Dharam Chand Jain vs The State Of Bihar on 14 April, 1976

Equivalent citations: 1976 AIR 1433, 1976 SCR 53, AIR 1976 SUPREME COURT 1433

Author: Syed Murtaza Fazalali

Bench: Syed Murtaza Fazalali, P.N. Bhagwati, A.C. Gupta

PETITIONER:
DHARAM CHAND JAIN

Vs.

RESPONDENT:
THE STATE OF BIHAR

DATE OF JUDGMENT14/04/1976

BENCH:
FAZALALI, SYED MURTAZA
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FAZALALI, SYED MURTAZA
BHAGWATI, P.N.
GUPTA, A.C.

CITATION:
1976 AIR 1433 1976 SCR 53
1976 SCC (4) 427

ACT:
Mineral Concession Rules 1960-r. 54-Scope of.

HEADNOTE:
On September 12, 1958, the appellant made an application to the State Government under the Miheral Concession Rules, 1960 for the grant of a mining lease. Having had no reply from the State Government he filed a revision application on June 21, 1961 before the Central Government which directed the State Government to dispose of the application. Since, there was no reply from the State Government, the appellant filed a second revision application before the Central Government, which by its order dated November, 21, 1964, allowed it. Even so, the State Government refused to implement that order. A third revision application was filed on January 27,1961 before the Central Government which, after obtaining the views of the

State Government, rejected it.

Allowing the appeal against the order of the Central Government,

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HELD : (1) The State Government being a subordinate authority in the matter of grant of a mining lease, was obliged under the law to carry out the orders of the Central Government. It was not open to the State to decline to carry out the orders of the Central Government particularly because the Central Government was a Tribunal superior to the State Government. In view of Government's order dated November 21, 1964, it was not open to the State Government to reject the application on any ground whatsoever. If the State Government found itself unable to implement the order, a reference could have been made to the Central Government for obtaining necessary directions. If any ground came into existence subsequent to the making of the order of the Central Government, the State Government could have brought it to the notice of the Central Government. In any case, the State Government could not have refused to implement the order of the Central Government unless that Government itself chose to revise it either on a reference or suo moto. [57 C-E]

(2) Under r. 54 of the Mineral Concessions Rule, 1960 the Central Government acts as a revisional tribunal against any order passed by the State Government. When the State Government refused to carry out the order, the Central Government should have proceeded to set aside the State Government's order and directed it to grant the application. The Central Government has not disposed of the revision application in accordance with law. [55 B, 56 F]

(3) Assuming that the Central Government could revise its earlier order, that could be done only if some fresh ground came into existence. There was absolutely no legal justification for the Central Government to go back upon its earlier order which stood unvaried and unvacated. [58 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1414 of 1968.

Appeal by Special Leave from the Judgment and Order dated the 17th February 1968 of the Govt. Of India, Ministry of Steel, Mines and Minerals.

A. K. Sen, B. D. Khanna, Bishambar Lal and H. K. Puri, for the Appellant.

D. Goburdhan for Respondent.

The Judgment of the Court was delivered by FAZAL ALI, J. This is an appeal by special leave against the order of the Central Government dated February 17, 1968, rejecting the revision application filed by the appellant before the Central Government under r. 54 of the Mineral Concession Rules, 1960. This appeal reveals a wavering and vacillating attitude of the State Government of Bihar taking inconsistent stands in refusing to implement a quasi-judicial order passed by the Central Government in favour of the appellant on one pretext or another spreading over several years. This has naturally resulted in a substantial miscarriage of justice to the appellant who was compelled to toss like a shuttle-cock from State Government to Central Government by filing revisions after revisions against the orders of the State Government which shows a somewhat extraordinary and curious conduct of the State Government.

The facts of the case lie within a very narrow compass. The appellant applied on September 12, 1958, for grant of a mining licence in an area of 66.77 acres in tehsil Ramgarh and deposited the prescribed fees of Rs. 700/-. The State Government was unable to make up its mind and passed no order at all on the application filed by the appellant. The appellant thereupon filed a revision application before the Central Government on the basis that his application was deemed to have been rejected by the State Government as it was not disposed of during the statutory period. This revision was filed on June 22, 1961 and gives a detailed history of the case of the appellant. The Central Government in its revisional capacity passed an order dated March 24 1962 directing the State Government to dispose of the application of the appellant on or before September 30, 1962. In spite of this direction, the State Government failed to pass any order on the application of the appellant. Failing to get any redress from the State Government in spite of the direction of the Central Government, the appellant was compelled to prefer a second revision application before the Central Government on October 15, 1963. Thereafter the Central Government invited the comments of the State Government on the second revision application. The State Government, however, appears to have taken the stand that as the area in question was the subject-matter of a litigation the State Government was legally advised to defer grant of a mining licence particularly in view of certain injunction orders passed by the Alipore Civil Court and the Calcutta High Court. These comments were forwarded to the appellant for his explanation. The appellant informed the Central Government that the injunction orders relating to Ramgarh litigation had since been vacated and the State Government may be directed to dispose of the application filed by the appellant for grant of the mining lease. It appears that by a subsequent correspondence the State Government informed the Central Govern-

ment that final orders on the application of the appellant could only be made if he decided to select one compact block for the mining lease. On receiving this comment, the Central Government allowed the revision application again and directed the State Government to grant the mining lease to the appellant in respect of a compact block to be selected by him. This order was passed on November 21, 1964. We might mention here that under r. 54 of the Mineral Concession Rules, 1960, the Central Government acts as a revisional tribunal against any order passed by the State Government and has obviously, therefore, the same powers as the State Government. This matter is no longer res integra and is settled by an authority of this Court in State of Assam and others v. Om Prakash Mehta & others(1) where this Court observed as follows:

> "Under Rule 55 the Central Government can call for the records from the State Government and after considering any comments made on the petition by the State Government or other authority, 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. It also provides for an opportunity to the applicant to make his representation against the comments, if any, received from the State Government or other authority. Thus the fact that the application for renewal is deemed to have been refused as a result of Rule 24(2) does not prohibit the Central Government from passing any order it may deem just and proper including an order granting renewal."

In these circumstances, therefore, when the Central Government allowed the revision application and directed the State Government to grant the licence to the appellant, the order must be deemed to be an order passed by the Central Government granting the prayer of the appellant for issue of the mining lease. As, however, the application had been made to the State Government by the appellant, the form of the order of the Central Government was to give a clear direction to the State Government to grant the formal lease. The order of the Central Government dated November 21, 1964, therefore, left no discretion to the State Government to refuse to grant the mining lease to the appellant. It seems to us that the State Government does not appear to have appreciated the real content of the order of the Central Government and was labouring under a misconception that in spite of a clear direction given by the superior Tribunal, namely, the Central Government, it was still open to the State Government to reject the application.

It appears that the State Government, after receiving the order of the Central Government, refused to implement it on the ground that the State Government had formulated a policy that the area in dispute should be conserved for building cement factories and licences should be given only to those applicants who are prepared to set up a cement factory. The State Government rejected the application of the appellant on December 17, 1966, as the appellant had not indicated anywhere in the application that he was prepared to set up a cement plant. In fact the appellant on coming to know of the stand taken by the Government did file an application before the Central Government on January 27, 1967 that he could put up a cement plant if it was economical to do so. The appellant consequently filed a third revision application before the Central Government against the order of the State Government dated December 17, 1966 rejecting the application of the appellant for grant of mining lease. This application was filed on January 27, 1967 and in his comments the appellant pointed out that by the time the Central Government was seized of the matter the policy of the State Government of Bihar, due to the change in the Ministry, had changed and that it may be asked to re-examine the matter. The Central Government accordingly invited further comments of the State Government in the matter and this time the State Government again took the stand that as the area in dispute which was comprised in Tauzi No. 28 was the subject matter of title suit in the Court of Hazaribagh, the State Government was not willing to grant the licence to the appellant and involve itself into an endless litigation. This comment appears to have found favour with the Central Government which rejected the revision application of the appellant by the impugned order dated February 17, 1968 against which the present appeal by special leave has been preferred before us.

The facts mentioned above are proved from the various annexures filed by the appellant along with the special leave and printed in the Paper Book and consist of various orders passed by the Central and State Governments, the correspondence between the State Government and the Central Government, the note-sheets and summary of facts made by the concerned Ministry etc. The learned counsel for the respondent has not at all disputed the correctness of the contents of these documents.

It seems to us that the Central Government has not disposed of the revision application in accordance with law. To begin with, the Central Government had expressly directed the State Government to dispose of the application of the appellant by its order dated March 24, 1962, on the first revision application filed by the appellant. Due to the continued inaction of the State Government, the second revision application was filed before the Central Government which was also allowed on November 21, 1964 and the State Government was given clear directions to grant the lease to the appellant. In view of this order it was not open to the State Government to reject the application of the appellant on any ground whatsoever. If the State Government found itself unable to implement the order of the Central Government a reference could have been made to the Central Government for obtaining necessary directions. Ultimately the order of the Central Government culminated into the grant of a licence in favour of the appellant after he had selected a compact block. Thereafter the State Government instead of implementing this order took the stand that they had devised a policy to grant leases only to those persons who were prepared to set up a cement plant. Subsequently this policy was also given a go by and the State Government rejected the application of the appellant on the ground that the land was the subject-matter of a litigation. This led to the last revision filed by the appellant before the Central Government. The Central Government, after calling for the comments of the State Government, appears to have upheld the order of the State Government rejecting the application. In doing so, the Central Government overlooked the fact that it had already directed by its order dated November 21, 1964 that the State Government should grant the mining lease to the appellant in respect of a compact block selected by the appellant. The State Government, being a subordinate authority in the matter of grant of mining lease, was obligated under the law to carry out the orders of the Central Government as indicated above. But the State Government declined to do so on the ground that it had laid down a policy that the mining leases in respect of the area should be given only to those who were prepared to set up a cement factory. It was clearly not open to the State Government to decline to carry out the orders of the Central Government on this ground, particularly because the Central Government was a tribunal superior to the State Government. If a ground came into existence subsequent to the making of the order of the Central Government which warranted a reconsideration of the order of the Central Government as indicated above, the State Government could have brought this ground to the notice of the Central Government. However, one thing is manifestly clear that the State Government could not have refused to implement the order of the Central Government unless the Central Government itself chose to revise it either on a reference by the State Government or suo motu. In fact to take the view that the State Government could decline to carry out the order of the Central Government on some ground which it thinks proper would be subversive of judicial discipline. Therefore, when the appellant preferred a revision application to the Central Government against the refusal of the State Government to carry out the order of the Central Government by rejecting his application, the Central Government should have proceeded to set aside the order of the State Government and

directed the State Government to grant the application of the appellant. Instead of doing this, the Central Government again appears to have entered into the merits of the question as if its earlier order was not in existence at all and sustained the rejection of the application of the appellant on the ground that the area in question was the subject-matter of the title suit in the Court of Hazaribagh, even though the appellant had pointed out to the Central Government that the injunction issued by the Court regarding the premises in dispute had been vacated. Even assuming for the sake of argument that the Central Government could revise its earlier order, and putting the case of the Central Government at its highest, this could be done only if some fresh ground came into existence which warranted reconsideration of the earlier order. The fact that there was a litigation pending in the Hazaribagh Court in respect of the area in question was neither a new or a fresh fact which came into existence for the first time after the order was made by the Central Government directing the State Government to grant the licence to the appellant. The litigation was pending since 1954 and the Central Government was aware of this fact even when it passed its order dated November 21, 1964. In these circumstances, therefore, there was absolutely no legal justification at all for the Central Government to go back upon its earlier order. The earlier order of the Central Government stood unvaried and unvacated and the State Government was bound to implement it and, therefore, the Central Government was in error in upholding the action of the State Government rejecting the revision application filed by the appellant and thus silently condoned the lapse committed by the State Government.

For the reasons given above, we are satisfied that the order impugned passed by the Central Government cannot be allowed to stand and must be set aside. We accordingly allow the appeal, set aside the order of the Central Government dated February 17, 1968 rejecting the revision application of the appellant and direct the State Government to implement the order of the Central Government dated November 21, 1964 for granting the mining lease to the appellant. The appellant will be entitled to his costs throughout.

[1976] SUPPLEMENTARY