

(2016) 12 OHC CK 0001
In the Orissa High Court
Case No : Writ Petition (C) No. 2954 of 2016

State of Odisha

APPELLANT

Vs

Government of India

RESPONDENT

Date of Decision : 19-12-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 55
Mines And Minerals (Development And Regulation) Act, 1957 — Section 30

Citation : (2017) 123 CutLT 955 : (2017) 1 ILRCuttack 14

Hon'ble Judges : Shri Vineet Saran, CJ. and Dr. B.R. Sarangi, J.

Bench : Division Bench

Advocate : Mr. R.K. Mohapatra, Government Advocate, for the Petitioner; M/s. P. Mishra and S.K. Padhi, Sr. Advocates along with M/s. Naveen Kumar, R.K. Mohanta, R.R. Mohapatra, Advocates, for the Opposite Party No. 2; Mr. D.K. Sahoo-1, Central Govt. Counsel, for the

Final Decision : Allowed

Judgement

Shri Vineet Saran, C.J.—Dharam Chand Jain, husband of opp. party no.2-Smt. Sobha Jain, had on 15.06.1970 applied for grant of mining lease for iron and manganese ores over an area of 1277.50 acres in Sidhamath Reserve Forest of Keonjhar district. On 05.06.1984, an order for granting mining lease over an area of 637 acres was issued in favour of the applicant-Dharam Chand Jain for a period of twenty years subject to the mining lease deed being executed within a period of six months of the order or within such further period as the State Government may allow, as provided under Rule 31(1) of the Mineral Concession Rules, 1960.

2. Without going into further details, we may mention on 12.05.1989, the applicant himself gave a proposal to reduce the grant area to 70.39 acres. While the matter remained pending, on 25.03.1995, the Collector, Keonjhar demarcated an area of 72.70 acres to be granted for lease in favour of the applicant, instead of 70.30 acres, and recommended to allow execution of the

mining lease deed, subject to approval under the Forest (Conservation) Act, 1980 and the Mineral Rules, 1960. Then on 30.05.1995, the power of attorney of the applicant submitted a draft mining plan. In response thereto, on 20.06.1995, notice under Rule 26(3) of the M.C. Rules, 1960 was issued to the applicant to comply with the deficiency latest by 30.07.1995. Then on 06.05.1997, Avin Jain, the power of attorney holder of the allottee-Dharam Chand Jain was requested to take all possible steps to obtain the approval of the Government of India within three months. On 26.09.1997, the allottee-Dharam Chand Jain was given reminder, as a last chance, to obtain prior approval of the Central Government under Section 2 of the Forest (Conservation) Act, 1980, failing which action to revoke the grant order dated 05.06.1984 would be initiated.

3. In the meanwhile, on 09.12.1995, the applicant-Dharam Chand Jain had expired, but the power of attorney continued to negotiate and correspond with the authority even after the death of the applicant. It was only on 25.06.2009, which was after 14 years of the death of Dharam Chand Jain and 12 years after the communication dated 26.09.1997, that the power of attorney of the applicant intimated the State Government about processing of the application for prior approval of the Central Government and also about the death of the allottee-Dharam Chand Jain on 09.12.1995. In the meantime, it was on 12.09.2006 that a probate was granted in favour of opp. party no.2-Smt. Sobha Jain-widow of late Dharam Chand Jain. Then a power of attorney is said to have been issued on 19.10.2006 by opp. party no.2 in favour her son Avin Jain. The said Avin Jain as power of attorney of opp. party no.2 requested for further time for completing the formalities and certain communications were also received by him from the Ministry of Forest and Environment, Government of Odisha. On 22.01.2010, the Addl. Secretary, Department of Steel and Mines, Government of Odisha, wrote to the Conservator of Forests that, after the demise of the grantee on 09.12.1995, there was no substitution in favour of any legal heir, as nobody had applied for the same, and that the grant of mining lease which was ordered on 05.06.1984 was not executed till that date, as the grantee had not furnished the statutory clearances as were required under the provisions of law. However, the Ministry of Forest and Environment, Government of Odisha, continued with the process and completed the formalities during pendency of this writ petition. On 13.01.2012, a notice was issued to the power of attorney holder of legal heir of the grantee by the Mines Department to show cause as to why the grant order be not revoked for non-execution of the mining lease deed within the stipulated period of six months, as provided under Rule 31(1) of the Minor Mineral Concession Rules, 1960.

4. The Deputy Director of Mines, Keonjhar then wrote to the Director of Mines, Odisha on 03.04.2012 that the grantee had obtained certain clearances for execution of the mining lease and that the Government may be moved to recommend the case of the grantee to the Chief Conservator of Forests for final disposal of diversion proposal and for allowing extension of time for execution of the mining lease deed. Pursuant thereto on 09.04.2012, the Director of Mines

forwarded the case of the applicant to the Addl. Secretary, Government of Odisha, Department of Steel and Mines. The matter was thereafter taken up by the State Government for consideration of grant of mining lease in pursuance of the order for granting lease dated 05.06.1984 in favour of Dharam Chand Jain. Vide order dated 20.07.2012, the State Government revoked the grant order dated 05.05.1984 and thereby refused to grant lease in favour of opp. party no.2. Challenging the said order, opp. party no.2 filed a revision under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957, which has been allowed by the Central Government vide order dated 08.06.2015. Challenging the same, this writ petition has been filed by the State Government.

5. We have heard Shri R.K. Mohapatra, learned Government Advocate for the State-petitioner; Shri Sahoo, learned counsel appearing for opp. party no.1-Government of India; and Shri Pinaki Mishra, Senior Counsel, Shri S.K. Padhi, Senior Counsel appearing along with Shri Naveen Kumar and Shri R.R. Mohapatra, learned counsel for the contesting opp. party no.2 and perused the record.

6. The submission of the learned Government Advocate appearing for the petitioner-State of Odisha is that the order of the State Government was a well-reasoned order, which had been accepted to be so by the Central Government while passing the order dated 08.06.2015 and, as such, there was no reason for the Central Government to have set aside the order of the State Government and allowed the revision.

It is further submitted that revisional authority has limited powers and when facts are not disputed, the finding recorded on the basis of the undisputed facts could not have been upset by the revisional authority. It is also submitted that the power of attorney of late Dharam Chand Jain continued to correspond with the State Government, even after his death on 09.12.1995 and intimation of the death of the grantee-Dharam Chand Jain was given to the State authorities by the power of attorney only on 25.06.2009. It is contended that during the period from 1995 to 2009, all actions of the power of attorney were invalid. It is contended that the delay is attributable to the grantee and not to the State Government.

Learned Government Advocate also contended that Rule 31(1) of the Mineral Concession Rules, 1960 requires lease deed to be executed within six months and when no further extension was granted by the State Government and the grantee remained silent for over a decade, the revocation of the grant order dated 05.06.1984 was perfectly justified, for which valid reasons have been given by the State Government vide order dated 20.07.2012. It is also submitted that while allowing the revision, no reason has been given with regard to explanation for delay and, as such, the Central Government has wrongly condoned the same, without assigning any reason. In the alternative, learned Government Advocate has submitted that if at all the case of the petitioner can be considered, it can only be done now under Rule 8 of "The Minerals (Other

than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016", which have now come into force with effect from 4th March, 2016.

7. Per contra, Shri Pinaki Mishra, learned Senior Counsel appearing for the contesting opp. party no.2 has submitted that the revisional authority has nowhere accepted in the order dated 08.06.2015 that the impugned order gave detailed reasons or that the same was a reasoned order. All that is stated in the revisional order is that the order of the State Government was a detailed one and self-explanatory and, as such, it cannot be construed that the revisional authority had accepted the order of the State Government as a reasoned order.

It is contended that the revisional authority can re-appreciate the facts and pass appropriate orders by substituting its findings. The contention is that the revisional authority had accepted the explanation given in the rejoinder affidavit with regard to cause of delay, and thus rightly held that the delay could not be attributed to any omission or lapse of opp. party no.2. Learned Senior Counsel has placed reliance on the communications dated 22.01.2010, 03.04.2012 and 09.04.2012, which are all by the Department of Steel and Mines of the State Government and it is wrong to state that the matter remained alive for consideration only in the Forest and Environment Department of the State Government, but had remained in consideration of the Mines Department also. Learned Senior Counsel submitted that when the Steel and Mines Department of the State Government had considered the matter to be alive as late as in the year 2010, then the question of explaining the delay from 1997 till 2010 would not arise. He thus contended that no interference is called for with the order of the Central Government passed in the revision.

Shri Pinaki Mishra, learned Senior Counsel has submitted that Avin Jain, who was the son of grantee-Dharam Chand Jain (as well as opp. party no.2-Smt. Sobha Jain) was the earlier power of attorney holder of the grantee-Dharam Chand Jain and after the probate was granted in favour of opp. party no.2 on 12.09.2006, he was given power of attorney by opp. party no.2 on 19.10.2006. The contention of Shri Mishra thus is that the power of attorney continued to act on behalf of the grantee as legal representative of the deceased grantee-Dharam Chand Jain, which, according to Shri Mishra, he was entitled to do so under Rule 25-A of the Mineral Concession Rules, 1960.

It is also contended by Shri Mishra, learned Senior Counsel that the State Government has condoned the delay by issuing communication after 2010 and the manner in which they proceeded thereafter.

8. We have carefully considered the submission of learned counsel for the parties and perused the record.

9. It is not disputed that the grant of mining lease, passed on 05.06.1984, was in favour of the applicant-Dharam Chand Jain. It is also not disputed that the grantee-Dharam Chand Jain expired on 09.12.1995. Though it is contended that intimation of the death of the grantee-Dharam Chand Jain was given to the State

Government immediately after his death, but there is no document to support the said contention. The first document on record regarding intimation of death of the grantee-Dharam Chand Jain is one dated 25.06.2009. It is also not disputed that after the death of grantee-Dharam Chand Jain, on 09.12.1995, the power of attorney of Dharam Chand Jain continued to correspond with the State Government with regard to grant of mining lease.

10. Rule 25-A of the Mineral Concession Rules, 1960 reads as follows;

"25A. Status of the grant on the death of applicant for mining lease :- (1) Where an applicant for a grant or renewal of mining lease dies before the order granting him a mining lease or its renewal is passed, the application for the grant or renewal of a mining lease shall be deemed to have been made by his legal representative.

(2) In the case of an applicant in respect of whom an order granting or renewing a mining lease is passed, but who dies before the deed referred to in sub-rule (1) of rule 31 is executed, the order shall be deemed to have been passed in the name of the legal representative of the deceased."

The aforementioned rules, as it appears, deals with the status of the grantee on the date of application for mining lease. It provides that where an applicant for grant or renewal of mining lease dies before the order granting him mining lease, the application for grant of mining lease shall be deemed to have been made by his legal representatives. The question of the power of attorney acting on behalf of the grantee as legal representative would arise only when intimation of the death of the grantee is given to the State Government. Without such intimation having been given, it would be presumed that the power of attorney-Avin Jain continued to act as power of attorney on behalf of a deceased person. A power of attorney can act on behalf of a living person, be it a natural person or juristic person. Once a person, who has given power of attorney, is no more there, the question of power of attorney continuing to act on behalf of such deceased person, would not arise. Had it been a case of the legal representative of the grantee having informed the State Government of the death of the grantee, and then proceeded with the matter as legal representative of the grantee, then the position would have been different. Such is not the case in hand.

11. In letter dated 26.09.1997 of the Steel and Mines Department of the Government of Odisha, the representative of the grantee was clearly intimated to obtain approval of Ministry of Environment and Forest within a period of one month from the date thereof, failing which action would be initiated to revoke the grant order. The representative/legal heir of the grantee neither obtained the approval of the Ministry of Environment and Forest nor intimated the reason, for not getting the same, to the State Government. As such, there was no request for extension of the time stipulated for compliance. The fact of death of the grantee-D.C. Jain, who died on 09.12.1995, was also not intimated by his legal heir to the State Government within a reasonable time. Consequentially, neither

the grantee nor his legal representative was able to get clearance from the appropriate authority within the period of lease approved under the grant order. Between 26.09.1997 and 07.07.2009, there was even no communication between the legal heir of the grantee and the Government regarding compliance with the terms and conditions of the grant/statutory provisions. There was no request for extension of time for ensuring compliance. On 11.11.2009, almost 25 years after the date of grant order, there was a request for grant of further time of one more year to complete the process of execution of mining lease deed. The inaction between the period from 26.09.1997 to 07.07.2009 has not been explained either before the authority or before the revisional authority.

12. As per the clarification issued by Ministry of Environment of Forest in office memorandum dated 14th July, 2010, two years of time may ordinarily be considered sufficient for the purpose of obtaining forest clearance. As such, the grantee has failed to furnish approval from the Ministry of Environment and Forest, even after expiry of the period of the lease mentioned in the grant order. As it appears, no cogent reason has been advanced on behalf of the grantee for the unusual long delay in achieving compliance with the prescribed terms and conditions, and for more than ten years there was no communication from the legal heir of the grantee regarding fulfilment of the conditions precedent for execution of the lease deed. On failure of the grantee, the granted area remained idle. As a result, the State Government lost revenue, which could have fetched from the mining lease.

13. In addition to the above, it is made clear that a mining lease is a State largesse over which no individual can have monopoly. There ought to be transparency and equal opportunity in distribution of State largesse with the paramount objective being to further community and State interest. Within the last 25 years, ever since issuance of the grant order, competition has increased and there is increased need of raw material for the manufacturing facilities that have been established within the State. Idling of State largesse is not in public interest. Neither the grantee nor his legal representative has done anything to indicate sincerity on his part. It would be in public interest to notify the granted area so that opportunity is accorded to all interested for grant of mining lease.

14. In view of the reasons described above, the State Government, considering the materials on record, came to a conclusion that there was no merit in the case of legal heir of the grantee for grant of additional time for fulfilment of statutory compliance, as the period of lease had already expired. Consequentially, it revoked the grant of mining lease for iron and manganese ore over an area of 637.00 acres in Sidhamath reserve forest of Keonjhar district in favour of original grantee, namely, D.C. Jain pursuant to proceeding dated 05.06.1984.

15. Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 reads as follows :

"30. Power of revision of Central Government :- The Central Government may, of

its own motion or on application made within the prescribed time by an aggrieved party, revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under this Act with respect to any mineral other than a minor mineral."

Similarly, Rule 55 of the Mineral Concession Rules, 1960 reads as follows :

"55. Orders on revision application :- (1) On receipt of an application for revision under rule 54, copies thereof shall be sent to the State Government or other authority and to all the impleaded parties calling upon them to make such comments as they may like to make within three months from the date of issue of the communication, and the State Government or other authority and the impleaded parties, while furnishing comments to the Central Government shall simultaneously endorse a copy of the comments to the other parties.

(2) Comments received from any party under sub-rule (1) shall be sent to the other parties for making such further comments as they may like to make within one month from the date of issue of the communication and the parties making further comments shall send them to all the other parties.

(3) The revision application, the communications containing comments and counter-comments referred to in sub-rule (1) and (2) shall constitute the records of the case.

(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.

(5) Pending the final disposal of an application for revision, the Central Government may, for sufficient cause, stay the execution of the order against which any revision application has been made."

A combined reading of aforesaid provisions would indicate that statute empowers to prefer revision against the order passed by the State Government before the Central Government. Invoking such power, wife of the original grantee preferred revision against the order passed by the State Government dated 20.07.2012. The power of "revision" is limited to the act of examining again in order to remove any defect or grant relief against the irregular or improper exercise or non-exercise of jurisdiction by the subordinate authority or the lower Court, as the case may be.

16. In *Sri Raja Lakshmi Dyeing Works v. Rangaswamy* (1980) 4 SCC 259, the apex Court held :

"Ordinarily, revisional jurisdiction is analogous to a power of superintendence and may sometimes be exercised even without it being invoked by a party. The conferment of revisional jurisdiction is generally for the purpose of keeping tribunals subordinate to revisional tribunal within the bounds of their authority to make them act according to well defined principles of justice.

Therefore, it follows that in a revision the revising authority is not bound to examine the facts for itself but is entitled to give its decision on points of law alone. As such, in a revision the person seeking revision has more restricted rights.

17. Applying the above well settled principle to the present context, we find that the revisional authority has not dealt with the detailed reasons given by the State Government with regard to undue delay in execution of lease after the order of grant was issued on 05.06.1984. The period of 12 years from 1997 to 2009 dealt with by the State Government has been cursorily considered by the revisional authority and brushed aside by merely stating that "the revisionist in his RA has indicated the circumstances which caused the delay and he has been able to establish that the delay cannot be attributed to any omission or lapse on the part of the revisionist". Nowhere, the revisional authority has considered as to what was stated in the rejoinder affidavit filed before it, which could establish that the delay could not be attributed to the revisionist (opp. party no.2 herein). Even otherwise, an explanation given before the revisional authority in the rejoinder affidavit could not be considered by the revisional authority until the said explanation was on record before the State Government. As such, the finding that the delay could not be attributed to opp. party no.2 or the grantee cannot be justified in law. It has also been stated by the revisional authority that the revisionist (opp. party no.2 herein) had "actively pursued their endeavour", which is also without any basis, as there is no factual foundation to substantiate the same.

18. In view of the aforesaid, we are of the opinion that the order dated 08.06.2015 passed by the revisional authority cannot be justified in law and the order of the State Government dated 20.07.2012 is a well reasoned order. The revisional authority, having limited jurisdiction, in exercise of such power, could not have interfered with the order so passed by the State Government. Certainly, the revisional authority is not discharging the jurisdiction of an appellate authority and we are of the opinion that within the limited compass of its jurisdiction, in the facts of this case, it ought not to have interfered with the order dated 20.07.2012 passed by the State Government.

The writ petition is accordingly allowed by quashing the order dated 08.06.2015 passed by the revisional authority. There shall be no order as to cost.

Dr. B.R. Sarangi, J.—I agree.