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March 10

VRAJLAL MANILAL & CO.

v.

UNION OF INDIA AND ANR.

[P. B. GAJENDRAGADKAR, C.J., K. N. WANCHOO, J. C. SHAH, N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.]

Mines and Minerals—State Government refuses to renew certificate of approval—Review petition to Central Government —Central Government receives report and information from the State Government behind the back of the appellants—Central Government acting quasi-judicially—Violation of natural justice —Mines and Minerals (Regulation and Development) Act, 1948 (No. XLIII of 1948)—Mines Concession Rules, 1949 rr. 57, 59.

The appellants constitute a partnership engaged in mining and they held a prospecting license as well as a certificate of approval from the State Government under the Mineral Concessions Rules, 1949 framed under the Mines and Minerals (Regulation and Development) Act, 1948. The approval certificate was granted for one year and until December 1955 it had been renewed from year to year when the State Government refused to renew it on the ground that the partners composing the firm had changed. Thereupon the appellants applied under r. 57 of the Minerals Concession Rules to the Union Government for the review of the order of the State Government refusing to renew the certificate of approval. While this application was pending the Union Government corresponded with the State Government and gathered information and received the latter's remarks regarding the merits of the matter behind the appellants' back. The request made by the appellants for copies of the correspondence and for an opportunity to be heard was refused by the Union Government. Ultimately the Union Government refused the review application on the ground that there was no valid ground to interfere with the decision of the State Government. The present appeal was filed on special leave granted by this Court. On behalf of the appellants it was contended that the Union Government while disposing of an application under r. 57(2) in terms of r. 59 acts as a quasi-judicial authority and the order which was passed taking into consideration the report of the State Government behind the appellants' back and without affording a reasonable opportunity for presenting their case was contrary to natural justice and was therefore void.

Held: (i) The Union Government when disposing of an application for review under r. 59 is functioning as a quasi-judicial authority.

Shivji Nathubhai v. *Union of India*, [1960]^2 S.C.R. 775, relied on.

(ii) Though *Shivji Nathubhai*'s case was concerned with a case where an order had been passed prejudicial to the respondents before the Central Government without affording them

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an opportunity to meet the case of an applicant for review the same principle would apply even where a petition for review is rejected based on materials which were not made available to the applicant for review.

(iii) Applying the above principle to the present case the order of the Central Government is vitiated as being contrary to the principles of natural justice in that the decision was rendered without affording to the appellants a reasonable opportunity of being heard which is a *sine qua non* of a fair hearing.

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 115 & 116 of 1963. Appeals by special leave from the judgment and orders dated July 9, 1958, September 24, 1958 of the Union of India (Ministry of Steel, Mines and Fuel, New Delhi) and the Punjab High Court (Circuit Bench) at Delhi respectively.

G. S. Pathak, Rameshwar Nath and *S. N. Andley*, for the appellant (in both the appeals).

S. G. Patwardhan and *B. R. K. G. Achar*, for respondent No. 1 (in both the appeals).

I. N. Shroff, for respondent No. 2 (in C.A. No. 116/1963).

March 10, 1964. The Judgment of the Court was delivered by

Ayyangar, J.

AYYANGAR, J.—Civil Appeal No. 115 is by special leave granted by this Court under Art. 136 of the Constitution and is against an order of the Union of India (Ministry of Steel, Mines and Fuel) dated July 9, 1958 rejecting an application filed by the appellants under rule 57 of the Mineral Concession Rules, 1949 to review an order passed by the Government of Madhya Pradesh rejecting their application for the renewal of the Certificate of Approval granted to them. The appellants filed a petition to the High Court Punjab under Art. 226 of the Constitution praying for a writ of *certiorari* to quash the above order of the Union of India. This petition was dismissed by the High Court *in limine* and Civil Appeal No. 116 of 1963 is by special leave of this Court against this order of the High Court, Punjab. It would thus be seen that both the appeals are directed to challenge the validity of the same order and we shall therefore deal with them together.

The appellants, who constitute a partnership, are engaged *inter alia* in the business of mining and they held a prospecting licence in the State of Madhya Pradesh. They hold concessions in regard to prospecting and working minerals in several areas of the State to the details of which it is not necessary to refer. Under the scheme of the Mines and Minerals (Regulation and Development) Act, 1948 (Act No. XLIII of 1948) and the Mineral Concession Rules, 1949 framed thereunder, in order that a prospecting licence may be granted to a person he has

to hold a certificate of approval from the State Government concerned and similarly the rules provide that no mining lease shall be granted to any person unless he held a similar certificate of approval. To enable them to do the prospecting in lands in which they had obtained mineral concessions, the appellants applied for and obtained from the Government of Madhya Pradesh a certificate of approval under the Mineral Concession Rules from 1952 onwards. The duration of the certificate is one calendar year and the same has to be renewed every year, if it is to be in force. The original certificate granted to the appellants for the year 1952 was being renewed from year to year and as a result they held a valid certificate of approval up to the period ending on December 31, 1955. Being desirous of having the same renewed for the following calendar year 1956 they made an application to the Government of Madhya Pradesh on November 22, 1955. The information required by the form of application prescribed by the rules was furnished and the necessary documents were filed and this application was recommended by the District Officer, Bhandara. The State Government, however, by an order dated September 21, 1956 rejected the application, the reason given being that the partners composing the firm had changed. This order was communicated to the appellants on October 6, 1956 and thereupon the appellants made an application on November 15, 1956 to the Union Government for a review of the order of the State Government under rule 57 of the Mineral Concession Rules. Rule 57(2) which was invoked by the appellants provides:

> "Where a State Government has failed to dispose of an application for grant of renewal of a certificate of approval or prospecting licence or a mining lease within the period prescribed therefor in these Rules, such failure shall, for the purpose of these rules, be deemed to be a refusal to grant or renew such certificate, licence or lease, as the case may be, and any person aggrieved by such failure may, within two months of the expiry of the period aforesaid, apply to the Central Government for reviewing the case."

The procedure for review is laid down by rule 59 which reads:

> "Review—Upon receipt of such application, the Central Government may, if it thinks fit, call for the relevant records and other information from the State Government, and after considering any explanation that may be offered by the State Government cancel or revise the order of the State Government, or pass such order as the Central Government may deem just and proper."

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Thereafter correspondence seems to have ensued between the Central Government and the Government of Madhya Pradesh in regard to the propriety of granting the application for review. The appellants having come to know from a letter addressed to them by the Government of India that the State Government had been required to send a report of their remarks in connection with their application for review made enquiries as to what had happened and also requested that they might be informed as to the progress of their application and that they might be given an opportunity of a personal hearing at which they would be able to satisfy the Government about the genuineness of their case. Some portions of this correspondence between the Government of India and the Government of the State as to the merits of the appellants' application are now on record but it is common ground that the appellants were not informed of these documents prior to the order now impugned rejecting the application for review was passed. On July 9, 1958 the application of the appellants was rejected by the Union Government, the order stating:

> "The Central Government have come to the conclusion that there is no valid ground for interfering with the decision of the Government of Madhya Pradesh rejecting your application for renewal of a certificate of approval for the year 1956."

The appellants thereafter applied to the Government of India requesting for a copy of the report of the State Government on the basis of which the application was rejected. The reply that the appellants received was that the Government of India regretted their inability to accede to their request. It is the validity of this order dated July 9, 1958 that is challenged in appeal No. 115 of 1963.

Mr. Pathak, learned Counsel for the appellants, submitted that the Union Government when disposing of an application under s. 57(2) in terms of rule 59 is acting as a quasi-judicial authority and the order which was passed taking into consideration the report of the State Government and without their knowing the contents of the report and without affording them a reasonable opportunity of presenting their case was contrary to natural justice and was therefore void. In this connection learned Counsel relied on the decision of this Court: *Shivji Nathubhai* v. *The Union of India*(1). Mr. Pathak is well-founded in his submission as to the nature of the jurisdiction exercised by the Union Government when disposing of an application for review under Rule 59 and the decision referred to does

(1) [1960] 2 S.C.R. 775.

support him that the Central Government acting under the rule referred to is functioning as a quasi-judicial authority. It does follow therefore that they could not act on the basis of material as regards which the appellants had no opportunity to make their representation. No doubt, the decision in *Shivji Nathubhai* v. *The Union of India and Ors.*(1) was concerned with a case where an order had been passed prejudicial to the respondents before the Central Government without affording them an opportunity to meet the case of an applicant for review but the same principle would, in our opinion, apply even where a petition for review is rejected based on materials which were not made available to the applicant for review.

As we have already indicated, the State Government had refused renewal of the certificate of approval because they considered that there had been a change in the composition of the firm which destroyed its identity. On the other hand, the case of the appellants was that the terms of the partnership deed made express provisions for the continuance of the identity of the firm, notwithstanding changes in the persons composing the firm by death, retirement or because of the accession of new members to replace deceased or retiring partners or even otherwise. If the report of the State Government made any points against the representations made by the appellants, and these were being taken into consideration by the Union Government, in common fairness, the appellants were entitled to be informed as to what these were and an opportunity to point out how far they militated against the contentions raised by them.

Learned Counsel for the respondent—Union of India, did not seek to support the position taken by the Central Government that they were justified in refusing to disclose the contents of the report they obtained from the State Government which afforded them the factual basis on which they rejected the application for review. We have therefore no hesitation in holding that the order of the Central Government now under appeal is vitiated as being contrary to the principles of natural justice, in that the decision was rendered without affording to the appellants a reasonable opportunity of being heard which is a *sine qua non* of a fair hearing.

The learned Judges of the Punjab High Court dismissed the petition filed before them under Art. 226, apparently because they proceeded on the view that the exercise of jurisdiction of the Central Government under rules 57 and 59 of the Mineral Concession Rules was really administrative in character so that the reasonable opportunity that is an essential requisite of quasi-judicial procedure was not attracted to the

(1) [1960] 2 S.C.R. 775.

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case. That was the view taken by that Court in the *Shivji Nathubhai* v. *The Union of India and Ors.*(1) which decision was reversed by this Court. It might be mentioned that the decision of this Court was rendered subsequent to their judgment now under appeal and therefore the learned Judges had not the advantage of the pronouncement of this Court.

The result is that the appeals are allowed and order of the Central Government dated July 9, 1958 and of the High Court dated September 24, 1958 are set aside. The Central Government will consider the review application afresh and dispose of the same in accordance with law and in the light of the observations contained in this judgment. The appellants are entitled to their costs in this Court (Hearing fee one set).

Appeals allowed.

(1) [1960] 2 S.C.R. 775.