 of the said Rules inviting applications for grant of mining lease in respect of the area which is held by the petitioner under valid iron ore lease dated 2.6.1962 is valid or not. Learned Counsel for opposite party No. 4 has urged that it is not open to the petitioner to challenge the said notification dated 15.11.1975 in as much as the said order has not been challenged in the writ petition. This Court finds that challenge to the said order has been made in this writ petition. In paragraph 3 (j) at page 8 of the writ petition it was averred by the petitioner "the area in respect of which the notification dated 15.11.1975 was issued, was retained by the petitioner under a mining lease granted to it on 2.6.1962, it was not available to be thrown open in accordance with Rule 59 of Mineral Concession Rules, 1960." In Ground No. (G) of the writ petition the said notification dated 15.11.1975 was also challenged to the effect that the notification of the State Government dated 15.11.1975 "was ab initio void, since the area was not available for grant in terms of Rule 59 of Mineral Concession Rules, 1960".

23. Therefore, it is not correct to say that no challenge was made to the said notification.

24. It has been argued that there is no prayer for quashing the said notification dated 15.11.1975.

25. In fact an amendment petition vide Misc. Case No. 869 of 2006 with that prayer was filed by the petitioner and the same was kept pending. But since the Court felt that necessary averments assailing the notification dated 15.11.1975 are already there on the record, no further amendment was necessary.

26. Now coming to the legality of the said notification this Court finds from the facts which have been noted above, that what was surrendered by the petitioner

by its communication dated 17.8.1973 was the lease for manganese ore in respect of the entire area of 830 acres. The acceptance by the State Government was also of the said surrender of manganese ore in respect of the entire area.

27. Now the question that arises is whether the said surrender is confined to the surrender of lease for manganese ore alone or there was automatic surrender of the lease also in respect of iron ore. Learned Counsel for opposite party No. 4 submitted that two mining leases were granted to the petitioner. In respect of the mining lease for iron ore it has been stated in Clause (iv) of the order that "the lease for iron ore will expire along with the mining lease for manganese already executed by M/s. Serajuddin & Co. in respect of the area noted above". The learned Counsel submitted that with the surrender of lease for manganese ore, the lease for iron ore will also expire in terms of the above clause. In support of the said contention, the learned Counsel relied on Rule 29 of the said rules and submitted that as the petitioner accepted the iron ore lease in terms of the Clause (iv) as noted above, the said condition will prevail over the period mentioned in the lease deed. This Court cannot accept the submission of the learned Counsel for the opposite party No. 4 that in view of Clause (iv) in the order granting iron ore lease, the said lease for iron ore will expire along with the surrender of mining lease for manganese. The exact wording of Clause (iv) is set out below:

Clause iv. That the lease for iron ore will expire along with the mining lease for manganese already executed by M/s. Serajuddin & Co., in respect of the area noted above.

A close perusal of the aforesaid clause will show that both the iron ore lease and the mining lease will expire simultaneously. The same has nothing to do with the expiry of the iron ore lease with the surrender of mining lease. Apart from that those are the terms which were presented for preparing the draft mining lease. Therefore, when the iron ore lease was finally prepared, its tenure was fixed separately and the tenure was from the 2.6.1962 till. 3.12.1977. The said clause will obviously override the conditions which were suggested for preparation of the draft lease. In this connection, learned Counsel also relied on Rule 67 of the said Rules, 1960. Learned Counsel further submitted that in view of the surrender of the lease for manganese ore subsequent notification dated 15.11.1975 issued by the Government of Orissa throwing open an area of 60.70 hectares for manganese ore is in accordance with Rule 58 of the said Rules since the State Government is the owner of the entire area and it is open to the State Government to throw open a part of the area for re-grant.

28. In this context, the Court is to examine first Rule 29 on which reliance has been placed by the learned Counsel for opposite party No. 4. Rule 29 provides for the determination of lease. Rule 29(1) stipulates that such determination of lease shall not be made except after notice in writing of not less than twelve calendar months to the State Government. In the instant case, the said notice was given by the petitioner. The proviso to Rule 29(1) stipulates that where a

lessee, holding a mining lease for a group of minerals, applies for the surrender of any mineral from the lease on the ground that deposits of that minerals have since been exhausted or depleted to such an extent that it is no longer economical to work the mineral, the State Government may permit the lessee to surrender that mineral, subject to certain conditions. In the instant case, the State Government has permitted the petitioner to surrender only the mining lease of manganese ore for the same area. Apart from that the lease for manganese is different from the lease for iron ore. These are two different leases, it is not a case of one lease for a group of minerals. So, the proviso to Rule 29(1) is not applicable in the facts of this case, other sub-clauses of Rule 29 are not attracted here.

29. Rule 59(1) of the said Rules in this connection is relevant. Under Rule 59 of the said Rules, it has been clarified that no area which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease or in respect of which, the order granting a licence or lease has been revoked or in respect of which a notification has been issued under the Sub-section (2) or Sub-section (4) of Section 17 or which has been reserved by the State Government shall be available for re-grant unless, an entry to the effect that the area is available for grant is made in the register under the relevant Rules and the availability of the area for grant is notified in the official gazette. However, proviso to Rule 59 (1) makes it clear that nothing of those restrictions will apply in the case of renewal of a lease in favour of the original lessee or his legal representative. However, under Rule 59(2) it has been made clear that the Central Government may, for reasons to be recorded in writing, relax the provisions of Rule 59(1) in any special case.

30. This Court finds that in this case the alleged re-grant of lease for an area of 60.70 hectares in favour of opposite party No. 4 has been made without complying with the requirements of Rule 59.

31. Reference in this connection may be made to the decision of the Supreme Court in the case of *Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others*, . In paragraph 40 at page 133 of the said report there is an observation to the extent that unless the availability for grant is re-notified in accordance with Rule 59 of the said Rules, such re-grant cannot be made. In paragraph 45 at page 137 of the said report it has been specifically stated that the notification under Rule 59 can specify the Government, corporation or company which can exploit the areas on the lines of the Rules itself. It has been emphasized that the area in question shall not be available for re-grant unless two requirements of Rule 59 are satisfied, viz. any entry in a register and a gazette notification that the areas are available for grant.

32. Commenting on Rule 59 of the said rule, the Apex Court held in *Indian Charge Chrome Ltd. v. Union of India* AIR 2003 SC 953 that the principle underlying Rule 59 is one of transparency. Therefore, the requirements of Rule 59 cannot be ignored.

33. In the instant case, a part of the same area where the petitioner was operating had been made available for re-grant without complying with the statutory conditions. This is clear from the affidavit filed by the State Government. The affidavit does not show that following Rule 59 of the said Rules, the area of 60.70 hectares out of 335.896 hectares was thrown open by State Government. The relevant paragraph 6 of the said affidavit runs as follows:

That accordingly, the area to the extent of 60.70 hectares out of 335.896 hectares was thrown open for re-grant vide Government Notification No. 12163 dated 15.11.1975 with orders that the area would be available for grant with effect from 25.1.76. But the area was under possession by M/s. Serajuddin and Co for iron ore.

Towards the end of para 22 in the said affidavit, the State Government accepted that it rejected the mining lease application of opposite party No. 4 in order to avoid the practical difficulty for the same area to be operated by two parties in as much as the petitioner was holding the mining lease under renewal over the entire area of 830 acres including the disputed area for iron ore for a period of 20 years with effect from 3.12.1997. It was made clear that the grant of mining lease for manganese ore in favour of opposite party No. 4 for the same area is not possible as it will "adversely affect the working for iron ore resulting in dispute and law and order situation in the area."

34. Therefore, throwing open the area of 60.70 hectares out of the entire area of 335.896 hectares which is equivalent to 830 acres has been done without following the relevant statutory Rules.

35. It goes without saying that when something is done in violation of the statutory rules, such action on the part of the State become vulnerable and is void in law. (See *Khub Chand and Others Vs. State of Rajasthan and Others*, at paragraph 7). The same principle has been followed by the Supreme Court in the case of *Dattaram S. Vichare Vs. Thukaram S. Vichare and Others*, , at paragraph 8).

36. It has been held by the Supreme Court that if a case is made out for granting relief, the Court cannot refuse to grant the same in the absence of a prayer. As early as in 1951, the Supreme Court held in the case of *Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others*,) that merely because proper relief has not been asked, a writ petition cannot be thrown out. But if a point is never taken in the writ petition and if the same is never argued before the Court, no relief can be given on that. In such a case the absence of a prayer is very vital. But here the legality of the notification dated 15.11.1975 has been argued on the basis of the averments in the writ petition as noted above. So mere absence of a specific prayer cannot prevent a writ Court from quashing the impugned notification dated 15.11.1975. The Court therefore quashes the said notification.

37. The judgment of the Supreme Court between the parties here and which has been referred to above (JT 1995) SC 325) decides some of the controversies in

the case.

38. In para-11 of the said judgment, the Supreme Court pointed out the issues which were before it. It appears from the perusal of the said paragraph that one of the issue was the correctness of the Orissa High Court's order in dismissing the writ petition filed by the State Government challenging the order of the Central Government dated 10.5.1978 on the ground that the writ petition was not maintainable at the instance of Government of Orissa as it had no locus standi to file the petition. On the said question the Supreme Court held in para-12 that it has the locus standi to challenge the direction of the Central Government since in the matter of granting lease the State Government is not an authority which is subordinate to the Central Government. The State Government is the owner of mines and minerals in question. if it is directed to issue a mining lease in favour of any party, the Supreme Court held, it has the locus standi to challenge that order under Article 226 of the Constitution of India.

39. The Supreme Court also considered whether the Central Government was competent to issue second revisional order dated 10.5.1978 directing the State Government to issue a mining lease in favour of Ganpat Rai Jain.

40. After a detailed discussion, the Supreme Court came to the conclusion that the said order dated 10.5.1978 which was passed by the Central Government by way of second revision cannot be sustained in law as the second revision is not maintainable. The Supreme Court held that if the State Government has failed to carry out any direction given to it by the Central Government, the aggrieved party may seek his remedy in accordance with law. But there is no provision in the said Rules for a second revision to the Central Government. In fact, learned Counsel for opposite party No. 4 has also accepted that the order dated 10.5.1978 passed by the Central Government by way of second revision is not tenable in law. In the concluding para of the said judgment, the Supreme Court while directing the Calcutta High Court to dispose of the pending case (Civil Revision Case No. 7894(W) of 1979) within a particular time frame expressed a doubt whether it will be in public interest, after a lapse of such a long time, for the State Government to grant lease in favour of Respondent No. 4 in terms of the offer made 17 years ago.

41. But in the impugned revisional order, the Central Government apart from proceeding on the basis of the order dated 15.11.1975 also proceeded on the basis of the order 10.5.1978, even though Supreme Court clearly opined that the order dated 10.5.1978 is not tenable in law.

42. Now coming to the impugned order, it appears that in its finding reached in para 14 of the same, the revisional authority proceeds on the basis that the order of the Central Government Tribunal, that is the order dated 10.5.1978, still survives. This finding is totally contrary to the Supreme Court's judgment inasmuch as the Supreme Court has held that there is no provision for the second revision and the Central Government has no power to entertain a second

revision. Therefore, the conclusions in para-14 of the impugned order have been arrived at on a clear misleading of the judgment of the Supreme Court.

43. This conclusion in para-15 of the impugned order also proceeds on the basis that 60.70 acres has become a distinct area from the area occupied by the petitioner. Since the notification dated 15.11.1975 cannot be upheld by this Court, this Court cannot accept this finding of the revisional authority. In fact, while discussing the said question in para-15 the revisional authority also held there cannot be two parties in the same area as lessee for distinct minerals.

44. It is precisely for this reason that this Court has already held that the notification dated 15.11.1975 cannot be sustained. The revisional authority has, thus reached inconsistent finding on the notification dated 15.11.1975.

45. In para-16 of the impugned order, the revisional authority has come to hold that in view of the Section 19 of the said Act the second renewal of the lease to the petitioner is void. It has already been noted that the second renewal of lease to the petitioner namely, the iron ore lease, was not challenged in the revision application filed by the opposite party No. 4. Since it was not challenged, the same cannot be quashed by the revisional authority.

46. The revision application which was filed by opposite party No. 4 was confined to the area of 60.70 hectares and the challenge was confined to the order of rejection of mining lease application dated 25.1.1976 of opposite party No. 4. On such application the revisional authority cannot set aside the renewal of mining lease granted to the petitioner inasmuch as same was totally outside the scope of the revision application.

47. The power of the revisional authority to pass orders is circumscribed by Rule 55 of the said Rules. Under Rule 55(4) of the said Rules the orders which can be passed by the revisional authority are provided. Rule 55(4) is set out below:

(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.

48. It cannot be disputed that the Central Government as a revisional authority acquires the role of a quasi-judicial tribunal (See : *Bharat Raja Vs. The Union of India (UOI) and Others*,). Such a quasi-judicial body is an inferior Tribunal. It is well settled that the jurisdiction of an inferior statutory Tribunal, as is the case here, is circumscribed by the words of the statute. Such inferior Tribunals do not have any inherent power as is vested on a Court of Record of plenary jurisdiction. The distinction between the nature of jurisdiction of such an inferior Tribunal and that of a Superior Court of Record of plenary jurisdiction has been very succinctly outlined by the Constitution Bench judgment of the Supreme Court in the case of *Naresh Shridhar Mirajkar and Others Vs. State of Maharashtra and Another*, . Speaking for the Constitution Bench, Chief Justice Gajendragadkar, by quoting from Halsbury's Laws of England explained the

principle as thus:

prima facie, no matter is deemed to be beyond the jurisdiction of a superior Court unless it is expressly shown to be so, while nothing is within the jurisdiction of an inferior Court unless it is expressly shown on the face of the proceedings that the particular matter is within the cognizance of the particular Court.

Following the said classic exposition of law in Halsbury's Laws of England, which has been approved by our Apex Court, this Court finds that quashing by the revisional authority of the second renewal lease of iron ore being outside the challenge in the revision petition, was wholly without jurisdiction. Apart from that, this Court finds with considerable anguish that the revisional authority, while passing its order as an inferior Tribunal, has made several observations about lack of jurisdiction of the Calcutta High Court in some of the orders passed by the High Court. It is not permissible for a quasi-judicial authority to question the jurisdiction of a High Court when there is no appeal against the order in question and it has become final. Otherwise also it is not open for a quasi-judicial authority to make such observation on the order of a High Court. The judicial discipline of restraint and showing reverence to an order of a Superior Court of Record is lacking in the order passed by the revisional authority.

49. Be that as it may, the order of the revisional authority on the second issue is also bad on the ground that the same contravenes the basic rules of natural justice. Under Rule 55(2) comments were invited from the petitioner on the basis of averments made in the revisional application. In the instant case, no comments were invited from the petitioner for the second issue since that was not subject-matter of challenge in the revision application. The function of such invitation of comments is to give a fair notice of the case which a party has to meet at the hearing. The provisions of Rule 55(2) of the said Rules codify the general principles of natural justice and fairness. But, in the instant case, the revisional authority acted contrary to Rule 55(2) by reaching a finding on the second issue when no comments on that were invited. Therefore, the finding on the second issue, apart from being without jurisdiction, is also vitiated for breach of the principles of natural justice and therefore, void in law.

50. Learned Counsel for opposite party No. 4 has of course challenged the petitioner's second renewal of iron ore lease on some other ground, which, however, did not find favour with the revisional authority. The said ground is that the lease of iron ore dated 3.6.1962 came to an end with the surrender of manganese lease because it was co-terminus with the manganese lease of 1957. This argument has been made without any reference to the facts of the case. The 1962 lease deed provides for its tenure in the lease deed itself. Such tenure commences on 2nd June, 1962 and expires on 3rd December, 1977. The said lease is an independent lease and in the body of the said lease deed the expression "co-terminus" has not been used.

51. Under the said Rules, the word "co-terminus" has been used in Rule 67. Rule 67 of the said Rules caters to a totally different situation. The said Rule is set out below:

67. Lease period. - Where more than one mineral is found in an area and lease is granted for exploiting two or more minerals, the periods of lease for all minerals shall be co-terminus with that for which the first lease was originally granted.

A perusal of the said Rule would make it clear that where more than one mineral is found in an area and lease for two or more minerals is applied for, the periods of lease for all minerals shall be co-terminus with that for which the first lease was originally granted. In the instant case, the two separate leases were granted to the petitioner and they were mineral specific leases. The applications for those two leases were not made together nor were they made simultaneously. Independent and separate applications were made. Application for lease for manganese ore was made on 15.4.1955 and for that of iron ore was made on 2.9.1958. So one lease deed was not granted for exploiting two or more minerals. So Rule 67 does not apply. Apart from that the tenure of a lease deed is not a matter to be decided by implication. The lease period being specifically mentioned in the lease deed any attempt to interpret the same differently by the opposite party No. 4 cannot be sustained and specially when the lessor does not interpret the lease deed in that manner. A lease deed being a commercial transaction, the interpretation of the parties will prevail. Therefore, Rule 67 is not attracted in the present situation. The order of the revisional authority is not based on that basis either.

52. The word "co-terminus" also occurs in Rule 38 of the said Rules. The said Rule is set out below:

38. Amalgamation of leases. - The State Government may, in the interest of mineral development and with reasons to be recorded in writing, permit amalgamation of two or more adjoining leases held by a lessee:

Provided that the period of amalgamated leases shall be co-terminus with the lease whose period will expire first:

Provided further that prior approval of the Central Government shall be required for such amalgamation in respect of leases for minerals specified in Part A and Part B of the First Schedule to the Act.

It is clear from a perusal of the said Rule, that it provides for amalgamation of different leases. Here no order of amalgamation has been passed by the State Government. Such order also requires prior approval of the Central Government. In the absence of these procedures there cannot be amalgamation and it is nobody's case that there was amalgamation of leases in the instant case. This argument on co-terminus lease is thus not relevant in the facts of this case.

53. For the reasons aforesaid, this Court cannot sustain the order dated 13.11.2001 passed by the Central Government. The findings of the Central

Government as the revisional authority on both the issues are bad in law. The said impugned order dated 13.11.2001 stands quashed, The writ petition is allowed to the extent indicated above. There will be no order as to costs.

N. Prusty, J.

54. I agree.