

PATNA HIGH COURT

Dey Gupta and Co

Vs

State of Bihar

Misc. Judicial Case No. 582 of 1960

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

11.07.1961

JUDGMENT

V. Choudhary, J.

1. This is a writ application under Article 226 of the Constitution of India. The petitioner is a firm registered at Calcutta under the Indian Partnership Act, and Sri Prabodh Ranjan Das and Sri Pradosh Kumar Dey are its two partners, both being residents of Rajmahal. On the 26th of March, 1959, the petitioner applied to the Government of Bihar for the grant of lease for China clay under the Mineral Concession Rules, 1949 (hereinafter to be referred to as the Rules) in respect of 155 bighas 1 katha 7 dhurs, which included plots Nos. 28 to 30, 32, 34 and 40 in mauza Araji Mokimpore, P.S. Rajmahal and plots Nos. 213 to 216, and 234 and 240 in mauza Saidpur, P.S. Rajmahal. That application was received by the District Mining Officer, Deoghar on the 30th of March, 1959. As no order was passed on the said application till the 17th of February, 1960, the petitioner made an application for review to the Government of India under rule 57 of the Rules, which is still pending before the Central Government, and no order has been made thereon. It is alleged that the Central Government has not been able to dispose of the said review application because the State Government has not submitted the relevant records called for by the Central Government. Respondent No. 2 is a Lady Social Organiser in N.E.S. Block, Taljhari, district Santal parganas. It appears that she also made an application for the grant of mining lease for China clay over an area of 629 bighas 13 kathas 11 dhurs in village Araji Mokimpore, which was received by the District Mining Officer, Deoghar on the 4th of March, 1959. Another application was made on behalf of Messrs. Orissa Cement Ltd., who are not parties to the present application, for the grant, of a prospecting licence for kaolinised sand stone over an area of 1466 bighas 17 kathas 15 dhurs in villages Kasva and others, which was received by the District Mining Officer, Deoghar on the 21st of May, 1957. According to the show-cause petition filed on behalf of the State of Bihar, out of the total area of 155 bighas 1 katha 7 dhurs, as applied for by the petitioner, an area of only 5 bighas 8 kathas 17 dhurs is left in village Kasva

beyond the area applied for by respondent No. 2 and Messrs, Orissa Cement Ltd. It is alleged by the petitioner that about the 18th of July, 1960, it came to know that the State Government was taking steps to grant a lease in favour of respondent No. 2 in respect of the area applied for by her, which, as stated above, included portions of the area applied for by the petitioner, and the petitioner filed an application under Article 226 of the Constitution in this Court, which was numbered as Miscellaneous Judicial Case No. 540 of 1960, but was subsequently withdrawn on the 21st of July, 1960. A notice of this application had been served on the Advocate-General of Bihar on the 18th of July, 1960, as required by the rules of this Court ; and it is said that, during the pendency of that application, on the 20th of July, 1960, the Government of Bihar, by Order No. 4348/M, granted a mining lease for china clay in favour of respondent No. 2 with respect to an area of 167.32 acres including plots Nos. 28, 29, 30, 32, 34 and 40 in mauza Araji Monkimpore, P. S. Rajmahal, and plots Nos. 213, 214, 215, 216 and 234 and 240 in mauza Saidpur, P. S. Rajmahal, which were in the application of the petitioner. The petitioner contends that the State Government had no authority in law to grant a lease in favor of respondent No. 2, and the order of the Government of Bihar is illegal, ultra vires and without jurisdiction. It has, therefore, been prayed that the above order of the Government of Bihar dated the 20th of July, 1960 be quashed.

2. Rule was issued by this Court against the respondents, and cause has been, shown by the learned Government Advocate on behalf of the State of Bihar by filing a counter-affidavit, and it is contended by the learned Government Advocate that, the petition of respondent No. 2 having been filed before the petition filed on behalf of the petitioner, she was entitled in law to be given preference. It has thus been submitted on behalf of the State of Bihar that the writ petition be dismissed.

3. From the facts stated above, it is apparent that the application for grant of a mining lease was made by respondent No. 2 about three weeks before the application for the same was made on behalf of the petitioner. Rule 32 of the Rules lays down that if more than one application regarding the same land is received, preference shall be given to the application received first, unless the State Government, for any special reason, and with the prior approval of the Central Government decides to the contrary. Under this rule, therefore, the State Government was bound to give priority to respondent No. 2 unless it otherwise decided. The petitioner, therefore, can have no reason to complain against the grant of the mining lease in favour of respondent No. 2. It is, however, contended on its behalf that the application of respondent No. 2 must be deemed to have been rejected much earlier, and, therefore, there could not be a grant of mining lease in her favor. In support of this contention, learned Counsel for the petitioner has referred to rules 28(1-A) and 57(2) of the Rules. Rule 27 provides for the making of an application for a mining lease. Rule 28(1-A) states that every application under rule 27 shall be disposed of by the State Government within nine months from the date of receipt of the application. Rule 57(2) reads that where a State Government has failed to dispose of an application for the grant or renewal of a certificate of approval or prospecting license or a mining lease within the period prescribed

therefor in these Rules, such failure shall, for the purpose of these rules, be deemed to be a refusal to grant or renew such certificate, license or lease, as the case may be, and any person aggrieved by such failure may, within two months of the expiry of the period aforesaid, apply to the Central Government for reviewing the case. It is contended that when no order was passed on the application of respondent No. 2 within nine months from the 4th of March, 1959, her application must be deemed, under these rules, to have been refused. It may be noted that it is under these rules that the petitioner filed an application, for review before the Central Government. The State Government had failed to pass any order on its application within nine months from the 30th of March, 1959, and, therefore, on the 17th of February, 1960, it applied for review to the Central Government. The contention put forward is that the application of respondent No. 2 also stood rejected, and the State Government could not legally pass any order thereafter granting a mining lease to her. In my opinion, the argument is based on confusion. No doubt, reading rule 28(1-A) with rule ; 57(2) of the Rules, it is clear that, if the Slate Government fails to dispose of an application for the grant of a mining lease within nine months, it must be deemed to have been refused by it. But this provision is made, in my opinion, only for the purpose of filing a review application before the Central Government, so that an applicant desirous to have a mining lease may not have to wait unnecessarily for a long period without! any order being passed on his application. That, however, does not mean that, after the lapse of nine months from the date of receipt of the application, the State Government ceases to have jurisdiction over the matter so as not to pass any order on any application after the lapse of nine months from the date of its receipt. The expression "deemed to be a refusal" in rule 57(2) is only for the purpose of a review application to be filed before the Central Government, and it is not a part of rule 28(1-A). In this view of the matter, the legality of the order passed by the State Government granting a mining lease to respondent No. 2 cannot be challenged on the above ground.

4. There is yet another difficulty in granting this writ application. The Central Government is in the seisin of the matter, which can even, now grant a lease to the petitioner and cancel the lease of respondent No. 2, if it so thinks proper. So long as the petitioner is seeking its remedy before the Central Government, it is not possible to give any relief to the petitioner under Article 226 of the Constitution.

5. For the reasons given above, it is apparent that there is no merit in this writ application, which must be dismissed with costs. Hearing fee Rs. 150/- (Rupees-one hundred and fifty only).

Ramaswami, C.J.

6. I agree.

Petition dismissed.