Shivji Nathubhai

Vs

The Union of India & Others

Civil Appeal No. 428 of 1959

(CJI B. P. Sinha, K. N. Wanchoo, J. C. Shah, P. B. Gajendragdkar, K. C. Das Gupta JJ)

19.01.1960

JUDGMENT

WANCHOO, J. -

This appeal upon a certificate granted by the Punjab High Court raises the question whether an order of the Central Government under r. 54 of the Mineral Concession Rules, 1949, (hereinafter called the Rules) framed under s. 6 of the Mines and Minerals (Regulation and Development) Act, No. 53 of 1941, (hereinafter called the Act) is quasi-judicial or administrative. The brief facts necessary for this purpose are these. The appellant was granted a mining lease by the then Ruler of Gangpur State on December 30, 1947, shortly before the merger of that State with the State of Orissa on January 1, 1948. This lease was annulled on June 29, 1949. Thereafter the appellant was granted certificates of approval in respect of prospecting licences and mining leases. Eventually, the appellant applied on December 19, 1949, for mining leases for manganese in respect of five areas in the district of Sundergarh (Orissa). He was asked on July 4, 1950, to submit a separate application for each area which he did on July 27, 1950. Some defects were pointed out in these applications and therefore the appellant submitted fresh applications on September 6, 1950, after removing the defects. In the meantime, the third respondent also made applications for mining leases for manganese for the same area on July 10, 1950. These applications were not accompanied by the deposit required under r. 29 of the Rules. Consequently, the third respondent was asked on July 24, 1950, to deposit a sum of Rs. 500, which it did on August 3, 1950. It was then found that the third respondent's applications were defective. It was therefore asked on September 5, 1950, to send a separate application in the prescribed form for each block and thereupon it submitted fresh applications on September 6, 1950. Eventually, on December 22, 1952, the State of Orissa granted the mining leases of the five areas to the appellant taking into account r. 32 of the Rules, which prescribed priority. It was held that the appellant's applications were prior and therefore the leases were granted to him. Thereafter on April 21, 1953, possession of the areas leased was delivered to the appellant. It seems, however, that the third respondent has applied for review to the Central Government under r. 52 of the Rules. This review application was allowed by the Central Government on January 28, 1954, and the lease to the third respondent with respect to two out of five areas.

The appellant's complaint is that he came to know in February, 1954, that the third respondent had applied to the Central Government under r. 52 for preview. He thereupon addressed a letter to the Central Government praying that he might be given a hearing before any order was passed on the review application. He was, however, informed on July 5, 1955, by the Government of Orissa of the order passed by the Central Government on January 28, 1954, by which the lease granted to him by the State of Orissa with respect to two areas was cancelled. Consequently, he made an application

under Art. 226 of the Constitution to the Punjab High Court praying for quashing the order of January 28, 1954, on the ground that it was a quasi-judicial order and the rules of natural justice had not been followed inasmuch as he had not been given a hearing before the review application was allowed by the Central Government, thus affecting his rights to the lease granted by the State of Orissa. The writ petition was heard by a learned Single Judge of the High Court and it was held that the order was not a quasi-judicial order but merely an administrative one and that there being no lis, the appellant was not entitled to a hearing. In the result, the writ petition failed. The appellant went up in Letters Patent Appeal to a Division Bench of the High Court, which upheld the order of the learned Single Judge. The appellant then applied for a certificate to permit him to appeal to this Court which was granted; and that is how the matter has come up before us.

Shri N. C. Chatterji appearing on behalf of the appellant contends that the Central Government was acting in a quasi-judicial capacity when it passed the order under r. 54 of the Rules and therefore it was incumbent upon it to hear the appellant before deciding the review application, and inasmuch as it did not do so it contravened the principles of natural justice which apply in such a case and the order is liable to be quashed. In support of this, learned counsel relies on Nagendra Nath Bora and another v. The Commissioner of Hills Division and Appeals, Assam and others ([1958] S.C.R. 1240) and submits that rr. 52 to 55 of the Rules which are relevant for the purpose clearly show that the proceeding before the Central Government is a quasi-judicial proceeding in view of the following circumstances appearing from these rules : (1) Rule 52 gives a statutory right to any person aggrieved by an order of the State Government to apply for review in case of refusal of a mining lease; (2) It also prescribes a period of limitation, namely, two months; (3) Rule 53 prescribes a fee for an application under r. 52. These circumstances taken with the circumstance that a lis is created as soon as a person aggrieved by an order is given the right to go up in review against another person in whose favour the order has been passed by the State Government show that the proceeding before the Central Government at any rate at the stage of review is quasi-judicial to which rules of natural justice apply.

Mr. G. S. Pathak appearing for the third respondent on the other hand contends that the view taken by the High Court is correct and that the order of January 28, 1954, is a mere administrative order and therefore it was not necessary for the Central Government to hear either party before passing that order. He points out that the minerals, for mining which the lease is granted under the Rules, are the property of the State. No person applying for a mining lease of such minerals has any right to the grant of the lease. According to him, the right will only arise after the lease has been granted by the State Government and the review application, if any, has been decided by the Central Government. He submits that even under r. 32, which deals with priority the State Government is not bound to grant the lease to the person who applies first and it can for any special reason and with the prior approval of the Central Government grant it to a person who applies later. His contention further is that as at the earlier stage when the grant is made by the State Government the order grant it to a person who applies later. His contention further is that as at the earlier stage when the grant is made by the State Government the order granting the lease is a mere administrative order - as it must be in these circumstances (he asserts), - the order passed on review by the Central Government must also partake of the same nature.

In order to decide between these rival contentions it is useful to refer to rules 52 to 55 which fall for consideration in this case. These are the rules as they existed up to 1953. Since then we are told there have been amendments and even the Act has been replaced by the Mines and Minerals (Regulation and Development) Act, 1957. We are, however, not concerned with the Rules as modified after January 1954 or with the Act of 1957. Rule 52 inter alia provides that any person

aggrieved by an order of the State Government refusing to grant a mining lease may within two months of the date of such order apply to the Central Government for reviewing the same. Rule 53 prescribes a fee. Rule 54 may be quoted in extenso, namely -

> "Upon receipt of such application, the Central Government may, if it thinks fit, call for the relevant records and other information from the State Government and after considering any explanation that may be offered by the State Government, cancel the order of the State Government or revise it in such manner as the Central Government may deem just and proper."

Rule 55 then says that the order of the Central Government under r. 54, and subject only to such order, any order of the State Government under these rules shall be final.

This Court had occasion to consider the nature of the two kinds of acts, namely, judicial which includes quasi-judicial and administrative, a number of times. In Province of Bombay v. Kushaldas S. Advani ([1950] S.C.R. 621), it adopted the celebrated definition of a quasi-judicial body given by Atkin L. J. in R. v. Electricity Commissioners ([1924] 1 K.B. 171), which is as follows :-

> "Whenever any body of persons having legal authority to determine questions affecting rights of subjects, and having the duty to act judicially act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

This definition insists on three requisites each of which must be fulfilled in order that the act of the body may be quasi-judicial act, namely, that the body of persons (1) must have legal authority, (2) to determine questions affecting the rights of subjects, and (3) must have the duty to act judicially. After analysing the various cases, Das J. (as he then was) laid down the following principles as deducible therefrom in Kushaldas S. Advani's case ([1950] S.C.R. 621) at p. 725 :-

> "(i) That, if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by any party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and prima facie and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act, and
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> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially."

It is on these principles which are now well-settled that we have to see whether the Central Government when acting under r. 54 is acting in a quasi-judicial capacity or otherwise. It is not necessary for present purposes to decide whether State Government when it grants a lease is acting merely administratively. We shall assume that the order of the State Government granting a lease under the Rules is an administrative order. We have, however, to see what the position is after the State Government has granted a lease to one of the applicants before it and has refused the lease to others.

Mr. Pathak contends that even in such a situation there is no right in favour of the person to whom the lease has been granted by the State Government till the Central Government has passed an order on a review application if any. Rule 55, however, makes clear that the order of the State Government is final subject to any order by the Central Government under r. 54. Now when a lease is granted by the State Government, it is quite possible that there may be no application for review by those whose applications have been refused. In such a case the order of the State Government would be final. It would not therefore be in our opinion right to say that no right of any kind is created in favour of a person to whom the lease is granted by the State Government. The matter would be different if the order of the State Government were not to be effective until confirmation by the Central Government; for in that case no right would arise until the confirmation was received from the Central Government. But r. 54 does not provide for confirmation by the Central Government. It gives power to the Central Government to act only when there is an application for review before it under r. 54. That is why we have not accepted Mr. Pathak's argument that in substance the State Government's order becomes effective only after it is confirmed; r. 54 does not support this. We have not found any provision in the Rules or in the Act which gives any power to the Central Government to review suo motu the order of the State Government granting a lease. That some kind of right is created on the passing of an order granting a lease is clear from the facts of this case also. The order granting the lease was made in December 1952. In April 1953 the appellant was put in possession of the areas granted to him and actually worked them thereafter. At any rate, when the statutory rule grants a right to any party aggrieved to make a review application to the Central Government it certainly follows that the person in whose favour the order is made has also a right to represent his case before the authority to whom the review application is made. It is in the circumstances apparent that as soon as r. 52 gives a right to an aggrieved party to apply for review a lis is created between him and the party in whose favour the grant has been made. Unless therefore there is anything in the statute to the contrary it will be the duty of the authority to act judicially and its decision would be a quasi-judicial act.

The next question is whether there is anything in the Rules which negatives the duty to act judicially by the reviewing authority. Mr. Pathak urges that r. 54 gives full power to the Central Government to act as it may deem 'just and proper' and that it is not bound even to call for the relevant records and other information from the State Government before deciding an application for review. That is undoubtedly so. But that in our opinion does not show that the statutory Rules negative the duty to act judicially. What the Rules require is that the Central Government should act justly and properly; and that is what an authority which is required to act judicially must do. The fact that the Central Government is not bound even to call for records again does not negative the duty cast upon it to act judicially, for even courts have the power to dismiss appeals without calling for records. Thus r. 54 lays down nothing to the contrary. We are therefore of opinion that there is prima facie a lis in this case as between the person to whom the lease has been granted and the person who is aggrieved by the refusal and therefore prima facie it is the duty of the authority which has to review the matter to act judicially and there is nothing in r. 54 to the contrary. It must therefore be held that on the Rules and the Act, as they stood at the relevant time, the Central Government was acting in a quasi-judicial capacity while deciding an application under r. 54. As such it was incumbent upon it before coming to a decision to give a reasonable opportunity to the appellant, who was the other party in the review application whose rights were being affected, to represent his case. Inasmuch as this was not done, the appellant is entitled to ask us to issue a writ in the nature of certiorari quashing the order of January 28, 1954, passed by the Central Government.

We therefore allow the appeal and setting aside the order of the High Court quash the order of the Central Government passed on January 28, 1954. It will, however, be open to the Central

Government to proceed to decide the review application afresh after giving a reasonable opportunity to the appellant to represent his case. The appellant will get his costs throughout from the third respondent, who is the principal contesting party.

Appeal allowed.

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