
(1967) 10 MP CK 0006

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 198 of 1967

Smt. Radha Devi Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-10-1967

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 24(3), 54, 56

Citation : AIR 1968 MP 121 : (1968) JLJ 58 : (1968) 13 MPLJ 70 : (1968) MPLJ 70

Hon'ble Judges : P.V. Dixit, C.J.; R.J. Bhawe, J

Bench : Division Bench

Advocate : R.S. Dabir and V.S. Dabir, for the Appellant; K.K. Dubey, Government Advocate for Respondents (Nos. 1 and 2) and M.N. Phadke, for Respondent (No. 3), for the Respondent

Judgement

Dixit, C.J.

By this application under Articles 226 and 227 of the Constitution, the petitioner Radha Devi Sharma seeks a writ of certiorari for quashing an order of the Central Government passed in January 1967 where by the Central Government, purporting to act In exercise of its powers under Rule 56 of the Mineral Concession Rules, 1960 (hereinafter called the Rules), corrected its earlier order made in June 1966 holding that a revision application dated the 27th December 1965 of the respondent No. 3, Sarladevi Shukla, was time-barred, and directed the respondent No 2, the State of Madhya Pradesh, to grant a mining lease for bauxite over an area of 225 37 acres in Khasra No. 187 of village Tikaria, Tehsil Murwara, Jabalpur district to the said Sarladevi Shukla.

The matter arises thus. On 28th June 1963 the State Government, in exercise of its powers under Rule 58(b) of the Rules notified for general information that certain areas of Khasra No. 187 in village Tikaria specified in the notification would be available for "obtaining prospecting licence and mining lease with effect

from 3rd August 1963". In response to this notice, the respondent No. 3 Sarladevi made an application for the grant of a mining lease over a total area of 225.37 acres in Survey No. 187 of village Tikaria. Tehsil Murwara, District Jabalpur. This application was not disposed of by the State Government within nine months from the date of its receipt as required by Rule 24(1) of the Rules. As, under Sub-rule (3) of Rule 24, if an application for the grant of a mining lease is not disposed of within the period specified in Sub- Rule (1) it is deemed to have been refused, Sarladevi filed a revision petition under Rule 54 before the Central Government on 27th December 1965 against the "deemed" rejection of her application dated the 3rd August 1963. On 27th December 1965, the petitioner Radha Devi Sharma also made two applications to the State Government for the grant of two mining leases, one in respect of 114.23 acres, and the other in respect of 74 77 acres, of Survey No. 187 of Mouza Tikaria An area of 189 acres was common in the applications of the petitioner and the respondent No 3. The petitioner's applications were also not disposed of by the State Government within nine months" time prescribed by Rule 24(1) of the Rules, She, therefore, filed two revision petitions under Rule 54 before the Central Government against the "deemed" refusal of her applications. One revision petition was filed by her on 10th October 1966 and another on 12th October 1966. Both these petitions are still pending before the Central Government.

By a letter dated the 16th June, 1966, the Under-Secretary to the Government of India in the Ministry of Mines and Metals informed the respondent No. 3, Sarladevi, that her revision petition dated the 27th December 1965 had been rejected by the Central Government. That letter was as follows:-

"I am directed to refer to your revision application dated 27-12-1965 on the above subject and to say that the application is against the failure of the State Government to pass an order on your Mining lease application dated 3-8-1963 within nine months. This being so, you should have filed your revision application within a period of two months from the date on which it was deemed to have been rejected i.e. before 3-7-1964. Your application is therefore clearly time-barred and there are no sufficient grounds for condonation of delay. The Central Government is therefore to reject your application."

Here, it is necessary to state that the area applied for by the petitioner and the respondent No. 3 was previously held under a mining lease by M/S G. H. Cook & Sons of Katni. Sometime before the expiry of their lease on 29th January 1955, M/S G. H. Cook & Sons applied to the State Government for the renewal of the lease. The renewal application was rejected by the State Government. It was, however, granted by the Central Government in a revision petition filed by M/s. G. H. Cook & Sons. The Central Government directed the State Government to renew the lease of M/S. G. H. Cook & Sons for a period of eight years from the next day following the termination of the previous lease, Accordingly, a renewed lease was granted to M/S. G. H. Cook & Sons for a period of eight years

commencing from 30th January 1955. M/S. G. H. Cook & Sons then moved the State Government for making the lease effective for a period of eight years beginning from 16th May 1960. the date on which the renewed lease was actually granted to them. This prayer was rejected by the State Government. A revision petition preferred by M/S. G. H. Cook & Sons to the Central Government under Rule 54 against this order of rejection by the State Government was also dismissed by the Central Government on the ground that it was time-barred. M/S. G. H. Cook & Sons then filed in this Court two petitions under Article 226 of the Constitution. In one of the petitions, namely, M. P. No. 264 of 1963, M/S. G. H. Cook & Sons prayed that a direction be issued to the State Government to grant them a renewed lease for a period of eight years commencing from 16th May 1960. In that petition, an interim order was passed by this Court on 26th August 1963 restraining the State Government from "taking proceedings for regranteeing the area under mining lease until further orders". Later, this stay-order was made operative till the disposal of that petition. That petition was rejected by this Court on 6th April 1964. In the other petition (M. P. No. 378 of 1963) filed by M/S G. H. Cook & Sons a writ of certiorari was sought for quashing the order of the Central Government rejecting the revision petition filed by them on the ground that the order was passed by the Central Government without giving them a notice of the hearing of the revision petition or any opportunity to represent their case. That petition was allowed on 6th April 1964. and the Central Government was directed to decide afresh the revision petition filed by M/S G. H. Cook & Sons after giving them an opportunity to represent their case.

It appears from the returns filed by the respondents Nos. 1 and 2, the Union of India and the State of Madhya Pradesh that on 4th July 1964 the Central Govt, directed the State Government not to deal with applications for fresh grant of mining lease over the area covered by the lease of M/S G. H. Cook & Sons, which was the subject-matter of a revision petition filed by M/S. G. H. Cook & Sons before the Central Government and which was pending. In compliance with this Court's order in M. P. No. 378 of 1963. dated the 6th April 1964, the Central Government heard M/S. G. H. Cook & Sons on their revision petition and ultimately dismissed that revision petition on 24th November 1965.

On 5th July 1966 the respondent No. 3, Sarladevi, made a representation to the Government of India for reconsideration of the order passed in June 1966 rejecting her revision petition on the ground that it was barred by time. The ground urged by her for reconsideration was that during the period the stay-order passed by this Court in M. P. No. 264 of 1963 was operative the State Government could not have considered her application dated the 3rd August 1963 for the grant of a mining lease and limitation would begin to run against her only from the date of the passing of the order by the Central Government on the revision petition filed by M/S G. H. Cook & Sons after giving them a personal hearing in compliance with this Court's order in M. P. No. 378 of 1963. By a letter dated the 16th July 1966 (Annexure R-9 to the return of the third respondent) of the Under-Secretary to the Government of India to the Secretary,

Government of Madhya Pradesh, Natural Resources Department the comments of the State Government were invited on the representation made by Sarladevi. In that letter it was mentioned that the order of the Central Government passed in June 1966 rejecting Sarladevi's revision petition was based on "incorrect information furnished by the State Government" and that the Central Government proposed to correct that order in exercise of its powers under Rule 56 of the Rules

In reply to this letter, the State Government wrote back on 28th July 1966 (Annexure R-11 to the return of the third respondent) saying that the stay-order issued by this Court in M. P. No 264 of 1963 stood vacated on 6th April 1964 when that petition was disposed of; and that the State Government at no stage communicated wrong facts to the Central Government. The State Government elucidated the matter by making the following comments in their letter dated the 28th July 1966--

"However when the two orders of the High Court were received by the State Government a reference was made to Government of India vide letter No. 4585-3604/ XII dated 15-6-1964 as to whether in view of orders of the High Court in petition No. 378 the pending applications should be kept pending further till the final decision of the Revision Petition. The Government of India vide their letter No. MV-1(234)/64 dated 4-7-1964 directed that further action on the application be stayed till the decision of the revision petition.

This revision petition was rejected by Govt. of India in April 1965 vide their letter No MV--(144/63) dated Nil April 1965 addressed to the petitioner G. H. Cook A Sons and copy endorsed to the State Government. Thus after the decision of the High Court in the two petitions there was no stay from the court and the stay order of the Government of India in the Revision Petition case also stood vacated on the passing of the said order in April, 1965.

Thereafter no further correspondence in the matter took place with the State Government. However, vide Government of India's letter No, MV-I(234)/64 dated 24-11-1965 the rejection already ordered in April 1965 was reconfirmed. The proceedings leading to this order and legal provisions under which it was passed are not known to the State Government.

Therefore from these facts it is abundantly clear that stay order by the High Court was vacated on 6-4-1964 and the order of Govt. of India was vacated in April, 1965. The interpretation that the High Court order was vacated on 29-11-1965 appears to have absolutely no basis on facts. The information sent by the State Government was entirely correct and the previous order of the Govt. of India treating the application for revision as time barred also appears to be unexceptionable. Even if the stay of Govt. of India order is to be considered it stood vacated in April 1965 computing limitation from this date also makes the revision petition time barred "

After receiving these comments, the Government of India addressed a letter

(Annexure-B to the petition) to the State Government on 16th January 1967 directing the State Government to grant a mining lease for bauxite over an area of 225.37 acres in Khasra No. 187 of village Tikaria. Tehsil Murwara, District Jabalpur, to the respondent No. 3 Sarladevi. That letter is as follows--

"In continuation of this Ministry's letter of even number dated 16-6-1966 and with reference to your letter No. 5014/5030/XII dated 28-7-1966. on the above subject. I am directed to say that the Central Government in exercise of the powers conferred by Rule 66 of Mineral Concession Rules, 1960, correct the orders contained in their letter dated 16-6-1966, treating the revision application dated 27-12-1965 of Shrimati Sarla Devi Shukla as time-barred and direct the State Government to grant Mining Lease for Bauxite over an area of 225.37 acres in village Tikaria (P. C. No. 187) Taluk Murwara, district, Jabalpur in her favour "

The petitioner says that she learnt about the decision of the Central Government to grant the mining lease to the respondent Sarladevi for the first time when the Central Government, by a letter addressed in March 1967, forwarded to her the comments of the State Government on her revision applications filed on 10th and 12th October 1966. In their comments (Annexure-D to the petition) addressed to the Ministry of Mines and Metals. Government of India, New Delhi, on the revision petitions of the petitioner Radha Devi, the State Government said that as the area applied for by Radha Devi had already been sanctioned by the Government of India in favour of the respondent Sarladevi, Radha Devi's revision petition deserved to be rejected.

Shri Dabir learned counsel appearing for the petitioner, argued that the application of the third respondent, Sarladevi, for grant of a mining lease, filed on 3rd, August 1963, should have been disposed of by the State Government within nine months from the date of its receipt as required by Rule 24(1); that when it was not disposed of within this time, it must be taken that it was refused on 3rd May 1964 as laid down in Rule 24(3); that if, therefore, Sarladevi was aggrieved by this refusal she should have filed a revision petition within two months from 3rd May 1964; and that the revision application filed by her on 27th December 1965 was thus first rightly rejected by the Central Government in June-1986 on the ground that it was barred by time. Learned counsel proceeded to say that the impugned subsequent order passed by the Central Government treating the revision application dated the 27th December 1965 of Sarladevi Shukla as within time and directing the State Government to grant her a lease was. as indicated in the letter dated the 16th January 1967. (Annexure-B to the petition) of the Government of India to the Union of India, passed by the Central Government in exercise of its powers under Rule 56 of the Rules But this Rule only enabled the Government to correct "any clerical or arithmetical mistake" in any order passed by it, it did not give to the Central Government the power to review an order passed under Rule 54

Relying on A.C. Estates Vs. Serajuddin and Co. and Another, . Master

Construction Co. (P) Ltd. Vs. State of Orissa and Another, ,J C. Rishi v. Union of India 1967 MPLJ 532=(AIR 1968 Madh Pra 42) and S. Barrow Vs. State of U.P. and Another, , learned counsel submitted that if in first rejecting Sarladevi's revision petition the Central Government arrived at a wrong conclusion that it was barred by time because the facts about the stay-order passed by this Court and the Central Government in Cook and Sons" case were not brought to its notice, then it could not be said that there was "any clerical or arithmetical mistake" in the order of the Central Government rejecting the revision petition; that in arriving at a different conclusion later on the question of limitation, the Central Government exercised the power of review which was not permissible under Rule 56; and that in fact the rules nowhere conferred on the Central Government any power to review its decision given in exercise of its power under Rule 54. Learned counsel further said that if on the basis of the decision of the Supreme Court in P. U Vaishya v. Union of India, C. A. No. 657 of 1967, D/- 17-8-1967 = 1967 MPWR 448, it was found that the impugned order of the Central Government treating the revision application of Sarladevi as within time and directing the State Government to grant a mining lease to her was ex facie defective for the reason that it did not give any reasons, then this Court could, from the averments made in the returns filed by the respondents, determine whether the Central Government had the power under Rule 56 to review its earlier conclusion that Sarladevi's revision application was barred by time and whether the subsequent conclusion of the Central Government holding the revision petition to be within time was right. It was also suggested that this application should be asked to state its reasons in support of its order contained in the letter dated the 16th January 1967 (Annexure-B to the petition.)

On behalf of the respondent Sarladevi, Shri Phadke raised the objection that this application was not maintainable, first because the petitioner had already availed herself of the remedy of revision petition under Rule 54 available to her and the two revision petitions filed by her under Rule 54 against the "deemed" rejection of her applications for lease were still pending before the Central Government; and secondly because the petitioner had no locus standi to challenge the orders passed by the Central Government on the respondent-Sarladevi's revision petition. Learned counsel submitted that in subsequently holding that the revision application filed by Sarladevi was within time, the Central Government merely decided that delay in the filing of the revision petition should be condoned and did not exercise any power of review; and that when the Central Government wrongly dismissed Sarladevi's revision application on the ground that it was time-barred, the mistake could be corrected under Rule 56 of the Rules.

Learned counsel referred us to Parsotam Das v. Muhammad Hamid, 1LR 8 Luck 93 = (AIR 1932 Oudh 291), where it was held that where the court erroneously, dismissed an execution application as time-barred omitting to notice that the last day of presentation was Sunday the court could correct the error u/s 152 C. P. C. and readmit the application It was also urged that if, following the decision of the

Supreme Court in (1967) CA No 657 of 1967. D/- 17-8-1967 (SC) (Supra) the impugned order of the Central Government holding that the revision application filed by Sarladevi was within time and directing the State Government to grant her a mining lease was found to be ex facie defective and illegal on the ground that it did not give any reasons, then it was not open to this Court to examine whether or not there was any clerical or arithmetical mistake in the earlier order of the Central Government holding the revision petition to be time-barred and whether the subsequent conclusion of the Central Government that the revision petition was within time was right. Learned counsel suggested that if the impugned order contained in the letter dated the 16th January 1967 (Annexure-B to the petition) is quashed following the decision of the Supreme Court in P. U. Vaishya's case, CA No. 657 of 1967, D/- 17-8-1967 (SC) (supra), then for the persons given in P. U. Vaishya's case, CA No. 657 of 1967 D/- 17-8-1967 (SC) the earlier decision of the Central Government holding the third respondent-Sarladevi's revision petition as time-barred, should also be quashed.

Taking first the preliminary objections raised on behalf of the respondent-Sarladevi to the maintainability of this petition, in our opinion, they lack substance. It is true that the petitioner has filed two revision petitions under Rule 54 of the Rules before the Central Government against the failure of the State Government to dispose of her two applications filed on 10th and 12th October 1966 for grant of mining leases, and those revision petitions are still pending before the Central Government. In those revision petitions the applicant Radha Devi has not assailed the order of the Central Government holding Sarladevi's revision petition to be within time and directing the State Government to grant her a mining lease. Sarladevi is not even a party in those revision petitions. In the revision petitions filed by Radha Devi the question raised is whether the two mining leases asked for by her should or should not be granted. In the petition before us, the question for determination is not whether the applicant Radha Devi is or is not entitled to get the mining leases; but it is whether the order of the Central Government passed in January 1967 holding that the revision petition of Sarladevi was within time and directing the State Government to grant a mining lease to her is valid and legal. It is, therefore, altogether erroneous to say that the applicant Radha Devi has availed herself of the remedy of revision petitions to the Central Government for obtaining the same relief which she is seeking in this petition. There is, therefore, no force in the contention that the applicant Radha Devi having filed two revision petitions before the Central Government under Rule 54, which are still pending, is not now entitled to invoke the jurisdiction of this Court under Article 226 of the Constitution for quashing the order of the Central Government passed in January 1967 treating the revision petition filed by the respondent Sarladevi as within time and directing the State Government to grant her a mining lease.

The contention that the applicant has no locus standi to challenge the order of the Central Government made in January 1967 in favour of the respondent-Sarladevi is also unsubstantial. It is manifest that so long as that order of the

Central Government, under which Sarladevi has been granted a lease, stands, the petitioner cannot obtain any mining lease in respect of the area for which a lease has been granted to Sarladevi. Indeed, this was precisely the ground which the State Government put forward when asked by the Central Government to comment on the revision applications filed by the applicant Radha Devi. It is, therefore plain that Radha Devi is vitally interested in having the order of the Central Government impugned in this petition, quashed That order stands in the way of the grant of mining leases to her, and it is only after it is quashed that she can urge in the revision petitions filed by her that leases for the areas in question should be granted to her

In our judgment, the order of the Central Government, contained in their letter dated the 16th January 1967 to the State Government and saving that the

"Central Government in exercise of the powers conferred by Rule 56 of Mineral Concession Rules, 1960, correct the orders contained in their letter dated 16-6-1966, treating the revision application dated 27-12-1965 of Shrimati Sarla Devi Shukla as time-barred and direct the State Government to grant Mining Lease for Bauxite over an area of 225.37 acres in village Tikaria (P. C. No. 187) Taluk Murwara. district Jabalpur in her favour"

must be quashed on the ground that it is not a "speaking order". It does not give any reasons supporting the decision in favour of the respondent Sarladevi.

Learned counsel appearing for the respondent No. 1 the Union of India, was not able to produce before us any order of the Central Govt recording reasons in support of its conclusion that the revision application filed by Sarla"devi was within time, and in support of its decision that the mining lease should be granted to Sarladevi. The respondent No. 3 Sarladevi, was also not able to produce any such order. Apparently, no such order was ever recorded by the Central Government and none was made available to any party It must, therefore, be taken that the order which the Central Government passed holding that the revision petition filed by Sarladevi was within time and directing the State Government to grant her a mining lease is only the one contained in the letter dated the 16th January 1967 of the Central Government to the State Government That order is plainly not a "speaking order" and that being so, following the decision of the Supreme Court in P. U. Vaishya's case CA No. 657 of 1967, D/- 17-8-1967 (SC) (supra) it must be quashed.

In the case of C.A No. 657 of 1967 D/-17-8-1967 (SO (supra) the order, which the Central Govt passed in a revision petition filed by Dr. Dubey and Girdhar Malviya under Rule 54 of the Mineral Concession Rules 1960 was contained in a letter addressed by the Central Government to the State Government on 3rd February 1966. That letter directed the State Government

"to include refractory clay as an additional mineral in the existing Mining Lease for sillimanite over an area of 488.21 acres in village Pipra district Sidhi of Dr. V. H. Dubey and Pt. Girdhar Malviya, after cancelling the mining lease for Kaolinite

over 86.47 acres in the same locality granted to Shri Pragdas Vaishya of M/s. Hanuman Prasad Pragdas."

In *Pragdas Umar Vaishya v. Union of India*, Misc. Petn. No. 92 of 1966, D/- 17-11-1966 (MP), which Pragdas filed in this Court under Article 226 of the Constitution for the issue of a writ of certiorari for quashing the order of the Central Government communicated to the State Government by the aforesaid letter dated the 3rd February 1966 no order of the Central Government allowing the revision petition of Dr Dubey and Girdhar Malaviya was exhibited. This Court, however, on examining the record of the revision petition filed by Dr. Dubey and Girdhar Malaviya, formed the view that the Central Government allowed the revision petition of those two persons after finding that their revision petition was within time and that their application for grant of a mining lease in respect of the new mineral as a refractory clay was prior in time to the application filed by Pragdas. Accordingly the application filed by Pragdas under Article 226 of the Constitution was dismissed by this Court. When the matter went up in appeal before the Supreme Court, it was held by the Supreme Court that the order of the Central Government communicated to the State Government by the letter dated the 3rd February 1966 was not a "speaking order": it did not give reasons in support of the decision taken by the Central Government and was, therefore, ex facie defective. It was also observed by the Supreme Court that this Court was not justified in looking into the file of the Central Government for "construing the reasons in support of that order". On this view, the Supreme Court set aside the order passed by the Central Government on 3rd February 1966 and directed the Central Government to deal with the revision application of Dr. Dubey and Girdhar Malaviya according to law.

The position here is no different. The impugned order of the Central Government, contained in their letter dated the 16th January 1967 addressed to the State Government is not a "speaking order". It does not give any reasons in support of the decision of the Central Government to "correct" its earlier order treating the respondent-Sarladevi's revision petition as time-barred and in support of the direction to the State Government to grant a mining lease to Sarladevi. The order is ex facie defective and must therefore be quashed.

If it is held that the impugned order of the Central Government is not a "speaking order", as it must be on the authority of the decision of the Supreme Court in the case of *P. U. Vaishya C. A. No. 657 of 1967 D/- 17-8-1967 (SC)* (supra), then the contention advanced by the learned counsel for the petitioner that this Court should stay the hearing of this petition and call for the reasons of the Central Government in support of that order, or should itself determine, from the record of the Central Government and the returns filed by the respondents, whether the revision application filed by Sarladevi on 27th December 1965 was within time and whether the Central Government could in the exercise of its power under Rule 56 of the Rules "review" its earlier conclusion that it was not within time cannot be accepted. So to do would be to follow a procedure which

the Supreme Court has in the case of P. U. Vaishya C. A. No. 657 of 1967 D/- 17-8-1967 (SC) (supra) held to be irregular. In our opinion it is not permissible for us to examine in this petition whether or not there was any clerical or arithmetical mistake in the earlier order of the Central Government holding the respondent Sarladevi's revision petition to be time-barred and whether the subsequent conclusion of the Central Government, that it was within time is right.

The prayer made by the learned counsel appearing for the respondent Sarladevi that if the impugned order is quashed following the decision of the Supreme Court in the case of P. U. Vaishya C. A. No. 657 of 1967 D/- 17-8-1967 (SC) (supra) then for the reasons given in that case the earlier decision of the Central Government holding Sarladevi's revision petition as time-barred should also be quashed, cannot clearly be considered in this petition by Radha Devi for the issue of a writ of certiorari for quashing the Central Government's order subsequently holding that Sarladevi's application was within time and directing the State Government to grant her a mining lease. If the earlier order of the Central Government holding that Sarladevi's revision petition was time-barred is for any reason invalid and illegal then it is open to Sarladevi to file a separate petition for the issue of a writ of certiorari for quashing that order also.

For all these reasons, this petition is allowed, and the order of the Central Government, contained in the letter dated the 16th January 1967 addressed to the State Government treating the revision petition dated the 27th December 1965 of Sarladevi as within time and directing the State Government to grant her a mining lease in respect of the area in question, is quashed. The Central Government is directed to deal with the representation made by Sarladevi to the Government of India for reconsidering their order passed in June 1966 rejecting her revision petition on the ground that It was barred by time according to law It Is needless to add that as the petitioner Radha Devi is vitally interested in the determination of the question, namely, whether the revision petition filed by Sarladevi on 27th December 1965 was within time or out of time and whether the Central Government could in exercise of its powers under Rule 56 of the Rules set aside its earlier decision holding that the revision petition was barred by time, a notice of the hearing of the representation of Sarladevi must be given to the petitioner The Central Government shall do so before dealing with the representation of the respondent Sarladevi Thp petitioner shall have costs of this application from the respondent No. 3. Counsel's fee is fixed at Rs. 200. The outstanding amount of security deposit shall be refunded to the petitioner.