

(1989) 04 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No. 1564 of 1981

Smt. Dev Kunver Bai Pandya

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 28-04-1989

Acts Referred:

Constitution of India, 1950 — Article 14

Mineral Concession Rules, 1960 — Rule 54

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

Citation : AIR 1990 Ori 1 : (1989) 68 CLT 218

Hon'ble Judges : J. Das, J;G.B. Patnaik, J

Bench : Division Bench

Advocate : N.C. Panigrahi, for the Appellant; Addl. Standing Counsel, D.K. Mohapatra and G.N. Satapathy, for the Respondent

Final Decision : Allowed

Judgement

G.B. Patnaik, J.—This writ application is directed against the revisional order of the Central Government dated 20-10-1978, annexed as Annexure-8, and for issue of a writ of mandamus to the State of Orissa (opposite party No. 1) to consider the question of renewal of the petitioner's lease in accordance with law.

2. Petitioner's case, briefly stated, is that her husband had obtained a mining lease from the ruler of Bonai for extracting manganese in villages Gonua and Mundajora over an area of 438.47 acres under Annexure-1 dated 30-9-1943 for a period of thirty years. On 12-1-1959, the Controller of Mining Leases passed an order reducing the period of lease from 30 to 20 years and thereafter illegally took over possession of the mines on 23-8-1971. The order of taking over possession was challenged in this Court in O.J.C. No. 303 of 1972 and by judgment dated 28-2-1973, annexed as annexure-2, this Court quashed the order of the Controller of Mining Leases and directed that the petitioner was entitled to continue for the full period of thirty years which was to expire on 30-9-1973. Before the expiry of the said lease, in accordance with the provisions

for renewal, the petitioner made an application for renewal on 27-9-1972. No order having been passed on the application for renewal within the statutory period of six months under Sub-rule (2) of Rule 24 of the Mineral Concession Rules, 1960 (hereinafter referred to as the "Rules"), the said application would be deemed to have been refused under Sub-rule (3) of Rule 24 of the Rules. Against the deemed refusal, the petitioner moved the Central Government in revision u/s. 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "Act") read with Rr.54 and 55 of the Rules. The Central Government by order dated 31-12-1973 set aside the deemed rejection and directed the State Government to consider and pass appropriate orders on merit within a period of four months after obtaining orders of the Central Government wherever necessary. This order of the Central Government has been annexed as Annexure-4. Notwithstanding the aforesaid direction of the Central Government, the State Government did not dispose of the renewal application and issued a reservation notification on 2-4-1977 reserving the Gonua and Mundajora manganese mines for exploitation in the public sector. This notification has been annexed as Annexure-5. After issuing the aforesaid reservation notification, the State Government rejected the petitioner's application for renewal on the ground that the area in question has been reserved for exploitation through public sector and no free area is available. This order was communicated to the petitioner and has been annexed as Annexure-6. Against this order of the State Government rejecting the petitioner's application for renewal on the purported plea of reservation for exploitation in public sector the petitioner went up in revision before the Central Government. It was indicated by the State Government in its Comments to the Central Government that the said area had been applied for by the Hindusthan Steel Limited, Rourkela, in May, 1970, and, therefore, the area was kept reserved and was given to the Hindusthan Steel Ltd. The State Government granted the area in favour of the Hindusthan Steel Limited on 19-7-1977 which order has been annexed as Annexure-9. The Central Government by order dated 20-10-1978 (Annexure-8) passed the final order in revision and though the order of the State Government rejecting the application for renewal filed by the petitioner was set aside yet did not grant any relief in favour of the petitioner on a peculiar conclusion, namely:--

".....The State Government need not however, pass fresh orders on the application since the deemed rejection of the petitioner's application consequent on the failure by the State Government to pass orders within the time allowed by the Central Government is not affected by the present order."

The main ground which weighed with the Central Government in setting aside the order of the State Government rejecting the petitioner's application for renewal is that the State Government has no power to reject the application after expiry of the time specified in the revisional order directing the State Government to dispose of the application and accordingly any order passed subsequent thereto is without jurisdiction and a nullity. Though the petitioner

initially had prayed for quashing of the order of the Central Government and for a direction to the State Government to re-consider the petitioner's application for renewal, by way of amendment, the petitioner also prayed for quashing of the reservation notification dated 2-4-1977, which has been annexed as annexure-6.

3. Mr. Panigrahi, the learned counsel for the petitioner, contends that the renewal application of the petitioner was required to be disposed of by the State Government in accordance with the direction of the Central Government under Annexure-4 dated 31-12-1973 taking into consideration the facts which existed on the date of the application for renewal or the date of the revisional order itself and without complying with the said order of the revisional authority and reserving the area for exploitation in the public sector long four years thereafter and thereupon making the application for renewal infructuous passing an order to that effect, the State Government must be held to have acted not in consonance with fair sense of justice and further the order of reservation must be held to be in colourable exercise of power and not sustainable in law. The learned counsel further submits that the Central Government was not justified in coming to the conclusion that the State had no power to consider the application for renewal after expiry of the period granted by the revisional authority and, therefore, the conclusion that the order is non est on the ground on which the Central Government has held it so cannot be sustained. The next submission of Mr. Panigrahi, the learned counsel for the petitioner, is that the Central Government being a statutory authority under the Act and the Rules and having issued a direction to the State Government to dispose of the application for renewal in accordance with law, it was not open for the State Government to decline to carry out the order on a ground which came into existence subsequent to the making of the order of the Central Government and, therefore, the impugned order of rejection of petitioner's renewal application on the sole ground of reservation for exploitation in public sector is illegal and cannot be set aside.

The learned Additional Standing Counsel appearing for the State, on the other hand, contends that the State being the owner of the mines has unfettered power to reserve any mines for exploitation in public sector and that power cannot be taken away by the Central Government in the garb of exercise of revisional power and, therefore, the order of reservation cannot be held to be bad in law. The learned counsel further contends that since the reservation notification has been issued on 2-4-1977, there was no other option than to reject the application for renewal filed by the petitioner had accordingly there is no infirmity in the order of the State Government rejecting the application for renewal. The rival contentions require a careful examination of the relevant provisions of the Act and the Rules and certain decisions cited at the Bar.

4. Before examining the submissions made by the learned counsel for parties, one other fact which requires to be noticed is that, the grant in favour of the Hindusthan Steel Limited (opposite party No. 3) is no longer subsisting and an

affidavit has been filed by the petitioner stating therein that opposite party No. 3 has surrendered the entire leasehold with effect from 20th of December, 1985 and the said surrender has been accepted by the State Government on 17-5-1986: Mr. Satapathy, the learned counsel appearing for opposite party No. 3 also in course of hearing of the writ application states that the Hindusthan Steel Limited has already surrendered the leasehold area that had been granted to it.

5. So far as the first contention of the learned counsel for the petitioner is concerned, it is no doubt true that the State is the owner of the mines and no person has any right to exploit it otherwise than in accordance with the provisions of the Act and the Rules. The power to order reservation flows from the fact that the State is the owner of the mines and the minerals within its territory which vest in it and such power is also contemplated in Rule 59 of the Rules. But the question for consideration is, whether that power can be exercised colourably so as to make a revisional order passed by the Central Government infructuous and can the State be permitted not to comply with the direction of the revisional authority by issuing a notification of reservation. From the facts narrated above, it is crystal clear that the petitioner had made an application for renewal of the lease and the same not having been disposed of within the statutory period, the petitioner had carried a revision to the Central Government against deemed order of refusal. The Central Government after setting aside the deemed order of refusal directed the State Government to consider the question of renewal on its own merit and subject to the provisions of the Act and the Rules. This order of the Central Government passed in revision has a binding effect on the State Government and the State Government cannot disobey the same. The question of reservation was nowhere in contemplation either when the petitioner made the application for renewal in 1972 or when the Central Government passed the revisional order on 31-12-1973. Without complying with the direction of the Central Government dt. 31-12-1973 and without disposing of the petitioner's application within four months from the date of receipt of the order of the Central Government as was required under the revisional order, the State Government kept the matter pending till April, 1977, and suddenly issued the notification of reservation on 2-4-1977 and thereafter in compliance with the revisional order of the Central Government dated 31-12-1973 disposed of the petitioner's application for renewal and rejected the same by order dt. 12-4-1977. In the aforesaid circumstances, the only conclusion that can be arrived at is that the order of reservation is merely a camouflage and was purposely passed to defeat the petitioner's right of consideration of the application for renewal and to defy the order of the revisional authority dt. 31-12-1973. The application for renewal was required to be considered on its own merits on the facts existed either on the date of the application or on the date when the revisional authority passed the order directing the State Government to dispose of the application for renewal. Non-compliance with the aforesaid direction and keeping the matter pending for more than three years

and then issuing an order of reservation for exploitation in public sector in exercise of the purported power of an owner and thereby making the revisional order infructuous and making the application for renewal also infructuous, in our opinion, amounts to a colourable exercise of power and, therefore, such an order of reservation as well as the order of rejection of petitioner's application for renewal cannot be sustained in law.

In fact, a similar matter came up for consideration before this Court in the case of *M. S. Deb v. State of Orissa* ILR (1980) Cut 38, and it was held by this Court :--

"We are inclined to agree with the submission of Mr. Rath for the petitioner that the order of reservation had been made mainly to find a ground for rejecting the applications of the petitioner. As already noticed, the State Government had already a time-bound order against it. Having defaulted to dispose of the proceeding within the time, it should not have invoked its power for reservation to defeat the applications and the applications should have been disposed of on the basis of existing facts either on the date of application for renewal or within the time indicated by the Central Government for disposal at the most. In order of reservation made almost twenty months after the date of the revisional order should not indeed be accepted as a valid reservation so as to automatically bring about rejection of the two applications for renewal which had been long pending with the State Government."

The ratio of the aforesaid case applies with full force to the facts and circumstances of the present case where the State Government had issued the reservation notification after three years" and four months of the revisional order of the Central Government and kept the petitioner's application for renewal pending without any consideration of the same. Consequently, we hold that the impugned order of reservation made on 2-4-1977 under Anne-xure-5 is a colourable exercise of power and has been passed for the sole purpose of making the petitioner's application for renewal infructuous and accordingly the said order of reservation cannot be sustained in law. We would accordingly quash the order of reservation dated 2-4-1977, annexed as An-nexure-5. There is no difficulty in this matter since the grantee pursuant to reservation namely opposite party No. 3 has in the meantime surrendered the leasehold in favour of the State. The first contention of Mr Panigrahi is accordingly sustained.

6. So far as the second contention of Mr. Panigrahi is concerned, we also find sufficient force in the same. It is true that by order dated 31-12-1973, the Central Government in exercise of its revisional power set aside the deemed refusal and directed the State Government to dispose of the petitioner's application for renewal within four month. But by no stretch of imagination it can be said that after expiry of four months the State Government becomes functus officio and it has full right to dispose of the application for renewal even after expiry of the period granted to it under the revisional order. Therefore, the conclusion of the Central Government under Annexure-8 with regard to the

illegality of the order of the State Government on the ground on which the same has been held to be illegal, cannot be sustained in law though in view of our finding on the first point, the order of the State Government refusing to renew the petitioner's application for renewal must be held to be bad in law. While, therefore, we agree with the conclusion of the Central Government that the order of the State Government dated 12-4-1977 rejecting the application for renewal is liable to be set aside, but we do not agree with the ground on which the same has been set aside by the Central Government. The contention of Mr. Panigrahi on this score must, therefore, be upheld.

7. Under the Act, the power has been conferred on the Central Government to regulate the development of mines and minerals. Though undoubtedly the State is the owner of the mines and the minerals yet in respect of a mineral included in the first schedule no lease can be granted without the previous approval of the Central Government. Then, against an order of refusal of an application for lease the aggrieved party has a right of revision before Central Government and in exercise of that revisional power the Central Government has the right to alter, set aside and grant in favour of the aggrieved party. Thus, full control over the mines and minerals has been conferred on the Central Government, but that control has to be exercised in accordance with the provisions contained in the Act and the Rules. This being the provision, a revisional order passed by the Central Government becomes binding on the State Government. The effect of a revisional order passed by the Central Government was considered by the Supreme Court in the case of *Dharam Chand Jain Vs. The State of Bihar*, . It was held by their Lordships (at p. 1436) :

".....The State Government, being a subordinate authority in the matter of grant of mining lease, was obligated under the law to carry out the orders of the Central Government as indicated above. But the State Government declined to do so on the ground that it had laid down a policy that the mining leases in respect of the area should be given only to those who were prepared to set up a cement factory. It was clearly not open to the State Government to decline to carry out the orders of the Central Government on this ground, particularly because the Central Government was a tribunal superior to the State Government. If a ground came into existence subsequent to the making of the order of the Central Government which warranted a reconsideration of the order of the Central Government as indicated above, the State Government could have brought this ground to the notice of the Central Government. However, one thing is manifestly clear that the State Government could not have refused to implement the order of the Central Government unless the Central Government itself chose to revise it either on a reference by the State Government or suo motu. In fact to take the view that the State Government could decline to carry out the order of the Central Government on some ground which it thinks proper would be subversive of judicial discipline....."

In view of the aforesaid authoritative pronouncement of the Supreme Court and

applying the same to the present case, we hold that the State Government has failed to carry out the direction of the Central Government in its order dated 31-12-1973 and after keeping the application pending for more than three years, rejected the renewal application of the petitioner under Annexure--6 on the ground of reservation which on the face of it is a colourable exercise of power. In this view of the matter, the contention of Mr. Panigrahi, the learned counsel for the petitioner, on this score must be sustained.

8. In the net result, therefore, the order of the State Government dated 2-4-1977 under Annexure-5, the order of the State Government dated 12-4-1977 rejecting the petitioner's application for renewal under Annexure-6 and the order of the Central Government in revision dt. 20-10-1978 under Annexure-8 are hereby quashed and the State Government is directed to dispose of the petitioner's application for renewal of lease in question on merits keeping in mind the relevant provisions of law. The Government while dealing with the question of renewal would be free to consider all relevant aspects of the matter. The application for renewal may be disposed of within six months from the date of receipt of our order.

The writ application is accordingly allowed, but in the circumstances, without any order as to costs.