

(1976) 02 CAL CK 0033

Calcutta High Court

Case No: Civil Rule No. 18318 (W) of 1975

South Karanpura Coal
Company Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Feb. 18, 1976

Acts Referred:

- Constitution of India, 1950 - Article 226, 311(2)
- Mineral Concession Rules, 1960 - Rule 37, 37(1), 37(2), 37(3)

Citation: (1977) 1 ILR (Cal) 347

Hon'ble Judges: Amiya K. Mookerji, J

Bench: Single Bench

Advocate: Ranadeb Chowdhury, R.C. Deb, Ranendra Nath Mitra and Satyabratha Sinha, for the Appellant; Hariprasanna Mukherji, Narottam Chatterji, Ashoke Sen and Gouri Mitra, General and Prasanta Kumar Ghosh, for the Respondent

Judgement

Amiya K. Mookerji, J.

This Rule is directed against an order dated November 24, 1975, passed by the Joint Secretary to the Government of Bihar cancelling the mining lease of the Petitioners under Rule 37(3) of the Mineral Concession Rules, 1960.

2. The Petitioner No. 1 is a limited company registered under the Indian Companies Act. The Petitioner No. 2 is a Director and share-holder of the company. The Petitioner No. 1 was the lessee in respect of 242 bighas colliery and coal lands with relevant surface right thereto situated in mouza Bundu in the district of Hazaribagh. It is alleged that u/s 10 of the Bihar Land Reforms Act the Petitioners have become statutory lessee under the State of Bihar. By letter dated June 12, 1976, the Petitioner No. 1 permitted M/s. S.D. Coal and Co. (the added Respondents) to carry out prospecting and exploratory operation in its lease-hold coal bearing land measuring 242 bighas for the purpose of proving the existence of seam and location thereof as well as the feasibility of winning coal from the

Said demised land economically. On July 5, 1975, the District Mining Officer, Hazaribagh, issued a show-cause notice to the Petitioners that why the Petitioners' lease should not be determined inasmuch as the Petitioner entered into an agreement for prospecting and car-rigging out exploratory-mining operations without obtaining permission under Rule 37 of the Mineral Concession Rules. On July 15, 1975, the Petitioner replied to the said show-cause notice wherein it was stated that Rule 37 of Mining Concession Rules, 1960, related to "transfer of lease". The arrangement envisaged in its letter dated June 12, 1975, to M/s. S.D. Coal and Co. did not amount in fact or in law to any transfer of lease as defined under Rule 37 of the Mining Concession Rules, 1960. Thereafter, on November 24, 1975, the impugned order was issued determining the Petitioners' lease with respect to 242 bighas of coal land situated in village Bundu in the district of Hazaribagh. The Petitioners being aggrieved by the said order moved this Court under Article 226 of the Constitution and obtained the present Rule.

3. It is urged by the Petitioners that proviso to Sub-Rule (3) of Rule 37 of the Mineral Concession Rules, 1960, has not been complied with before determining the lease under Sub-Rule (3) of Rule 37. Sub-rule (3) of Rule 37 reads as follows:

The State Government may, by order in writing, determine any lease at any time if the lessee has, in the opinion of the State Government, committed a breach of any of the provisions of sub-rule (1) or has transferred any lease or any right, title or interest therein otherwise than in accordance with sub-rule (2): Provided that no such order shall be made without giving the lessee a reasonable opportunity of stating his case.

4. It is not disputed that no reasonable opportunity of stating their case was given to the Petitioners before passing the impugned order under Sub-Rule (3) of Rule 37.

5. It is contended by Mr. Mukherji, appearing on behalf of the State of Bihar, that there has been contravention of Rule 37(1)(b) of the Rules. The Petitioners also stated their case in reply to the show-cause notice issued by the Mining Officer. There was no necessity of giving any further opportunity to the Petitioners inasmuch as the Petitioners themselves admitted that they entered into an agreement with M/s. S.D. Coal and Co. without taking any consent in writing of the State Government. Thus, it is abundantly clear that the Petitioners have contravened Rule 37(1)(b) of the Rules and accordingly, their lease has been rightly determined by the State Government.

6. The words "reasonable opportunity" were considered by the Supreme Court in [Khem Chand Vs. The Union of India \(UOI \)and Others](#), wherein it is stated that reasonable opportunity includes:

(a) an opportunity to deny one's guilt,

(b) an opportunity to defend himself by cross-examining the witness produced against him and by examining himself or any other witnesses in support of his defence.

7. It is true that the Supreme Court construed those words in the context of Article 311(2) of the Constitution. But even then there cannot be a total departure from the meaning of that expression: in relation to other Statute. In my view, the words "reasonable opportunity" as stated in proviso to Sub-Rule (3) of Rule 37 of the Mineral Concession Rules, 1960, connotes an opportunity of giving evidence in support of the contention of the person concerned and in controverting such charges as are made against him.

8. The records were produced before me. Some Hindi documents were read out by the learned Junior Advocate who appeared along with Mr. Mukherji. It has been learnt from those letters that the Mining Officer on receipt of the reply to the show-cause of the Petitioners wrote out a long note along with his comments and sent it to the Deputy Commissioner of Hazaribagh. An opinion was also obtained from the Government Pleader, who was of opinion that the Petitioners did not violate the provisions of Rule 37(1)(b). The Deputy Commissioner on receipt of the said report from the Mining Officer sent another report of the Government and on the basis of those two reports the State Government passed the impugned order.

9. Mr. Mukherji concedes that "reasonable opportunity" include a personal hearing. That personal hearing has been denied to the Petitioners.

10. So, in my opinion, the condition precedent for exercising powers in Sub-Rule (3) of Rule 37 of the Mineral Concession Rules, 1960, has not been fulfilled in the instant case and the impugned order must be quashed. I make it clear that this order shall not, however, prevent the State of Bihar to have any action against the Petitioners in accordance with law.

11. In the result, this Rule is made absolute. The impugned order dated November 24, 1975, passed by the Joint Secretary to the Government of Bihar which is annex. "E" to the petition, is quashed by a writ of certiorari. Let a writ of mandamus be issued directing the Respondents not to give any effect to the said impugned order.

12. There will be no order as to costs.

13. Let certified copies be delivered to the parties expeditiously, if applied for.