State of Haryana

Vs

Ram Kishan and Others

Civil Appeals Nos. 1472-77 of 1987

(CJI R. S. Pathak, L. M. Sharma JJ)

06.05.1988

JUDGMENT

SHARMA, J. –

1. The present appeals by the State of Haryana and the Haryana Minerals Limited are directed against the common judgment of the Delhi High Court disposing of six writ applications filed by different petitioners impleaded as respondent 1 herein.

2. Separate mining leases were executed on behalf of the State of Haryana with respect to silica sand and ordinary sand in favour of the writ petitioners for a period of 10 years, in accordance with the provisions of the Mines and Minerals (Regulation and Development) Act, 1957, hereinafter referred to as 'the Act'. The State of Haryana, in purported exercise of powers under Section 4-A of the Act prematurely terminated the leases by its order dated October 1, 1986 which is quoted in the judgment of the High Court, stating that it was proper to do so as the Haryana Minerals Limited, respondent 4 (appellant 2 herein) a public sector undertaking had informed that it had fully equipped itself to undertake the mining operation and that necessary permission in terms of the section had been obtained from the Central Government to prematurely terminate the leases. Admittedly no prior notice to the writ petitioners or any opportunity to them to place their case was given.

3. The lessees contended before the High Court that essential conditions for exercise of the powers under Section 4-A are not satisfied in the present cases and further, the impugned decision is violative of the principles of natural justice. It was also urged that so far as the lease in respect of ordinary sand which is a minor mineral under the Act, is concerned, Section 4-A being excluded by the provisions of Section 14 is not applicable. It was also averred that forcible possession of the mining areas was taken even before communicating the impugned order. The High Court agreed with these contentions and allowed the writ petitions. The State of Haryana and the Haryana Minerals Limited, respondents 2 and 4, respectively, in the writ cases were allowed special leave to appeal under Article 136. Hence these appeals.

4. Section 4-A as it stood at the relevant time read as follows :

> 4A(1) Where the Central Government, after consultation with the State Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may request the State Government to make a premature termination of a mining lease in respect of any mineral, other than minor mineral, and, on receipt of such request, the State Government shall make an order making a

premature termination of such mining lease and granting a fresh mining lease in favour of such government company or corporation owned or controlled by government as it may think fit.

(2) Where the State Government, after consultation with the Central Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may, by an order, make premature termination of a mining lease in respect of any minor mineral and grant a fresh lease in respect of such mineral in favour of such government company or corporation owned or controlled by government as it may think fit.

5. Silica sand being a major mineral is governed by sub-section (1) of Section 4-A and ordinary sand by sub-section (2). Accordingly to the appellant, full and necessary consultation between the two governments i.e. the Central Government and the State Government was held and it was considered expedient in the interest of regulation of mines and mineral development to take the impugned decision. Reference in this regard was made by the learned counsel to the report of the Indian Bureau of Mines referred to in the letters of the Director, Department of Mines, Central Government to the Chief Secretary, Government of Haryana, dated April 20, 1985, July 8, 1985 and July 10, 1985 and the State's letters dated July 14, 1986, September 17, 1986 and September 29, 1986. It has been contended that since a decision was jointly taken by the two governments to grant mining lease of the entire area to the Haryana Minerals Limited, this by itself fulfilled the necessary conditions under Section 4-A and as the writ petitioners-lessees had no locus standi to place their point of view with respect to this aspect, it was not necessary to give them a notice. The argument is that in the circumstances there is no question of violation of principles of natural justice. It was also claimed that the State was the final authority to take a decision under Section 4A with respect to both major and minor minerals.

6. Mr B. Datta, Additional Solicitor General, stated on behalf of the Union of India, respondent 2 that the respondent is ready to reconsider the matter after hearing the parties concerned. He refuted the claim of the appellant that the State is the ultimate authority to take a decision under Section 4-A with respect to major minerals and he appears to be right. Sub-section (1) which deals with major minerals employers the Central Government to consider the matter and, after having consultation with the State Government, to take a decision in this regard and once it does so and makes a request to the State Government for prematurely terminating a lease, the State Government shall be under an obligation to act. The use of "shall" in this context indicates the binding nature of the request.

7. The language of Section 4-A clearly indicates that the section by itself does not prematurely terminate any mining lease. A decision in this regard has to be taken by the Central Government after considering the circumstances of each case separately. For exercise of power it is necessary that the essential condition mentioned therein is fulfilled, namely, that the proposed action would be in the interest of regulation of mines and mineral development. The question of the State Government granting a fresh mining lease in favour of a government company or a corporation arises only after a decision to terminate the existing mining lease is arrived at and given effect to. The section does not direct termination of all mining leases, merely for the reason that a government company or corporation has equipped itself for the purpose. The section was enacted with a view to improve the efficiency in this regard and with this view directs consultation between the Central Government and the State Government to be held. The two governments have to consider whether premature termination of a particular mining lease shall advance the object or not, and must, therefore, take into account all considerations relevant to the issue, with reference to the lease in

question. It is not correct to say that an existing mining lease can be terminated merely for the reason that a government company or corporation is ready to undertake the work.

8. Considered in this light, the section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so will be violative of the principles of natural justice. Since there is no suggestion in the section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right. Reference may be made to the observations of this Court in Baldev Singh v. State of Himachal Pradesh [(1987) 2 SCC 510], that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rule would apply. The cases, Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720 : AIR 1987 SC 1802], D. C. Saxena v. State of Haryana [(1987) 3 SCC 251 : AIR 1987 SC 1463 : 1987 SCC (L&S) 210 : (1987) 3 ATC 814] and State of Tamil Nadu v. Hind Stone [(1981) 2 SCC 205 : (1981) 2 SCR 742 : AIR 1981 SC 711], relied upon by Mr Mohanta do not help the appellant. The learned counsel placed reliance on the observations in paragraphs 5 to 7 of the judgment in Union of India v. Cynamide India Ltd. [(1987) 2 SCC 720 : AIR 1987 SC 1802], which were made in connection with legislative activity which is not subject to the rule of the audi alteram partem. The principles of natural justice have no application to legislative activities, but that is not the position here. It has already been pointed out earlier that the existing mining leases were not brought to their end directly by Section 4-A itself. They had to be terminated by the exercise of the executive authority of the State Government. Somewhat similar was the situation with regard to Section 4-A of Haryana Board of School Education Act, 1969 which was under Consideration in D. C. Saxena v. State of Haryana [(1987) 3 SCC 251 : AIR 1987 SC 1463 : 1987 SCC (L&S) 210 : (1987) 3 ATC 814]. A matter of policy was adopted and included by the legislature in the impugned section. Besides, the validity of the section was not under challenge there, as was expressly stated in paragraph 6 of the judgment. So far as the case, State of Tamil Nadu v. Hind Stone [(1981) 2 SCC 205 : (1981) 2 SCR 742 : AIR 1981 SC 711], is concerned, the learned counsel for the appellant cited it only with a view to emphasise the importance of the mineral wealth of the nation which nobody denies. We, therefore, hold that a final decision to prematurely terminate a lease can be taken only after notice to the lessee.

9. Coming to the facts of the present case it will be observed that the question of terminating the mining leases in question before us was introduced for the first time under the letter dated July 14, 1986 (page 80) of the State of Haryana. The earlier letters dated April 20, 1985 and July 8, 1985, of the Department of Mines, Union of India sent to the State Government discussed the general question about the desired improvement in the mining field and referred to the report of the Indian Bureau of Mines on silica sand mining in Haryana. The report had highlighted various aspects of silica sand mining in the State and made several positive suggestions. It was stated in the letter dated April 20, 1985 that if the lessees did not comply with the requirements mentioned therein, their leases "deserve to be terminated in accordance with the procedure established under law". In the letter dated July 8, 1985, further emphasis was laid on ensuring scientific mining of optimum utilisation of natural resources, ensuring safety in operation and ensuring payment of fair wages to the mine workers. In this letter the desirability of entrusting mining operations to the public sector was mentioned but it was also stated that the representatives of the Government of Haryana had in the earlier meetings expressed their inability to entrust the Haryana Minerals Ltd. (appellant 2 before us) with the mining operations in the entire State immediately. Additional terms and conditions were also suggested to be imposed in the future mining lease to be granted in favour of private parties. Later on, it appears that the Haryana Minerals Ltd. became ready to take over the

mining operations and intimated its preparedness by letter dated July 10, 1986 and thereupon the State of Haryana wrote on July 14, 1986 to the Union of India that it was appropriate to prematurely terminate the six leases mentioned in the letter of that date. It will be significant to note that the State Government did not take a decision to terminate all the mining leases; on the contrary, fresh mining leases in favour of private individuals were in contemplation of the State authorities, as indicated by the aforementioned letters and by Annexure P-5 (page 273) to the writ petition of Ram Kishan in the High Court. The State's letter dated July 14, 1986 was followed by another letter dated September 5, 1986 and in reply to it, the Central Government asked for a report on several specific points mentioned in their letter which is at page 85 of the paper book. In place of sending the required information, the State Government, in its letter dated September 17, 1986, took the erroneous stand that the information sought for was not relevant. Instead of pointing out that the information demanded was very pertinent in the context of the proposed termination of the mining leases, the Central Government by its letter dated November 26, 1986 agreed to the proposal, but took care to advise that while taking any action for premature termination of the leases the authority should "ensure that the provisions of Section 4-A of the Act are complied with". As has been mentioned earlier, the Union of India does not deny the right of hearing to the affected lessees and is ready, even now, to give an opportunity to them. Admittedly, the writ petitioners who are respondents before us were never given any such opportunity and according to their assertion if such an opportunity had been afforded, they would have shown that the standard of their mining operation was very high and favourably measured against the expected standard suggested in the report of the Indian Bureau of Mines and mentioned in the letter of the Mines Department of the Central Government and that it was definitely superior to that of Haryana Minerals Limited.

10. On a consideration of the facts and circumstances of the present case, we are of the opinion that there was no effective consultation between the Union of India and the State Government, and the Central Government did not form any opinion as required under Section 4-A of the Act. We are further of the view that the lessees, the respondents before us, were entitled to be heard before a decision to prematurely terminate their leases was taken but they were not given any opportunity to place their case.

11. Mr Sen, the learned counsel for the respondents, very fairly stated that he could not support the plea that leases in respect of minor minerals are saved from the application of Section 4-A altogether by reason of Section 14. This Court in State of Tamil Nadu v. Hind Stone [(1981) 2 SCC 205 : (1981) 2 SCR 742 : AIR 1981 SC 711], (at pp. 746H and 747-A : SCC p. 209) pointed out that perhaps since Section 4-A(1) is inapplicable to minor minerals because of the provisions of Section 14, Section 4-A(2) has been specially enacted making somewhat similar provision. It must, therefore, be held that leases in respect of minor minerals also can be prematurely terminated in appropriate cases. However, in view of our earlier finding the respondents must succeed. We accordingly dismiss these appeals with costs.

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