M/s. D. N. Roy and S. K. Bannerjee and Others

Vs

The State of Bihar and Others

Civil Appeal No. 1908 of 1968

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

30.09.1970

JUDGMENT

HEGDE, J. -

1. On June 24, 1959, the Deputy Commissioner, Santal Parganas caused a notice, dated June 20, 1959, published in the Bihar Gazette in accordance with the provisions of Rule 67 of the Mineral Concession Rules, 1949, of the availability for regrant of mining rights in respect of fireclay over the whole of village Palasthali No. 39, situate in Thana Nala, Block Kasta, Sub-Division Jamtara in the District of Santal Parganas. He announced in that notice that the said area will be available for regrant with effect from August 1, 1959 and invited applications for grant of mining lease in respect of that area in accordance with the provisions of Mineral Concession Rules, 1949. The appellant, a partnership firm applied for that lease on June 24, 1959 itself. Thereafter other persons including the 5th respondent Nankhu Singh also applied for obtaining the lease in question. The State Government of Bihar granted lease to the appellant on March 31, 1962. In pursuance of that grant a written agreement was entered into between the State Government and the appellant and the same was duly registered. The State Government rejected the applications of the other applicants. Even during the pendency of the applications before the State Government, the 5th respondent moved the Central Government under Rule 54 of the Mineral Concession Rules, 1960 which had replaces the 1949 Rules. Therein he prayed that the grant of the lease in favour of the appellant, if it had been made, should be cancelled and that he should be granted the mineral lease in question. The Central Government served a copy of that petition on the appellant and called for its comments. At the same time it called for the comments of the State Government as well. After receiving the comments of the State Government, the same were passed on to the appellant as well as to the 5th respondent and their further comments were called for. After examining the representation made by the parties and the comments offered by the State Government, the Central Government dismissed the petition made by the 5th respondent on September 30, 1964. The order of the Central Government reads thus :

> # "Government of India Ministry of Steel and Mines (Department of Mines and Metals)No. MV-1 (569) /61 New Delhi, the 30th September, 1964FromShri A. Nabar,Under Secretary to the Government of India.ToShri Nankhu Singh,P. O. Churulia, Distt. Burdwan (West Bengal).Subject : Application under Rule 54 of the Mineral Concession Rules,1960, in respect of Mining lease for fireclay over248 acres in Mouza Palasthali, P.S. Nala, Distt. Santal Parganas.Sir,I am directed to refer to your application, dated 17-10-1961 on theabove subject and to say that after careful consideration the CentralGovernment hereby reject your revision application as being time-barred. Yours faithfully, (Sd.) A. Nabar, Under Secretary to the Government of

India."##

2. Thereafter the Central Government passed a further order on November 5, 1964 and that order reads thus :

> # Registered A/D "Government of India Ministry of Steel and Mines (Department of Mines and Metals)No. MV-1 (569)/61 New Delhi, the 5th November, 1964.FromShri H. S. Sahni,Under Secretary to the Government of India.ToThe Secretary to the Government of Bihar,Department of Mines and Geology, Patna.Subject : Revision application under Rule 54 of the MineralConcession Rules, 1960, from Shri Nankhu Singh relating to Mininglease for Fireclay over 248 acres in Santal Pargana District.Sir,In continuation of this Ministry's letter of even number,dated 30-9-1964 on the above subject, I am directed to say thatsince no entry in the standard register was made as requiredunder former Rule 67 of the Mineral Concessions Rules, 1949, thearea could not have been held to be available and the fourapplications (referred to in para 2 of the State Government's letter No.3181/M, dated 9-6-1962) should be deemed to be premature and shouldhave been rejected on that ground alone.Even assuming that the notification was valid, the firsttwo applications were premature under Rule 68 and on thatground should have been rejected. Apart from this the applicationof Messrs. D. N. Roy and S. K. Bannerjee was deemed to berejected on the expiry of nine months from the date of receipt ofapplication i.e. 24-3-1960. The party did not come up in revision. Theapplication, therefore, ceased to exist and the order of the StateGovernment granting the lease to this party on 31-3-1962, was withoutjurisdiction. The grant and consequent execution of the Mining lease aretherefore, void.In view of the position explained above the CentralGovernment in exercise of their revisionary power conferred by Rule 55of Mineral Concession Rules, 1960 and all other powersenabling in this behalf hereby set aside the order of the StateGovernment contained in their letter No. A/MM/4031/62-1789-M, dated31-3-1962 (mentioned in State Government's letter No.A/MM/4031/62-3181-M, dated 9-6-1962) granting Mining lease to Messrs.D. N. Roy and S. K. Bannerjee and further direct them to throw open thearea against under Rule 58(1) of Mineral Concession Rule, 1960 forregrant. The notification should clearly indicate the date from whichthe area could be available for regrant and the date by whichthe petitioners should submit their application for mineral concession.Messrs. D. N. Roy and S. K. Banerjee are being informed. Yours faithfully, (Sd.) H. S. Sahani, Under Secretary to the Government of India.Copy forwarded to Messrs. D. N. Roy and S. K. Banerjee,village and P.O. Churulia, District Burdwan (West Bengal) withreference to their letter dated 12-6-1963. (Sd.) H. S. Sahni, Under Secretary to the Government of India."##

3. Aggrieved by this order the appellant moved the Patna High Court under Article 226 of the Constitution to quash the order of the Central Government, dated November 5, 1964 (which will hereinafter be referred to as the 'impugned order'). The High Court dismissed the petition. As against the order of the High Court the appellant has brought this appeal after obtaining certificate of fitness from the High Court.

4. It was urged before the High Court that the Government having passed the final order on September 30, 1964, it had no power to review its own order and make any further order. Admittedly there is no provision under the Mines and Minerals (Regulation and Development) Act,

1957 or under the Mineral Concession Rules, 1960 empowering the Central Government to review its order. The High Court did not hold that the Central Government had any power to review its own order either under the Mines and Mineral (Regulation and Development) Act, 1957 or under the Mineral Concession Rules. It upheld the Central Government's order on two grounds namely, that the order, dated September 30, 1964, is not a complete order as it did not dispose of the application made by the 5th respondent completely and secondly the Central Government had suo moto power to review the order of the State Government under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957. These conclusions of the High Court were assailed before us.

In his application under Rule 54 of the Mineral Concession Rules, 1960, the 5th respondent prayed for : (i) setting aside the grant made in favour of the appellant and (ii) grant the area in question on lease to him. The High Court thought that these are two independent prayers. In its view the Central Government by its order, dated September 30, 1964, had disposed of only the prayer of the 5th respondent to grant the area on lease to him but it had not disposed of is first prayer namely to cancel the grant in favour of the appellant. In our opinion this is an incorrect approach. The two reliefs asked for by the 5th respondent were interconnected reliefs. In the context in which they were made, they cannot be considered as independent prayers. No grant in his favour could have been made without first setting aside the grant made in favour of the appellant. Therefore the first relief asked for by the 5th respondent is a necessary condition precedent for a grant in his favour. Further by its order dated September 30, 1964, the Central Government dismissed the entire application of the 5th respondent on the ground that the same was time-barred. If his application in respect of one part of his prayer was time-barred, it was equally time-barred in respect of the other part.

6. The impugned order of the Central Government does not show that it was made in the exercise of its suo moto power. It is purported to have been made on the basis of the application made by the 5th respondent under Rule 54 of the Mineral Concession Rules, 1960. In paragraph 3 of that order it says "in view of the position explained above the Central Government in exercise of their revisionary power conferred by Rule 55 of Mineral Concession Rules, 1960 and all other powers enabling in this behalf hereby set the order of the State Government contained in their letter No. A/MM/4031/62-1789-M, dated 31-3-1962".

7. It is true that the order in question also refers to "all other powers enabling in this behalf". But in its return to the writ petition the Central Government did not plead that the impugned order was passed in exercise of its suo moto powers. We agree that if the exercise of a power can be traced to an existing power even though that power was not purported to have been exercised, under certain circumstances, the exercise of the power can be upheld on the strength of an undisclosed but undoubted power. But in this case the difficulty is that an no stage the Central Government intimated to the appellant that it was exercising its suo moto power. At all stages it purported to act under Rules 54 and 55 of the Mineral Concession Rules, 1960. If the Central Government wanted to exercise its suo moto power it should have intimated that fact as well as the grounds on which it proposed to exercise that power to the appellant and given him an opportunity to show cause against the exercise of suo moto power as well as against the grounds on which it wanted to exercise its power. Quite clearly the Central Government had not given him that opportunity. The High Court thought that as the Central Government had not only intimated to the appellant the grounds mentioned in the application made by the 5th respondent but also the comments of the State Government, the appellant had adequate opportunity to put forward his case. This conclusion in our judgment in untenable. At no stage the appellant was informed that the Central Government

proposed to exercise its suo moto power and asked him to show cause against the exercise of such a power. Failure of the Central Government to do so, in our opinion, vitiates the impugned order.

8. For the reasons mentioned above we allow this appeal as well as the writ petition and set aside the impugned order. Central Government shall pay the costs of the appellant in this Court as well as in the High Court.

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