Madhya Pradesh Industries Ltd vs Union Of India And Others on 16 August, 1965

Equivalent citations: 1966 AIR 671, 1966 SCR (1) 466, AIR 1966 SUPREME COURT 671, 1966 (1) SCWR 272, 1966 SCD 342, 1966 MAH LJ 249, 1966 MPLJ 256, 1966 (1) SCR 466, 1966 (1) SCJ 204

Bench: J.R. Mudholkar, R.S. Bachawat

PETITIONER:
MADHYA PRADESH INDUSTRIES LTD.

Vs.

RESPONDENT:
UNION OF INDIA AND OTHERS

DATE OF JUDGMENT:
16/08/1965

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
MUDHOLKAR, J.R.
BACHAWAT, R.S.

CITATION:
1966 AIR 671 1966 SCR (1) 466
CITATOR INFO :

RF	1966 SC1922	(5)
R	1967 SC1606	(8,13,18,24)
F	1970 SC1302	(6)
O	1971 SC 862	(8,9)
AFR	1977 SC 567	(21,24,25)
R	1984 SC1361	(28)
F	1985 SC1121	(5)
R	1986 SC1173	(8)
R	1986 SC2105	(17)
RF	1990 SC1984	(23,26)

ACT:
Mines and Minerals (Regulation and Development) Act (67 of 1957), S. 17 and Mineral Concession Rules, r. 55-Revisional Jurisdiction of Central Government--obligation to give reasons and personal hearing.
Constitution of India, 1950, Art. 136-Discretionary jurisdiction.

HEADNOTE:
In 1959 on the application of the appellant for a mining lease in an area the then Government of Bombay made an order granting the entire area of the mines to the appellant; but in 1960, the State of Bombay having been divided into the States of Maharashtra and Gujarat, the Government of Maharashtra, in which State the mines fell, reserved the mines for exploitation in the public sector and informed the appellant that its application for a mining lease was rejected. The appellant's revision application under r. 55 of the Mineral Concession Rules, was rejected by the Central Government. Thereafter, the State Government changed its mind and again called for applications for the grant of a mining lease, and the appellant submitted its application. Meanwhile, the appellant filed an appeal under Art. 136 of the Constitution, to this Court, against the order of the Central Government dismissing its revision application.
In the appeal, the respondent urged that since the appellant had submitted a fresh application, it was not a fit case for the exercise of the jurisdiction of the Court under Art. 136, and the appellant contended that the order of the Central Government was bad because : (i) the mines could not be placed in the public sector without complying with the provisions of s. 17 of the Mines and Mineral (Regulation and Development) Act, 1957; (ii) the Central Government ignored the final order of the Government of Bombay granting the lease of the mines to the appellant; (iii) no personal hearing was given to the appellant; and (iv) no reasons were given in the order.
HELD (By Full Court) : (i) The appellant having taken the opportunity to apply for the lease, it was not a fit case for interference under Art. 136. [475 B, C]
(ii) Section 17 has no bearing on the question at issue, as it has nothing to do with public or private sectors. [474 E-F; 475 C-D]
(iii) The order of the Government of Bombay, was only a recommendation to the Central Government for the grant of a mining lease to the appellant. [474 D; 475 D]
(iv) The appellant was not entitled to a. personal hearing before the Central Government. [473 F; 475 C-D]
Per Subba Rao. J.-Rule 55, requires a reasonable opportunity to be given to the applicant. But the opportunity need not necessarily be by personal bearing, even if it was asked for. It could be by written repre-sentation. It depends on the facts of each case and is ordinarily in the discretion of the tribunal. [473 G-H]
467
(v) Per Mudholkar and Bachawat, JJ.The revision application was rejected by the Central Government because it agreed with the reasons given by the Government of Maharashtra, for refusing the appellant's application for a mining lease.

The Central Government acting under r. 55, was therefore not bound to give in its order, fuller reasons for rejecting the application. [476 B]

Per Subba Rao, J. (Contra) : Neither the State Government's nor the Central Government's order disclosed reasons for rejecting the appellant's application, and therefore the Central Government's order was vitiated. [473 E]

The Central Government was acting judicially as a tribunal, under r. 55, and so its decision was subject to an appeal to the Supreme Court under Art. 136. Therefore, it should give reasons for its order. If tribunals can make orders without giving reasons, it may lead to abuse of power in the hands of unscrupulous or dishonest officers. But, if reasons are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order at its best will be reasonable and at its worst plausible. But, the extent, and nature of the reasons depend upon each case. What is essential is that reasons & hall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. [471 D; 472 E-G; 473 C-D]

Harinagar Sugar Mills Ltd., v Shyam Sunder Jhunjhunwala, [1962] 2 S.C.R. 339, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 464 of 1965. Appeal by special leave from the order dated October 17, 1964, of the Government of India, Ministry of Steel and Mines, Department of Mines and Metals on an application under Rule 54 of the Mineral Concession Rules 1960. G. S. Pathak, S. N. Andley, Rameshwar Nath, for the appellant.

S. V. Gupte, Solicitor-General, R. N. Sachthey and B.R.G.K. Achar, for the respondents.

Subba Rao, J. delivered a separate Opinion. The Judgment of Mudholkar and Bachawat, JJ. was delivered by Bachawat, J. Subba Rao, J. This appeal by special leave is directed against the order of the Government of India rejecting the revision filed by the appellant against the order of the Government of Maharashtra.

The appellant, the Madhya Pradesh Industries Ltd., is a public limited company engaged in mining manganese ore. On February 5, 1941, one Rai Bahadur Bansilal Abirchand took a lease of a land of extent 216 acres and 92 cents in the Government Forest, East Pench Range, in the Tahsil of Ramtek in the District of Nagpur, from the Governor of Central Provinces and Berar for a term of 15 years commencing from September 10, 1940. Under an indenture dated March 4, 1952, the appellant obtained a transfer of the said leasehold interest from the successors in interest of the said Bansilal Abirchand. After the transfer, the appellant entered into possession of the said extent of land and is alleged to have spent about Rs. 10,00,000 for the purpose of developing the area to carry out the

mining operation. The said lease was to expire on September 9, 1955. On the expiry of the said lease the appellant applied for the renewal of the lease for a further period of 20 years to the appropriate authority, namely, the Secretary to Government, Commerce and Industries Department, Madhya Pradesh, Nagpur. After a protracted correspondence covering a period of about 3 years, the offer on special duty, Industries and Co-operation Department, State of Bombay, informed the appellant by letter dated September 2, 1958, that the said renewal could not be granted. The appellant filed a revision against that order to the Central Government, but that was dismissed on December 14, 1958. On April 9, 1959, the State of Bombay issued a notification calling for applications from the public in respect of the least of the said mines. On May 15, 1959, the appellant filed an application for the grant of a lease for a period of 20 years in respect of the said mines. Presumably others also filed similar applications. On July 8, 1959, the Government of Bombay made an order

-ranting the entire area of the said mines to the appellant and by letter dated July 14, 1959, informed him of the same. During the year 1960 the territories forming part of the State of Bombay were divided and the State of Maharashtra and the State of Gujarat came into being and the said mines fell in the Maharashtra State. On August 25, 1960, the Maharashtra Government issued a notification for the information of the public that the said mines were reserved for the exploitation of minerals in the public sector. Thereafter on January 16, 1961, the Collector of Nagpur informed the appellant that its application for the],ease of the mines was rejected as the mines in question fell in a block reserved for State exploitation. On March 11, 1961, the appellant filed a revision to the Central Government against the said order. On June 22, 1961, the Central Government informed the appellant that instructions had been issued to the Government of Maharashtra, Industries and Labour Department, Bombay, for reconsidering its application and, therefore, it might pursue the matter with the said Government. Accordingly, the appellant took up the matter with the Maharashtra Government. By letter dated December 19, 1961, the Government of Maharashtra informed the appellant that its application for the mining lease had been rejected. Thereafter, the appellant on or about February 17, 1962, filed a revision application before the Central Government against the said order of the Government of Maharashtra. On October 17, 1964, the Central Government rejected the revision application. It is stated in the counter-affidavit filed by the Central Government that subsequently the Government of Maharashtra, after obtaining the consent of the Central Government, had issued a notification dated March 26, 1965, inviting applications from the public for the grant of mineral concessions in the said area. It is also stated therein that the appellant has submitted its application for the -rant of mining lease in respect of the said area in response to the said notification. This is not disputed. The appellant filed the present appeal against the order of the Central Government dated October 17, 1964, dismissing its revision petition against the order of the Government of Maharashtra. To that appeal, the Central Government is made the first respondent; the Under Secretary to the Government of India in the Ministry of Steel and Mines, who made the said order, the second respondent-, and the State of Maharashtra, the third respondent. Mr. Pathak, learned counsel for the appellant raised before us the following points: (1) The order passed by the Central Government is bad, because, though it is a judicial order, no reasons are given for rejecting the revision of the appellant. (2) The order is bad also because it has not complied with the principles of natural justice, namely, (i) though the appellant requested for a personal hearing, it was not acceded to; and (ii) the Central Government had taken into consideration extraneous matters without giving an opportunity to the appellant to explain them.

(3) The order of the Central Government is illegal, because it ignored the final order made by the State Government granting the lease of the mines to the appellant and also because it should have held that the Central Government could not place the mines, in the public sector without complying with the provisions of s. 17 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act 67 of 1957), hereinafter called the Act.

The learned Solicitor General, while controverting the legality of the said contentions, points out that this is not a fit case for the exercise of the discretionary jurisdiction of this Court under Art. 136 of the Constitution inasmuch as the Maharashtra Government has now called for fresh applications for the granting of licence in respect of the said mines and the appellant, along with others. has put in its application to the said Government.

To appreciate the first point it will be convenient at the outset to read the relevant provisions of the Act and the Rules made thereunder. Under s. 5 of the Act, no mining lease shall be granted by a State Government to any person unless he satisfied the conditions laid down therein. Under s. 8(2) thereof, no mining lease can be granted in respect of manganese ore, among ,others, without the previous approval of the Central Government. Section 10 prescribes that an application for a mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed manner. Section 30 confers on the Central Government power to revise any order of the State Government either on an application made by an aggrieved party or suo motu. In supersession of the earlier rules, the Central Government, in exercise of the powers conferred on it by s. 13 of the Act, made rules for carrying out the purpose of the Act. Chapter IV of the Rules provides for the grant of mining leases in respect of land in which the minerals belong to Government and also the manner of disposal of applications for a mining lease or for the renewal of mining lease by the State Government. Rule 26 says 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 to the person against whom such order is passed. Under r. 54, any person aggrieved by any order made by the State Government may within two months from the date of tile communication of the order to him apply to the Central Government for the revision of the order. A court- fee is prescribed for the said revision. Rule 55., which is the crucial rule, reads "Where a petition. for revision is made to the Central Government under rule 54, it may call for the record of the case from the State Government, and after considering any comments made on the petition by the State Government or other authority, as the case may be, 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 :

> Provided that no order shall be passed against an applicant unless be has been given an opportunity to make his representations against the comments, if any. received from the State Government or other authority." A perusal of the said provisions makes it abundantly clear that the State Government exercising its powers under the Act and the Rules made thereunder deals with matters involving great stakes; presumably for the said reason, the Central Government is constituted as an authority to revise the order of the State Government. Rules 54 and 55 lay down the procedure for filing a revision against the order of the State Government and the

manner of its disposal. Under r. 54, a revision application has to be filed with the prescribed court-fee; and under r. 55, the Central Government, after calling for the records from the State Government and after considering any comments made on the petition by the State Government or other authority, as the case may be, may make an appropriate order therein. The proviso expressly says that no order shall be made unless the petitioner has been given an opportunity to make his representations against the said comments. The entire scheme of the rules posits a judicial procedure and the Central Government is constituted as a tribunal to dispose of the said revision. Indeed, this Court in Shivji Nathubhai v. The Union of India(1) ruled that the Central Government, exercising its power of review under r. 54 of the Mineral Concession Rules, 1949, was acting judicially as a tribunal. The new rule, if at all, is clearer in that regard and emphasizes the judicial character of the proceeding. If it was a tribunal, this Court under Art. 136 of the Constitution can entertain an appeal against the order of the Central Government made in exercise of its revisional powers under r. 55 of the Rules. This Court in a later decision in M/S. Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala(2) went further and held that, as the decision of the Central Government was subject to an appeal to the Supreme Court under Art. 136 of the Constitution, the Central Government should give reasons for its order. It is true that in that case the Central Government reversed the order of the Directors of a company refusing to register transfers. but that was not the basis of the decision. The necessity for giving reasons was founded on the existence of an appeal to the Supreme Court against the said order. The learned Solicitor General argues that, if the Central Government is to give reasons when it functions as a tribunal, it will obstruct the work of the Government and lead to unnecessary delays. I do not see any justification for this contention. The Central Government functions only through different officers and in this case it functioned through an Under Secretary. The condition of giving reasons is only attached to an order made by the Government when it functions judicially as a tribunal in a comparatively small number of matters and not in regard to other (1) [1960] 2 S.C.R. 775.

(2) [1962] 2 S.C.-R. 339.

Sup./65-2 administrative orders it passes. The delay in disposal of can be attributed to many reasons and certainly not to the giving of reasons by tribunals.

The question cannot be disposed of on purely technical con- siderations. Our Constitution posits a welfare State; it is not defined, but its incidents are found in Chapters III and IV thereof, i.e., the Parts embodying fundamental rights and directive principles of State Policy respectively. "Welfare State' as conceived by our Constitution is a State where there is prosperity, equality, freedom and social justice. In the context of a welfare State, administrative tribunals have come to stay. Indeed, they ,are the necessary concomitants of a welfare State. But arbitrariness in their functioning destroys the concept of a welfare State itself. Self-dicipline and supervision exclude or at any rate minimize arbitrariness. The least a tribunal can do is to disclose its mind. The compulsion of disclosure guarantees consideration. The condition to give reasons. introduces clarity and excludes

or at any rate minimises arbitrariness; it gives satisfaction to the party against whom the order is made; and it also enables an appellate or supervisory court to keep the tribunals within 'bounds. A reasoned order is a desirable condition of judicial ,disposal. The conception of exercise of revisional jurisdiction and the manner of disposal provided in r. 55 of the Rules are indicative ,of the scope and nature of the Government's jurisdiction. If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only -safeguard.

It is said that this principle is not uniformly followed by appellate courts, for appeals and revisions are dismissed by appellate and revisional courts in limine without giving any reasons. There is an essential distinction between a court and an administrative -tribunal. A Judge is trained to look at things objectively, uninfluenced by considerations of policy or expediency; but, an executive officer generally looks at things from the standpoint of policy and expediency. The habit of mind of an executive officer so formed cannot be expected to change from function to function or from act to act. SO it is essential that some restrictions shall be imposed on tribunals in the matter of passing orders affecting the rights of parties; and the least they Should do is to give reasons for their orders. Even in the case of appellate courts invariably reasons are given, except when they dismiss an appeal or revision in limine and that is because the appellate or revisional court agrees with the reasoned judgment of the subordinate court or there are no legally permissible grounds to interfere with it. But the same -reasoning cannot apply to an appel- late tribunal, for as often as not the order of the first tribunal is laconic and does not give any reasons. That apart, when we insist upon reasons, we do not prescribe any particular form or scale of the reasons. The extent and the nature of the reasons depend upon each case. Ordinarily, the appellate or revisional tribunal shall give its own reasons succinctly; but in. a case of affirmable where the original tribunal gives adequate reasons, the appellate tribunal may dismiss the appeal or the revision, as the case may be, agreeing with those reasons. What is essential is that reasons shall be given by an appellate or revisional tribunal expressly or by reference to those given by the original tribunal. The nature and the elaboration of the reasons necessarily depend upon the facts of each case. In the present case, neither the State Government's nor the Central Government's order discloses reasons for rejecting the application of the appellant. In the circumstances the Central Government's order is vitiated, as it does not disclose any reasons for rejecting the revision application of the appellant.

As regards the second contention, I do not think- that the appellant is entitled as of right to a personal hearing. It is no doubt a principle of natural justice that a quasi- judicial tribunal cannot make any decision adverse to a party without giving him an effective opportunity of meeting any relevant allegations against him. Indeed, r. 55 of the Rules, quoted supra, recognize the said principle and states that no order shall be passed against any applicant unless he has been given an opportunity to make his representations against the comments, if any, received from the State Government or other authority. The said opportunity need not necessarily be by personal hearing. It can be by written representation. Whether the said opportunity should be by written representation or by personal hearing depends upon the facts of each case and ordinarily it is in the discretion of

the tribunal. The facts of the present case disclose that a written representation would effectively meet the requirements of the principles of natural justice. But there is some apparent justification in the submission that the Central Government had taken into consideration an extraneous matter that came into existence subsequent to the filing of the revision, namely, that Messrs. Manganese Ore (India) Ltd., which is a public sector undertaking, had applied for the lease of the area in question on October 5, 1962, for the purpose of mining. The appellant did not allege in its affidavit that this fact was not brought to its notice before the Central Government made the order; indeed, it did not file any reply affidavit to the effect that the said matter was kept back from it. I would have pursued the matter a little further but for the fact that I am refusing to interfere in this appeal on other grounds.

There are no merits in the contention that the Government of Bombay by its order dated July 14, 1959, granted the entire area of the said mines to the appellant; for, under the Act the State Government has no power to make such a grant of Manganese Ore except with the previous approval of the Central Government. Admittedly, no such approval was obtained. The said order can, therefore, only be construed at best to be a recommendation to the Central Government. Nor can I agree with the contention of the learned counsel based upon s. 17 of the Act. The contention is that if the State Government intended to entrust the exploitation of the said mines to the public sector it could have done so only in strict compliance with the provisions of s. 17 of the Act. Section 17 of the Act has nothing to do with public or private sector: it applies only to a specific case where the Central Government proposes to undertake prospecting or mining operations in any area not already held under any prospering licence or mining lease. In that event it shall follow a particular procedure before undertaking the mining operations. In the present case there was no proposal on the part of the Central Government to undertake the mining operation in the area in question. That section has, therefore, no bearing on the question 'raised. I have already noticed that after the disposal of the revision by the Central Government the State Government again changed its mind and called for applications from the public for grant of mining licence in respect of the said area and the appellant, along with others, has applied for the same. Learned counsel for the appellant, though he admits the said fact, contends that though the appellant has a fresh opportunity to apply for the lease of the mines, it has to meet competition from others who did not enter the field earlier. But the people who entered the field earlier lid not prefer any revision against the order of the State Govern-

ment aid, presumably, if we interfere at this stage, there would be unnecessary complications and public interest might suffer, as it might turn out that the appellant would be the only surviving applicant in the field among the earlier applicants. Though the appellant has to compete with others who were not earlier in the field--this question we have no precise information-it has certainly an opportunity to apply for the lease. In the circumstances I do not think that this is a fit case for our interference in the exercise of our discretionary jurisdiction.

The appeal is dismissed, but in the circumstances of the case, without costs.

Bachawat J. We agree that the appeal should be dismissed. We agree that (a) this is not a fit case for interference under Art. 136 of the Constitution, (b) the appellant was not entitled to a personal hearing, (c) s. 17 of the Mines and Minerals (Regulation and Development Act, 1957 (Act No. 67 of

1957) has no bearing on the question in issue, and (d) the order of the Government of Bombay dated July, '14, 1959 was, in effect, a recommendation to the Central Government for the grant of a mining license to the appellant. But we are unable to agree with the contention of Mr. Pathak that the order of the Central Government dated October 17, 1964, rejecting the revision application under r. 55 of the Mineral Concession Rules, 1960 is bad, because it did not give any reasons. By its order dated December 19, 1961, the State Government of Maharashtra rejected the appellant's application for a mining lease for the reasons mentioned in the order. A reference to the order (annexure R) shows that the State Government gave full reasons. On February 17, 1962, the appellant filed a revision application before the Central Government against the order of the State Government under r. 55 of the Mineral Concession Rules, 1960. By its order dated October 17, 1964, the Central Government rejected the revision application stating I am directed to refer to your application No. A/ 32/8163 dated 17-2-1962 on the above subject, and to say that after careful consideration of the grounds stated therein, the Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Maharashtra rejecting your application for grant of mining lease for man manganese over an area of 216.92 acres in Government Forest East Panch Range, W. C. June-

wand, Tahsil Ramtek, District Nagpur. Your application for revision is, therefore, rejected."

The reason for rejecting the revision application appears on the face of the impugned order. The revision application was rejected, because the Central Government agreed with the reasons given by the State Government in its order dated December 19, 1961, and the application did not disclose any valid ground for interference with the order of the State Government. In our opinion, the Central Government, acting under r. 55, was not bound to give in its order, fuller reasons for rejecting the application.

Mr. Pathak contended that the effect of Art. 136 of the Con- stitution is that every order appealable under that Article must be a speaking order and the omission to give reasons for the decision is of itself a sufficient ground for quashing it. We are unable to accept this broad contention. For the purposes of an appeal under Art. 136, orders of Courts and tribunals stand on the same footing. An order of Court dismissing a revision application often gives no reasons, but this is not a sufficient ground for quashing it. Likewise, an order of an a administrative tribunal rejecting a revision application cannot be pronounced to be invalid on the sole ground that it does not give reasons for the rejection.

In support of his contention Mr. Pathak relied upon the following observations of Shah, J. in Harinagar Sugar Mills Ltd. v. Shyam Sundar Jhunjhunwala(1) :

> "If the Central Government acts as a tribunal exercising judicial powers and the exercise of that power is subject to the jurisdiction of this Court under Art. 136 of the Constitution, we fail to see how the power of this Court can be effectively exercised if reasons are not given by the Central Government in support of its order."

In that case, it appears that the Central Government acting as an appellate tribunal, under s. 111(3) of the Companies Act, 1956, had without giving any reasons for its order, set aside a resolution of the directors of a company refusing to register certain transfers of shares. There was nothing on the record to show that the Central Government was satisfied that the action of the directors in refusing to register the shares was arbitrary and untenable, and, moreover, on the materials on the record (1) [1962] 2 S.C.R. 339, 357.

it was not possible to decide whether or not the Central Government transgressed the limits of its restricted power under S. 1 1 1 (3). The Central Government reversed the decision appealed from without giving any reasons; nor did the record disclose any apparent ground for the reversal. In this context, Shah, J. made the observations quoted above, and held that there was no proper trial of the appeals and the appellate order should be quashed. Hidayatullah, J. at p. 370 of the Report pointed out that there was no reason for the reversal and the omission to give reasons led to the only inference that there was none to give. There is a vital difference between the order of reversal by the appellate authority in that case for no reason whatsoever and the order of affirmance by the revising authority in the present case. Having stated that there was no valid ground for interference, the revising authority was not bound to give fuller reasons. It is impossible to say that the impugned order was arbitrary, or that there was no proper trial of the revision application. Appeal dismissed.