Mineral Development Ltd vs The State Of Bihar And Another on 15 December, 1959

Equivalent citations: 1960 AIR 468, 1960 SCR (2) 909, AIR 1960 SUPREME COURT 468

Bench: Bhuvneshwar P. Sinha, P.B. Gajendragadkar, K.C. Das Gupta, J.C. Shah

PETITIONER:
MINERAL DEVELOPMENT LTD.

Vs.

RESPONDENT:
THE STATE OF BIHAR AND ANOTHER

DATE OF JUDGMENT:
15/12/1959

BENCH:
SUBBARAO, K.
BENCH:
SUBBARAO, K.
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
GUPTA, K.C. DAS
SHAH, J.C.

CITATION:
1960 AIR 468 1960 SCR (2) 909
CITATOR INFO :
RF 1961 SC 705 (19)
RF 1967 SC 829 (6)
F 1981 SC 873 (24)
RF 1988 SC1099 (6)

ACT:
Fundamental Rights-Restriction by State imposed by law-Reasonableness-Objective test-Duty of Court-Constitutional validity-Bihar Mica Act, 1947, s. 2.5(1)(C)-Constitution of India, Arts. 19(1)(f), (g) and 19(5) & (6).

HEADNOTE:
The Secretary of the Government of Bihar in the Revenue Department issued a notice to the petitioner company who were the lessees of mining lease, charging it with violation

of ss. 10, 12 and 14 Of the Bihar Mica Act, 1947, and calling upon it to show cause why action should not be taken to cancel its licence which was being issued from year to year for mining Mica. The company asked for particulars of the alleged violation of the provisions of the Act from the Government which was furnished. The company sent a written representation to the Government denying the allegations. After two years of the said representation, the Government issued a notification cancelling the

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petitioner company's licence under the provisions of S. 25(1)(c) Of the Act.

The company moved the Supreme Court under Art. 32 Of the Constitution for the issue of a writ of certiorari to quash the said order of the Government of Bihar cancelling the licence and for the issue of writ of mandamus directing them to forbear from giving effect to the said order of cancellation, on ground inter alia that the Government acted illegally and with mala fides and infringed the fundamental rights of the petitioner under Art. 19(1), sub-cls. (f) and (g) of the Constitution and that the provision of S. 25(1)(c) of the Bihar Mica Act, 1947, operate as an unreasonable restriction on the said right, and even if the said section did not infringe its fundamental rights, the order of the Government in cancelling the lease without affording it a reasonable opportunity to show cause within the meaning of the second proviso to that section, infringed its fundamental rights.

Held, that the provisions of S. 25(1)(c) of the Bihar Mica Act, does not impose an unreasonable restriction on the fundamental rights under Art. 19(1)(f) & (g) of the Constitution.

The restrictions which a State is authorised to impose under cls. (5) & (6) of Art. 19 of the Constitution, in the interest of the general public over the fundamental rights of a citizen under sub-cls. (f) & (g) of clause (1) of Art. 19 must be reasonable and must not depend upon the mere uncontrolled discretion of the executive.

It is the duty of this Court to decide having regard to the concept and principle of reasonableness which is correctly laid down in The State of Madras v. V. G. Row, whether a particular Statute satisfied the objective test of " reasonableness. "

The statutory conditions of the Bihar Mica Act, subject to which the licence is given are, obviously, reasonable and necessary for regulating the mining industry- The power to cancel the licence which is conferred on the Government under S. 25 Of the said Act is only to achieve the object of the Act, i.e., to enforce provisions which have been enacted in the interest of the public, and that power is exercisable on the basis of objective tests and in accordance with the principles of natural justice.

The general proposition that whenever discretionary power is conferred on a State Government or the Union Government by law, the said law must- necessarily operate as a reasonable restriction on a fundamental right, negatives the concept of fundamental rights for the simple reason that fundamental rights are guaranteed against State action. Therefore, the conferment of such a power on the State Government and not upon a subordinate officer is only one of the considerations that may enter into the judicial verdict on reasonableness of a particular law and the reasonableness of that law falls to be decided only on the cumulative effect of the circumstances under which such power is conferred.

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The concept of " reasonable opportunity " is an elastic one and is not susceptible of easy and precise definition. What is reasonable opportunity under one set of circumstances need not be reasonable under different circumstances. It is the duty of the Court to ascertain in each case, having regard to the overall picture before it, to come to a conclusion whether reasonable opportunity is given to a person to " show cause. "

Tribunals or authorities who are entrusted with quasi-judicial functions are as much bound by the relevant principles governing the " doctrine of bias " as any other judicial tribunal.

In the instant case the Revenue Minister had personal bias within the meaning of the decisions and he should not have taken part in either initiating the enquiry or in cancelling the licence. Neither the necessary conditions to enable the Government to take action under S. 25(1)(c) Of the Act has been established nor the State Government has afforded reasonable opportunity to the petitioner within the meaning of the second proviso to S. 25(1) Of the Act.

State of Madras v. V. G. Row, [1952] S.C.R. 597, followed.

Thakur Raghubir Singh v. Court of Wards, Ajmer, [1953] S.C.R. 1049, held inapplicable.

JUDGMENT:

ORIGINAL JURISDICTION: Petition No. 159 of 1956. Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

N. C. Chatterjee and D. N. Mukherjee, for the petitioners. Mahabir Prasad, Advocate-General for the State of Bihar, Bajrang Sahai and R. C. Prasad, for the respondents. 1959. December 15. The Judgment of the Court was delivered by SUBBA RAO J.-This petition under Art. 32 of the Constitution is filed by the Mineral Development Limited against the State of Bihar and another for the issue of a writ of certiorari to quash the order of the Government of Bihar dated September 7, 1955, cancelling the petitioner's licence and for the issue of a writ of mandamus directing them to forbear from giving effect to the said order of cancellation.

One Raja Bahadur Kamakshya Narain Singh (hereinafter called the proprietor) was the proprietor of Ramgarh and Serampur estates in the district of Hazaribagh in the State of Bihar. On December 29,1947, the said proprietor executed a mining lease in favour of the Mineral Development Limited (herein- after called the Company) for all minerals in respect of 3,026 villages for a period of 999 years. On or about January 3, 1951, the Deputy Commissioner, Hazaribagh, granted the Company a licence bearing No. H.L. 261-H in form ' B' under s. 6 of the Bihar Mica Act, 1947 (hereinafter called the Act) for mining mica. The licence was renewed from year to year by the relevant authority and the last of the renewals expired on December 31, 1954. The Secretary to the Government of Bihar in the Revenue Department issued a notice dated March 7, 1953, to the Company charging it with violations of ss. 10, 12 and 14 of the Act and calling upon it to show cause within 15 days of the receipt of the said notice why action should not be taken to cancel the licence issued in favour of the Company. By letter dated March 20, 1953, the Company requested the Secretary to the Government, Revenue Department, Bihar, to furnish the Company with particulars of the alleged violations of the provisions of the Act. After a reminder was sent, the Company was furnished by the Government with the particulars by its letter dated May 1, 1953. On or about May 17, 1953, the Company sent a written representation to the Government denying the allegations made against it and explaining how the Company complied with the provisions of the Act. After this letter, no further correspondence passed between the Government and the Company. But on September 7, 1955, i.e., two years after the said representation, the Government issued a notification cancelling the Company's licence No. 261-H of 1951. The result of this notification was that the Company was prevented from carrying on the mining operations in large tracts of land it had taken on lease from the said proprietor.' The Company in its petition has stated that it had invested a large sum of about Rs. 16 lakhs to obtain the mining lease and spent a considerable sum in prospecting and developing the mines, that by the arbitrary act of the Government it could not work the mines, that a large number of labourers had been thrown out of employment and that in the result it was being put to heavy loss. It has filed the present petition for the reliefs mentioned already for the reasons, among others, that the Government acted illegally and with mala fldes and infringed the fundamental rights of the petitioner under Art. 19(1), sub cls. (f) and (g) of the Constitution. The first respondent to the petition is the State of Bihar and the second respondent is the Additional Secretary to the Government of Bihar in the Revenue Department. They filed a counter denying the allegations made against the Government and particularly stated that they had acted within their rights and cancelled the licence in strict compliance with the provisions of the Act.

The arguments of Mr. Chatterjee, learned Counsel for the petitioner, may be broadly formulated under the following four heads: (i) The Bihar Mica Act, 1947, as amended by the Bihar Mica (Amendment) Act, 1949, is ultra vires for want of constitutional competence; (ii) the provisions of -the Act are repugnant to the provisions of the Central Act 53 of 1948, and, therefore, to the extent of such repugnancy the former Act should yield to the latter Act, with the result that the licensing provisions under the Act ceased to have any legal effect; (iii) the petitioner has the fundamental rights under Art. 19(1)(f) and (g) of the Constitution to acquire, hold and dispose of his property and to carry on any occupation, trade or business in respect thereof, and that the provisions of s. 25(1)(c) of the Act operate as an unreasonable restriction on the said rights, and are therefore void; and (iv) even if the said section did not infringe his fundamental rights, the order of the Government in cancelling the lease without affording him reasonable opportunity to show cause within the meaning

of the second proviso to that section infringed his fundamental right. The first two contentions need not detain us; for, the petition may be disposed of on the basis of the last two contentions.

The first question, therefore, is whether the provisions of s. 25 of the Act infringe the fundamental rights of the petitioner under sub-cls. (f) and (g) of Art. 19(1) of the Constitution. The said provisions of the Constitution read:

> Article 19: (1) All citizens shall have the right-
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> (f) to acquire, hold and dispose of property; and
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> (g) to practise any profession, or to carry on any occupation, trade or business."

Under sub-cls. (f) and (g) of Art. 19(1), every citizen has the right to acquire, hold and dispose of property, and to practise any profession, or to carry on any occupation, trade or business. But cls. (5) and (6) of Art. 19 authorize the State to make a law imposing restrictions in the interest of the general public, but the restrictions so imposed must be reasonable. The concept of reasonableness has been clearly explained by Patanjali Sastri, C.J., in State of Madras v. V. G. Row(1) as under:.

> " It is important in this context to bear in mind that the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict."

These observations, if we may say so with great 'respect, lay down the correct principle. It follows that it is the duty of this Court to decide, having regard to the aforesaid considerations and such others, whether a particular statute satisfies the objective test of " reasonableness ". While not disputing the general principle, the learned Counsel for the petitioner strongly relied upon the decision of this Court in Thakur Raghubir Singh v. Court of Wards, Ajmer (2) in support of his contentions. The facts in that case (1) [1952] S.C.R. 597. 607.

(2) [1953] S.C.R. 1049, 1055.

were:s. 112 of the Ajmer Tenancy and Land Records Act (XLII of 1950) provided that " if a landlord habitually infringes the rights of a tenant under this Act, he shall, notwithstanding anything in section 7 of the Ajmer Government Wards Regulation, 1888 (1 of 1888) be deemed to be a 'landlord who is disqualified to manage his own property' within the meaning of section 6 of the said Regulation and his property shall be liable to be taken under the superintendence of the Court of Wards." The determination of the question whether a landlord bad habit- ually infringed the rights of his tenants was left to the Court of Wards. The petitioner whose estate was taken over by the Court of Wards questioned the validity of the power conferred on the Court of Wards. This Court

held that the said section was void as being an unreasonable restriction on the rights in property as the restriction made the enjoyment of that right depend upon the mere discretion of the executive. Mahajan, J., as he then was, observed :

> " When a law deprives a person of possession of his property for an indefinite period of time merely on the subjective determination of an executive officer, such a law can, on no construction of the word "reasonable" be described as coming within that expression, because it completely negatives the fundamental right by making its enjoyment depend on the mere pleasure and discretion of the executive, the citizen affected having no right to have recourse for establishing the contrary in a civil court."

In that case the combined operation of s. 112 of Act XLII of 1950 and the provision's of Regulation 1of 1888 was that the Court of Wards could in its own discretion and on its own subjective determination assume superintendence of the property of a landlord who habitually infringed the rights of his tenants. The Act also did not provide any machinery for determining the question whether a certain landlord was a person who habitually infringed the rights of his tenants. Even the condition precedent for the assumption of superintendence by the Court of Wards, viz., the previous sanction of the Chief Commissioner, was also a matter entirely resting on his discretion. It will be seen that under that Act the entire question was left to the unbridled discretion of the executive without providing for any machinery to ascertain the grounds for its action. That decision cannot apply to the facts of the present case as they differ in material respects from those considered by this court in that decision.

The short question, therefore, is whether s. 25 of the Act places unreasonable restrictions on the petioner's fundamental rights under Art. 19(1)(f) and (g) of the Constitution. It is conceded that the State can make a law imposing restrictions, in the interest of the public, on citizens in respect of their enjoyment of mineral rights; but the complaint is that the law which enables the State in its uncontrolled discretion to prevent the owner or the lessee of such a field from enjoying his land or leasehold interest or to carry on his mining operations permanently or for an indefinite period is unreasonable. So stated there is plausibility in the argument. But let us look at the law more closely to ascertain whether it suffers from such a vice.

The Act was passed in the year 1947 and was amended from time to time. The declared object of the Act is " to regulate the possession and transport of, and trading in, mica in the Province of Bihar ". It was necessitated, presumably, because of the scarcity of mica and its importance in the industrial field, and for that reason for regulating home consumption and foreign export. The learned Counsel for the petitioner did not controvert the position, and indeed conceded that reasonable restrictions can legitimately be imposed on the mining operations of the petitioner. Section 4 of the Act imposes a prohibition on the possession of, and trading in, mica without licence, proprietor's certificate, or digger's permit. Sections 5 and 6 prescribe a machinery for granting proprietor's certificate, miner's or dealer's licence. Sections 10 to 12 define the duties of licensees and registered proprietors in the matter of keeping accounts and producing them for inspection. Section 14 prohibits the removal of mica from one place to another without a pass. Sections 17, 19 and 21A impose penalties for the

infringement of the provisions of the Act an the rules made thereunder. Section 22 to 24 deal with miscellaneous matters, such as the power Of a police officer to arrest without warrant persons guilty of an offence under this Act, to search, seize and detain mica removed without a pass etc. Then comes s. 25. As the main argument of the learned Counsel turns upon the provisions of s. 25, it is necessary to read the entire section, which is as follows :

> Section 25. " (1) The State Government may cancel the licence or proprietor's certificate of any licensee or registered proprietor who-
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> (a) allows his licence or proprietors certificate, as the case may be, to be used on behalf of any other person as authority to- buy or have in his possession or sell mica extracted from a mica mine or from a mica dump, or
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> (b) being a person to whom a miner's licence has been granted extracts mica from a mine the particulars of which are not endorsed on his licence, or
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> (c) is guilty of repeated failure to comply with any of the other provisions of this Act or rules made thereunder, or
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> (d) is convicted of an offence under Chapter XVII of the Indian Penal Code committed in respect of mica:
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> Provided that a licence or a proprietor's certificate shall not be cancelled solely by reason of conviction from which the licensee or the registered proprietor has no right of appeal or revision;
>
> Provided further that a licence or a proprietor's certificate shall not be cancelled unless the licensee or the proprietor has been furnished with the grounds for such cancellation and has been afforded reasonable opportunity to show cause why his licence shall not be cancelled. (2) A fresh licence or proprietor's certificate shall not, without the previous sanction of the State Government, be granted to any licensee or registered proprietor whose licence or proprietor's certificate has been cancelled under this section."

This section embodies the severest punishment that can be imposed under the Act on a licensee or a proprietor. It enables the State Government to cancel the licence. The power is entrusted to the highest executive in the State which ordinarily can be relied upon to discharge its duties honestly, impartially and in the interest of the public without any extraneous considerations. The section provides clearly ascertainable standards for the State Government to apply to the facts of each case. Clauses (a), (b), (c) and

(d) of s. 25(1) describe with sufficient particularity the nature of the defaults to be committed and the abuses to be guilty of by the licensee in order to attract the penal provisions. Clause (c) with which we are directly concerned embodies the last step that can be resorted to by the State

Government to eliminate the recalcitrant operator from the field of mining industry if only he is guilty of repeated failures to comply with any of the provisions of the Act or the rules made thereunder other than those mentioned in the other clauses of the section. The discretion of the State Government under cl. (c) of s. 25(1) is hedged in by two important restrictions: viz., (i) the failure to comply with the provisions of the Act or the rules made thereunder, should be a repeated failure and not a mere sporadic one, i.e., the defaulter must be a recalcitrant one; (ii) before cancelling the licence the State Government should afford reasonable opportunity to the licensee to show cause why his licence should not be cancelled. That apart, the cancellation of the licence has not the effect of barring the licensee or the proprietor from applying for a fresh licence. The only condition imposed is that a fresh licence shall not be granted to him without the previous sanction of the State Government. In the foregoing circumstances, can it be said that the section imposes an unreasonable restriction on the petitioner's fundamental rights ? The statutory conditions subject to which the licence is given are, obviously, reasonable and necessary for regulating the mining industry. The provisions of the Act, as we have already pointed out, were only designed to compel a licensee to keep accounts, produce them before the authorities when required, to prevent him from removing mica from the fields without passes and to impose penalties for contravening the rules. The only vice is said to lie in the power to cancel a licence conferred on the State Government under s. 25 of the Act. The power given to the State Government is only to achieve the object of the Act i.e., to enforce the said provisions, which have been enacted in the interest of the public; and that power, as we have indicated, is exercisable on the basis of objective tests and in accordance with the principles of natural justice. We, cannot, therefore, hold that s. 25(1)(c) of the Act imposes an unreasonable restriction on the petitioner's fundamental rights under Art. 19(1)(f) and

(g) of the Constitution.

Before leaving this part of the case, we must make it clear that we do not intend to lay down as a proposition that whenever discretionary power is conferred on a State Government or the Union Government by law, the said law must necessarily operate as a reasonable restriction on a fundamental right. Such a general proposition negatives the concept of fundamental rights for the simple reason that fundamental rights, are guaranteed against State action. Therefore, the conferment of such a power on the State Government and not upon a subordinate officer is only one of the considerations that may enter into the judicial verdict on the reasonableness of a particular law and the reasonableness of that law falls to be decided only on the cumulative effect of the circumstances under which such power is conferred.

The next question is, did the State Government comply with the provision of s. 25(1)(c), read with the second proviso thereto, of the Act ? Under the said proviso the State Government can cancel a licence after affording reasonable opportunity to the licensee to show cause why his licence should not be cancelled. This proviso confers a quasi- judicial power on the State Government. The concept of " reasonable opportunity "

> is an elastic one and is not susceptible of easy and precise definition. The decisions on cases under Art. 311 of the Constitution afford illustrations of the applications of the said doctrine to varying situations. What is reasonable opportunity under one set of

> circumstances need not be reasonable under different circumstances. It is the duty of the Court to ascertain in each case, having regard to the overall picture before it, to come to a conclusion whether reasonable opportunity is given to a person " to show cause" within the meaning of the second proviso to s. 25(1) of the Act. Tribunals or authorities who are entrusted with quasi-judicial functions are as much bound by the relevant principles governing the " doctrine of bias "

as any other judicial tribunal. This Court in a recent decision in Gullapalli Nageswara Rao v. The State of Andhra Pradesh (1) observed:

> "The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well-settled and they are: (i) no man shall be a judge in his own cause; (ii) justice should not only be done but manifestly and undoubtedly seem to be done. The two maxims yield the result that if a member of a judicial body is " subject to a bias (whether financial or other) in favour of, or against, any party to a dispute, or is in such a position that a bias must be assumed to exist, he ought not take part in the decision or sit on the tribunal"; and that ,any direct pecuniary interest, however small, in the subject-matter of inquiry will disqualify a judge, and any interest, though not pecuniary, will have the same effect, if it is sufficiently substantial to create a reasonable suspicion of bias". The said principles are equally applicable to authorities, though they are not courts of justice or judicial tribunals, who have to act judicially in deciding the rights of others, i.e., authorities who are empowered to discharge quasijudicial functions."

In view of the foregoing principles the first question to be considered is whether in the present case the (1) [1959] S.C.R. Supp. (1) 319.

authority functioning for the State Government-it is admitted that the then Revenue Minister of the State made the impugned order-had personal bias against the petitioner. Secondly, we will have to scrutinize the record to ascertain whether reasonable opportunity was given to the petitioner to show cause or whether it was denied that right. Thirdly, we will have to ascertain whether the State Government found that the petitioner was guilty of repeated failure to comply with any of the other provisions of the Act or the rules made thereunder and cancelled the licence on the basis of that finding. It may be mentioned that the learned Advocate General, who appeared before us on behalf of the State, submitted that the State Government exercised its power under s. 25(1)(c) of the Act.

The notice to show cause was issued by the State Government to the petitioner on March 7, 1953. The licence granted in favour of the petitioner was cancelled by the State Government by its notification dated September 1, 1955. Admittedly, during this period Sri Krishna Ballav Sahay was the Revenue Minister of the Government of Bihar, and he was in charge of the department dealing with mines. There was political rivalry between the said Minister and Sri Raja Bahadur Kamakshya Narain Singh, the ex-landlord of Ramgarh and Serampur estates in the district of Hazaribagh, who leased the lands in question to the petitioner. The case of the State is that the said lease was benami only for the said proprietor; and the case of the petitioner is that the wife of the proprietor, Rani

Lalita Rajya Luxmi Devi, is the registered share holder of the Company. The question whether the lease is only benami for the proprietor or not is now in dispute in title suit No. 53 of 1954 pending on the file of the court of the Subordinate Judge, Hazaribagh. We shall, therefore, assume for the purpose of this case that there is a dispute on the question of title, the State Government asserting that the lease is only benami for the proprietor and the petitioner claiming to be the real lessee and the wife of the proprietor only a registered share holder of the Company. Whichever version is true, the proprietor, directly or because of his wife, is very much interested in the Company,at any rate, the Government's case is that he is the owner. It is alleged in the petition that the said proprietor opposed the Revenue Minister in the general election held in 1952 to the Bihar Legislative Assembly in the constituency of Giridih and Barkagaon and defeated him. It is also stated that before the said election, the Revenue Minister filed a criminal case against the proprietor in the District Court of Hazaribagh charging him under s. 500 of the Indian Penal Code. The High Court in a judgment dated April 15, 1952, delivered in the petition to transfer the said case to some other Court recorded the admitted fact that there was political rivalry between the Minister and the proprietor. Ultimately, this Court transferred the said criminal case from the State of Bihar to the file of a Magistrate's Court in Delhi on the ground that there was political rivalry between the two persons. These facts are not denied in the counter-affidavit filed by the State. In the said counter-affidavit the following cryptic statement occurs:

> " That the allegations in para. 14(b) of the petition about the alleged political rivalry between Sri Kamakshya Narain Singh and Sri Krishna Ballav Sahay, the then Minister, Revenue, has no bearing on the facts of this case so far as the orders of the Government are concerned and to that extent the allegations are denied."

It may, therefore, be taken that the allegations of' personal bias of the Revenue Minister against the proprietor is not denied. It is also not disputed that the proceedings against the petitioner were started during the tenure of the said Revenue Minister and that the actual order of cancellation was made by him. We have no hesitation in holding that the Revenue Minister had personal bias against the proprietor and that he was also acting on the belief that the lease was only benami for the said proprietor. We, therefore, hold that the said Revenue Minister had personal bias within the meaning of the decisions and he should not have taken part in either initiating the enquiry or in cancelling the licence.

On the basis that s. 25 of the Act is constitutionally valid, the question is whether the provisions of that section have been complied with in the present case. If they were not complied with, the order of the State Government made in derogation of the said provisions would certainly infringe the fundamental rights of the petitioner. The main objection to the validity of the impugned order is that the State Government did not afford the petitioner reasonable opportunity to show cause why his licence should not be -cancelled. The subject-matter of the mining leasehold interest is in respect of 3,026 villages for a period of 999 years. It is alleged in the petition that a large amount of about Rs. 16 lakhs were spent by the petitioner to obtain the mining lease and in addition a considerable sum was spent in prospecting and developing the mines. On March 7, 1953, the Government of Bihar through its Secretary in - the Revenue Department issued a notice to the petitioner asking it to show cause within 15 days of the receipt of the said notice why action to cancel the miner's licence

No. 261-H under s. 25(1)(c) of the Act should not be taken by the Government. It is stated in the notice that the petitioner committed " violations of ss. 10, 12 and 14 in respect of their mica godowns at Marhand and Sultana, ss. 10 and 12, in respect of the godowns at Simaria and s. 10 in respect of Kowabar godowns and have thus been guilty of repeated failures to comply with those provisions of the Bihar Mica Act, 1947." On receipt of this notice, the peti- tioner by its letter dated March 20, 1953, asked the Government to furnish it with particulars of the allegations contained in the said notice and on March 27, 1953, renewed its request for the said particulars. On May 1, 1953, the Government sent a Memorandum No. A/M1-8022/53R. to the petitioner Company giving the particulars of the violations of the provisions of the Act. The subject of the memorandum is described as " Repeated failure to comply with the provisions of the Bihar Mica Act, 1947." The particulars show that between December 3, 1952, and December 11, 1952, the Inspector of Mica Accounts inspected different godowns of the petitioner and found contravention of the provisions of ss. 10, 12 and 14 of the Act. What is important to notice is that the inspection, though spread over a few days, was really one inspection of different godowns and the particulars disclosed were comparatively trivial defaults in carrying out the provisions of the Act. It may also be noticed that one of the particulars related to an inspection alleged to have been made on March 6, 1952; and, in respect of that inspection, the petitioner was prosecuted and convicted; but the licence was renewed for the next two years in spite of the said conviction. The result of that inspection is, therefore, not germane to the enquiry initiated by the notice dated March 7, 1953. After giving the particulars the memorandum concludes., " it is clear that the Company has been guilty of repeated failure to comply with the provisions of the Bihar Mica Act, 1947 " and on these allegations the Company was directed to show cause why the licence should not be cancelled under s. 25(1)(b) of the Act. Section 25(1)(b) says that the State Government may cancel the licence of any licensee who, " being a person to whom a miners's licence has been granted extracts mica from a mine the particulars of which are not endorsed on his licence." It is admitted by the learned Advocate General that the Government did not take action under cl. (b) of s. 25(1) and that the mention of that clause in the memorandum was only a mistake for cl. (c) of s. 25(1) of the Act. On May 17, 1953, the petitioner submitted to the Government a detailed explanation in regard to the charges levelled against it. It premised its explanation with the statement that all the relevant books of accounts and stock books had been seized by the Inspector of Mica Accounts and had not been returned in spite of repeated requests and that therefore it reserved its right to make further submissions when the books were returned. It also pointed out that at the time of inspection it was not asked to explain the alleged irregularity in accordance with the usual procedure in regard to such matters. In then proceeded to answer every one of the allegations made against it. The explanation given by the Company appears to be plausible and the contraventions alleged, even if true, appear to be too trivial for the drastic action taken by the State. In 1954 the Government filed a suit against the said proprietor for a declaration that the various companies brought into existence by him were bogus ones and the various transactions entered into by him were all benami for him. After the explanation given by the petitioner, there was a lull for more than two years. The State Government neither returned the account books nor invited the petitioner to make further submissions by allowing it to look into the accounts seized by the authorities concerned. Suddenly, on September 7, 1955, a notification was issued to the effect that the Governor of Bihar was pleased to cancel the petitioner's licence. It was also directed to stop operating the mica mines forthwith and to produce the books of account relating to the above mines in respect of their godowns on September 12, 1955. From the foregoing

narration of facts it is obvious that the licence affecting rights of great magnitude was cancelled to say the least, for trivial reasons. The enquiry was held by the department headed by the Minister who was obviously biased against the petitioner. Some technical non- compliances of the rules alleged to have been discovered during the inspection of certain godowns were given as an excuse to withdraw the licence no opportunity was given to the petitioner to inspect its accounts and to explain the alleged-defaults with reference to the accounts. After the petitioner gave its reply, a sense of false security was created in the petitioner and after a period of two years the Government issued the notification cancelling the licence. Meanwhile, as a second string to the bow, the state filed a suit against the proprietor for a declaration that the lease was benami and for other reliefs. The hidden hand of the Revenue Minister can be seen in this enquiry. The proceedings were started because of political rivalry between the proprietor and the Revenue Minister. Though heavy stakes were involved, the enquiry was conducted in a manner which did not give any real opportunity to the petitioner to explain its conduct and to disprove the allegations made against it; and the order of cancellation of the licence was made admittedly by the same Revenue Minister, who was behind the enquiry. In the circumstances, we must hold that no reasonable opportunity was given to the petitioner within the meaning of the second proviso to s. 25(1) of the Act. That apart, the State Government did not find on the material that the petitioner was guilty of repeated failure to comply with any of the provisions of the Act. The particulars furnished by the Government did not disclose any such repeated failure. Under s. 25(1)(c) of the Act, repeated failure to comply with any of the provisions of the Act is a necessary condition for the cancellation of a licence. Unless there is repeated failure within the meaning of that clause the State Government has no power to cancel the licence under the said clause. That apart, neither in the notice initiating the proceedings nor in the notification cancelling the licence issued by the Government it was stated that the petitioner was guilty of " repeated failure " within the meaning of the said clause. But in the particulars furnished, the State Government alleged that the petitioner had been guilty of repeated failure to comply with the provisions of the Act, but the particulars did not support that statement, for, apart from the default of March, 1952, the alleged contravention of rules were discovered by the Inspector of Mica Accounts only during the inspection of some of the godowns between December 3, 1953, and December 11, 1953. The result of that one continuous inspection cannot be the basis for holding that the petitioner was guilty of " repeated failure " within the meaning of s. 25(1)(c) of the Act. There is nothing on record to show that the petitioner was found to be guilty of contravention of any of the provisions of the Act on any other occasion after March, 1952. Apart from the only prosecution, which we have already noticed, the petitioner was not prosecuted for any other contravention of the provisions of ss. 10, 12 or 14 of the Act. That prosecution cannot be pressed into service, as the State Government renewed the licence for 1953-54. In this state of record we must hold that the respondents failed to prove that the petitioner was guilty of repeated failure to comply with the provisions of the Act. On the basis of the said finding, the respondents would have no power to take action under S. 25(1)(c) of the Act.

The foregoing discussion establishes that neither the necessary condition to enable the Government to take action under s. 25(1)(c) of the Act has been established nor the State Government had afforded reasonable opportunity to the petitioner within the meaning of the second proviso to s. 25(1).

In the result we accept the petition and issue a writ of certiorari against the respondents quashing the order of the Government of Bihar dated September 1, 1955, cancelling miner's licence No. 261-H of 1951 granted in favour of the petitioner. The respondents will pay the costs to the petitioner.

Petition allowed.