A STATE OF ORISSA

*v.*

UNION OF INDIA AND ANR.

DECEMBER 13, 1994

B [B.P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

*Mineral Concession Rules, 1960: Rules 24,54 and Explanation. Lease—Application for grant of—No orders passed by State Government within twelve months—Deemed refusal—Revision—Power of Central Government—Direction by Central Government to State Government to*
C *consider the application within 100 days—Non-compliance with by State—Second revision before Central Government— Held not maintainable.*

*Grant of lease—Where Central Government directs the State Government to grant mining lease State has locus standi to challenge that order.*
D

**Pursuant to a Notification issued by State Government for grant of lease of iron ore, the 2nd respondent and two other applicants filed their applications but the same were not disposed of by the State Government for more than a year and consequently they were deemed to have been refused by virtue of the provisions contained in Rule 24 of**
E **the Mineral Concession Rules, 1960. Revision applications were filed before the Central Government which set aside the deemed refusal and directed the State Government to pass a final order on the applications within a period of 100 days from the date of the order. Since the State Govt. did not pass any orders as per the directions of the Central**
F **Government the 2nd respondent preferred a second revision before the Central Government stating that his application not having been disposed of within 100 days must be deemed to have been refused. By its order dated 10.5.78 the Central Government directed the State Government to grant the mining lease to the second respondent. Against this order the State Government filed a writ petition in the**
G **High Court which held that the petition by State was not maintainable because the State Government was bound by the orders of the Central Government, the latter being a superior authority. The State Government preferred an appeal in this Court.**

**Allowing the appeal and setting aside the order of the High Court,**
H **this Court.**

HELD: 1. Under the provisions of rule 54 of the Mineral Concession Rules, 1960 the Central Government having once passed an order in revision, cannot again exercise the same power in respect of the same deemed refusal under Rule 24 read with Rule 54. Nor can it exercise the power of revision *de hors* the explanation to Rule 54 in the absence of any order passed by the State Government. [505 G]

2. Rule 54 of the Mineral Concession Rules, 1960 clearly provides that where an application, *inter alia*, for the grant of a mining lease is not disposed of within the period prescribed in Rule 24, the State Government shall be deemed to have made an order refusing the grant on the date on which the period prescribed expires. In view of this deeming provision a revision is clearly maintainable on the expire of 12 months from the date of the application for a mining lease if no order is passed thereon. But there is no provision in the Mineral Concession Rules for a second revision to the Central Government if the State Government thereafter fails to pass an order despite the directions of the Central Government. [503 G to H, 504 A, 504 E]

3. The power of revision was exercised in the present case by the Central Government when it directed the State Government to dispose of the applications within 100 days. This period was prescribed by the Central Government for disposal of the applications is not covered by the Explanation to Rule 54. This period is not a period specified in the Mineral Concession Rules but is a period fixed by the Central Government by an order in the exercise of its power of revision. The State Government has merely not carried out this order. In such a situation there is no deemed order of the State Government from which a revision would lie to the Central Government under Rule 54 of the Mineral Concession Rules, 1960. The Explanation to Rule 54 does not cover such a situation. The failure of the State Government to pass an order within the time fixed by the Central Government in the exercise of its revisional power is not covered by the Explanation to Rule 54. A second revision, therefore is not maintainable when there is no fresh order, deemed or otherwise which can be challenged in revision. [504 B to D]

4. The State Government is not merely an authority subordinate to the Central Government which would, undoubtedly, be bound by the revisional orders of the superior authority. It is also the owner of the mines and minerals in question. If it is directed to issue a mining lease

A **in favour of any party, it has *locus standi* to challenge that order under Article 226 of the Constitution of India. [503 F]**

*Indian Metals and Ferro Alloys Ltd.* **v.** *Union of India and Ors.*, **[1992] Suppl. 1 S.C.C. 91 and** *Dharam Chand Jain* **v.** *State of Bihar*, **[1976] 4 S.C.C. 427, held inapplicable.**

B

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 9160 of 1994.

From the Judgment and Order dated 18.8.88 of the Orissa High Court in O.J.C. No. 717 of 1979

C

R.K. Mehta for the Appellant.

M.L. Verma, N.N. Goswamy, S.K. Sethi, A.K. Sharma, R.D. Upadhyay and W.A. Qadri for the Respondents.

D

The Judgment of the Court was delivered by.

**SUJATA V. MANOHAR, J.** Leave granted.

This appeal by special leave is filed at the instance of the State of Orissa against an Order of a Division Bench of the High Court of Orissa holding that a writ application filed by the State of Orissa under Article 226 E of the Constitution of India seeking to challenge the decision of the Central Government dated 10th of May, 1978 in Revision Application No. 2/299/77-MV, was not maintainable. The facts giving rise to this appeal are as follows:—

F The State of Orissa is the owner of mines and minerals within its territorial jurisdiction. The grant by the State of mining leases and licenses is regulated by the provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Minerals Concession Rules,1960. The State of Orissa had granted a mining lease for manganese ore over an area of 830 acres in Village Balda under Champua Sub-Division of Keonjhar G District in the State of Orissa to one M/s. Serajuddin and Co. for a term of 20 years effective from 3.12.1957. Subsequently on 2.6.1962 a co-terminus mining lease for iron ore over the above area was also executed in favour of M/s. Serajuddin and Co. Both these leases were to expire on 3.12.1977, which was the date on which the primary lease was to expire. Before the expire of the lease period, M/s. Serajuddin and Co. surrendered their lease H in respect of manganese ore. This was accepted by the State Government on

26.11.1974. M/s. Serajuddin and Co., however, filed an application on 25.11.1976 for a grant of renewal of the iron ore lease for a period of 30 years in respect of the said area. This renewal application was rejected by the State Government on 5.7.1979, since the Central Government, in their order dated 25.5.1979, had refused to accord approval for this renewal. In the meantime, in view of the surrender of the said lease in respect of manganese ore by M/s. Serajuddin and Co. the State Government issued a Notification dated 15.11.1975 for regrant of the said mining area admeasuring 60.70 hectors in the said Village Balda in the Champua Sub-Division of Keonjhar District in the State of Orissa.

Pursuant to the said Notification two applications were filed for a mining lease in respect of manganese/iron ore on 25.1.1976. One application was filed by the 2nd respondent Ganpatrai Jain and another application was filed by one Jagdish Mishra. Thereafter on 3.2.1976 a third application was presented by M/s. Ferro Alloys Corporation. The applications were processed in the Directorate of mines which recommended to the State Government that all the applications should be rejected as manganese was proposed to the exploited through a Public Sector undertaking. The State Government, however, did not pass any orders on these applications for more than a year.

In respect of applications for mining leases, Rule 24 of the Mineral Concession Rules, 1960 as in force at the relevant time provides as follows:

"24. *Disposal of Application for Mining Lease:*

(1) An application for the grant of a mining lease shall be disposed of within twelve months from the date of receipt.

(2) x x x x x x

(3) If any application is not disposed of within the period specified in sub-rule (1), it shall be deemed to have been refused."

The applications of the second respondent as well as the other two applications aforesaid were not disposed of within a period of 12 months. These applications were deemed to be refused by reason of the above Rule 24.

From this deemed refusal, the second respondent filed a revision petition before the Central Government under Rule 54 of the Mineral Concession Rules, 1960. The other two applicants also filed revision

A petitions before the Central Government. In this connection, the relevant portion of Rule 54 of the Mineral Concession Rules, 1960 provides as follows:

> "54 (1): Any person aggrieved by any order made by the State Government.....in exercise of the powers conferred
> B on it by the Act or these rules may, within two months of the date of communication of the order to him, apply to the Central Government.....for revision of the order.....
>
> *Explanation*: For the purpose of this rule, where a State Government has failed to dispose of an application for the
> C grant or renewal of a prospecting licence or a mining lease *within the period specified in respect thereof in these rules,* the State Government shall be deemed to have made an order refusing the grant or renewal of such licence or lease on the date on which such period expires."

D (underlining ours)

Therefore, on the expiry of the period of 12 months from the date of each of these applications, each of them was deemed to have been refused by virtue of the provisions of Rule 24. By reason of the *Explanation* to Rule 54, a revision would lie to the Central Government from this deemed order
E of refusal. Accordingly, the second respondent and the other two applicants preferred revision applications before the Central Government. The Central Government by its order dated 28.3.1977 set aside the deemed refusal and directed the State Government to pass a final order on the applications within a period of 100 days from the date of the order.

F This period of 100 days expired on 5.7.1977 in the case of the second respondent. However, the State Government did not pass any final orders as per the directions of the Central Government. The second respondent, thereupon, filed a second revision petition before the Central Government on the basis that his application not having been disposed of within the
G period of 100 days as ordered by the Central Government in its order of 28.3.1977, must be deemed to have been refused. After issuing a show cause notice to the State Government, the Central Government passed an order on this revision application on 10.3.78 directing the State Government to grant a mining lease for iron ore/manganese for an area of 60.70 hectares in the said Village Balda in the District of Keonjhar in
H favour of respondent No.2.

This order was challenged by the State Government in a writ petition bearing O.J.C. No. 717 of 1979 before the Orissa High Court. The Orissa High Court has held that the State Government is bound by the orders of the Central Government, the latter being a superior authority. Hence the State Government cannot challenge the order of the Central Government in a writ petition. The present appeal is from this judgment and order of the Orissa High Court. A B

In the meanwhile, M/s. Serajuddin and Co. approached the Calcutta High Court against the order of the state Government dated 5.7.1997 rejecting their application for renewal of the mining lease in respect of iron ore. This was numbered as Civil Revision Case No.7894(W) of 1979. The High Court of Calcutta as per its directions dated 20.8.1979, has directed the State Government to maintain *status quo*. Accordingly, the said area is still under the possession of M/s. Serajuddin and Co. who are working the said area for minerals. We are informed by the appellant that this interim order of the Calcutta High Court is still in force. It is further pointed out that in view of its policy, the appellant cannot grant mining leases for different minerals in the same land to different parties. Hence in the view of the order of the Calcutta High Court, it is not possible for the State Government to comply with the order of the Central Government. C D

We have to consider whether the Orissa High Court was right in dismissing the writ petition filed by the State Government challenging the order of the Central Government dated 10.5.78 on the ground that the writ petition was not competent and maintainable. E

In this connection, it is necessary to note that in the first place, the State Government is not merely an authority subordinate to the Central Government which would, undoubtedly, be bound by the revisional orders of the superior authority. It is also the owner of the mines and minerals in question. If it is directed to issue a mining lease in favour of any party, it has *locus stand* to challenge that order under Article 226 of the Constitution of India. F

Secondly, we must also consider whether in the present case, the Central Government was competent to issue the second order directing the State Government to issue a mining lease in favour of the Second respondent. Rule 54 of the Mineral Concession Rules, 1960 clearly provides that where an application, *inter alia*, for the grant of a mining lease is not disposed of within the period prescribed in Rule 24, the State Government shall be deemed to have made an order refusing the grant on the date on which the period prescribed expires. In view of this deeming G H

A provision, a revision is clearly maintainable on the expiry of 12 months from the date of the application for a mining lease if no order is passed thereon. Because it is an application for revision of a deemed order of refusal deemed to have been passed by the State Government.

This power of revision was exercised in the present case by the Central B Government when it directed the State Government to dispose of the applications within 100 days. This period which was prescribed by the Central Government for disposal of the applications is not covered by the Explanation to Rule 54. This period is not a period specified in the mining Concession Rules but is a period fixed by the Central Government by an order in the exercise of its power of revision. The State Government has C merely not carried out this order. In such a situation there is no deemed order of the State Government from which a revision would lie to the State Government under Rule 54 of the Mineral Concession Rules, 1960. The Explanation to Rule 54 does not cover such a situation. The failure of the State Government to pass an order within the time fixed by the Central Government in the exercise of its revision powers is not covered by the D Explanation to Rule 54. A second revision, therefore, is not maintainable when there is no fresh order, deemed or otherwise which can be challenged in revision. If the State Government has failed to carry out any directions given to it by the Central Government, the aggrieved party may seek his remedy in accordance with law. But there is no provision in the Mining E Concession Rules for a second revision to the Central Government if the State Government fails to pass an order despite the directions of the Central Government.

In this connection, our attention was drawn to certain observations made by this Court in the case of *Indian Metals and Ferro Alloys Ltd.* v. F *Union of India and Ors.*, [1992] Supp. 1 SCC 91 at 125. In paragraph 32, this Court has referred to certain statutory inadequacies pointing out, *inter alia*, that if the Central Government's directions to dispose of the applications within a certain period are not carried out by the State Government, the Central Government would be helpless in the matter and the aggrieved party may have to seek redress in an appropriate court of law. It G has adversely commented on the fact that Central Government in such a situation becomes *functus officio* and has no jurisdiction to revise its earlier orders. The Court has also commented on the delays which would result and has observed that this is an "extremely cumbrous and ineffective procedure". It has also observed that it is puzzled why the Central Government, even in the first instance, could not dispose of the application on H merits after hearing concerned parties. We fail to see how these

observations help the second respondent in any manner. If the procedural provisions are inadequate, it is for the appropriate authorities to amend the concerned rules. The above observations cannot be read as holding that a second revision is maintainable if the State Government does not carry out the order in revision passed by the Central Government.

Our attention was also drawn by the second respondent to a decision of a Bench of three Judges of this Court in the case of *Dharam Chand Jain* v. *State of the Bihar,* [1976] 4 SCC 427. In that case, in exercise of its powers of revision, the Central Government had directed the State Government to dispose of the application of the appellant within a certain period. Due to the continued inaction of the State Government a second revision application was filed before the Central Government which was allowed and the State Government was given clear directions to grant a lease to the appellant. 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 rejection the application of the appellant on the ground that the land was the subject matter of litigation. This order of rejection led to the last revision filed by the appellant before the Central Government. The Central Government upheld the order of the State Government rejecting the application. This last order of the Central Government was challenged by the appellant. The Court held that the Central Government, having once directed the State Government to grant the lease to the appellant, could not thereafter ignore its earlier order and pass a subsequent order upholding the State Government's rejection of the application. It held that the State Government was bound to carry out the first order of the Central Government. The question of the power or jurisdiction of the Central Government to pass the second order directing the grant of a lease in favour of the appellant, does not appear to have been questioned by any of the parties. Nor has the judgment examined this aspect. Looking to the provisions of Rule 54, it is clear that the Central Government having once passed an order in revision, cannot again exercise the same power in respect of the same deemed refusal under Rule 24 read with Rule 54. Nor can it exercise the power of revision *de hors* the explanation to Rule 54 in the absence of any order passed by the State Government.

In the present case, the State Government has further pointed out that in view of the order passed by the Calcutta High Court as far as back in August, 1979 which is till in operation, it is unable to carry out the first order of the Central Government passed in revision. Undoubtedly, during

A the period of 100 days which was granted to the State Government for passing the orders, there was no such order of the Calcutta High Court. The order of the Calcutta High Court was passed a little later. Nevertheless, it is not now possible to direct the State Government to carry out the order of the Central Government unless the order of the Calcutta High Court is vacated. It is unfortunate that an interim order of *status quo* should have
B continued for a period of 15 years. We, therefore, request the Calcutta High Court to dispose of the pending Civil Revision case No. 7894(W) of 1979 within four months from today if it is not already disposed of. In the event of any order being passed by the Calcutta High Court vacating the interim order of *status quo* in favour of the appellant, it may still have to be considered whether in public interest, after a lapse of 15 years, the State
C Government should be directed to grant a lease in favour of an applicant in terms of the offer made by him 17 years ago, even assuming that the second order of the Central Government is valid in law. We, however, need not go into this question in view of our earlier findings.

The appeal is, therefore, allowed. The impugned order of the Orissa
D High Court is set aside and the Orissa High Court is directed to dispose of the writ petition on merit in accordance with law as expeditiously as possible. In the circumstances, there will be no orders as to costs.

T.N.A. Appeal allowed.