Madan Gopal Rungta

Vs

Secretary to the Government of Orissa

Civil Appeal No. 407/61

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, P. B. Gajendragadkar, K. N. Wanchoo, N. Rajgopala Ayyangar JJ)

16.03.1962

JUDGMENT

WANCHOO, J.

This is an appeal by special leave against the judgment of the Orissa High Court. The brief facts necessary for present purposes are these. The appellant made an application to the State Government of Orissa in 1949 for grant of a mining lease for manganese ore over an area comprising 5400 acres situated in the district of Keonjhar. The appellant was the first applicant for the lease of the aforesaid area, and subsequently other persons applied for lease of the same area including Messrs. Tata Iron and Steel Company Limited (hereinafter referred to as Tatas), the intervener in the present appeal. The Government of Orissa decided to grant the lease in favour of Tatas and in January 1956 referred the matter to the Central Government for its approval under r. 32 of the Mineral Concession Rules, which lays down that if more than one application regarding the same land is received, preference shall be given to the application received first, unless the State Government, for any special reason, and with the prior approval of the Central Government decides to the contrary. The appellant made a representation to the Central Government against the recommendation of the State Government. Eventually, on April 9, 1957, the Central Government turned down the recommendation of the State Government about the grant of the mining lease to Tatas. It also directed that the applications received prior to the application of Tatas should be considered according to the Rules but added that in case the Government of Orissa desired to work the area on a departmental basis, the Central Government would have no objection to consider a proposal for that purpose. Thereafter the State Government rejected the application of the appellant in December 1957 on the ground that the State Government proposed to arrange for the exploitation of the area in the public sector.

This was followed by an application for review to the Central Government under r. 57 of the Rules. This application was rejected by the Central Government in June 1959. Thereupon the appellant filed a petition under Art. 226 of the Constitution in the High Court in July 1959. This petition was dismissed by the High Court on the ground that it had no jurisdiction to deal with the matter under Art. 226 as the final order in the case was passed by the Central Government which was located beyond the territorial jurisdiction of the High Court. The appellant then applied to the High Court for a certificate to appeal to this Court, which was rejected. He then asked for special leave from this Court, which was granted; and that how the matter has come up before us.

The main question raised before us is the limit of the jurisdiction of the High Court under Art. 226 in circumstances like those in the present case. The contention on behalf of the appellant is that as

the Central Government had merely dismissed the review petition, the effective order rejecting the appellant's application for the mining lease was that of the State Government and therefore the High Court would have jurisdiction to grant a writ under Art. 226, and that the principle laid down in Election Commission India v. Saka Venkata Subba Rao ((1953) S.C.R. 1144.) would not apply. Reliance in this connection has been placed on the decision of this Court in The State of Uttar Pradesh v. Mohammed Nooh ((1958) S.C.R. 595.).

It is well settled by a series of decisions of this Court beginning with Saka Venkata Subba Rao's Case ((1953) S.C.R. 1944.) that there is two-fold limitation on the power of the High Court to grant a writ under Art. 226. These limitation are firstly that the power is to be exercised throughout the territories in relation to which the High Court exercise jurisdiction, that is to say, the writs issued by the High Court cannot run beyond the territories subject to its jurisdiction, and secondly, that the person or authority to whom the High Court is empowered to issue such writs must be within those territories, which clearly implies that they must be amenable to its jurisdiction either by residence or location within those territories. The view taken in this case has been recently re-affirmed by this Court in Lt. Col. Khajoor Singh v. Union of India ((1961) 2 S.C.R. 828.). Prima facie, therefore, as the final order in this case was passed by the Central Government which is not located within the territories over which the High Court has jurisdiction, the High Court will have no power to grant a writ in this case.

Learned counsel for the appellant however relies on the decision in Mohd. Nooh's case ((1958) S.C.R. 595.) where it was held that it was not correct to say that an order of dismissal passed on April 20, 1948, merged in the order in appeal therefrom passed in May 1949, and the two orders in turn merged in the order passed in revision on April 22, 1950, or that the original order of dismissal only became final on the passing of the order in revision. It was further held that the order of dismissal was operative on its own strength and therefore no relief under Art. 226 could be granted against the order of dismissal passed in 1948 as Art. 226 was not retrospective in operation. It is urged that if the order of dismissal in that case did not merge in the final order of revision which was passed in April 1950, after the Constitution came into force, there was no reason why the order of the State Government should be taken to have merged in the order of the Central Government in this case so as to deprive the appellant of his remedy in the High Court under Art. 226. We are of opinion that the principle of Mohd. Nooh's case ((1958) S.C.R. 595.) cannot apply in the circumstances of the present case. The question there was whether the High Court would have power to issue a writ under Art. 226 in respect of a dismissal which was effective from 1948, simply because the revision against the order of dismissal was dismissed by the State Government in April 1950 after the Constitution came into force. It was in those circumstances that this Court held that the dismissal having taken place in 1948 could not be the subject-matter of an application under Art. 226 of the Constitution for that would be giving retrospective effect to that Article. The argument that the order of dismissal merged in the order passed in appeal therefrom and in the final order of revision was repelled by this Court on two grounds. It was held (firstly) that the principle of merger applicable to decrees of courts would not apply to orders of departmental tribunals, and (secondly) that the original order of dismissal would be operative on its own strength and did not gain greater efficacy by the subsequent order of dismissal of the appeal or revision, and therefore the order of dismissal having been passed before the Constitution would not be open to attack under Art. 226 of the Constitution. We are of opinion that the facts in Mohd. Nooh's case ((1958) S.C.R. 595.) were of a special kind and the reasoning in that case would not apply to the facts of the present case.

Further, in A. Thangal Kunju Musaliar v. M. Venkitachalam Potti ((1955) 2 S.C.R. 1196.), though this Court was considering a matter in which the question which is before us was not directly in

issue, it had occasion to consider certain decisions of certain High Courts which dealt with cases similar to the present case : (see p. 1213). In those decisions orders had been passed by certain inferior authorities within the territories subject to the jurisdiction of the High Courts concerned, but they had been taken in appeal before superior authorities which were located outside the territories subject to the jurisdiction of the High Courts concerned. In those circumstances the High Courts had held that the order of the inferior authorities had merged in the orders of the authorities. This Court apparently approved of the view taken by the High Courts in those cases on the ground that a writ against the inferior authority within the territories could not be of any avail to the petitioners concerned in those cases and could give them no relief for the orders of the superior authority outside the jurisdiction would remain outstanding and operative against them. Therefore, as no writs could be issued against the outside authorities, this Court was of the view that the High Courts right in dismissing the petitions, as any writ against the inferior authority which is within the jurisdiction of the High Court, in view of the orders of the superior authority, would be infructuous. The position in the present case is similar to that envisaged above. The Orissa Government rejected the application of the appellant for grant of the mining lease. The appellant being aggrieved by that order went in review to the Central Government under the Rules and that review petition was dismissed so that in effect the Central Government also rejected the application of the appellant for grant of the mining lease to him. It is not in dispute that if the Central Government was so minded it could have allowed the review and directed the Orissa Government to grant mining lease to the appellant. Therefore when the Central Government rejected the review petition, it in effect rejected the application of the appellant for the grant of the mining lease to him. This order of the Central Government in effect rejecting the application of the appellant for the grant of the mining lease to him and confirming the rejection of the application of the appellant by the Orissa Government is clearly not amenable to the jurisdiction of the High Court of Orissa under Art. 226 in view of the fact that the Central Government is not located within the territories subject to the jurisdiction of the Orissa High Court. It would therefore have been useless for the Orissa High Court to issue a writ against the Orissa Government for the Central Government's order rejecting the review petition and therefore in effect rejecting the application of the appellant for grant of the mining lease would still stand. This is made clear by r. 60 of the Rules, which provides that "the order of the Central Government under Rule 59 and subject only to such order, any order of a State Government under these rules, shall be final". Clearly therefore r. 60 provides that where there is a review petition against the order passed in the first instance by the State Government, the order of the Central Government passed in review would prevail and would be the final order dealing with an application for a mining lease under the Rules. Therefore, quite apart from the theoretical question of the merger of the State Government's order with the Central Government's order, the terms of r. 60 make it perfectly clear that whenever the matter is brought to the Central Government under r. 59, it is the order of the Central Government which is effective and final. In these circumstances we are of opinion that the High Court was right in holding that it had no jurisdiction to issue a writ under Art. 226 in the present case as the final order in this case was that of the Central Government which was not situate within the territories over which the High Court has jurisdiction.

Our attention in this connection was drawn to Shivji Nathubhai v. The Union of India ((1960) 2 S.C.R. 775.). In that case a mining lease had been granted by the State Government to a particular person and there was a review petition against the grant of that mining lease. The order granting the mining lease was set aside on review without notice to the person to whom the lease had been granted. In that connection a question arose whether the person to whom the State Government had granted the lease had any interest to enable him to make an application under Art. 226. It was then pointed out by this Court that under the Rules the order of the State Government would be effective

as there was no requirement that it was not final until confirmation by the Central Government. That case however is of no assistance to the appellant for where there is a review petition and the Central Government passes an order on such petition one way or the other it is the Central Government's order that prevails and the State Government's order must in those circumstances merge in the order of the Central Government. The observations in that case on which the appellant relies were made in another connection and can have no bearing on the question before us, where an order has been passed by the Central Government on review and it is that order which is made final by r. 60 and which stands in the way of the appellant. There is therefore no force in this appeal and it is hereby dismissed with costs.

Appeal dismissed.

</html