A

KAYS CONCERN

v.

UNION OF INDIA & ORS.

April 6, 1976

[P. N. BHAGWATI, A. C. GUPTA AND S. MURTAZA FAZAL ALI, JJ.]

B

Mineral Concession Rules, 1960, *Rule* 54—*Disposal of revision application —Obligation of Central Government to consider the entire material before it.*

On the expiry of his sub-lease for extracting phosphate form an area of 400 hectares situate in Singbhum district, Bihar, the appellant applied to the State Government for a grant of fresh lease. For nine months the State Government failed to dispose of his application, and under R. 24(3) of the C Mineral Concession Rules, 1960, it was deemed to have been refused. Under Rule 54 of the Mineral Concession Rules, 1960, the appellant applied for revision and the Central Government directed the State Government to consider his application on merits. The State Government rejected the application on the ground that it had decided not to grant lease for phosphate to individuals or private parties, but to work this mineral in the public sector. The appellant again applied for revision during the pendency of which an advertisement of the State Government appeared in the 'Statesman' indicating the abandon- D ment of its proposal to mine phosphate and apatite in the public sector. The appellant brought the advertisement to the notice of the Central Government, but it rejected his revision application, completely disregarding the advertisement.

The appellant preferred an appeal to this Court by special leave.

Allowing the appeal and remanding the case to the Central Government, the Court,

E

HELD : The Central Government failed to take into consideration this advertisement which appeared to indicate a change in the stand of the State Government, and made its order in complete disregard of it. This was clear non-application of mind on the part of the Central Government to a very material circumstance which was brought to its notice before its disposal of the revision application. The order of the Central Government, therefore, suffers from a patent error. [1044G-H, 1045A]

F CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1633 of 1968.

Appeal by special leave from the judgment and order dated the 2nd December, 1967 of the Government of India, Ministry of Steel, Mines and Metals (Department of Mines and Metals) at New Delhi in No. M.V. 1 (141)/67.

G *S. K. Mehta* and *K. R. Nagaraja,* for the appellant.

S. P. Nayar and *Girish Chandra,* for respondent No. 1.

U. P. Singh and *Shambhu Nath Jha,* for respondent No. 2.

The Judgment of the Court was delivered by

BHAGWATI, J. This appeal can be disposed of on a very narrow H point and we will, therefore, set out only so much of the facts giving rise to the appeal as bear on this point and omit what is unnecessary.

Since 23rd December, 1959 the appellants had a sub-lease from the Receiver in Suit No. 203 of 1905 for extracting phosphate from

an area of 400 hectares situate in Singhbhum District in the State of Bihar. This sub-lease, according to the State of Bihar, came to an end from 1st September, 1964 and the appellants, therefore, made an application to the State of Bihar on 22nd/24th March, 1965 for a grant of fresh mining lease for extraction of apatite and phosphate from the same area under Rule 22 of the Mineral Concession Rules, 1960 made by the Central Government under s. 13 of the Mines & Minerals (Regulation & Development) Act, 1957. The State Government failed to dispose of the application within a period of nine months from the date of its receipt and hence under Rule 24(3) of the Mineral Concession Rules, 1960 the application was deemed to have been refused by the State Government. The appellants preferred a revision application to the Central Government on 16th February, 1966 against the deemed refusal of their application under Rule 54 of the Mineral Concession Rules, 1960. The Central Government disposed of the revision application by an order dated 31st December, 1966 directing the State Government to consider the application of the appellants and to decide it on merits. The State Government thereafter by an order dated 9th February, 1967 rejected the application of the appellants on the ground that the State Government had already taken a decision not to grant lease for phosphate ore to any individual or private party as it had decided "to work this mineral in the public sector". The appellants again filed a revision application to the Central Government against the order of the State Government rejecting their application. The Central Government invited comments of the State Government on the revision application and on the comments submitted by the State Government, the appellants were given an opportunity to submit their cross-comments which they did on 8th August, 1967. Whilst the revision application was pending, the appellants read an advertisement in the issue of Statesman dated 13th September, 1967 to the following effect :

"Government of Bihar

Department of Mines & Geology, Patna.

Mining and beneficiation of low grade apatite of Singhbhum.

A reserve of a little over 1 million tonnes of low grade Apatite Mineral with average 16% P.O. has been proved in a belt consisting of several mouzas in the Singhbhum District of Bihar. The representative bulk samples of the minerals have laboratory Jamshedpur, and it has been found that the mineral can be suitably upgraded by beneficiation, to yield Apatite concentrate with 36% to 40% P.O., suitable for use as raw material for the manufacture of Phosphetic fertiliser. Report of economic feasibility studies available. The State Government may consider giving tax holidays for a fixed period and also may guarantee the safety of the investment invested parties capable of making investment to the tune of 40 to 50 lakhs in undertaking to above project may obtain further particulars from the

A Mines Commissioner, Department of Mines and Geology, Government of Bihar, Patna.

Sd/- K. ABRAHAM,
Commissioner of Mines & Geology."

The appellant immediately addressed a communication dated 26th B September, 1967 to the Central Government enclosing a copy of the advertisement and pointing out that it was clear from the advertisement that the State Government had abandoned the idea of working apatite and phosphate in the public sector and that the ground for rejecting the application of the appellants for mining lease no longer existed. The Central Government, however, by an order dated 2nd December, 1967 rejected the revision application stating that :

C "... the Central Government have come to conclusion that as the State Government are anxious to do phosphate mining for their own fertilizer factory in public sector, there is no valid ground for interfering with the decision of the State Government rejecting your application for grant of mining lease for apatite and phosphate in Singhbhum district."

D

The appellants thereupon preferred the present appeal against the order of the Central Government with special leave obtained from this Court.

It is apparent from the order of the Central Government dated 2nd December, 1967 that the Central Government rejected the revi- E sion application of the appellants on the ground that the State Government was anxious to do phosphate mining for its own fertilizer factory in the public sector. This was undoubtedly the original ground put forward by the State Government for rejecting the application of the appellants for mining lease. But it does appear *prima facie* from the advertisement in the issue of the Statesman dated 13th September, 1967 that the proposal of the State Government to mine F apatite and phosphate for its own fertilizer factory in the public sector was abandoned and the State Government was prepared to give mining lease to a party which was prepared to undertake a project of setting up a plant for beneficiation of this mineral so as to make it suitable for use as raw material for the manufacture of phosphatic fertilizer. The appellants brought this advertisement to the notice of the Central Government by their representation dated 26th Septem- G ber, 1967 and this was done before the revision application was disposed of by the Central Government. Even so, the Central Government failed to take into consideration this advertisement which appeared to indicate a change in the stand of the State Government and made its order dated 2nd December, 1967 in complete disregard of it. The order of the Central Government dated 2nd December, 1967 clearly shows that the Central Government failed to apply its H mind to this advertisement though it was brought to its notice in time and proceeded to dispose of the revision application as if no such advertisement had been issued by the State Government. The Central Government did not even care to invite the comments of the State

Government in regard to the advertisement and ignored it altogether in making its order rejecting the revision application. This was clear non-application of mind on the part of the Central Government to a very material circumstance which was brought to its notice before it disposed of the revision application. The order of the Central Government, therefore, suffers from a patent error and it must be quashed and set aside and the matter must go back to the Central Government for fresh determination. A B

We accordingly set aside the order dated 2nd December, 1967 passed by the Central Government and remand the case to the Central Government with a direction to dispose of the revision application, after taking into account the entire material before it, including the advertisement given by the State Government in the issue of Statesman dated 13th September, 1967 and giving an opportunity to the State Government to offer its comments in regard to this advertisement and a further opportunity to the appellants to make their submissions on the comments, if any, offered by the State Government. The State of Bihar will pay the costs of the appeal to the appellants. C

M.R. *Appeal allowed.*