SUPREME COURT OF INDIA

State of Assam

Vs.

Om Prakash Mehta

C.A.No.1240 of 1967

(A. Alagiriswami, I. D. Dua and C. A. Vaidialingam, JJ.)

22.12.1972

JUDGEMENT

ALAGIRISWAMI, J.:-

1. This is an appeal by special leave against the judgment of the High Court of Assam allowing the petition filed by respondent questioning the validity of the order dated 27-6-1962 issued by the Deputy Commissioner, Khasi Jaintia Hills on behalf of the Government of Assam that their application for renewal of the mining lease granted to their father must be deemed to have been refused under sub-rule (3) of Rule 24 of the Mineral Concession Rules, 1960.

2. The lease in question was granted by the Crown Representative on 29th April, 1942 to Bhagirath Mohta the father of the respondents for a period of 20 years to operate the coal-mines. Bhagirath Mohta died on 18-5-1961 and on 3-8-1961 the respondents applied for renewal of the lease. By his order earlier mentioned the Deputy Commissioner informed the respondents that the application for renewal must be deemed to have been refused. On 22-10-1962 the respondents filed a revision petition to the Central Government under Rule 54 of the Mineral Concession Rules, and this was

rejected on 8-2-1963. On 7-5-1963 the respondents filed a petition before the High Court of Assam for quashing the order dated 27th June, 1962 and for a writ of Mandamus directing the renewal of the lease. The appellants contended that the rights of the respondents, if any, were wholly contractual and based on disputed facts and they could only establish them by filing a regular suit in a Civil Court.

3. The High Court of Assam allowed the petition filed by the respondents holding that Rule 24 (3) of the Mineral Concession Rules, under which the application by the respondents was deemed to have been rejected, was unreasonable and ultra vires of Section 8 of the Minerals (Regulation and Development) Act, 1957, and the deemed refusal of the application for renewal had no legal effect, that the explanation to Rule 54 should also be struck down as repugnant to the main sections of the Act. It, therefore, quashed the order of the Deputy Commissioner dated 27th June, 1962 and issued a writ of Mandamus to the State Government to deal with and dispose of the application of the petitioners dated 3-8-1961 for renewal.

4. The first question to be decided, therefore, is whether Rule 24 (3) and the explanation to Rule 54 are repugnant to the provisions of Section 8 of the Act and therefore, liable to be struck down. We may first set out the relevant provisions. Rule 24 reads as follows :

"24. Disposal of application for mining lease - (1) An application for the grant of a mining lease shall be disposed of within nine months from the date of its receipt.

(2) An application for the renewal of a mining lease shall be disposed of within ninety days from the date for its receipt.

(3) If any application is not disposed of within the period specified in sub-rule (1), or sub-rule (2), it shall be deemed to have been refused."

Rule 54 reads as follows :

"Application for revision. - (1) Any person aggrieved by any order made by the State Government or other authority in exercise of the powers conferred on it by the Act or these rules may, within two months of the date of communication of the order to him, apply to the Central Government in duplicate in Form N for revision of the order. The application should be accompanied by a treasury receipt showing that a fee of Rupees 100 has been paid into Government treasury or in any branch of the State Bank of India doing the treasury business to the credit of the Central Government.....

Provided that any such application may be entertained after the said period of two months, if the applicant satisfies the Central Government that he had sufficient cause for not making the application within time.

(2) In every application under sub-rule (1) against the order of a State Government refusing to grant a prospecting licence or a mining lease, any person to whom a prospecting licence or mining lease was granted in respect of the same area or for a part thereof, shall be impleaded as a party.

(3) Along with the application under sub-rule (1), the applicant shall submit as many copies thereof as there are parties impleaded under sub-rule (2).

(4) On receipt of the application and the copies thereof, the Central Government shall send a copy of the application to each of the parties impleaded under sub-rule (2) specifying a date on or before which he may make his representations, if any, against the revision application.

Explanation :- For the purpose of this rule, where a State Government has failed to dispose of an application for the grant or renewal of a prospecting licence or a mining lease within the period specified in respect thereof in these rules, the State Government shall be deemed to have made an order refusing the grant or renewal of such licence or lease on the date on which such period expires :

Section 8 of the Act is to the following effect :

"8. (1) The period for which a mining lease may be granted shall not -

(a) in the case of coal, iron ore or bauxite, exceed thirty years; and

(b) In the case of any other mineral, exceed twenty years.

(2) A mining lease may be renewed -

(a) in the case of Coal, iron ore or bauxite, for one period not exceeding thirty years, and

(b) in the case of any other mineral, for one period not exceeding twenty years :

Provided that no mining lease granted in respect of a mineral specified in the First Schedule shall be renewed except with the previous approval of the Central Government.

(3) Notwithstanding anything contained in sub-section (2), if the Central Government is of opinion that in the interests of mineral development it is necessary so to do, it may, for reasons to be recorded, authorise the renewal of a mining lease for a further period or periods not exceeding in each case the period for which the mining lease was originally granted."

5. From a reading of Section 8 it is difficult to see how exactly the rules referred to above can be said to be contrary to the provisions contained in that Section. Let us, therefore, consider the scheme of the Act.

6. It is an Act to provide for the regulation of mines and the development of minerals under the control of the Union. Section 4 lays down that no person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence or, as the case may be, a mining lease, granted under this Act and the rules made thereunder. Section 5 lays down certain restrictions in the matter of granting prospecting licences or mining leases. Section 6 lays down the maximum area for which a prospecting licence or mining lease may be granted. Section 7 lays down periods for which prospecting licences may be granted or renewed. Section 8 lays down the periods for which mining leases may be granted or renewed. Section 10 lays down the procedure for applying for prospecting licences or mining leases. Section 11 lays down the preferential rights of certain persons to the grant of prospecting licences and mining leases. Section 13 enables the Central Government to make rules for regulating the grant of prospecting licences and mining leases. Among the clauses contained in sub-section (2) of that Section, which specify the purpose for which rules may be made, are clauses (g) and (r) which are as follows :

(g) the terms of on which, and the conditions subject to which, any other prospecting licence or mining lease may be granted or renewed;

(r) any other matter which is to be, or may be prescribed under this Act.

Section 19 lays down that any prospecting licence or mining lease granted, renewed or acquired in contravention of the provisions of this Act, or any rules or orders made thereunder shall be void and

of no effect. Section 20 lays down that the provisions of the Act and the rules made thereunder shall apply in relation to the renewal after the commencement of this Act of any prospecting licence or mining lease granted before such commencement as they apply in relation to the renewal of a prospecting licence or mining lease granted after such commencement. Section 30 enables the Central Government of its own motion or on application made within the prescribed time by an aggrieved party, to revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under the Act.

7. The First Schedule to the Act contains a list of minerals in respect of which no prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

8. The Mineral Concession Rules, 1960 were made under this Act. Chapter II of the rules contains provisions regarding certificate of approval. Chapter III deals with grant of prospecting licences in respect of land in which the minerals vest in the Government. Chapter IV deals with grant of mining leases in respect of land in which the minerals vest in the Government. Rule24 is found in this Chapter. Chapter V deals with procedure for obtaining a prospecting licence or mining lease in respect of land in which the minerals vest in a person other than the Government. Chapter VI deals with grant of prospecting licences and mining leases in respect of land in which the minerals vest partly in Government and partly in a private person. Chapter VII deals with revision. Rule 54, the explanation to which has been held void by the Assam High Court, is found in this Chapter. It is not necessary for the purpose of this discussion to refer to Chapters VIII and IX.

9. The Act and the Rules thus contain the complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to Government as well as lands belonging to private persons. The main point to be kept in mind is the fact that the mining lease in question is in a land belonging to Government and it is for a mineral included in the First Schedule to the Act in respect of which no mining lease can be granted without the previous approval of the Central Government. Normally the Government like any other owner of property is entitled to choose with whom it shall deal and what sort of a contract it will enter into, but being a public authority its acts are necessarily regulated by certain rules. The Act and the rules in this case are intended to regulate the development of mines and minerals under the control of the Union and contain the provisions necessary for that purpose. No person can claim any right in any land belonging to Government or in any mines in any land belonging to Government except under and in accordance with the Act and the Rules or any right except those created or conferred by the Act. There is no question of any fundamental right in any person to claim that he should be granted any lease or any prospecting licence or mining lease in any land belonging to the Government. It is necessary to bear this in mind because some sort of vague right was claimed on behalf of the respondents as though there is a right of renewal of the mining lease in question even apart from the rules.

10. The original lease in favour of the father of the respondents contained a clause that if the lessee were desirous of taking a renewed lease for a further term of years he should give six calendar months' previous notice in writing to that effect and the Crown Representative will deliver a renewed lease for a further term of 20 years. Now as a result of the provisions of Sections 19 and 20 of the Act renewal of the lease granted to the father of the respondents is governed by the Act and the Rules. Rule 24 (3) provides that an application for the grant of a mining lease shall be disposed of within ninety days from the date of its receipt, and if it is not so disposed of it shall be deemed to have been refused. A later amendment omitted the words "or sub-rule (2)" found in that sub-rule with the result that the sub-rule (3) now reads as follows :

"If any application is not disposed of within the period specified in sub-rule (1) it shall be deemed to have been refused."

This might seem a little confusing. Does it mean that the period specified in sub-rule (1) applies not merely to the grant of a mining lease mentioned in sub-rule (1) but also to the renewal of a mining lease mentioned in sub-rule (2) ? But we think that it will be a reasonable interpretation to hold that the effect of this amendment would be that while the provision regarding disposal within 90 days of an application for renewal still stands, the provision for deeming it to have been refused is no longer there. But this does not dispose of the matter because the explanation to rule 54 lays down that for the purposes of that rule, where a State Government has failed to dispose of an application for the grant or renewal of a prospecting licence or a mining lease within the period specified in respect thereof, the State Government shall be deemed to have made an order refusing the grant or renewal on the date on which such period expires. So the explanation has two purposes (i) to state the effect of the failure to dispose of the applications referred to in R. 24, sub-rules (1) and (2) within the periods specified in those sub-rules, as also (ii) to provide the starting point for the purpose of computing the period of two months within which an application for revision under Rule 54 must be preferred.

10A. It has been urged vehemently that a provision to the effect that if the State Government does not dispose of an application for renewal within 90 days it should be deemed to have been refused is an unreasonable one and should, therefore, be struck down. As we have already mentioned it cannot be said that the respondents had any right apart from the rights conferred on them by the Act and the Rules. Their right, if any, is a creation of, and only flows from, the Act and the Rules. They cannot claim any right de hors the Act and the Rules. So if the Act and the Rules provide that an application not disposed of within 90 days should be deemed to have been refused, they have to abide by the Rules and take the consequences. There is no question of any contravention of any rights of the respondents in the making of these rules. It is said that there is no way of the respondents knowing what has been done about their application for renewal and if the concerned officer or authority neglects to take any action with regard to their application they should not be penalised. We do not see how, if that is the Legislative policy, it can be questioned. It cannot be said to be in contravention of any provision of the Constitution. Nor is there any question of the principles of natural justice having been violated. Indeed there may be some purpose in such a provision. It is well known that in almost all statutes regarding local bodies it is provided that

applications for building licences that are not disposed of within a specified period should be deemed to have been granted. It has never been argued in those cases that it is unfair to the local bodies concerned. That is the provision of law. Let us assume that in a case like the present rule 24 (2) did not exist. Let us assume that the officer or authority dealing with the application for renewal simply sleeps over if for years. The applicant will then be in a worse position. Apparently the idea was that the officer or authority dealing with an application for renewal must dispose of it quickly and if he did not it should be deemed to have been refused thus giving an opportunity to the aggrieved party to approach the Central Government to exercise its powers of revision under Rule 54. Under Rule 55 the Central Government can call for the records from the State Government and after considering any comments made on the petition by the State Government or other authority, may confirm, modify or set aside the order or pass such other order in relation thereto as the Central Government may deem just and proper. It also provides for an opportunity to the applicant to make his representation against the comments, if any, received from the State Government or other authority. Thus the fact that the application for renewal is deemed to have been refused as a result of Rule 24 (2) does not prohibit the Central Government from passing any order it may deem just and proper including an order granting renewal. In this case the respondents did not file an application for renewal within two months of the Deputy Commissioner's informing them that their application should be deemed to have been rejected, though that letter of the Deputy Commissioner itself was issued nearly nine months after their date of application. Indeed they could have filed an application for revision when they failed to get a reply within 90 days of their application for renewal. It means that it is the respondents that were not alert.

11. We can see nothing unreasonable in the order passed by the Central Government. It has been mentioned in that order that after careful consideration of the facts stated in their review application it was rejected as being time barred. The application to the Central Government preferred by the respondents contained all the facts. The applications for revision have to be in form (L) appended to the Rules. It has to specify the minerals for which the revision application is filed, the details of the area in respect of which the revision application is filed and a map or plan for the area has also to be attached. There is no reason to assume that the Central Government did not apply their minds to these facts.

12. We are unable to see how Rule 24 (3) and explanation to Rule 54 can be said to contravene the provisions of Section 8 of the Act. They are within the rule making powers of the Government. Clause (g) of Section 13 too enables the Government to make rules regarding the terms on which and conditions subject to which any prospecting licence or mining lease may be granted or renewed. It includes the power to make rules regarding conditions subject to which they may be refused. We do not see how the provisions of Rule 26 which lays down that 'where the State Government passes any order refusing to grant or renew a mining lease, it shall communicate in writing the reasons for such order' militates against this conclusion. In view of the provisions of Rules 24 and 54 the only reason which the State Government can give under Rule 26 is that because 90 days are over the application should be deemed to have been refused.

13. The High Court's view that Rule 24 (3) and the explanation to Rule 54 are in contravention of S.

8 is vitiated by its assumption that every order to be passed on an application for renewal should be approved by the Central Government. This is not correct. Only renewal cannot be granted without the Central Government's approval and not rejection.

14. The only relevant decisions of this Court are reported in (1960) 2 SCR 775 = (AIR 1960 SC 606), Shivji Nathubhai v. Union of India and the decision in C. A. No. 657 of 1967, D/- 17-8-1967 (SC). In both of them it was held that the power of the Central Government under Rule 54 is a quasi-judicial power. They do not deal with the nature of the power exercised by the State Government in granting or refusing mining leases or renewals thereof. The decisions in Seeta Ramaiah v. State of Andhra Pradesh, AIR 1963 Andh Pra 54 and Shivji Nathubhai v. Union of India, AIR 1959 Punj 510 more or less take the same view of the matter as we have.

15. We do not feel called upon to deal with the question whether as a result of the order passed by the Central Government there has been a merger and the application by the respondents before the High Court which did not ask for setting aside the order of the Central Government, cannot succeed as that point was not taken before the High Court; nor it is necessary to deal with the question in the view that we have taken of this case in its other aspects. In the result we hold that the High Court was in error in holding that Rule 24 (3) and the explanation to Rule 54 of the Mineral Concession Rules 1960 are contrary to the provisions of the Act and should be struck down.

16. The appeal is allowed and the order of the High Court is set aside. The respondents will pay the appellant's costs.

Appeal allowed.