

Chougule and Co., Pvt., Ltd.

Vs

Union of India and Another

Civil Appeal No. 910(N) of 1967

(G. K. Mitter, A. N. Ray JJ)

25.01.1971

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from an order of the Government of India, Ministry of Steel, Mines and Metals rejecting an application for revision by the appellant under Rule 54 of the Mineral Concession Rules, 1960. The substantial grievance of the appellant is that it had a preferential right under Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, to have a mining lease in respect of an area advertised for re-grant by the State of Mysore and that the respondent without properly applying its mind to the facts of the case turned down its application for revision without giving any reasons for the order passed.

2. The facts are as follows. The appellant is a firm which claims to have an established business house engaged in the business of large-scale mining of iron and manganese ores. It was granted a prospecting licence in respect of an area of Ac. 1770-00 in S. No. 17(1) part of village Palade, Taluk Supa Petha, North Kanara District which was then in the territory of the State of Bombay. It was granted a certificate of approval by the Bombay Government on October 27, 1961. Thereafter, as a result of the Reorganisation of the States the area mentioned above became a part of the territory of the State of Mysore. The appellant made an application to the State of Mysore for renewal of the prospecting licence but the State Government did not renew the same. The appellant thereupon made an application for revision to the Central Government for the purpose of obtaining a renewal of the prospecting licence but the revision application was not allowed. On October 25, 1962 the State of Mysore, respondent No. 2 herein, notified the grant of mining lease of an area of Ac. 774-00 in favour of one L. K. Suthankar out of an area of Ac. 1770-00 mentioned above. It is claimed by the appellant that without notifying the area for re-grant as required under Rule 58 of Mineral Concession Rules. The appellant thereupon filed an application on November 19, 1962, for revision of the order of the State of Mysore in favour of Suthankar. In spite of the pending application for revision respondent No. 2 executed a lease in favour of Suthankar by an order, dated October 20, 1964 and directed the State of Mysore to take action as required under Rule 58 of the Mineral Concession Rules. Suthankar moved an application under Article 226 of the Constitution before the High Court of Mysore for quashing the order of the Central Government. On that application the High Court passed an interim order on April 6, 1965, directing re-advertisement of the area in terms of the said Rule 58. The State of Mysore issued an advertisement on July 22, 1965, declaring the area of Ac. 774-00 as available for grant. The appellant submitted an application for a mining lease on August 28, 1965 contending inter alia in its application that it had a preferential right to a mining lease in respect of the whole area of Ac. 1770-00 of which the said Ac. 774-00 formed a part. It appears that on that very day the Director of the State Department of Mysore, Mines and Minerals,

had sanctioned the grant of a lease to Suthankar. The State of Mysore did not inform the appellant thereof and did not care to pass any order on the application of the appellant. As the appellant's application was to be deemed to have been refused in terms of Rule 24(3) of the Mineral Concession Rules, 1960, after the lapse of nine months from the date of the application even if no order was made, the appellant filed an application in revision before the Union of India under Rule 54 of the Mineral Concession Rules on July 21, 1966. In terms of the said rule the Union of India asked for comments from the State of Mysore on the appellant's revision application. The State submitted its comments on September 30, 1966. On receipt of the same the appellant filed its reply to the said comments before the Central Government on November 29, 1966. On April 4, 1967, the impugned order was passed by the Central Government over the signature of an Under Secretary of which the text is as follow :

"I am directed to refer to your revision application, dated July 21, 1966, and letter, dated November 29, 1966, on the above subject and to say that after careful consideration of the grounds stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Mysore to reject your application for grant of mining lease for manganese and iron ore over an area of 774 acres in village Palade, Taluk supra Petha, District North Kanara. Your application for revision is therefore rejected."

3. The contention urged on behalf of the appellant is that the order was not a speaking order inasmuch as it gave no reasons for the rejection of the revision application and gave no indication as to why its claim to preferential rights under Section 11 was ignored.

4. It is now settled by decisions of this Court that a speaking order is necessary in the case of a decision under Rule 55 of the Mineral Concession Rules where the State Government has not given any reasons for rejecting the application of a party because such a decision affects important rights of parties and if given in a summary manner without a hearing being allowed deprives a party of his right to know why the decision had gone against him. In *Bhagat Raja v. Union* (1967) (3) SCR 302 : AIR 1967 SC 1606 : (1968) 1 SCJ 431.) the appellant who was an unsuccessful applicant for a mining lease filed an application in revision under Section 30 of the Mines and Minerals (Regulations and Development) Act, 1957, read with Rule 54 of the Mineral Concession Rules to the Union of India. The successful applicant who had been given the lease filed a counter-statement and the State Government of Andhra Pradesh filed its comments on the appellant's application. The Union Government without hearing the appellant rejected his revision application the text of which ran as follows :

"I am directed to refer to your revision application, dated December 14, 1964, and letter dated January 23, 1956, on the above subject and to say that after careful consideration of the grounds stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Andhra Pradesh rejecting your application for grant of a mining lease for asbestos over an area of Ac. 113-50 in Brahmanapalli village, Cuddapah District, Andhra Pradesh. Your application for revision is, therefore, rejected."

In quashing the said order of the Union of India it was observed (at p. 309) :

"Ordinarily, in a case like this, if the State Government gives sufficient reasons for accepting the application of one party and rejecting that of the others, as it must, and

the Central Government adopts the reasoning of the State Government, this Court may proceed to examine whether the reasons given are sufficient for the purpose of upholding the decision. But, when the reasons given in the order of the State Government are scrappy or nebulous and the Central Government makes no attempt to clarify the same, this Court in appeal may have to examine the case de novo without anybody being the wiser for the review by the Central Government. If the State Government gives a number of reasons some of which are good and some are not, and the Central Government merely endorses the order of the State Government without specifying those reasons which according to it are sufficient to uphold the order of the State Government, this Court, in appeal, may find it difficult to ascertain which are the grounds which weighed with the Central Government in upholding the order of the State Government. In such circumstances, what is known as a 'speaking order' is called for."

5. Counsel for the appellant cited the above decision as also the one in *M/s. Travancore Rayon Ltd. v. Union of India* (1969 (3) SCC 868.) and urged that the reasons which impelled this Court to allow the appeal in *Bhagat Rajas'* case (*supra*) are also present in the instant case.

6. The State Government made no order on the application of the appellant, dated July 27, 1966, claiming a preferential right under Section 11. In its comments on the revision application of the appellant to the Central Government, dated May 27, 1966, the following points were said to be brought out :

1. The appellant who was holding a prospecting licence over an area of Ac. 1770-00 could not conduct any prospecting operations since the Central Excise Department authorities did not permit the licensee to cross the Goa border and to prospect the area. Their revision application to the Central Government was rejected by the Government of India by letter, dated March 18, 1959. They therefore had no claim for any preferential right over the area.

2. L. K. Suthankar made an application for the grant of mining lease in respect of Ac. 774-00 and a mining lease was granted to him by notification, dated October 5, 1962, which was however cancelled by the Government of India on the application of the appellant.

3. In the meanwhile Suthankar had filed an application for the issue of a writ of mandamus in the High Court of Mysore against the order of the Central Government cancelling his lease whereupon the High Court had passed an order that Suthankar should continue to be in possession of the buildings put up by him in the mining area subject to the condition that during the pendency of the writ petition he was not to exploit the area or remove any surface ore therefrom.

4. When the area was thrown open for re-grant by notification, dated July 29, 1965, the Director, State Department of Mines and Geology recommended the application of Suthankar, dated August 28, 1965, for grant of the mining lease on the ground that he had already been holding this area and had invested considerable sums of money for a period of about two years in developing the mines and mining approach roads. He had already been operating upon a number of managanese mines in North Kanara District and he had good performance to his credit and under the interim orders of

the High Court he was still in possession of the buildings put up by him and in the circumstances the Government proposed to sanction the lease to him.

7. In reply to the comments of the State Government the appellant disputed some of the statements mentioned therein and stated that it was not to blame for not pursuing the prospecting operations as the authorities of the Central Excise Department did not permit them to conduct the operations in the area which was situate near the Goa border probably for preventing smuggling. The appellants were always ready to start prospecting operations but were unable to do so for causes beyond their control. When the Central Government cancelled the lease granted to Suthankar it was necessary for the State Government to consider the applications for the re-grant on their merits and the Directorate of Mines and Geology should have considered the claims of the parties to such a grant and should not have directed the issue of a grant in favour of Suthankar merely because he claimed to have invested money in developing the mines and mining approach roads on the basis of a lease which was not properly granted. Suthankar never held the area under a prospecting licence nor had he done any prospecting operations in the area.

8. Reference may be made to Section 11 of the Mines and Minerals (Regulations and Development) Act, 1957, which deals with preferential right in respect of certain persons. Under sub-section (1) :

"Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person."

9. This is however subject to a proviso that the State Government must be satisfied that the licensee had not committed any breach of the terms and conditions of the prospecting licence and was otherwise a fit person for being granted the mining lease. Sub-section (2) provides that :

"Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later :",

and under sub-section (3) the matters referred to in sub-section (2) are as follows -

- (a) any special knowledge of, or experience in prospecting operations or mining operations, as the case may be, possessed by the applicant;
- (b) the financial resources of the applicant;
- (c) the nature and quality of the technical staff employed or to be employed by the applicant; and
- (d) such other matters as may be prescribed.

10. Learned counsel for the appellant urged that the State Government had nowhere stated that the appellant had committed any breach of the terms and conditions of the prospecting licence; neither had it ever suggested that the appellants were not persons fit for being granted a mining lease. Quite apart from the preferential claim it was necessary for the State Government to consider the relative merits of the claims to the lease put forward by the appellant and Suthankar. They should have

considered which of the two applicants were to be preferred on account of its special knowledge or experience in prospecting operations or mining operations, the relative financial resources and the nature and quality of the technical staff employed by them. The Directorate of Mines of the State of Mysore preferred the claim of Suthankar merely because he had carried on some operations under a lease which was cancelled by the Government of India and had carried on some mining operations under that cancelled lease.

11. Counsel further contended that the very text of the order of April 4, 1967, shows a complete non-application of mind by the authority rejecting the revision application. The order refers to "the decision of the Government of Mysore to reject" the applicant's application for grant of a mining lease whereas in point of fact the Government of Mysore never came to any such decision nor passed any order thereon. It was as a result of the application of the Mineral Concession Rules that the appellant's application to the State was deemed to be rejected because no order had been passed thereon for the space of nine months. Further according to learned counsel there was no reference to the comments of the State Government made on the revision application of the appellant and the order apparently was not based on the grounds given in such comment, unless it be held that a reference to the appellant's letter, dated November 29, 1966, indirectly brought in the comments of the State Government.

12. There is a striking similarity between the impugned order passed in this case and the one which was quashed in Bhagat Raja's case (supra). It will be noted that excepting for the difference in the dates and the details of the lands in respect of which the lease was claimed the texts of the two orders are identical. One cannot but remark that orders rejecting such applications appear to be made on a formula which is well known to the department. In our view departments cannot be allowed to perform their tasks so perfunctorily in disposing of claims of parties to valuable rights and it is incumbent on them to indicate the grounds on which the revision applications are disposed of unless the State Government had already in this order of rejection given the grounds and the Union Government referred to such grounds in its capacity as a revising authority.

13. In the result the appeal is allowed and the order of April 4, 1967, is quashed. The Central Government is directed to decide the revision application afresh in the light of the observations made. But in the circumstances of this case, we make no order as to costs of this appeal.

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