that of *pagwand*. It is said that the plaintiff came to know of his rights on the said date and consequently that his right to sue commenced on the said date. There is, in my opinion, considerable force in this argument. In any case the right did not accrue to him on either of the two dates on which the mutations were sanctioned.

The only other question which requires determination in the present case is whether the plaintiff can be said to have relinquished his rights in the property for the possession of which he has brought the present suit. It is said that although the family to which he belongs is governed by the rule of *chundawand*, he appeared before the revenue officer in the year 1935 and again in the year 1938 and willingly agreed to the property being divided equally amongst the four brothers, although he could have claimed that half the property should be mutated in his name and that the remaining half of the property should be mutated in the names of his three brothers. This cannot, however, be regarded as a case of relinquishment of his rights. Nor can the plaintiff be estopped by his conduct from putting forward the plea that he was in fact governed by the rule of *chundawand* and not by the rule of *pagwand*.

For these reasons I would uphold the order of the courts below and dismiss the appeal with costs. Ordered accordingly.

KAPUR, J. I agree.



CIVIL WRIT

*Before Kapur, J.*

SHIVJI NATHUBHAI,—*Petitioner.*

*versus*

THE UNION OF INDIA, (2) THE STATE OF ORISSA, AND (3) MESSRS MADHUSUDAN DAS & BROS.,—

*Respondents*

**Civil Writ Application No. 306-D of 1954.**

1955

Nov., 28th

*Mines and Minerals (Regulations and Development) Act, LIII of 1948—Rules 32, 57 and 59—Mining lease granted*

*under Rule 32 by State Government—Review application to Central Government under Rule 57—Central Government reviewing decision of State Government under Rule 59—Decision of Central Government under Rule 59 whether Judicial, quasi-Judicial or Administrative—Such decision whether infringes any fundamental right under Article 19 (1) (f) or (g).*

*Held*, that under rule 59 there is no duty cast on the Central Government to act judicially or quasi-judicially and the Government is not enjoined to make its decision "by a course of conduct analogous to the Judicial process". No *lis* arises as there is no assertion of a claim by one side and denial by the other but it is merely a case of two persons applying to a landlord for the grant of a lease. And merely because the landlord has to take a decision as to the suitability or even eligibility of one of the two applicants to get the lease it cannot be said to give rise to a *lis* requiring a judicial approach and the requirements of the statute are contrary to any such duty of acting judicially or quasi-judicially.

*Held further*, that Rule 32 of the Mineral Concession Rules confers no right on a person applying for a lease. All that he may be entitled to is to get a lease in certain circumstances but if no lease is granted it cannot be said that his fundamental rights are infringed, as that would not fall under section 19 (1) (f) or (g) because there is no interference with the right of the petitioner to acquire, hold and dispose of property or to practise any profession or any occupation or trade. There is no interference with the petitioner's right to acquire any property. Merely because a landlord or the Government refused to give a lease to a particular person even though deserving, would not amount to infringement of his fundamental rights under Article 19 (1) (f), nor is it an interference with his right to carry on any occupation, trade or business.

Petition under Article 226 of the Constitution of India praying—

(*a*) that this Honourable Court be pleased to issue a Writ in the nature of *Certiorari*, or other writ, direction or order under Article 226 of the Constitution against the 1st respondent, calling for

the records before it of the case relating to the said order, dated the 28th January, 1954, and after looking into the same and going into the question of the legality thereof, quash and set aside the said order ;

(*b*) that this Honourable Court be pleased to issue a Writ in the nature of Prohibition or other writ, direction or order under Article 226 of the Constitution against the 1st respondent, prohibiting it, its officers servants, and agents from enforcing the said Order, dated the 28th January, 1954, or from taking any steps or proceedings in enforcement, furtherance, pursuance or implementation of the same, or from directing the Government of Orissa to modify its said Order, dated the 22nd December, 1952, or to give effect to the 1st respondent's said Order, dated 28th January, 1954, or to grant a mining lease for manganese to the 3rd respondents in respect of the Gariajore and Kandmal areas ;

(*c*) that this Honourable Court be pleased to issue a Writ in the nature of Mandamus or other writ, direction or order under Article 226 of the Constitution against the 1st respondent, restraining it, its officers, servants and agents, from enforcing the said order, dated the 28th January, 1954, or from taking any steps or proceedings in enforcement, furtherance, pursuance or implementation of the same, or from directing the Government of Orissa to modify its said Order, dated the 22nd December, 1952, or to give effect to the 1st respondent's said Order, dated 28th January, 1954, or to grant a mining lease for manganese to the 3rd respondents in respect of the Gariajore or Kandmal areas ; and/or directing the 1st respondent to withdraw or cancel the said order ;

(*d*) that this Honourable Court be pleased to issue a Writ of prohibition and/or *mandamus* or other writ, direction or order against the 2nd respondent, restraining it from enforcing or acting

upon or in pursuance of the 1st respondent's said order, dated the 28th January, 1954, and directing it to act upon and implement its said order, dated 22nd December, 1952.

(*e*) that pending the hearing and final disposal of this petition this Hon'ble Court be pleased to issue an interim order and injunction against the 1st and 2nd respondents restraining them, their officers, servants and agents from enforcing the 1st respondent's said order, dated the 28th January, 1954, or from taking any steps or proceedings in enforcement, furtherance, pursuance or implementation of the same, and directing them to maintain the *status quo*;

(*f*) that the respondents or any of them be ordered to pay the petitioner's costs of and incidental to this petition; and

(*g*) that the petitioner be awarded such further and other reliefs and such other writs, directions or orders under Article 226 of the Constitution be issued as the nature and circumstances of the case may require.

N. C. CHATTERJI, DINABANDHU SAHU, S. N. ANDLEY and J. B. DADOCHARJI, for Petitioner.

PORUS A. MEHTA, BISHAMBAR DAYAL, M. C. SETALVAD, Attorney-General and S. S. SHUKLA, for Respondents.

JUDGMENT.

Kapur, J.

KAPUR, J. This is a rule obtained by Shivji Nathubhai of Sambalpur and is directed against an order made by the Government of India, under rule 59 of the Mineral Concession Rules, 1949, reversing the order of the Government of Orissa granting a mining lease to the petitioner and ordering that it be granted to respondent No. 3. Messrs. Madhusudan Das and Bros.

At the very beginning of the proceedings Mr. Porus A. Mehta pointed out that in paragraph 2 of the affidavit filed on behalf of the Union of India there was a mistake in regard to a question of fact, in that it was wrongly stated that a suit had been filed in the Court of the Additional Subordinate Judge at Cuttuck. What had actually happened was that a notice under section 80, Civil Procedure Code, was given to the Government along with a copy of the proposed plaint, and that had led to this mistake. No objection was taken by the other side in regard to this correction, and although it has not been formally mentioned in the affidavit, I have taken the facts to be as stated by Mr. Porus A. Mehta.

The Raja of Gangpur, whose State has since merged into the State of Orissa, on the 5th November, 1947, granted permission to the petitioner to extract manganese ore from certain areas in Gariajore and Kendmal in Sundargarh District of that State, and it is stated that he started working. On the 14th December, 1947, an agreement of merger of Gangpur State into the State of Orissa was entered into. On the 13th December, 1947, the Raja of Gangpur executed a lease for mining a number of areas including the two mentioned above and the period of this lease was fifteen years. On the 1st of January, 1948, the merger took place. On the 29th January, 1948, the Orissa Government notified that the lease by the Raja of Gangpur had been annulled.

On the 19th December, 1949, an application was made by the petitioner for a lease in respect of several areas including these two areas, but at that time the petitioner had not received a "certificate of approval", which he received on the 9th January, 1950. On the 4th July, 1950, the Deputy Collector of Mines asked the petitioner to make

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separate applications for each of the mines and make separate security deposits. The deposits under rule 29 had not been made because no maximum had been prescribed. On the 27th July, 1950, separate applications were made and the petitioner deposited Rs. 200 under rule 20 and Rs. 500 under rule 25, i.e., Rs. 700 in respect of each of the applications, but it appears that he did not give particulars of the *khasra* numbers. These formal defects were removed and the applications so corrected were filed at 12-10 p.m. on the 6th September, 1950.

On the 10th July, 1950, Messrs. Madhusudan Dass and Bros., opposite party No. 3, made an application regarding Gariajore and Kendmal mines but did not make any deposit under rule 29 but only made a deposit of Rs. 200 under rule 20. On the 24th July, the Deputy Collector asked them, the opposite party No. 3, also to make the requisite deposit and on the 3rd August, 1950, they deposited Rs. 500. On the 5th September, the Deputy Collector called upon the opposite party No. 3 to file separate applications and these applications and deposits were made by Messrs. Madhusudan Das and Bros. on the 6th September, 1950, at 1 p.m.

The Orissa Government made an order in favour of the petitioner on the 22nd December, 1952, which is annexure 'A' holding that the applications filed by the present petitioner must be taken to have been filed on the 27th July, 1950. The application of the opposite party No. 3 was filed on the 6th September, 1950, and the petitioner was, therefore, entitled to priority and also that the State Government felt that they were bound to "accommodate the old lessees" and, therefore, "Shivji Nathubhai should get precedence". The following portion of the order may be quoted:—

> "The State Government consider that provided certain terms about royalty and

conditions of mining are settled with the Government of India and are acceptable to the lessee the areas Gariajore, Kendmal, Kinijirma, Amesdegi and Mohuljore can be settled for mining lease for manganese. The State Government, therefore, order that subject to the conditions being suitably accepted by the lessee, the leases for the above areas will be granted to Sri Shivji Nathubhai".

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On the 21st April, 1953, a lease was entered into and possession is stated to have been given by the Government to the petitioner, but "subject to the result of any appeal or revision that may be preferred and subject to the following conditions" (It is not necessary to set out the conditions).

Within the period prescribed under rule 57, an application for review was made to the Central Government who made an order under rule 59 on the 28th January, 1954, reversing the order of the Orissa Government and directed that the lease be given to Messrs. Madhusudan Das and Bros. This was in regard to the areas Gariajore and Kendmal. The petitioner has placed on the file a letter, dated the 25th February, 1954, addressed to the Central Government asking for a hearing before any final order to his detriment was passed, but it is admitted that no hearing was given. But in the counter affidavit of the Central Government Mr. G. C. Jerath, Under Secretary, has stated that the Government acting under rule 59 did call for an explanation and records of the case and the matter was fully considered and the necessary order was passed under rule 59 and that they were not bound to give a personal hearing to the petitioner. The order of the Union Government shows that they treated the application of Messrs. Madhusudan

Shivji Nathu-Das and Bros., opposite party No. 3, to have been complete as from the 10th July, 1950.

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The law in regard to mines and minerals is contained in the Mines and Minerals (Regulations and Development) Act, 1948. The preamble of this Act is:—

> "Whereas it is expendient in the public interest to provide for the regulation of mines and oil fields and for the development of minerals to the extent hereinafter specified;"

Therefore, the Central Legislature has declared the extent to which the law and the regulations are expedient in the public interest. The petitioner contended that the statement in the preamble was merely illusory and the extent of what is expedient in the public interest had really not been stated and that it was a mere formal recital. In my opinion this criticism is not well-founded because the sections do indicate what in the opinion of the Central Legislature, was expedient in the public interest and to what extent. Section 5 gives to the Central Government the power to make rules as respects all mineral leases and these rules have been made under the name of Mineral Concession Rules, 1949. A perusal of the various sections shows the extent to which the Central Legislature wanted to go.

In the Government of India Act in Part I of Schedule VII, Item 36 deals with regulation of mines. It provides:—

> "36. Regulation of mines and oil fields and minerals development to the extent to which such regulation and development under Dominion control is declared by Dominion law to be expedient in the public interest".

In List II, Provincial Legislative List, the item is 23 which provides:—

> "Regulations of mines and oil fields and mineral development subject to the provisions of List I with respect to regulation and development under Dominion control".

Thus the power of the Provincial Legislature was subject to Dominion Legislation, if any. In the Constitution the corresponding entries are Items 54 of List I and 23 of List II.

Mr. Chatterji confined his arguments to the following points—(1) that in making the order under rule 59 the Central Government were acting as a quasi-judicial body and their not hearing the petitioner was a violation of natural justice, (2) that as there was an assertion of claim by one party and opposition by another, there was a *lis* and it was the duty of the Central Government to act judicially and their decision was a quasi-judicial act, and (3) rule 59 violates fundamental rights under Article 19(1)(f) and (g) and is an unreasonable restriction. Two other submissions made by him were that even if the order of the Central Government was an administrative order, the procedure must accord with the elements of justice and that rule 59 did not apply to the present case.

In support of the fourth point that even if it was an administrative order the procedure must be in accordance with natural justice, Mr. Chatterji relied on *Ebrahim Vazir Mavat* v. *The State of Bombay and others* (1), which was a case under the provisions of Influx from Pakistan (Control) Act, 1949, which was held to be void under Article 13(1) because it was in conflict with the fundamental rights of a citizen under Article 19(1)(e) of

(1) 1954 S.C.R. 933

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the Constitution and as a consequence the order passed of physical removal of a citizen from India was set aside. In that case the appellant claimed to be a citizen of India who had been ordered to be removed because he had returned from Pakistan without a permit and was convicted for that offence and it was contended that the order of his removal violated his fundamental right guaranteed under Article 19(1)(e) "to reside and settle in any part of the territory of India"; this order was sought to be supported by the Union under Exception 5 of Article 19. The order of removal had been passed under section 7 of the Act which empowered the Central Government to direct the removal from India of any person who had committed or against whom a reasonable suspicion existed that he had committed an offence under the Act. Dealing with this part of the case Ghulam Hasan, J., said:—

> "The question whether an offence has been committed is left entirely to the subjective determination of the Government. The inference of a reasonable suspicion rests upon the arbitrary and unrestrained discretion of the Government, and before a citizen is condemned, all that the Government has to do is to issue an order that a reasonable suspicion exists in their mind that an offence under section 5 has been committed. The section does not provide for the issue of a notice to the person concerned to show cause against the order nor is he afforded any opportunity to clear his conduct of the suspicion entertained against him. This is nothing short of a travesty of the right of citizenship".

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Again at page 940 the learned Judge said:—

> "Assuming, however, that section 7 is consequential to section 3 it gives no opportunity to the aggrieved person to show cause against his removal. There is no forum provided to which the aggrieved party could have recourse in order to vindicate his character or meet the grounds upon which it is based. Neither the Act nor the rules framed thereunder indicate what procedure is to be followed by Government in arriving at the conclusion that a breach of section 3 or of the rules under section 4 has taken place."

And, therefore, section 7 was held to be void under Article 13(1), but that was a case in which there was a breach of the fundamental rights under Article 19(1)(e). The interference there was with the right of citizenship and the whole thing was left under the Act to the subjective determination of the Government and as there was no provision for the issuing of a notice it was held that the matter did not fall within the words "reasonable restriction" on the exercise of any rights conferred by clause (1)(e) of Article 19.

The other case relied upon is the decision of the Supreme Court in *Thakur Raghubir Singh* v. *Court of Wards, Ajmer, and another* (1). That was an executive order made under the Ajmer Government Court of Wards Regulations which empowered the Court of Wards to assume management of the lands of a landholder who had habitually infringed the rights of tenants. This was held to be an infringement of a fundamental right

(1) 1953 S.C.R. 1049

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under Article 19(1)(f) because it made the right of enjoyment of property depend merely on the discretion of the executive because the Court of Wards could in his discretion on a subjective determination assume the superintendence of the property of the landlord. It must be borne in mind that there is a fundamental right of property under Article 19(1)(f) which was infringed and it was held that it was not a reasonable restriction.

In regard to the principles on which a writ of *certiorari* could issue, Mr. Chatterji relied upon *T. C. Basanna* v. *T. Nagappa and another* (1). He also relied upon *R.* v. *Boycott and others* (2), where the certifying of a boy as an imbecile by two doctors and the decision of the Board of Education declaring him to be an imbecile was held to be in excess or usurpation of jurisdiction. That was because it was clearly a case of doubt within the meaning of section 31 of the Mental Deficiency Act as there were diametrically different opinions given by two equally eminent doctors. The Lord Chief Justice repelled the contention raised that the documents in that case were examplifications not of judicial proceedings but merely of administrative acts. But his Lordship was of the opinion that the authority of *R.* v. *Electricity Commissioners* (3), was against that contention and decided that the documents purported to be and did look like the decision of a quasi-judicial authority and, therefore, fell within the range of the jurisdiction of the Court in *certiorari*. The passage which his Lordship referred to is at page 205 of that report *R.* v. *Electricity Commissioners* (3), and runs as follows:—

"Wherever anybody of persons having legal authority to determine questions affect-

(1) A.I.R. 1954 S.C. 440
(2) 1939) 2 A.E.R. 626
(3) (1924) I.K.B. 171

> ing the rights of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs".

This passage expressly mentions the words "and having the duty to act judicially". It has been shown in the present case that there was no duty to act judicially or that the Government of India was acting in a quasi-judicial capacity. This case does not support the contention raised by Mr. Chatterji that even if an order under rule 54 is an administrative order, it is subject to the jurisdiction of this Court in *certiorari*.

The question to be decided then is, is there any fundamental right which has been infringed. The case of the petitioner comes to this that he made an application for the lease of certain properties owned by the Government and that he had a right to get a lease. That, in my opinion, would not fall under section 19(1)(f) or (g) because there is no interference with the right of the petitioner to acquire, hold and dispose of property or to practise any profession or any occupation or trade. There is no interference with the petitioner's right to acquire any property. Merely because a landlord or the Government refuses to give a lease to a particular person even though deserving would not amount to infringement of his fundamental rights under Article 19(1)(f), nor is it an interference with his right to carry on any occupation, trade or business.

As to when a body is to act judicially has been stated in Halsbury's Laws of England, Vol. II, page 57 (Simond Ed.):—

> "The question whether or not there is a duty to act judicially must be decided in

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each case in the light of the circumstances of the case and the construction of the particular statute, with the assistance of the general principles already set out".

Mr. Chatterji then referred to *Province of Bombay* v. *Kusaldas S. Advani and others* (1), and particularly relied upon the following two passages from the judgment of Das, J., at page 725:—

> "(i) that if a statute empowers an authority not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a lis and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act, and
>
> (ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially".

But the words in the judgment of the learned Judge " in the absence of anything in the statute

(1) 1950 S.C.R. 621

to the contrary" in my opiniin takes away the support which the petitioner sought from this passage. The statute in the present case provides in rule 59 of the Rules as to how the Central Government has to act when a petition for review is filed. When quoted this rule runs as follows:—

> "59. Upon receipt of such application, the Central Government may, if it thinks fit, call for the relevent records and other information from the State Government, and after considering any explanation that may be offered by the State Government, cancel the order of State Government or revise it in such manner as the Central Government may deem just and proper".

All that it requires is that the Central Government can call for the relevant records, relevant information and explanation of the State Government, but it does not provide for any hearing to any of the parties. It was contended that this rule is *ultra vires* because it is contrary to the rules of natural justice, but I find no support for this proposition. At any rate, in the Indian Constitution there is no "due process" clause.

In the *Province of Bombay* v. *Kusaldas S. Advani and others* (1), Kania, C. J., at page 631 laid down the four conditions when a writ of *certiorari* may issue and they are:—

> "Wherever any body of persons, (1) having legal authority, (2) to determine questions affecting rights of subjects, and (3) having duty to act judicially, (4) act in excess of their legal authority".

(1) 1950 S.C.R. 621

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At page 632 the learned Chief Justice said:—

> "The respondent's argument that whenever there is a determination of a fact which affects the rights of parties, the decision is quasi-judicial, does not appear to be sound."

and, therefore, the mere fact that there is a determination of a fact which affects the rights of the petitioner does not make the determination quasi-judicial. The true position, as was pointed out by Kania, C. J., at page 633, is:—

> "That when the law under which the authority is making a decision, itself requires a judicial approach, the decision will be quasi-judicial".

Fazl Ali, J., at page 642, said:—

> "The word 'decision' in common parlance is more or less a natural expression and it can be used with reference to purely executive acts as well as judicial orders. The mere fact that an executive authority has to decide something does not make the decision judicial".

At page 729 Das, J., himself referred with approval to the observations of Lord Radcliffe in *Nakkuda Ali's case* (1), Lord Radcliffe said at page 77:—

> "It is a long step in the argument to say that because a man is enjoined that he must not take action unless he has reasonable ground for believing something he can only arrive at that belief by a course of conduct analogous to the judicial process. And yet, unless that

(1) 1951 A.C. 66

proposition is valid, there is really no ground for holding that the Controller is acting judicially or quasi-judicially when he acts under this regulation. If he is not under a duty so to act then it would not be according to law that his decision should be amenable to review and, if necessary, to avoidance by the procedure of *certiorari*.

Under rule 59, providing for a review there is no duty cast on the Central Government to act judicially or quasi-judicially and the Government is not enjoined to make its decision "by a course of conduct analogous to the judicial process". On the other hand a procedure is prescribed in rule 59 which the reply of the Government shows was followed in this case and which does not fall within the range of a judicial or a quasi-judicial process. The decision of the Central Government being an "examplification not of judicial proceedings but merely of "an administrative act did not fall within the range of the jurisdiction of the Court in *certiorari*."

Rule 32 of the Mineral Concession Rules confers no right on a person applying for a lease. All that he may be entitled to is to get a lease in certain circumstances but if no lease is granted it cannot be said that his fundamental rights are infringed and rule 59 provides for no enquiry.

No lis arises in this case because the case is not one of assertion of a claim by one side and denial by the other but it is merely a case of two persons applying to a landlord for the grant of a lease. And merely because the landlord has to

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take a decision as to the suitability or even eligibility of one of the two applicants to get the lease it cannot be said to give rise to a lis requiring a judicial approach and the requirements of the statute are contrary to any such duty of acting judicially or quasi-judicially. It is more in the nature of the Central Government making up its mind on certain explanations as to who should be the recipient of the lease: see the Stevenage Case, *Franklin and others* v. *Minister of Town and Country Planning* (1). I hold therefore :—

(a) the Central Government is not acting judicially or quasi-judicially under rule 59, but the act is a mere administrative decision and the case falls within the rule laid down by Kania, C. J., in *Advani's case* (2), and by Fazl Ali. J., at page 642;

(b) there is no lis in this case as the Central Government is only to decide as to whom it will grant lease of its mines;

(c) there is neither an infringement of Article 19(1)(f) nor (g);

(d) it has not been shown as to how the case does not fall under rule 59 nor is that rule unconstitutional as it contravenes no provision of the Constitution.

In the result this petition fails and is dismissed and the rule is discharged with costs.

(1) 1948 A.C. 87
(2) 1950 S.C.R. 621, 631