

(1969) 01 OHC CK 0015
In the Orissa High Court
Case No : O.J.C. No. 589 of 1968

Sree Narayan Company

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 14-01-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Mineral Concession Rules, 1960 — Rule 24(3), 54, 55

Citation : AIR 1969 Ori 163

Hon'ble Judges : S. Barman, C.J.; B.K. Patra, J

Bench : Division Bench

Advocate : S.R. Mohanty and R.K. Kar, for the Appellant; Advocate General and Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

Barman, C.J.—In this writ petition, the petitioner prays for the issue of a writ of mandamus directing the State of Orissa to grant in his favour a mining lease for iron and manganese ore over an area of 186.454 hectares near village Dumirta in Khesra forest, Taluk Barbil, District Keonjhar, in compliance with the order of the Central Government dated July 12/14, 1967 in exercise of their revisional powers under Rule 55 of the Mineral Concession Rules, 1960, directing the State Government to grant the said mining lease in favour of the petitioner.

2. On June 19/21, 1966 the petitioner applied for mining lease of 292.274 hectares in respect of iron and manganese ore. By January, 1967 the petitioner is stated to have complied with all the requisitions made by the concerned authorities in connection with the aforesaid application for mining lease. On January 7, 1967 the petitioner wrote to the opposite parties that as seven months had passed since his application and that unless the application is disposed of within nine months from the date of its receipt, Government must be deemed to have rejected the petition under Rule 24 (3) of the Mineral Concession Rules; yet the application for lease was not disposed of by the State

Government. Thereafter on April 8, 1967 the petitioner made an application to the Central Government for revision against deemed refusal of the lease under Rule 54. On May 25, 1967 the Central Government communicated that the State Government proposed to grant lease of the available area of 186.454 hectares and the petitioner was called upon to send his acceptance within 15 days. Accordingly, on May 30, 1967 the petitioner duly accepted the proposal of the State Government for grant of lease over the said area.

3. On July 12/14, 1967 the Central Government directed the State Government to grant a mining lease for iron and manganese ore over 186.454 acres and allowed the revision application of the petitioner in exercise of the power under Rule 55 of the Mineral Concession Rules. On July 22, 1967 the petitioner forwarded a copy of the aforesaid order of the Central Government passed on his revision application, to the State Government for early action. Thereafter, the State Government not having complied with the directions of the Central Government the petitioner filed this writ petition on June 18, 1968 for issue of a writ of mandamus on the State Government for compliance by it of the directions of the Central Government as aforesaid.

4. In the course of hearing the learned Advocate General appearing for the State Government conceded that by virtue of Articles 256 and 257 of the Constitution the State Government was bound to carry out the directions of the Central Government. While making this concession it was however contended on behalf of the State Government that they are not in a position to comply with the direction of the Central Government contained in their communication because the contract made in exercise of the executive power of the State has to be executed on behalf of the Governor in the prescribed manner as required by Article 299 of the Constitution.

The point of the State Government is that in the absence of such a contract on behalf of the Governor, or by a person in such manner as the Governor may direct or authorise, the State Government is not in a position to comply with the direction of the Central Government to execute a mining lease. In support of this contention, the State Government relied on the decision of the Supreme Court in *K.P. Chowdhary Vs. State of Madhya Pradesh and Others*, where it was held that if the contract between Government and another person is not in full compliance with Article 299 of the Constitution it will be no contract at all and could not be enforced either by Government or by the other person to the contract; that in view of the mandatory terms of Article 299(1) no implied contract could be spelled out between the Government and the other party (the appellant) in that case.

5. The question is: What is the nature and effect of an order passed by the Central Government on the revision application filed by the petitioner? Where the Central Government, in revision, under Rule 54 of the Mineral Concession Rules, 1960 sets aside the State Government's decision refusing to grant the lease (in the present case it was a case of deemed refusal) and directs the State

Government to grant the lease, the State Government has no other alternative but to grant the lease in accordance with the orders passed by the Central Government. Indeed, factually and finally the order is of the Central Government and a duty is cast on the State Government under the rules to carry out such an order. In disposing of the application for revision under Rule 54 the Central Government acts as a quasi-judicial authority; therefore, the State Government as an inferior authority is bound to carry out the direction of the Central Government contained in the order disposing of the revision petition.

The order of the Central Government in the revision application under Rule 54 of the Mineral Concession Rules was in substance a judicial determination on the question of grant of lease in favour of the petitioner which the State Government was bound to carry out. If the order of the Central Government has not been complied with by the State Government, an application will lie under Articles 226 and 227 of the Constitution for a direction to the State Government commanding it to carry out the order of the Central Government and directing it to grant the lease. This view is supported by the decision of the Madhya Pradesh High Court in Narsinghdas Jankidas Mohta Vs. The State of Madhya Pradesh, .

6. That apart, the lease deed is ultimately to be executed in Form K or in a form as near thereto as the circumstances of each case may require, as provided in Rule 31. The material portion of the Model Form of Mining Lease in Form K is set out as follows:

" This Indenture made this day of19 between the Governor of . . / the President of India (hereinafter referred to as "The State Government" which expression shall where the context so admits be deemed to include the successors and assigns) of the one part and (Name of person with address and occupation) (hereinafter referred to as the "lessee" which expression shall where the context so admits be deemed to include his heirs, executors, administrators, representatives and permitted assigns)

***** Witnesseth that in consideration of the rents and royalties, covenants and agreements by and in these presents and the Schedule hereunder written, reserved and contained, and on the part of the lessee/ lessees to be paid, observed and performed, the State Government (with the approval of the Central Government) hereby grants and demises unto lessee/lessees. All those mines

***** The mining lease executed in such prescribed form is sufficient compliance with the provisions of Article 299 of the Constitution.

7. In the view that we have taken on the concession made on behalf of the State Government and on the facts of this case, the State Government must comply with the direction of the Central Government dated July 12/14, 1967 to execute the mining lease in favour of the petitioner.

8. The writ petition is accordingly allowed with costs. Hearing fee Rs. 200/-

(rupees two hundred only).

Patka, J.

9. I agree.