Assam Sillimanite Limited and Another

Vs

Union of India and Others

Writ Petition No. 105 of 1973

(S. Ranganathan, A. M. Ahmadi JJ)

16.03.1990

JUDGMENT

RANGANATHAN, J. -

1. The petitioner company obtained mining leases from the Government of Assam to extract sillimanite in the Khasi and Jaintia Hills District. In pursuance thereof, three lease deeds were executed by the State Government in favour of the petitioner. The first was a lease deed dated April 25, 1962 for a period of 15 years in respect of an area of 129.60 hectares at Lalmati. The second, dated April 10, 1963, was for a period of 15 years in respect of an area of 777.60 hectares at Nongmawait. The third one dated June 8, 1967 was for a period of 15 years and covered an area of 363 hectares at Wamsophi. The three lease deeds were to expire on April 25, 1977, April 9, 1978 and June 7, 1982 respectively but there was a clause for further renewal.

2. The petitioner company had also established a refractory plant in 1961 near Ramgarh in District Hazaribagh. It appears, however, that petitioner faced a number of difficulties in operating the refractory plant and was explaining its difficulties to be State of Meghalaya which was formed in 1970.

3. Between 1970 to 1972, the Union of India, through its public sector companies, Hindustan Steel Ltd. and Bokaro Steel Ltd. negotiated with the petitioner for the purchase of its refractory plant and also for having the mining leases transferred to them. Though the refractory plant was not functioning properly and was on the verge of closure, the petitioner was not willing to transfer its mining leases to the public sector companies but was willing to supply the required quantity of sillimanite to the Bokaro Steel Plant. It is also stated that some negotiations took place as a result of which the petitioner was planning to reopen the factory on November 6, 1972. However, in the meantime on November 2, 1972, the Central Government took over the management of the refractory plant under Section 18-AA of the Industries Development and Regulation Act, 1951. Possession of the plant as well as its management was also taken over by the Hindustan Steel Ltd. on the same day. This take over was challenged by the petitioner company but its challenge was repelled by the Delhi High Court and a special leave petition was filed, which is pending in this Court. We are not concerned with this issue in the present case.

4. On September 12, 1972, the Mines and Minerals (Regulation and Development) Act, 1957, was amended by Act 56 of 1972. By this amendment, Section 4-A was introduced in the Act, which reads as follows :

"4-A. (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 a 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."

This amendment came into effect in September 1972.

5. At this juncture it may be mentioned that Act 37 of 1986 has further amended the 1857 Act and substituted Section 4-A by the following section which insofar as it is relevant for out present purposes reads as follows :

"4-A. (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, preservation of natural environment, control of floods, prevention of pollution, or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for conservation of mineral resources or for maintaining safety in the mines or for such other purposes, as the Central Government may deem fit, it may request the State Government to make a premature termination of a prospecting licence or mining lease in respect of any mineral other than a minor mineral in any area or part thereof, and, on receipt of such request, the State Government shall make an order making a premature termination of such prospecting licence or mining lease with respect to the area or any part thereof.

(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, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for such other purposes, as the State Government may deem fit, it may, by an order, in respect of any minor mineral, make premature termination of a prospecting licence or mining lease with respect to the area or any part thereof covered by such licence or lease :

Provided that the State Government may, after the premature termination of a prospecting licence or mining lease under sub-section (1) or sub-section (2), as the case may be, grant a prospecting licence or mining lease in favour of such government company or corporation owned or controlled by government as it may think fit.

(3) No order making a premature termination of a prospecting licence or mining lease shall be made except after giving the holder of the licence or lease a reasonable opportunity of being heard."

6. In pursuance of the 1972 amendment, the State Government passed an order terminating the mining leases granted to the petitioner and granted fresh leases over the same areas in favour of M/s. Hindustan Steel Ltd., a government company, fully owned by the Central Government. The order, made in the name of the Governor, reads as follows :

"Dated : Shillong, December 7, 1972.

No. MG. 133/72 : Whereas the Central Government, having consulted the Government of Meghalaya, is of opinion that it is expedient in the interest of mineral regulation and development that the mining leases or sillimanite mentioned below by M/s. Assam Sillimanite Ltd. (having its Registered Office at 13 A.T. Road, Gauhati) in Meghalaya are terminated forthwith;

And, whereas, in terms of Section 4-A of the Mines and Minerals (Regulation and Development). Act, 1957, as amended by the Mines and Minerals (Regulation and Development) Amendment Act, 1972, the Central Government has requested the Government of the said mining leases held by M/s. Assam Sillimanite Ltd.;

Now, therefore, the Government of Meghalaya in exercise of the powers conferred by Section 4-A(1) of the Mines and Minerals (Regulation and Development) Act, 1957, as amended by the Mines and Minerals (Regulation and Development) Amendment Act, 1972 hereby terminates prematurely the mining leases of sillimanite mentioned below held by M/s. Assam Sillimanite Ltd. with immediate effect and grants fresh mining leases over the same areas in favour of M/s. Hindustan Steel Ltd., a government company, fully owned by the Central Government.

#Lease Locality Area in Period Date of expiryNo. hect- of ares Lease5. Lalmati 129.60 15 April 24, 1977 years6. Nongmawait 777.60 -do- April 9, 19787. Wamsophi 363.00 -do- June 7, 1982"##

7. The petitioner filed a writ petition in the Gauhati High Court against the order dated December 7, 1972 but it was not able to obtain any ex parte interim orders. The petition was withdrawn from the Gauhati High Court and the present petition under Article 32 has been filed in this Court. On March 5, 1973, this Court issued rule nisi and also directed the maintenance of the status quo pending notice. It, however, appears that Hindustan Steel Ltd. had taken possession of the properties in question and the interim stay was also vacated on January 20, 1987. The present position, therefore, is that the mining leases have been granted to the Hindustan Steel Ltd. and they have also been operating the mines for the past several years.

8. Though several objections have been raised to the action of the State Government in the writ petition, including a challenge to the validity of Section 4-A, the arguments before us were restricted by Shri P. C. Jain to only two aspects. He submitted that, admittedly, no notice had been issued by the State Government before terminating the leases prematurely. This, according to him, amounts to denial of natural justice and vitiates the order dated December 7, 1972. The second contention is that the order not fulfil the requirements specified in Section 4-A justifying the

premature termination of leases in pursuance thereof.

9. This writ petition came up for hearing on earlier occasions but it was adjourned from time to time as the same issue was pending decision in this Court in the case of State of Haryana v. Ram Kishan ((1988) 3 SCC 416 : (1988) 3 SCR 1015). Our task in the present writ petition has been considerably simplified because the above civil appeals have been disposed of by this Court by its judgment dated May 6, 1988. Shri P. C. Jain, learned counsel for the petitioner company submits that the first point raised by him has been squarely decided in his favour in the above case and that, therefore, he is entitled to succeed in the present writ petition. Learned counsel also referred to a decision of the Delhi High Court reported in Dharam Veer v. Union of India (AIR 1989 Del 227), which has followed the decision in Ram Kishan case ((1988) 3 SCC 416 : (1988) 3 SCR 1015). In that case, a similar order of premature termination was set aside by the High Court and the lessees were directed to be put back in possession of the leased premises which had been taken away from them in pursuance of their unlawful order. Learned counsel submits that, in the present case, having regard to the comparatively long periods of leases and the lapse of time, he would not pray for the petitioner being put back in possession of the leased premises but he contends that the least that could be done is to award compensation to the petitioner company for (what has now to be held to be), the wrongful premature termination of the leases. He submits that the petitioner is willing to have this aspect of the matter referred to arbitration by any arbitrator appointed by this Court.

10. On the other hand, Shri R. B. Datar, learned counsel for the Union of India submits that, in State of Haryana v. Ram Kishan ((1988) 3 SCC 416 : (1988) 3 SCR 1015), the Central Government had expressed its willingness to reconsider the matter after hearing the parties concerned and that, therefore, the decision of this Court in that case is distinguishable. He sought to contend, on the strength of observations made by this Court in Barium Chemicals Ltd. v. Company Law Board (1966 Supp SCR 311 : AIR 1967 SC 295 : (1966) 36 Com Cas 639) as we the decision in R. S. Dass v. Union of India (1986 Supp SCC 617 : (1987) 2 ATC 628) that rules of natural justice can be statutorily excluded either expressly or by necessary implication. In the present case, he submits that it became expedient, in the interest of regulation of mines and mineral development, to have the mining operations in respect of raw materials necessary for the production of iron and steel entrusted to public sector companies and a policy decision to this effect had been taken by the government. In this context, he submits, the grant of an opportunity to the lessee would be totally meaningless and futile. He says that the object and purpose of the statute clearly excludes the provision of an opportunity to the lessees before termination of the leases. If at all, he submits, it will be open to a lessee, whose lease is prematurely terminated under Section 4-A, to challenge the order of premature termination, after it was passed, on the ground that it did not satisfy the conditions set out in Section 4-A but that the Section should not be construed as envisaging a hearing of the lessees before an order of premature termination is made. Referring to the amendment of Section 4-A in 1986, which specifically provides for an opportunity of hearing under sub-Section (3), Shri Datar says that this provision became necessary because the grounds for premature termination set out in the new sub-Section (1) of Section 4-A were made wider and made more comprehensive. Under the new sub-section, premature termination of leases was permissible in various other circumstances, such as : preservation of natural environment, control of floods, prevention of pollution, avoidance of danger to public health or communications, ensuring of safety of buildings, monuments and other structures, conservation of mineral resources, maintenance of safety in mines and such other purposes as the Central Government may deem fit. There were purposes in respect of which an opportunity of hearing to the lessee would be really needed and helpful but that, in the context of earlier sub-section, which was much narrower, no such opportunity of hearing was at all contemplated.

11. We do not propose to reconsider this matter as, in our opinion, the contention raised by Shri P. C. Jain is directly and squarely concluded by the decision in Ram Kishan case ((1988) 3 SCC 416 : (1988) 3 SCR 1015). It is no doubt true that in that case the Central Government appears to have been willing to rehear the parties but the court did not proceed on the basis of any concession. The court discussed the provisions of Section 4-A at great length and held that there was no suggestion in the section to deny the right of the affected persons to be heard and that the section must be interpreted to imply that the persons 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, it was held, would be violative of the principles of natural justice. The court concluded that the lessee-respondents were entitled to be heard before a decision to prematurely terminate their leases was taken and that, since it was not done, the High Court was right in quashing the order passed under Section 4-A.

12. In our opinion, the decision in Ram Kishan case ((1988) 3 SCC 416 : (1988) 3 SCR 1015) fully covers the present case and should be followed by us. In fact, we think that the subsequent amendment in 1986 lends support to the plea of the petitioners. Though it is true that the scope of Section 4-A(1) has been widened, the insertion of sub-Section (3) clearly reflects a statutory intention that an opportunity of hearing must be given before the order of termination is passed, presumably as such an order widely affects the rights of the lessees. We are not able to agree with Shri Datar that under Section 4-A, as it stood before 1986, no useful purpose would have been served by the giving of such an opportunity. Several situations and circumstances can be conceived of where, given an opportunity of hearing, the lessee may be able to either dissuade the government from terminating the leases prematurely or in persuading the government to do it subject to certain safeguards for its benefit. For example, the lessee may be able to show that the public sector corporation to whom it is proposed to entrust the working of the mines is not yet adequately equipped to exploit the mines and that, at least for some more time the status quo should continue; or, again, if there is only a short period before the leases are to expire in the normal course, the lessee may be able to persuade the government that no great advantage would be derived by premature termination of the lease. These are only illustrative. Several such other situations can be thought of. It is very difficult, therefore, to accept the contention that became an order under Section 4-A is to be passed in order to give effect to a policy of the government, it is not necessary or useful to provide the lessees, whose leases are about to be terminated, an opportunity of hearing. We, therefore, hold, respectfully following the decision in Ram Kishan case ((1988) 3 SCC 416 : (1988) 3 SCR 1015), that the order passed under Section 4-A dated December 7, 1972 is null and void as it violated the principles of natural justice and was passed without giving an opportunity to the lessees of being heard.

13. The next question is regarding the relief to be granted to the petitioner. Shri Datar submits that in the writ petition the only prayer made by the petitioners is for the quashing of the order dated December 7, 1972 and that no further claim has been made in the writ petition. He submits that if the petitioners are aggrieved because of the premature termination of the leases, it is open to them to file a suit or take other appropriate remedies for obtaining compensation in respect of the unlawful termination. We do not think that this is a fair course to be adopted in this case. The writ petition was filed by the petitioner company as early as in February 1973 and has been pending in this Court for about 17 years. It is true that the petitioner could have filed a suit for the same purpose with a prayer for additional relief by way of compensation or damages. But we do not think that it should now be asked to go back to file a suit for compensation or damages which may be barred by limitation. After the lapse of such a long time, in our opinion, the proper course is to adopt some method for deciding the quantum of relief that could be granted to the petitioner by way of

compensation and damages, which cat at once be simple and expeditious and which will avoid further unnecessary litigation. We think that the request of the learned counsel that the matter may be referred to arbitration is a fair one and indeed this course is also not seriously resisted by the respondents. The short question that remains to be decided is whether the petitioners have suffered any damages as a result of the premature termination of the three leases in their favour either in the shape of loss of profits for the unexpired periods of the leases or in any other material respect. We, however, direct that, having regard to the circumstances of the case, the compensation/damages should be restricted to a period of five years from the date of termination of the leases or up to the date of expiry of the original lease deeds referred to above whichever is less and not for the entire unexpired period of all the leases. We refer this issue to arbitration.

14. Shri Justice S. Natarajan, retired Judge of this Court, is appointed as arbitrator to decide the above issue. The Union of India has promised to place the services of a mining engineer/expert at the disposal of the arbitrator to assist him on the technical aspects of the matter. The name of the nominee should be communicated to the arbitrator within four weeks from today. It will be open to the arbitrator to avail himself of the services of such nominee. Parties may settle the terms of arbitration with the arbitrator. The company and Union of India should, however, deposit Rs. 10,000 each with the arbitrator as soon as the terms are settled to enable him to start the proceedings without delay. The arbitrator may enter upon the reference within four weeks of the date of communication of this order to him. He may make his award within a period of four months thereafter. He will not be obliged to give reasons for his conclusions. A copy of this order may be sent to the learned arbitrator by the Registry. The writ petition is disposed of in the above terms. In the circumstances, we make no order as to costs.

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