

SerajuddIn and Co. Vs. the State of Orissa and ors.

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Court : Kolkata

Decided On : Feb-26-1971

Reported in : AIR1971Cal414

Judge : Anil Kumar Sen, J.

Acts : [Constitution of India](#) - Article 226(1A); ;[Constitution of India](#) (Fifteenth Amendment) Act, 1963; ;Mineral Concession Rules, 1960 - Rules 31 and 54

Appeal No. : Civil Rule No. 2013 (W) of 1967

Appellant : SerajuddIn and Co.

Respondent : The State of Orissa and ors.

Advocate for Def. : Nani Coomar Chakravarty and ;Paritosh Mukharji, Advs.

Advocate for Pet/Ap. : R.C. Deb, Bar-at-Law, ;Dipankar Gupta and ;P.K. Sen, Advs.

Judgement :

ORDER

Anil Kumar Sen, J.

1. In this writ petition the petitioner, Serajuddin & Co., a firm registered under the Indian Partnership Act. 1932, disputes the validity of an order dated September

22, 1967 passed by the Secretary, Department of Mining & Geology, Government of Orissa.

2. In order to appreciate the challenge and the true nature of the order impugned in this writ petition it would be necessary to recount in short the facts which led to the said order. On December 3, 1949 the respondent No. 1, State of Orissa, invited application from the petitioner for grant of a mining lease under the Mineral Concession Rules, 1949 (hereinafter referred to as the said Rules of 1949). Such Rules were framed by the Central Government in exercise of its powers under Section 5 of the Mines & Minerals (Regulation & Development) Act, 1948 (Act 53 of 1948) (hereinafter referred to as the Act of 1948). Both the Act and the Rules were subsequently replaced by new ones viz.. Mines & Minerals (Regulation & Development) Act, 1957 (67 of 1957) and the Mineral Concession Rules, 1960.

3. In response to the said application on December 6, 1949 the petitioner applied for grant of a mining lease in respect of 93 and odd acres of land in village Gurda, P.S. Chamakpur. District-Keonjhar in the State of Orissa. The area on final assessment is found to be 99 acres but nothing turns on the difference in the area. The application of the petitioner along with that of others was considered by respondent No. 1 and by an order dated May 16, 1955 the said respondent directed granting of the mining lease in respect of the said area in favour of the petitioner. This grant was made subject to the conditions which the State Government would propose to incorporate in the lease deed of which the petitioner would be apprised being accepted by him.

4. In furtherance of the aforesaid grant on the very same date the said respondent offered to deliver possession to the petitioner on yearly licence for immediate commencement of the work on its accepting certain terms and conditions set out therein. The petitioner having accepted the said offer, the respondent No. 1 on July 27, 1955 directed possession of the said land to be made over to the petitioner with working permission for a year and with a promise to renew the permission from year to year till finalisation of the lease deed. Such possession was actually delivered on August 13, 1955. It appears that for three years no steps were taken on behalf of the respondent No. 1 for execution of a formal mining

lease in accordance with the provisions of the said Rules of 1948 although representations therefore were made from time to time on behalf of the petitioner, some of which had been disclosed in the present writ petition as annexure G series. It is only on July 26, 1958 that the respondent No. 1 sent a draft lease to the petitioner for the purpose of executing a formal lease. The petitioner on August 22, 1958 sent back the draft with requisite modification to the Collector of Keonjhar for the final approval on behalf of the respondents. It appears that a formal date for execution of the document was thereafter fixed on behalf of the Collector and the petitioner on more occasion that one had the date for execution extended. At this stage on October 25, 1958 the petitioner made a representation to the respondents suggesting that an additional clause be incorporated into the lease deed to safeguard certain rights of the lessee brought in by the amended provisions of Rule 41 (1) (ii) of the said Rules of 1949. It appears that the matter again was lost sight of and the Collector even lost the requisite file. The petitioner however continued to make representations and send reminders to the respondent No. 1 or the Collector demanding a decision from the respondents on its suggestion to incorporate a new clause in the lease deed in consonance with Rule 41 (1) (ii) of the said Rules of 1949. In the meantime some dispute also arose between the parties over payment of royalties. While, according to the respondents, the petitioner fell heavily into arrears in the matter of payment of royalty, the petitioner denied the liability.

5. In the background of the aforesaid circumstances on April 4, 1962 the respondent No. 1 revoked the grant originally made on May 16, 1955 on the ground that the petitioner failed to execute the lease though called upon to do so. The said order was communicated to the petitioner by a memo dated April 11, 1962 issued by the Collector, Keonjhar and this memo reads as hereunder.

'Sub:-- Grant of mining lease for Manganese Ore over 99 acres in Gurda Village.

Dear Sir,

You were allowed to execute the mining lease referred to above in this office letter No. M-1650 dated 20-8-58. As you failed to execute the same so long Government has been pleased to revoke the order in which the mining lease was granted in

your favour.

You are therefore requested to stop working of the said mine at once on receipt of this order and quit possession forthwith.

Yours faithfully

Sd/- G. N. Das.

Collector, Keonjhar.'

Against this order as communicated by the Memo dated April 11, 1962 the petitioner preferred a revision petition under Rule 54 of the Mineral Concession Rules, 1960 which had in the meantime superseded the said Rules of 1949. The Central Government rejected the revision petition and affirmed the original order of revocation. This order of the Central Government was communicated to the petitioner by a memo dated August 6, 1965.

6. It is not disputed that pending revision before the Central Government on April 28, 1962 the Collector, Keonjhar addressed a memo to the petitioner intimating as follows:--

'Ref:-- This office memo No. 925 (3) dated 11-4-62 and No. 984, dated 20-4-62.

Sir,

In connection with the above, Messrs. Serajuddin & Co. are allowed to resume mining operation in respect of 99 acres (Gurda Block) area until further order
...'

On the basis of the said order the petitioner continued its mining operation as before until September 22, 1967 when he was served with another order which is the subject-matter of challenge in this writ petition. This order is set out hereunder.

'GOVERNMENT OF ORISSA,

MINING AND GEOLOGY DEPARTMENT

No. III (A)M-1/67~5201/MG

Bhubaneswar,

the 22-9-67.

NOTICE

To,

M/s. Serajuddin & Co., Mine Owners and Exporters,

P-16, Bentinck Street,

Calcutta-1.

Whereas you M/s. Serajuddin & Co., were allowed to execute a Mining Lease for Manganese Ore over an area of 99 acres in Gurda area of Keonjhar district;

Whereas you failed to execute the said lease till April, 1962 and the orders of grant were revoked by the State Government and you were asked to stop working of the mines and quit possession immediately by the Collector Keonjhar, in his letter No. 924 dated 11-4-62 which was received by you in time;

Whereas you filed a revision petition on 18-4-62 against the said orders of revocation passed by the State Government and the Central Government in their letter No. MV-1 (122)/62, dated 6-8-65 rejected the same.

Whereas you are in unauthorised possession of the area of 99 acres in Gurda and working the mines therein without a valid lease or order;

Now, therefore you are hereby directed to stop working and quit possession of the area within a period of thirty days from the date of receipt of this notice failing which action will be taken as deemed proper.

By order of the Governor

Sd/- Illegible,

SECRETARY TO GOVERNMENT.'

7. In the writ petition the petitioner has limited its challenge to the aforesaid order dated September 22, 1967 and the prayer is also limited to one for having the said order set aside by this Court by an appropriate writ though in the grounds the revocation has been challenged as void in support of the claim in the petition. Neither the order of revocation dated April 4, 1962 nor the order of the Central Government passed in revision as referred to in the memo dated August 6, 1965 is being challenged in this writ petition. Mr. Deb appearing on behalf of the petitioner in support of this writ petition has raised several points which I shall have occasion to refer hereinafter while I deal with points so raised individually.

8. The respondents 1 and 2 are appearing to contest this Rule. An affidavit was filed on their behalf on February 4, 1969. Broad facts set out hereinbefore are not in dispute between the parties though there has been some dispute as to the true implication or effect of some of the orders and or the communications referred to hereinbefore. Mr. Chakraborty has contested each of the points raised by Mr. Deb in support of this Rule and has in his turn further raised two objections to the maintainability of the writ petition as framed. In the first place, Mr. Chakraborty has contended that as all the respondents have their offices and are located beyond the territorial jurisdiction of this Court, this Court has no jurisdiction to entertain the present writ petition. Secondly Mr. Chakraborty has contended that it is not open to the petitioner to challenge the consequential order like the one impugned in the present petition which is nothing but a notice to quit when neither the revocation nor the order passed in revision affirming the same had been challenged. In my view, the second objection raised by Mr. Chakraborty can properly be gone into while considering the merits and accordingly I reserve consideration of this objection until I consider the case of the petitioner on its merits.

9. But it would be necessary at this stage to dispose of the first preliminary objection raised by Mr. Chakraborty. The said objection is founded on the decision of D. Basu, J. In the case of Samarendra Nath Roy v. State of West Bengal, (1967) 71 Cal WN 592. It is no doubt true that the said decision amply supports the contention raised by Mr. Chakraborty but the said decision now stands

overruled on appeal in FMA 497 and 363 of 1967 by a Bench decision dated 30-4-1970. On the interpretation of Article 226(1A) of the Constitution as put by the Court of Appeal if a part of the cause of action arises within the jurisdiction of this Court, this Court acquires jurisdiction to issue a writ against the respondents even though they are not residing in or located within the territories over which this Court exercises its jurisdiction. In other words the initial limitation imposed on the exercise of jurisdiction under Article 226 of the Constitution by a High Court has been done away with by the Fifteenth Amendment of 1963 to the extent and in respect of cases where the cause of action in part or in whole arises within jurisdiction of the said Court. Here in the present case it is not disputed) by the respondents that all the effective orders including the impugned order dated September 22, 1967 had been served on the petitioner at its Calcutta address at P-16, Bentinck Street, Calcutta-1 and on such service a part of the cause of action arises within the territorial limits of this Court so that by virtue of the amendment incorporated by Article 226(1A), this Court acquires jurisdiction to entertain a writ petition on such a dispute notwithstanding the fact that all the respondents are located beyond its jurisdiction. The same view was taken under the very same circumstances by B. C. Mitra. J. In the case of Rohtas Industries v. Union of India. C. R. No. 5957 (W) of 1968, D/- 30-9-1969 (Cal). In this view the first objection raised by Mr. Chakraborty as to the maintainability of the present writ petition is overruled.

9A. Now I proceed to consider the petitioner's challenge on its merits and along therewith the other objection raised by Mr. Chakraborty. Mr. Deb has first contended that there exists no order of revocation apart from the impugned order dated September 22, 1967 so that when it refers to a revocation by the State Government it refers to a non-existent order. Incidentally, Mr. Deb also contends that if the impugned order itself be treated as an order of revocation it is ex facie illegal as it was passed ex parte without affording any opportunity to the petitioner to show cause. I am however unable to construe the impugned order dated September 22, 1967 to be an order of revocation by the State Government so that it should be struck down on a ground as contended for by Mr. Deb. It is equally difficult for me to accept the contention of Mr. Deb that there exists no order of revocation and as such the impugned order should be condemned as one based

on non-existent grounds. I cannot ignore the existence of an order of revocation dated April 4, 1962 which has been disclosed in the supplementary affidavit filed on behalf of the respondents. The existence of such an order was also asserted in the original affidavit-in-opposition filed on behalf of the respondent and reference thereof can be had from the documents disclosed by the petitioner. Mr. Deb however contends that when the said order of revocation itself was never served on the petitioner nor annexed to the original affidavit-in-opposition its existence should be ignored by this Court on the principle that an order which is not communicated or which is not disclosed is no order in law. Mr. Deb has drawn my attention to the provisions of Rule 54 of the Mineral Concession Rules, 1960 as also the Standard Form N annexed to the said Rules to show that it was necessary for the respondents to communicate the order in order to make the order effective in law. Reliance is also placed on the observations of the Supreme Court in the case of Bachitar Singh v. State of Punjab, : AIR 1963 SC395 . in my view the decision of the Supreme Court in the case of Bachitar Singh cannot be stretched to such an extent as to support Mr. Deb's challenge to the order of revocation in the present case on the particular facts and circumstances thereof. in the said case the Supreme Court clearly found that the administrative authorities had not come to the final decision, no formal order was at all drawn up or communicated and it is only on such findings the Supreme Court came to the conclusion that there existed no effective order in law. But in the present case it is not disputed by the petitioner that he was served with a memo dated April 11, 1962 by the Collector, Keonjhar informing the petitioner that the State Government had revoked the grant on the ground that the petitioner had failed to execute the lease. Obviously the petitioner was informed of the order passed by the State Government under Rule 31 of the Mineral Concession Rules, 1960. in the absence of any statutory provision laying down any particular mode of communication I am of the view that there is no reason why a communication like the one dated April 11, 1962 incorporating the substance of the order should not be treated as communication thereof. Mr. Deb also drew my attention to the observations of the Supreme Court in the case of Mahabir Prasad v. State of U. P., : [1971]1SCR201 (paragraph 9 thereof) in contending that I should ignore the order as disclosed in the supplementary affidavit as the same was not served earlier at any point of time

on the petitioner. It is no doubt true that it is always desirable that in these cases actual orders should be served on persons grants in whose favour are being revoked inasmuch as they have a right of revision against the order but I am unable to find any authority in the decision of the Supreme Court in the case of Mahabir Prasad which would entitle me to hold that notwithstanding the communication dated April 11, 1962 I should treat the order of revocation to be non-existent. In Mahabir Prasad's case the Supreme Court only rejected an offer made by the respondents to disclose certain orders which were never disclosed in the proceedings before the High Court and which were never served earlier on the petitioner. The facts in the present case are widely different.

10. Incidentally Mr. Deb suggested that even if there had been an order of revocation such order should itself be deemed to have been revoked by the order dated April 28, 1962. It is not possible to accept this suggestion firstly because the order dated April 28, 1962 never purported to do so nor was it possible for the Collector to revoke an order passed by the State Government. The said order was passed by the Collector and it was simply an order suspending withholding of working permission which he had earlier directed while communicating the revocation order of the State Government. Obviously such suspension was made in view of the revision petition then pending before the Central Government. In this view the first objection raised by Mr. Deb fails and is overruled.

11. Mr. Deb next contends that even if there exists an order dated April 4, 1962 revoking the original grant in favour of the petitioner such revocation, having been made without any opportunity to the petitioner to show cause must be held to be violative of the principles of natural justice and as such is a nullity. Accordingly, Mr. Deb contends that this Court should ignore the existence of such a void order like the one dated April 4, 1962 and set aside the order, dated September 22, 1967 based on such a void order. To support this contention Mr. Deb has submitted that the initial grant dated May 16, 1955 as read along with subsequent orders dated May 16, 1955 and July 27, 1955 must be interpreted to create a lease in favour of the petitioner. Reference has been made to the provisions of Section 2 of the Government Grants Act (Act 15 of 1895) to support this submission. Reliance is also placed on certain decisions wherein it has been laid down that

notwithstanding the provisions of the Transfer of Property Act and the Registration Act such grants without registration and without fulfilment of the requirements of the Transfer of Property Act can confer legal title upon the grantees. This part of the contention of Mr. Deb has been contested by Mr. Chakraborty on the ground that under the provisions of Mines and Mineral (Regulation & Development) Act, 1948 and the Rules framed thereunder and particularly in view of Section 13 of the said Act there can be no effective mining lease even by the Government without formal execution of a lease deed as enjoined by the statute and the Rules framed thereunder. In my view it is not necessary to enter into or decide this controversial issue as it is not necessary to find out what was the true nature of right, title or interest which accrued as a result of such a grant or whether the grant amounted to a lease or not. I am however in agreement with Mr. Deb that a grant made under Rule 28 of the Mineral Concession Rules, 1949 at least confers a legal right on the grantee to have a mining lease executed on his fulfilling the other obligations. This itself is a valuable right which grantee loses if the grant is revoked. Reference may be made to the decision of the Supreme Court in the case of Gujarat Pottery Works Private Ltd. v. B. P. Sood, : [1967]1SCR695 (para. 7). Such being the position revocation necessarily entails deprivation of such rights of the grantee. Furthermore under Rule 31 of the Mineral Concession Rules, 1960--in purported exercise of which powers the revocation had been made---the revocation could be made only on the existence of certain facts that is default on the part of the grantee. Therefore an objective determination was called for and it was necessary for the respondents to give reasonable opportunity to the grantee to show cause why the grant should not be revoked. This principle, in my view, is now well settled in view of a number of decisions by the Supreme Court. Reference may be made to the cases of Sivaji Nathu Bhai v. Union of India, : [1960]2SCR775 , Purtabpur Company v. Cane Commissioner, : [1969]2SCR807 , A. R. Kraipak v. Union of India, : [1970]1SCR457 and State of Orissa v. Bina Pani Dei, : (1967)1ILLJ266SC . Admittedly in the present case the revocation was made without giving any opportunity to the petitioner to show cause why such revocation should not be made. On the facts set out hereinbefore this Court entertains reasonable doubt as to whether the petitioner can be said to be really in default which alone could entitle the State Government to revoke the grant if power is to be exercised under

Rule 31 of the Mineral Concession Rules, 1960 as done in the present case. This being the position on facts the order of revocation dated April 4, 1962 must be deemed to be violative of principles of natural Justice and Mr. Deb would accordingly be justified in contending that such an order should be treated as a nullity. Strong reliance has been placed by Mr. Deb on the decision of the Supreme Court in the case of Ram Swarup v. Shikar Chand, : [1966]2SCR553 (para. 13) and the observations of Lord Denning in the case of Macfoy v. United Africa Co, Ltd., (1961) 3 All ER 1169 at p. 1172.

12. Though Mr. Deb succeeds in his contention that the initial order of revocation dated April 4, 1962 as passed by the State Government is void, still the petitioner has a serious Impediment in obtaining any relief on the present writ petition. That impediment lies in the fact that it a not challenging the order passed in revision by the Central Government under Rule 54 of the Mineral Concession Rules, 1960 nor has it sought for any relief as against the said order. According to Mr. Chakraborty this order has become now final and binding on the petitioner and furthermore when the original order has now merged in this final order the petitioner is not entitled to get any relief unless it seeks and gets appropriate relief from this Court setting aside the said order of the Central Government. In my view, there is great substance in this contention of Mr. Chakraborty and the decision of the Supreme Court relied on by him truly supports this contention. Reference has been made to the decision of the Supreme Court in the case of Madan Gopal Rangta v. Secy, to the Govt. of Orissa. : AIR 1962 SC1513 . In that case the petitioner challenged an order of the State Government rejecting his application for grant of a mining lease as also an order passed by the Central Government on review of the said order under Rule 57 of the Mineral Concession Rules, 1949. It being a case prior to the Fifteenth Amendment of the Constitution incorporating Article 226(1A). the Orissa High Court took the view that It had no jurisdiction to deal with the matter as the final order in the case had been passed by the Central Government which was located beyond the territorial jurisdiction of the High Court. The matter having gone on appeal to the Supreme Court, the Supreme Court upheld the decision of the Orissa High Court. In so doing the Supreme Court held that the Orissa High Court could not have set aside the order of the State Government refusing the mining lease when the said order had merged into the order of the Central Government

passed on review. That such initial orders merge into the revisional or review orders like the appellate orders is reaffirmed by the Supreme Court in a still later decision in the case of Sankar v. Krishna, : [1970]1SCR322 . This being the position I am of the view that the order of revocation had now merged into the order passed by the Central Government in revision and when the petitioner is not challenging the said order and is not seeking any relief to have the same set, aside, he cannot challenge the original order of revocation or the consequential orders like the one dated September 22, 1967 which is impugned in the present writ petition. It may be true that on the finding of this Court the order of revocation is void, but it was open to the petitioner to contend as such and to the Central Government to hold as such in the revision against such an order. On the order of the Central Government this plea stands overruled by necessary implication and such order is now final and binding on the petitioner.

13. Mr. Deb tried to meet this contention of Mr. Chakraborty by first contending that the revision was not directed against the order of revocation but the same was directed against the order dated April 11, 1962 by the Collector withholding working permission and as such the order passed by the Central Government in such revision would not stand in the way of the petitioner getting appropriate relief in the present writ petition. For twofold reasons I am unable to accept this contention of Mr. Deb. In the first place on a proper reading of the revision petition, a copy whereof has been exhibited in the present proceedings, I have no manner of doubt that the revision was directed not against any order withholding working permission but was directed against revocation itself which was communicated to the petitioner by the memo dated April 11, 1962. Secondly if we look to the provisions of Rule 54 of the Mineral Concession Rules, 1960, it would appear clear that there could have been no revision against an order of the Collector withholding working permission in consequence to revocation of a grant. Under the said provision revision lies against any order made by the State Government or other authorities in exercise of powers conferred on it by the Act or the Rules. The order of the Collector, if it is read as one merely withholding working permission as suggested by Mr. Deb, no revision lies against such an order as it is not one passed by the Collector in exercise of any power conferred by the Act or the Rules. Petitioner was also quite aware of this position and accordingly read the

communication of the Collector not as an order of the Collector but as a communication of the revocation order by the State Government and preferred the revision petition accordingly.

14. Mr. Deb next contended that there can be no absolute principle laid down that in every case the initial order should merge in appellate or revisional orders. He tried to distinguish the decision of the Supreme Court in the case of Madan Gopal Rangta, : AIR 1962 SC1513 by pointing out that there the review was preferred under Rule 57 of the Mineral Concession Rules, 1949 and it was only because of the provisions of Rule 60 of the said Rules that the Supreme Court took the view that the Initial order refusing the grant merged into the review order passed by the Central Government. According to Mr. Deb there being no similar provision in the present Mineral Concession Rules, 1960 like the one as in Rule 60 of the Old Rules, this Court should not accept the contention raised on behalf of the respondents that there had been a complete merger of the order of revocation into the order passed by the Central Government in revision. Reliance is placed by Mr. Deb on the decision of the Supreme Court in the case of State of Madras v. Madurai Mills, : [1967]1SCR732 . I am however unable to read the decision of the Supreme Court in the case of Madan Gopal, : AIR 1962 SC1513 in the manner suggested by Mr. Deb and hold that the Supreme Court proceeded to hold that there had been a merger of the order of refusal by the State Government into the review order passed by the Central Government only because of the provisions of Rule 60 of the Mineral Concession Rules, 1949. As I read the said decision in paragraph 6 of the reports as in the All India Reporter I find Supreme Court held that the appellants' application for grant being rejected by the State Government a review was preferred before the Central Government and when the Central Government rejected the review application the order of the Central Government must be read to mean in effect rejecting the application for the grant by the Central Government too. The Supreme Court referred to the provisions of the Rule 60 only to lend support to their conclusion otherwise arrived at that in such cases the initial order merges into the review order. I may agree with Mr. Deb that there may not be any scope for a too rigid application of this Rule but whether application of such Rule is called for or not is to be decided in each case on the statutory provisions and on the nature and extent of the powers exercised by the respective

authorities. in the Madras case relied on by Mr. Deb the Supreme Court refused to invoke the doctrine of merger as on facts the Supreme Court had found that that part of the order of the Commercial Tax Officer impugned in the proceedings leading to the appeal to the Supreme Court was not the subject-matter of any revision before the Deputy Commissioner of Commercial Taxes. But in the present case the order passed by the State Government under Rule 31 of the Mineral Concession Rules, 1960 is subject to revision by the Central Government under Rule 54, therefor. It would therefore not be unreasonable to hold that the order which is to be passed by the Central Government must prevail over the order passed by the State Government. If it is to so prevail It would naturally call for an application of the principle that the order of the State Government merges into the order passed on revision. On the facts too there can be no doubt that when the petitioner challenged the order of revocation by the State Government in his revision petition before the Central Government and when the Central Government rejected the revision petition it must be deemed to have also itself revoked the grant. Incidentally, Mr. Deb had drawn my attention to another decision of the Supreme Court in the case of Bhagat Raja v. Union of India, : [1967]3SCR302 where the Supreme Court set aside an order passed in exercise of powers under Rule 54 of the Mineral Concession Rules, 1960 which was same on its terms as in the present case. The said decision might have been of great assistance to Mr. Deb if he had challenged the order of the Central Government but that not having been done I am unable to hold that the said decision can be of any help to him. In this view the present writ petition should fail on the ground that the order of revocation having now merged into the order of the Central Government the validity whereof is in no way under challenge in this proceeding, the petitioner is not entitled to seek any relief in respect of the consequential order dated September 22, 1967 thereto.

15. There is one other difficulty in the way of the petitioner getting any relief from this Court on the present writ petition. It is not disputed that the petitioner's original application for grant of a mining lease was made and disposed of under the provisions of the Mineral Concession Rules, 1949. The grant was made on December 6, 1949. Under the provisions of Rule 28A as incorporated in the said Rules with effect from February 22, 1953 if the formal lease is not executed within

six months of the order sanctioning the lease the order stands revoked under the provisions of the statutory Rule itself. No doubt under the proviso to the said Rule the State Government was still authorised to execute the formal lease if it was satisfied that the applicant for the lease was not responsible for the delay. In my view, admittedly the formal lease not having been executed within six months from the grant or six months from the date when the aforesaid provision was Incorporated into the Rules, the grant dated May 16, 1955 stood revoked by the operation of law so that the foundation of the petitioner's claim in the present writ petition -- based as it is on the grant --falls through. It is true that in spite of such statutory revocation the State Government was carrying on correspondence with the petitioner since 1958 for the purpose of having a formal lease executed but that can be explained because of the fact that under the proviso the said Government had still the authority to execute a formal lease if it was satisfied that the delay was not due to the petitioner. Mr. Deb however is right in his contention that such statutory revocation is wholly Inconsistent with the respondent No. 1's exercising powers under Rule 31 of the Mineral Concession Rules, 1960 because, according to him, if the grant stood revoked under the law there was nothing for the State Government to revoke. Mr. Deb has therefore contended that this Court must assume that the respondent No. 1 treated the grant to be one as made under the corresponding provision of the Mineral Concession Rules, 1960. The application for the grant stood disposed of by the order dated May 16, 1958 when the Mineral Concession Rules, 1960 came into force what remained pending was the proceedings for execution of the formal deed. So I am unable to find any legal sanction to support this contention of Mr. Deb. I, however, agree with Mr. Deb that because of the provisions of Rule 28A of the Mineral Concession Rules, 1949 there was no scope for the State Government to revoke the grant under Rule 31 of the Mineral Concession Rules, 1960. At best this may be taken to be an erroneous act on the part of the State Government, but that confers no legal right on the petitioner when the grant itself stood revoked by the operation of law.

In the conclusion I should record that Mr. Deb appearing in support of this Rule had tried to challenge the order of the State Government revoking the grant on the ground that such revocation was not competently made under the Rules of Business framed under Article 166 of the Constitution but I propose not to deal

with this point firstly because such a case had not been made in the pleadings and secondly because it is not necessary to decide it inasmuch as if it was open to this Court to enter into the validity or otherwise of the order of the State Government, It would have held the order to be void on a still more fundamental objection raised by Mr. Deb and upheld on my findings made hereinbefore to the effect that such an order was passed in breach of fundamental principles of natural justice.

On the conclusions as above this writ petition falls and the Rule is discharged. There will be no order for costs in this Rule.

Let the operation of this order be stayed for a month.

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