

(2008) 05 JH CK 0020
In the Jharkhand High Court

Thakur Prasad Sao

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 15-05-2008

Acts Referred:

Constitution of India, 1950 — Article 14, 21, 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30
Partnership Act, 1932 — Section 42

Citation : (2008) 3 JCR 23

Hon'ble Judges : M. Karpaga Vinayagam, C.J;Narendra Nath Tiwari, J

Bench : Division Bench

Judgement

Narendra Nath Tiwari, J.—These three cases have interwoven factual background. WP(C) No. 1460 of 2007 Is the origin for the Cont. Case (C) No. 220 of 2007 and WP(C) No. 4302 of 2007. The consideration, discussion and decision in the case of M/s. Thakur Prasad Sao WP(C) No. 1460 of 2007 have the direct bearing on the other two cases. In that view, all the three cases have been heard simultaneously with the consent of the parties and the same are being disposed of by this synchronic order.

2. M/s. Thakur Prasad Sao, the petitioner in WP(C) No. 1460 of 2007, in his writ petition has sought quashing of the order of the State Government, respondent, dated 2nd March, 2007, whereby the application filed by the petitioner for renewal of the mining lease has been rejected without giving any heed to the order passed by the Central Government dated 5th August, 2005 while allowing the revision application of the petitioner as also the orders earlier passed by this Court on 12th December, 2005 and 5th December, 2006. The petitioner has also sought a direction to renew the lease of the petitioner.

3. The facts stated, in brief, are as follows:

(i) The petitioner is a partnership firm engaged in the business, of mining.

(ii) The mining lease of iron-ore was granted to the petitioner on 4.1.1954 for a

period of 20 years.

(iii) In the year 1974, the licence was renewed for the further period up to 3rd February, 1994.

(iv) As per the term of the lease, the petitioner made an application dated 30th January, 1993 for renewal of the mining lease for a further period of 20 years from 4th February, 1994 to 3rd February, 2014.

(v) In the meantime, on 13.12.1993, the Forest Department directed the petitioner to stop all mining activities in the lease area with effect from 5.2.1994.

(vi) Even though under the relevant rules, the lease was to be deemed to have been extended for a further period till the application for renewal is considered, the petitioner chose to stop the mining operation in view of the directions of the Forest Department.

(vii) By order dated 1st September, 2004, the State Government rejected the petitioner's application for renewal on the ground that the petitioner did not show any interest in the disposal of the renewal application.

(viii) On 17th September, 2004, the State Government took symbolic possession of the leased area.

(ix) Aggrieved by the refusal of the State Government to renew the lease, the petitioner filed revision application before the Central Government u/s 30 of the Mines and Minerals (Development and Regulation) Act in September, 2004.

(x) In the meantime, In pursuance of the order dated 1st September, 2004, the State Government issued notification under Rule 59 of the Mineral Concession Rules on 18th September, 2004, declaring the petitioner's leasehold area available for regnant.

(xi) The Central Government disposed of the revision filed by the petitioner by order dated 5th August, 2005 setting aside the order dated 1st September, 2004 of the State Government, whereby the application for renewal of the petitioner's lease was rejected. The matter was remitted to the State Government for considering the issues afresh.

(xii) State Government though intimated the petitioner that its Mining Lease renewal application may be reconsidered without prejudice to what has happened in the past, 11 years have elapsed after the mining activities were stopped by the State Government.

(xiii) Against the said order dated 5th August, 2005 in revision, the State Government filed a writ petition, being WP(C) No. 5765 of 2005.

(xiv) This Court, by an order dated 12th December, 2005 dismissed the writ petition refusing to interfere with the order, whereby the State Government was directed to decide the petitioner's application for renewal of mining lease afresh without being prejudiced by its earlier order of refusal.

(xv) On 24th March, 2006, State Government issued notice asking the petitioner to furnish several documents which are required for considering the application for renewal. The petitioner was asked to appear on 8th April, 2006 the date of hearing before the Secretary, Mines with the requisite documents.

(xvi) Accordingly, on 8th April, 2006, the petitioner appeared and filed a detailed explanation on all the issues and furnished the documents.

(xvii) By letter dated 23rd June, 2006, the Deputy Commissioner issued notice to the petitioner asking to appear on 29th July, 2006 for hearing.

(xviii) On 29th July, 2006, the petitioner appeared before the Secretary along with senior counsel. The Secretary informed the counsel that he needs some advice from the law department before hearing the petitioner and that the petitioner shall be informed after fixing the date of hearing.

(xix) On 2nd August, 2006, the petitioner made a detailed representation to Hon'ble the Chief Minister about the delay in disposal of the renewal application. The Chief Minister asked the authority to review the earlier order.

(xx) An opinion was sought on the said order from the Law Department. The Law Secretary opined that the decision could not be reviewed and the letter dated 23rd June, 2006 for hearing on 29th July, 2006 should not have been issued.

(xxi) On coming to know about the same, the petitioner sent representations on 27th November, 2006 and 28th November, 2006 requesting for giving opportunity for hearing.

(xxii) However, the State Government did not respond to the petitioner's representation.

(xxiii) The petitioner then filed writ petition being WP(C) No. 7134 of 2006, seeking direction on the State Government to renew the lease expeditiously or to hear the petitioner before taking any decision.

(xxiv) On 5th December, 2006, this Court disposed of the said writ petition, directing the respondents to dispose of the petitioner's application for renewal of lease after hearing the petitioner within three months after affording opportunity of being heard pursuant to the communication of the respondent dated 23rd June, 2006, if such opportunity was not already allowed.

(xxv) The Secretary had also written a note on the file on 29th July, 2006 that before he proceed to hear the case, he needed advice of the Law Department. There was, thus, no hearing on 29th July, 2006 and no date of hearing was fixed thereafter for giving opportunity of hearing to the petitioner.

(xxvi) After getting the orders of the High Court dated 5th December, 2006, the petitioner made representation dated 11th December, 2006 requesting the State Government to afford an opportunity of hearing before passing the order.

(xxvii) To the utter dismay of the petitioner suddenly the impugned order dated

2nd March, 2007 was passed, dismissing the renewal application, without considering the issues afresh as directed by the Central Government and without giving any opportunity of hearing to the petitioner as directed by this Court by order dated 5th December, 2006 passed in WP(C) No. 7134 of 2006.

4. The said impugned order has been challenged on the following grounds:

(i) The State Government was directed by the Central Government, by the said order dated 5th August, 2005 passed in the revision, to consider some issues afresh and pass an order uninfluenced by the post events. The State Government was not to consider as an open remand taking up all the issues all over again. The matter was remanded for consideration of specific issues. The State Government is allowed to travel beyond the issues specified in the order of revision.

(ii) The Central Government's order was upheld by the High Court In the writ petition filed by the State Government challenging the same. But, the State Government contrary to that travelled beyond that and disturbed the issues which were already considered and decided.

(iii) The order impugned is in clear breach of the mandatory requirements of Rule 26(1) of the Mineral Concession Rules, 1960. The notice dated 4th March, 2006 was issued for hearing under Rule 26(3). Through that notice, the petitioner was asked to submit documents and furnish the requisite information on 8th April, 2006. There was no hearing under Rule 26(1) of the Mineral Concession Rules. The said rule requires a hearing by the State Government before rejection of the application for renewal. The mandatory requirement of Rule 26(1) has never been complied with.

(iv) In spite of the direction of this Court, by order dated 5th December, 2006 to afford opportunity of hearing to the petitioner, the State Government did not give opportunity of hearing and passed the order dismissing the renewal application on 2nd March, 2007. There is clear violation of the order of this Court as well as violation of principles of natural justice.

(v) The State Government has neither given opportunity of hearing pursuant to the notice dated 23rd June, 2006 or thereafter nor there was withdrawal of the notice saying that hearing is not necessary. Admittedly there was no hearing on 29th July, 2006. The Secretary needed legal opinion from the law department before any hearing. There was no hearing thereafter. It is blatant violation of the directions of this Court.

(vi) The opinion of the law department that no hearing can be given is a gross misinterpretation of the order of the High Court as well as the order of the Central Government.

(vii) The State Government has not heard the petitioner as required by Rule 26(1) at any time after the matter was sent back to the State Government by order of remand or the Central Government, so also in spite of the High Court

depriving the petitioner of statutory/constitutional right.

(viii) The State Government, if decided to reopen the entire matter ought to have issued a fresh notice to the petitioner informing the petitioner the said, decision and affording opportunity to represent themselves as also directed by the High Court by order dated 12th December, 2005 passed in WP(C) No. 7134 of 2006.

5. The respondent State contested the writ petition. In the counter affidavit filed by them, they made, inter alia, the following contentions:

(i) The petitioner has got efficacious alternative remedy under Rule 54 of the Mineral Concession Rules, 1960 (for short "MCR, 1960"). The writ petition is not maintainable.

(ii) The partnership of the petitioner-firm was dissolved in terms of Section 42(c) of the Indian Partnership Act and the application for renewal in the name of non-existent firm is not maintainable.

(iii) The petitioner has not submitted the royalty clearance certificate as required by. Rule 22(3) of the MCR, 1960.

(iv) No one has vested right to claim renewal of lease and none can claim a vested right to have an application for grant of renewal of lease dealt with in a particular way.

(v) The petitioner was duly given an opportunity to be heard in terms of Rule 26(1) of MCR, 1960.

(vi) Notice dated 4th March. 2006 under Rule 26(3) of the MCR. 1960 was also duly issued to the petitioner to supply the omissions and lacunae in his application for renewal of mining lease, but he failed to do so.

(vii) The petitioner has not fulfilled the statutory requirement for renewal of mining lease.

(viii) No prejudice whatsoever has been caused to the petitioner. The term of the relief sought for is in the nature of an anticipatory writ.

(ix) Notice dated 23rd June. 2006 was issued for appearance on 29th July, 2006. The petitioner had appeared and placed some points. The same were also placed by him earlier.

(x) The Chief Minister had called for the file and ordered for review of the decision taken by the Mining Committee, which had recommended for approval of the decision to reject the petitioner's renewal application.

(xi) In view of the above opinion of the Law Department was sought on the point whether there was any scope for review.

(xii) The Law Secretary opined that there is no scope for review, as the final decision has already been taken.

(xiii) The department was in the process of issuing the order, but without waiting for the same, the petitioner approached this Court.

(xiv) The hearing dated 8th April, 2006 was final and was valid compliance of the order of this Court dated 5th December, 2006 passed in WP(C) No. 7134 of 2006.

(xv) The petitioner had failed to get approval of the Central Government in relation to forest clearance for more than 20 years even though the letter dated 23rd June, 2006 was issued for hearing under Rule 26. Since the same was not found answered by the Law Secretary, the notice sent by the said letter was not given effect to.

(xvi) The order of this Court dated 5th December, 2006 was for giving opportunity, in case, no opportunity of hearing was given earlier.

(xvii) However, since the petitioner was earlier heard on 8th April, 2006, there was no question of giving any further hearing.

6. The main points for consideration and need answer in this writ petition are as follows:

(i) Whether the petitioner was afforded opportunity of hearing before consideration and disposal of the petitioner's application for renewal, as required under Rule 26(1) of the MCR, 1960?

(ii) Whether the petitioner was afforded opportunity of hearing as directed by this Court by order dated 5th December, 2006 passed in WP(C) No. 7134 of 2006 and whether there was compliance of principles of natural justice?

(iii) Whether the writ petition is maintainable in view of the alternative statutory remedy u/s 30 of the Mines and Minerals (Development & Regulation) Act, 1957?

Point No. I

7. By order dated 5th December, 2006, while disposing of the petitioner's writ petition, this Court had directed the respondents to consider the petitioner's application for renewal of the mining lease and dispose of the same within a period of three months after affording an opportunity of hearing pursuant to the communication of the respondents dated 23rd June, 2006, if such an opportunity was not already allowed.

That apart, it is a settled law that before passing an adverse order against a person, principles of natural justice has to be followed and complied with by affording an opportunity of hearing.

8. In the instant case, Rule 26(1) of the MCR, 1960 provide for giving opportunity of hearing to the applicant for renewal of mining lease before refusing his application. Under Rule 26(1) opportunity of hearing is contemplated before the order of refusal is passed against the applicant as envisaged in Section 26(1) of the MCR. 1960. Opportunity of hearing is distinctly contemplated under Rule 26(3) of the said rule before such as final hearing, if it

so requires.

9. Rule 26(3) requires that where the State Government considers that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall require the applicant to furnish the same. Even incomplete application without giving material particulars or without enclosing the required documents cannot be rejected without giving such opportunity. The State Government shall require the applicant to furnish the details/documents, if it is not satisfied with the compliance.

10. The notice u/s 26(3) is thus, contemplated for giving an opportunity to the applicant to remove the deficiency or explain the same. Notices under Rules 26(3) and 26(1) are not for the same purpose, rather separate notices are contemplated of different stages. Compliance of the requirement of Rule 26(3) is not a substitute for compliance of Rule 26(1) of the said rule.

11. Mr. C.S. Vaidyanathan, learned senior counsel, appearing on behalf of the petitioner, submitted that in the instant case, neither the direction of this Court dated 5th December, 2006 for giving opportunity of hearing to the petitioner nor the principles of natural justice nor the requirements of Rule 26(1) of the MCR, 1960 have been complied with and no opportunity of hearing has been given to the petitioner before passing the impugned order.

12. He further submitted that the State respondent heavily emphasized that the petitioner was given opportunity of hearing on 8th April, 2006. On perusal of the notice fixing date of the said hearing, it is evident that the same was for hearing under Rule 26(3). Notice dated 4th March, 2006. which was issued to the petitioner, notifying the date of hearing on 8th April, 2006 expressly and clearly mentioned the same as a notice under Rule 26(3). There was, thus, no compliance of the mandatory provisions of Rule 26(1) of MCR, 1960 inasmuch as there has been violation of principles of natural justice and the order of this Court dated 5th December, 2006 passed in WP(C) No. 7134 of 2006.

13. Mr. Vaidyanathan urged that the mandatory requirement of statutory provision of Rule 26(1) as also the principles of natural justice envisages a clear and unambiguous notice giving the petitioner fair and sufficient opportunity to represent himself and failure on the part, of the respondents in compliance of the said mandatory requirement of law and principles of natural justice renders the entire action and the impugned order vitiated. Learned counsel placed reliance on the decisions of the Supreme Court in Mazharul Islam Hashmi Vs. State of U.P. and Another, , Ishwar Industries Ltd. Vs. Union of India (UOI), and Surath Chandra Chakrabarty Vs. State of West Bengal, .

14. Mr. M.S. Ganesh, learned senior counsel, appearing on behalf of the respondent-State, by way of reply made the following submissions:

(i) By order dated 12th December, 2005 passed in WP(C) No. 5765 of 2005, the State Government was directed to re-decide the renewal matter afresh in

accordance with law not being prejudiced by the impugned order. The notice dated 23rd June, 2006 was issued to the petitioner to appear for hearing. The petitioner had appeared and placed his points on 29th July, 2006. Thereafter, opinion of the Law Secretary was sought on the point as to whether there is a scope of review of the order passed by the State Government. The Law Secretary opined that there was no scope for review, as the final decision has already been taken and while the department was in process of deciding the petitioner's application, he rushed to this Court and preferred writ petition, being WP(C) No. 7134 of 2006. In the meanwhile, the petitioner appeared and was heard on 8th April, 2006. The hearing dated 8th April, 2006 was full and final. Notwithstanding letter dated 23rd June, 2006 was issued for hearing under Rule 26, since the same was not found proper by the Law Secretary, there was no requirement of hearing on the basis of the letter dated 23rd June, 2006. This Court while disposing of the said writ petition directed that the opportunity of hearing to the petitioner has to be given, if no such opportunity of hearing was already given to him.

(ii) In the instant case, the petitioner was already given opportunity of hearing on 8th April, 2006. There was no need of further hearing and there was no prejudice to the petitioner, as alleged by him. There was, thus, due compliance of the requirement of Rule 26 of MCR, 1960, principles of natural justice and the direction of this Court dated 5th December, 2006 and contrary to the allegations/contentions no substance.

(iii) Learned counsel referred to and relied on the decisions of the Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, , State Bank of Patiala and others Vs. S.K. Sharma, , Union of India and another Vs. M/s. Jesus Sales Corporation, .

15. In order to appreciate the rival contentions and submissions of the parties on this point, the relevant provisions of Rule 26 are required to be taken notice of. Rule 26 of the MCR, 1960 is reproduced herein below:

26. Refusal of application for grant and renewal of mining lease.--(1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for. (No. I(22)/63-MII, dated 18.7.1963).

(2) An application for the grant of renewal of a mining lease made under Rule 22 or Rule 24-A, as the case may be, shall not be refused by the State Government only on the ground that Form-I or Form-J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in Sub-clauses (d), (e), (f), (g) and (h) of Clause (i) of Sub-rule (3) of Rule 22.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall by notice, require the applicant to supply the omission or, as the case may, furnish the document, without delay and in any case not later than

thirty days from the date of receipt of the said notice by the applicant.

16. On close reading of the said rule, it is evident that before refusing for grant and renewal of mining lease, the State Government shall afford opportunity of hearing under Rule 26(1). Rule 26(3) distinctly provides for opportunity of hearing when the State Government considers that the application is not complete in all material particulars or is not accompanied by required documents for the purpose of giving the applicant opportunity to furnish the same. The requirement of hearing under Rule 26(1) is distinct from the requirement of hearing under Rule 26(3).

17. The respondents tried to meet the point of denial of opportunity of hearing before refusing renewal of lease to the petitioner under Rule 26(1), asserting that the petitioner was heard pursuant to the notice issued by Memo No. 536, dated 4th March, 2006, whereby the petitioner was asked to appear for hearing. The said notice dated 4th March, 2006. is reproduced herein below:

Government of Jharkhand Department of Mines and Geology Letter No. BM-6-1028/94.../M

Ranchi, dated....

From,

Gauri Shankar Prasad, Deputy Secretary to the Government. To,

M/s. Thakur Prasad Sao, PO-Chaibasa Singhbhum West (Jharkhand) Sub. : Renewal of mining lease for iron ore held over an area of 500 acres in Mauza Ghatkuri in West Singhbhum District-Reg.

Sir,

With regard to the subject it is stated that several lacunae have been found in the process of inspection of your mining lease and also you have not furnished several required documents and information for consideration of renewal. A list of the required documents and information is attached to this letter.

(2) Your matter will be heard in terms of Rule 26(3) of MCR, 1960 on 8.4.2006 at 11 a.m. by the departmental secretary.

(3) You are hereby informed to be present on the appointed date and time, alongwith all 23 (twenty three) documents and information sought in the annexed list and also with all the documents relating to the renewal, and present your case, failing which a decision will be taken with the available documents.

Yours faithfully -Sd-

Deputy Secretary to the Government

Memo 535/M, Ranchi Date 4.3.2006

Cc : District Mining Officer, Chaibasa for information and necessary action.

(2) He is directed to be present in the hearing at the scheduled time and date along with all the correspondence on the subject-matter and ensure the attendance of the applicant from his level also.

-Sd-

Deputy Secretary to the Government

(Emphasis supplied and enclosure to the said letter has not been reproduced)

18. On perusal of the said notice, it is unequivocally clear that the same was issued asking the petitioner to furnish the several required documents, which were not enclosed with the application along with some of the information for consideration of renewal. The list of the required documents and information were attached to the said letter. It is clearly mentioned that on the date fixed, the matter will be heard in terms of Rule 26(3) of the MCR, 1960.

19. The respondents were conscious of the provision. They subsequently issued another notice in order to afford an opportunity of hearing to the petitioner under Rule 26(1) by fixing 29th July, 2006. By the said notice, the petitioner was called upon to appear in the matter on the date fixed for hearing by the Departmental Secretary under Rule 26 on 29th July, 2006. The relevant part of the said notice reads as under:

You are hereby informed that a hearing in the matter will be held by the Departmental Secretary under Rule 26 in his chambers at 4.00 p.m. on 29.7.2006.

Therefore, in the circumstances, be present at the place, time and date indicated above with all the required information and documents and present your case and clarify how the renewal is justified, failing which an ex-parte decision will be taken with the available documents.

20. On plain reading of the aforementioned two notices, it cannot be said that the same were issued for the same purpose. There is clear distinction between the two notices. The notice dated 4th March, 2006 fixing date 8th April, 2006 clearly intended hearing in terms of Rule 26(3) of MCR, 1960, while the notice dated 23rd March, 2006 fixing date 29th July, 2006 was for the hearing under Rule 26(1) of MCR, 1960 i.e. to clarify how the request for renewal is justified.

21. Admittedly, there was no hearing on 29th July, 2006. The Departmental Secretary intimated the petitioner that before hearing the matter he intends to take opinion of the Law Department on some issues.

22. Since, thereafter, there was no information to the petitioner.

23. The petitioner in that situation had to file WP(C) No. 7134 of 2006.

24. There was, thus, no hearing either on 29th July, 2006 or at any time thereafter and even after the order of this Court dated 5th December, 2006.

25. In view of the aforementioned discussion, it is held that the mandatory requirement of Rule 26 of MCR, 1960 has not been complied with before rejecting the petitioner's application for renewal by the impugned order and the impugned order is vitiated for non-compliance of the said rules.

Point No. II

26. It has already been discussed and held that the petitioner was not given opportunity of hearing, as contemplated under Rule 26(1) of MCR, 1960 before passing the impugned order. The aforesaid discussion sufficiently covers the point under consideration. That apart from the record, it is clear that in spite of the order of this Court dated 5th December, 2006, the petitioner was not afforded any opportunity of hearing. In order to cover up the same objection, the respondent-State have taken the plea that the petitioner was given notice on 23rd June, 2006 to appear on 29th July, 2006 and place their points. However, in view of the noting of the Chief Minister, the Secretary instead of hearing the matter on that date referred the same to the Law Secretary for his opinion. The Law Secretary gave his opinion that there is no scope of review of the decision as the same was the final decision after full and final hearing on 8th April, 2006. The direction of this Court was for giving opportunity of hearing, if such opportunity was not given to the petitioner. Since the opportunity was already given to the petitioner on 8th April, 2006, there was no need for fresh hearing or giving opportunity to the petitioner to be heard and there was no violation of the order of this Court.

27. As noticed hereinabove, the Secretary of the Department before proceeding to hear the matter on 29th July, 2006 referred the matter for opinion of the Law Department. Opportunity of hearing said to be given on 8th April, 2006 was not for taking final decision, rather it was for hearing under Rule 26(3) of MCR, 1960.

28. In view of the above, the only conclusion is to hold that there has been no hearing in compliance of the order of this Court dated 5th December, 2006.

29. So far as the requirement of compliance of principle of natural justice is concerned, it is now established it has wide and pervasive application, independent of any parallel provision. The root is embedded in equity and basic canon of justice and now forms part of the fundamental right with its conspicuous presence in Articles 14 and 21 of the Constitution of India. The basic requirement of the principle is giving sufficient opportunity of hearing to the other side before taking any decision to his prejudice. Sufficient opportunity of hearing means substantial opportunity and proper latitude to meet the points, which are likely to be used and considered against the party. The opportunity must be an effective opportunity and not a mere pretence.

30. Principle laid down by the Supreme Court in several decision mandates that the opportunity of hearing must be real and effective opportunity. Before determining any issue prejudicial to the person, he must be afforded an opportunity of fair hearing, which is an essential requirement for administration

of justice. It does not admit of any hazy and doubtful instance. It must be clearly seen to be performed and complied with. Mere lip service or saying that the requirement of the principle has been fulfilled would not conform to the essentials of the principle. The object of audi aleram partem is to provide the real opportunity of representation/hearing to the other side.

31. Put to the said acid test, the facts and material on record do not suggest and establish the compliance of the rules of natural justice, as claimed by the respondents. Conversely it has been argued on behalf of the respondents that no prejudice has been caused to the petitioner in terms of the relief sought for by them in the writ petition, as there is alternative remedy available to them by way of appeal. Since the denial of opportunity of hearing is itself a great prejudice to the petitioner, it is not necessary to go into the question of further prejudice, which the petitioner suffered or is likely to suffer. Since it has been held that no notice or opportunity of hearing was given to the petitioner in compliance of Rule 26(1) of MCR, 1960, as directed by this Court by order dated 5th December, 2006 in WP(C) No. 7134 of 2006, non-compliance of the principles of natural justice is conspicuous and writ large as well. The decisions of the Supreme Court in S.L. Kapoor, State Bank of Patiala and Ors. and Union of India and Ors. (supra), relied on by the respondents have been rendered on different facts, are of no help to bring home their rival contentions.

32. In view of the above discussion, it is held that the petitioner has not been afforded opportunity of hearing as directed by this Court and there has been no compliance of principles of natural justice before taking the impugned decision. The order dated 2nd March. 2007 passed by the State respondents being vitiated on account of the said infirmity cannot sustain and is liable to be quashed.

Point No. III

33. Alternative remedy itself is not an impediment in maintainability of the writ petition. It is a well settled principle that non-compliance of principles of natural justice in passing an order renders the decision a nullity and writ petition challenging such order is maintainable, notwithstanding availability of an alternative remedy.

34. In the instant case, not only the principles of natural justice has been violated, the respondents have also not complied with direction of this Court passed in WP(C) No. 7134 of 2006. The impugned order passed in violation of the principles of natural justice as also in violation of the order of this Court is void, ab initio and is wholly without jurisdiction. The action and impugned order call for an intervention of the Court warranting appropriate writ/direction in exercise of its jurisdiction under Article 226 of the Constitution for safeguarding the interest of justice. Reference may be made to the decisions of the Supreme Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and State of H.P. v. Gujarat Ambuja Cement (2005) 6 SCC 499.

To conclude this point, it is held that this writ petition is maintainable.

35. In the result, this writ petition is allowed. The impugned order dated 2nd March, 2007, contained in Memo No. 502/M is, hereby, quashed. The matter is remitted to the State Government for fresh consideration, hearing and disposal of the petitioner's application in accordance with the provisions of law and the principles of natural justice.

36. It is made clear that this Court has not gone into the merit of the rival claim of the parties, which is to be heard and decided by the State Government. The State Government in dealing with the petitioner's application shall not be prejudiced by any observation made on merit in this order.

37. Before we part, it is necessary to mention that an intervention application (IA No. 460 of 2008) was filed in this case on behalf of one M/s. Essel Mining and Industries Ltd. for its addition as respondent at the stage of hearing of the writ petition.

38. Learned counsel for the petitioner submitted that the said intervener had knowledge of the pendency of the writ petition throughout and he had also taken the copy of the order dated 10th July, 2007 passed in this case, but he has preferred to intervene in the matter at the final stage of hearing of the writ petition only in order to delay the disposal of the same at the instance of the interested party. The presence of the intervener is not at all required for adjudication and decision on the controversies involved in this writ petition.

39. It is relevant to mention that the said M/s. Essel Mining Industries Ltd. is a party to WP(C) No. 4302 of 2007 and has availed the opportunity of hearing in that case which has been simultaneously heard, being based on the same factual background. That apart the petitioner has not sought any relief against the said intervener. In that view, it is neither necessary nor proper party in this case and its presence is not required in view of the controversies involved in the case. The said IA No. 460 of 2008 stands disposed of in the above term.

Cont. Case (Civil) No. 220 of 2007

40. In Cont. Case (Civil) No. 220 of 2007, initiation of proceeding for contempt has been sought against the respondents/opposite parties for not complying with the order dated 5th December, 2006 passed in WP(C) No. 7134 of 2006.

41. In the foregoing paragraphs, the relevant facts and background giving rise to this petition have been noticed. While deciding the said writ petition WP(C) No. 1460 of 2007, it has been held that no opportunity of hearing was given to the petitioner before passing the impugned order inspite of the direction of this Court in WP(C) No. 7134 of 2006.

42. However, this Court does not wish to proceed further with the contempt case for the following reasons;

(i) The concerned opposite party in reply to the show cause has tendered unconditional and unqualified apology.

(ii) The opposite party No. 1 seemed to be misled by the legal opinion given by the Secretary, Law Department observing that no fresh hearing was required in view of the earlier hearing dated 8th April, 2006.

(iii) In WP(C) No. 7134 of 2006, it was directed that, if no such opportunity of hearing was earlier afforded, the petitioner shall be given opportunity of hearing. Though a wrong conclusion was drawn for denial of hearing, regard being had to the circumstances of the case, we avoided to enter into and determine as to whether there was any deliberate and wilful omission in not affording opportunity of hearing to the petitioner. In view of the above, we accept unqualified apology tendered by the opposite party and drop the contempt proceeding.

WP(C) No. 4302 of 2007

43. In WP(C) No. 4302 of 2007, the petitioner-Aditya Associates has prayed for quashing the notification dated 18th September, 2004 issued by the respondent No. 2 under Rule 59(1) of MCR 1960, inviting applications for grant of mining lease in respect of an area of 202.34 hectares in Mauza Ghatkuri, Reserve Forest Block No. 15, Compartment No. 31, Gua Range, West Singhbhum.

44. It has been stated that the said area was leased out to M/s. Thakur Prasad Sao after the expiry of the period of lease, the said Thakur Prasad Sao had applied for renewal of the lease, his application for renewal of the lease was rejected by the State Government by order dated 1st September, 2004. M/s. Thakur Prasad Sao challenged the said order in WP(C) No. 5935 of 2004, which was disposed of, directing the revisional authority to dispose of the revision application filed by the petitioner. By order dated 5th August, 2005, the Central Government, being the revisional authority, set aside the order of the State Government and directed to consider the application of M/s. Thakur Prasad Sao afresh. After the said remand, the petitioner was under impression that the State Government would issue a fresh notification in accordance with Section 59 of MCR, 1960, but without issuing a fresh notification, they proceeded to consider the applications received earlier in view of the refusal of the renewal of lease in favour of M/s. Thakur Prasad Sao.

45. It has been submitted that the respondents, being the welfare State, they are expected to act reasonably, fairly and legally, but they have violated the mandatory provision of law and prescribed procedure. The State Government cannot arbitrarily adopt a procedure against the public interest. While dealing with the public property, the dominant purpose shall be to secure the best deal, which can be achieved when there is a maximum participation. The impugned notification dated 18th September, 2004 issued by the respondent No. 2 becomes non est in the eye of law in view of the order passed by the revisional authority dated 5th August, 2005, setting aside the order dated 1st September, 2004 whereby the renewal application of M/s. Thakur Prasad Sao was rejected. By not following the prescribed procedure of Rule 59 after the order of the revisional authority allowing revision of M/s. Thakur Prasad Sao. The petitioner

has been thus deprived of the valuable right and liberty to apply for the licence.

46. The respondents have contested the petitioner's claim stating, *inter alia*, that the petitioner has got no locus standi for filing the instant writ petition. The petitioner has not applied for mining lease pursuant to the notification dated 23rd September, 2004. The Government had completed the entire process of hearing under Rule 26(1) of MCR, 1960 whereafter M/s. Essel Mining and Industries Ltd. has been selected for grant and the proposal is ready to be sent to the Central Government for final approval of the same.

47. It has been further submitted that since the State Government had already issued notification invited applications from the interested persons for mining lease, the lease hold area, which was earlier held by M/s. Thakur Prasad Sao and the petitioner having failed to apply response to the same, he has no locus standi to challenge the process and the decision taken in accordance with provisions of MCR, 1960.

48. We have heard learned Counsel for the parties considered their respective submissions. We have considered the factual background of the case, controversy involved in this writ petition is regarding application for mining lease of the leasehold area earlier by M/s. Thakur Prasad Sao, after their application for renewal of the lease was rejected. However, we find substance in petitioner's claim that after the order of the Central Government setting aside the order of the State Government the order of rejection of renewal application filed by Thakur Prasad Sao was rendered non est and a notification, thereafter, should have been a reasonable and legal approach of the State Government. Nonetheless, we are not inclined to enter into the said controversy in view of the decision rendered in the case of M/s. Thakur Prasad Sao WP(C) No. 1460 of 2007, whereby the order of the State Government refusing renewal of lease has been set aside.

49. In view of the said decision of this Court in the case of M/s. Thakur Prasad Sao, the said area is now no longer available for fresh grant of lease.

50. Considering the above, this writ petition is held to be premature and not maintainable in the present circumstance. We, accordingly, dispose of the same giving liberty to the petitioner to approach this Court or any other proper forum if any such cause of action would arise hereafter.

51. To conclude, writ petition of M/s. Thakur Prasad Sao WP(C) No. 1460 of 2007 is allowed. IA No. 460 of 2008 is disposed of as aforesaid. Contempt Case (C) No. 220 of 2007 (M/s Thakur Prasad Sao) is dropped. Writ petition of Aditya Associates WP(C) No. 4302 of 2007 is disposed of with the observations, aforesaid.

52. There is no order as to costs.