Avtar Singh vs Union of India and another on 24 November, 1992

Equivalent citations: AIR 1993 Delhi 56, 1992 (24) DRJ 141

Bench: P Nag

ORDER:

1. In this writ petition, the petitioner challenges the revisional order on the Central Government dated 24-11-1984 passed under S. 30 of the Mines & Minerals (Regulation & Development) Act, 1957 (hereinafter referred to as the Act) read with Rule 54 of the Mineral Concession Rules, 1960 (Annexure P-1) and order of review dated June 3, 1985 (Annexure P-2) whereby the order of cancellation of lease dated 27-4-1984 (Annexure P-14) has been upheld.

2. The petitioner was granted a lease of an area of 684 kanals and 6 marlas in village Palli, Taluk Ballabhgarh in the State of Haryana for extraction of Silica Sand for a period of 10 years effective from 8-7-1981 to 7-7-1991. In pursuance of the Order dated 3-7-1981, the petitioner entered into a lease agreement with respondent No. 2 which incorporated by reproduction the terms which are mentioned in R. 27 of the Mineral Concession Rules. 1960 (hereinafter referred to as "The Rules 1960"). In the aforesaid lease agreement, special condition was also incorporated to the effect that the lessee of minor mineral will work the mine first and the petitioner shall start work only after the lessee for minor minerals has finished his operations. The area leased to the petitioner was co-extensively lease in favor of Shri R. L. Sharma for extraction of ordinary sand termed as "Minor Mineral". The petitioner was, thus put in a restrictive condition to the effect that he would not interfere with the mining operation of Shri R. L. Sharma for extracting of the said minor mineral according to Condition 6(a) inserted in the lease deed. According to the petitioner, the officers/officials of the respondent/Department from the very beginning adopted a hostile and arbitrary attitude towards him and started harassing him inasmuch as he was issued a show cause notice on 10-3-1983 (Annexure P-12) under R. 27(5) of the Rules framed by the Central Government in exercise of its power under S. 13 of the Act for determination of lease. According to the Show Cause Notice, an inspection was carried out on 22-3-1992 jointly by the Director General Mines Safety and the General Manager, District Industries Centre, Faridabad, Government of Haryana and it was found that the depth of pits found in the mine was more than 36 meters and the sides were vertical and there was dangerous overhanging. Helmets and foot-wears were not provided to the workers nor arrangement of drinking water and first aid were made at the mine sites. The qualified personnel were also not appointed as required under the Rules. The petitioner in accordance with the Rules was asked to remedy the aforesaid breaches and comply with the terms and conditions of lease within sixty days of the receipts of the Notice.

3. On 9-5-1983, vide Annexure P-13 the petitioner replied to the show cause notice and submitted that the boundary marks had been erected but these were unfortunately demolished by the miscreants. But the petitioner had repaired the boundary marks. According to the petitioner there were no dangerous pits on the leased area and that he had made necessary arrangements for the first aid and drinking water supply at the mine she. Furthermore, the petitioner categorically denied that there had been any joint inspection as referred to in the show cause notice or was he informed about it.

4. In the additional affidavit dated 26th October, 1985 filed by the petitioner, it has been stated that according to the plan prepared by the Director of Mines Safety as on 25-9-1983 there were 21 pits in the entire area leased out to him arid none of the pits is in a dangerous condition or is

of alarming height. It is inconceivable that the depth of the pits would reduce by working the mines for 18 months. According to him, after 18 months from the date of inspection, the depth of the of the pits have been considerably reduced inasmuch as some pits are of the depth of 0.5 meters. 0.4 meters etc. while the maximum depth is of 8.5 meters, which shows that the report submitted on the basis of joint inspection on 22-3-1982 is not correct and the dangerous pits cannot at the time of joint inspection are the pits which do not fall within the area leased out to the petitioner although they might be failing within the revenue estate of Pali. As a matter of fact, the area leased out to the petitioner is a very small fraction of the entire revenue estate of Pali and the map will show that on 25-9-1983 when the survey was conducted there were many pits of the depth of 25, 30 meters etc. in the revenue estate of Pali but there was not a single pit of the depth of more than 8.5 meter in the area leased out to the petitioner.

5. The State Government, however, did not accept the version of the petitioner and came to the conclusion that the petitioner had failed to comply with the directions of the Authorities and consequently vide communication dated 27-4-1981 (Annexure P-14) in exercise of the powers under R. 27(5) of the Rules terminated the lease of the petitioner, forfeited the security deposited by the petitioner amounting to Rs. 1,060/-.

6. Against this communication/order dated 27-4-1984, the petitioner filed a revision petition before the Central Government under S. 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as "The Act") read with R. 54 of the Rules. One of the grounds amongst others, taken in the revision petition is that the State Government gave a contract in January, 1982 to the petitioner for extraction of minor mineral over the entire leased area at Pali to M/s. R. L. Sharma & Co. up to 31-3-1984 and it was this Company which indulged in unscientific method and dug mines up to the depth of 100 feet. The petitioner was granted mining lease subject to the condition that the lessee would not interfere in any manner whatsoever with the extraction of minor minerals for which contract was given to another party. Another crucial ground was taken before the Revisional Authority was that no joint inspection as referred to was carried out, no prior information was given either to the petitioner or his agent nor was inspection team seen working in the mine; nor did it meet any member of the supervisory staff of the petitioner. As a matter of fact, the so-called inspection held on 22-3-1982 was a fictitious inspection. However, the revision was dismissed on 24-11-1984 (Annexure P-1).

7. Against the Revisional order dated 24-11-1984, the petitioner attempted to seek redress by moving a Special Leave Petition being S.L.P. (Civil) No. 1017 of 1985 before, the Supreme Court under Art. 136of the Constitution of India. Vide order dated 19-2-1985, the Supreme Court dismissed the S.L.P. by a non-speaking order. According to the petitioner, as stated in para 20 of the petition, the Supreme Court considered it in expedient to intervene in the matter on the ground that jurisdiction to decide implied the jurisdiction to decide it rightly or wrongly unless the matter involves any violation of breach of the principles of natural justice or fundamental rights or any other constitutional violation in absence of which they would be disentitled to interfere even if the judgment was wrong, but made oral observation to seek a Review.

8. Thereafter, the petitioner, after having come to know about the filing of an affidavit by Shri S. K. Bhatnagar, Geologist of Government of Haryana in Civil Writ Petition No. 8135/83 in the case of Bandhua Mukti Morcha v. State of Haryana on the basis of which the Central Government accepted the Revision of M/s. Mohan Ram & Company -- a similar case -- has filed a review petition before the Central Government. The said review petition was also dismissed being not maintainable by the Central Government.

9. Faced with the dismissal of the review petition, the petitioner filed a civil writ petition, being C.W.P. No. 1485/85, in this High Court, which was dismissed as withdrawn with liberty to file a fresh petition as the Court observed that the petitioner should also challenge the main order dated 24-11-1984 passed in revision, in the petition. Therefore, the present writ petition has been filed challenging both the orders, namely, main order dated 24-11-1984 and the order of review dated 3-6-1985 (Annexures P-1 and P-2 to the writ petition).

10. Counter-affidavit dated 4-9-1986 of Shri Kuldipak Ahuja, Mining Engineer, Department of Industries, Haryana, has been filed on behalf of respondent No. 2 -- State of Haryana. At the very outset, they have raised a preliminary objection about the maintainability of the writ petition. According to them, the petitioner had challenged the order dated 24-11-1984 of the Central Government passed in Revision application before the Supreme Court of India by way of Special Leave Petition (Civil) No, 1017/85 which was dismissed by the Supreme Court on 19-2-1985. Therefore, the order of the Revisional Authority has become final and the present writ petition is not maintainable.

11. Respondent No. 2 has denied that there is any similarly between the case of M/ s. Mohan Ram and Company and the Revision of the petitioner. In fact, according to them, facts of both the cases are entirely different. The grant of lease of 684 kanals and 6 marlas for a period of 10 years from 8-7-1981 to 7-7-1991 to the petitioner has been admitted. The grant of minor mineral contract to Shri R. L. Sharma has also been admitted. Incorporation of Condition 6(a) in the lease-deed of the petitioner also stands admitted which was to the effect that the lessee of minor minerals will work the mine first and the petitioner shall start work only after the lessee for minor mineral has finished his operations. However, on factual aspect the respondent No. 2 has denied the allegations of the petitioner. According to them, as the petitioner was operating his lease area under dangerous conditions without adhering to the provisions of Mines Act, 1952 and Rules and Regulations framed there under, the State Government was left with no other alternative but to terminate his mining lease on 27-4-1984. On 20-10-1983, the Director Mines Safety had imposed prohibitory orders regarding employment of labour in this mine. The allegations of the petitioner that the inspection held on 22-3-1982 was a fictitious one has also been denied. It has further been stated that the dropping of the proceedings initiated by the Director of Mines Safety against the petitioner on 23-5-1985 has no relevance with the cancellation of the mining lease on 27-4-1984 on the ground that the petitioner was operating mine under dangerous conditions and in violation of the provisions of Mines Act, 1952 and Rules and Regulations framed there under. The order of C.J.M. Faridabad (AnnexureP-17) only dropped the proceedings under S. 72B of the Mines Act, 1952 which related only to violation of prohibitory orders under S. 2(3) of Mines Act, 1952. This does not absolve the petitioner from the charge of working his lease area in dangerous manner in violation of various provisions of Mines Act, 1952 and Rules and Regulations framed there under. The termination of the lease by the respondent No. 2 has been justified as according to them, the lease has "been terminated in accordance with the provisions of law as the petitioner failed to remove the defects as given in the show cause notice. However, it has been denied that Shri R. L. Sharma who was given the contract of minor mineral has dug dangerous pits, as alleged in the show cause notice. In fact, it was the petitioner who had dug deep pits up to the depth of 25 meters in his area. He could not shift the responsibility of digging these pits on Shri R. L. Sharma who only held the contract of minor mineral found near the surface.

12. In the reply, it may be highlighted that respondent No. 2 has taken the stand that the depth of dangerous pits have been shown up to 25 metres.

13. No counter-affidavit has been filed by the Union of India, respondent No. 1.

14. One Sahi Ram son of Shri Pola Ram, of Village and P.O. Uklona, Distt. Hissar moved an application dated 24-4-1989, being CMP No. 2252/89, under O.1, R. 10(2)(4) read with S. 151 of the Code of Civil Procedure for impleading the applicant as party in the present writ petition on the ground that after termination of the mining lease of the petitioner by respondent No. 2 under R. 27(5) of the Rules vide order dated 27-4-1984, applicant applied for the grant of mining lease over the area for which the mining lease was granted to applicant on 31-10-1985 for three years and the possession was handed over on 11-11-1985 to him by respondent No. 2. However, the lease of applicant was also terminated under S.4(A) of the Act on 14-7-1986 by respondent No. 2 but again the possession thereof was restored and handed over to the applicant by respondent No. 2 in view of the order dated 17-8-1988 passed by this Court in Civil Writ Petition No. 420 of 1987 and since then the applicant had been conducting the operational work in the mining area.

15. The application under O.1, R. 10, C.P.C. to be arrived as one of the respondents on behalf of Sahi Ram son of Pola Ram was allowed and he was imp leaded as respondent No. 3.

16. Respondent No. 3 has filed his counter-affidavit dated 12-8-1989 and taken the same preliminary objection as of State of Haryana inasmuch as the writ petition is not maintainable as the Special Leave Petition filed by the petitioner against the Revisional order has since been dismissed by the Supreme Court and the Revisional Order has become final and, therefore, the same cannot again be challenged in this Court by way of present proceedings. The power of review by the Central Government has been denied. According to him, R. 56 of the M.C.R. 1960 speaks only of correctional powers, clerical, arithmetical mistakes only. He has also denied that the case of M/ s. Mohan Ram and company was identical or similar to the present case of the petitioner. Respondent No. 3 has supported the version of the respondent No. 2 that the petitioner has contravened the terms of the lease and has indulged in unscientific methods and dug pits more than 100 feet. It has further been stated that the respondent No. 3 got the lease of mines for a period of three years which was terminated later on 14-7-1986 under S. 4A of the Act. Being aggrieved, he filed a writ petition, being CWP No. 410/87 (or 420/ 87.....Ed.), which was allowed vide order dated 17-8-1988 passed by Leila Seth and Arun B. Sahrya, JJ. The said order was again confirmed by the Supreme Court by dismissing the Special Leave Petition on 7-10-1988. Consequently, the respondent No. 3 was restored the possession of the mines in view of the judgment of this Court in C.W.410/87.

17. Mr. Kapil Sibar, learned counsel for respondent No. 2 -- State of Haryana, at the very outset, during the course of arguments, raised a preliminary objection that the Special Leave Petition filed by the petitioner against the Revisional order of the Central Government having been dismissed, the Revisional order has become final and no writ petition would be maintainable in this Court over the same cause of action. According to him, the Supreme Court while dismissing the S.L.P. had passed the order on merits of the case and the same is binding on the parties on the principle of res judicata and the same matter cannot be re-agitated in this Court. The petition, therefore, should be thrown out on this ground alone.

18. It may be noticed that this preliminary objection was also taken at the time of admission of the writ petition but in spite of this the petition was admitted by the Division Bench.

19. Mr. P.N. Lekhi, counsel for the petitioner, vehemently stressed that the law is well settled that in case special leave petition is dismissed by a non-speaking order, such dismissal cannot

be considered as dismissal on merits. Furthermore, if special leave petition is refused by the Supreme Court underArt. 136 of the Constitution, it does not necessarily mean that the judgment against which leave is sought is approved by the Supreme Court.

20. In order, to appreciate the rival contentions of the parties, it will be necessary to reproduce the order of the Supreme Court, which reads as under:

"UPON Hearing counsel the Court made the following ORDER Special Leave Petition is dismissed."

21. Mr. Sibal heavily relied upon a Division Bench decision of this Court reported as Ram Gopal v. Union of India, 1972 Serv LR 258. In that case, a petition under Art. 226 of the Constitution of India was filed in the High Court and one of the reliefs, amongst, others, sought for was for mandamus for rearranging the seniority of Superintendents Class II Gazetted. There was no dispute that in respect of the same subject matter, earlier a writ petition was filed under Art. 32 of the Constitution before the Supreme Court and the same was dismissed at the preliminary hearing. Before the High Court, an objection was taken that since the Supreme Court had dismissed the petition under Art. 32 in respect of the same subject matter and relief, the writ petition filed under Art. 226 of the Constitution in the High Court was not maintainable as the dismissal by the Supreme Court operates as a bar of res judicata. In that context, this Court," after examining the observations made in Daryao v. State of U.P., , has held that once the matter has been dismissed by the Supreme Court and the order did not indicate that it was dismissed on the ground that the application was premature, the same must be taken to be a dismissal on merits and it would not be open to the petitioner to urge the same matter before the High Court. It would be anomalous to suggest that a writ petition of which the Supreme Court did not consider it necessary to issue notice to the other side and dismissed it on preliminary hearing can nevertheless be allowed to be examined in detail by subsequent petition filed in the High Court. Such a view would be destructive of the finality of the judgment.

22. According to Mr. Sibal, the judgment cited by him, being of a Division Bench, should be followed by me in the present case as well and it should be held that since the matter has been dismissed by the Supreme Court and the order does not indicate that it was dismissed on the ground that the application was premature, the same must be taken to be a dismissal on merits. In that judgment the following observations of the Supreme Court in Daryao case (supra) were analysed.

" If a writ petition is dismissed in liming and an order is pronounced in that behalf, whether or not the dismissal would constitute a bar would depend upon the nature of the order. If the order is on the merits it would be a bar; if the order shows that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar, except in cases which are already indicated. If the petition is dismissed in liming without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata."

The above observations were interpreted by this Court to mean that it is not essential that the Supreme Court should give detailed order indicating reasons for dismissal before it could be held that the said writ petition was dismissed on merits. If the order was on the merits it would be a bar; if the order showed that the dismissal was for the reason that the petitioner was guilty of laches or that he had an alternative remedy it would not be a bar. In the petition filed under Article 32 before the Supreme Court, the order was no doubt "Dismissed in liming", but did not indicate that it was dismissal on the ground that the application was premature or the

petitioner was guilty of lecher or alternative remedy, in the absence of which the order should be considered to have been made on merits. However, insofar as the observations of the Supreme Court in Daryao's case (supra) to the effect that if the petition was dismissed in liming without passing a speaking order then such dismissal cannot be treated as creating a bar of res judicata have been interpreted by this Court in that case to mean to confine to a case of dismissal in liming by a non-speaking order by the High Court and not to the dismissal by the Supreme Court under Article 32 of the Constitution. According to the High Court, this is because an appeal lies to the Supreme Court against the order of the High Court and unless it was a speaking order the Supreme Court felt it was not possible for it to know whether the dismissal by the High Court was on merits and that consideration does not apply to the case of dismissal of a writ petition in liming by the Supreme Court so as to prevent the bar of res judicata when the same matter is sought to be reagitated in subsequent petition under Article 226 before the High Court.

23. I am afraid the submission of Mr. Sibal is wholly unacceptable. The case cited by him is distinguishable and does not apply to the facts of the present case as in the case decided by the Division Bench of the Delhi High Court, the petition was originally filed under Article 32 of the Constitution in the Supreme Court under which a citizen has a right to invoke the jurisdiction of the Supreme Court for the enforcement of their fundamental rights and dismissal of the petition in liming by the Supreme Court can some times be interpreted to mean as dismissal on merits, depending upon the nature of the order. Insofar as special leave petition under Article 136 of Constitution is concerned, it is a matter of discretion and not of right. The Supreme Court does not generally grant special leave, unless it is shown that exceptional and special circumstances exist, that substantial and grave injustice has been done and that the case in question presents features of sufficient gravity to warrant a review of the decision appealed against. The rejection of special leave petition is not akin to considered decision of the Supreme Court on merits in appeal. In other words, jurisdiction of the Supreme Court under Article 32 and under Article 136 of the Constitution are entirely different and the interpretation given by the Division Bench of this Court in Ram Gopal case (1972 Serv LR 258) (supra) does not apply to the facts of the present case as in the present case special leave petition filed against the order of Revisional Authority has been dismissed in liming without any speaking order and there is no petition as such under Article 32 of the Constitution. Furthermore, in the light of the later decisions of the Supreme Court which squarely cover this point, it is rather difficult to rely upon the judgment of the Division Bench of this Court.

24. On the other hand, Mr. Lekhi, counsel for the petitioner, has relied upon, in this context, Indian Oil Corporation Ltd. v. State of Bihar, AIR 1986 SC 1780, which, to my mind, squarely settles and covers the point at issue. In that case, exactly similar question, as in the present, arose for decision whether the dismissal in liming of a Special Leave Petition filed before the Supreme Court by a party challenging the award of a Labour Court would preclude the said party from subsequently approaching the High Court under Article 226 of the Constitution seeking to set aside the said award. In that case also the special leave petition was dismissed by the Supreme Court by a non-speaking order. The Division Bench of the Patna High Court, accepting the preliminary objection to the maintainability of the writ petition took the view that dismissal of the S.L.P, filed by the appellant against the award by a non-speaking order precludes the appellant from the challenging the said award before the High Court under Article 226 of the Constitution. The Supreme Court in this content has clearly held (at pp. 1781 and 1782 of AIR):

"6. We are clearly of opinion that the view taken by the High Court was not right and that the High Court should have gone into the merits of the writ petition without dismissing it on the preliminary ground. As observed by this Court in Workmen of Cochin Port Trust v. Board of Trustees of the Cochin Port Trust, , the effect of a non speaking order of dismissal of a special leave petition without anything more indicating the grounds or reasons of its dismissal must, by necessary implication, be taken to be that this Court had decided only that it was not a fit case where special leave should be granted. This conclusion may have been reached by this Court due to several reasons. When the order passed by this Court was not a speaking one, it is not correct to assume that this Court had necessarily decided implicitly all the questions in relation to the merits of the award, which was under challenge before this Court in special leave petition. A writ proceeding is a wholly different and distinct proceeding. Questions which can be said to have been decided by this Court expressly, implicitly or even constructively while dismissing the special leave petition cannot, of course, be reopened in a subsequent writ proceeding before the High Court. But neither on the principle of res judicata nor on any principle of public policy analogous thereto, would the order of this Court dismissing the special leave petition operate to bar the trial of identical issues in a separate proceeding namely, the writ proceeding before the High Court merely on the basis of an uncertain assumption that the issues must have been decided by this Court at least by implication. It is not correct or safe to extend the principle of res judicata or constructive res judicata to such an extent so as to found it on mere guess work.

7. This enunciation of the legal position has been reiterated by this Court in Ahmedabad Manufacturing & Calico Printing Co. Ltd. v. Workmen, . The principles laid down in the two decisions cited above fully govern the present case.

8. It is not the policy of this Court to entertain special leave petitions and grant leave under Article 136of the Constitution save in those cases where some substantial question of law of general or public importance is involved or there is manifest injustice resulting from the impugned order or judgment. The dismissal of a special leave petition in liming by a non-speaking order does not therefore justify any inference that by necessary implication the contentions raised in the special leave petition on the merits of the case have been rejected by this Court. It may also be observed that having regard to the very heavy backlog of work in this Court and the necessity to restrict the intake of fresh cases by strictly following the criteria aforementioned, it has very often been the practice of this Court to grant special leave in cases where the party cannot claim effective relief by approaching the concerned High Court under Article 226 of the Constitution. In such cases also the special leave petitions are quite often dismissed only by passing a non-speaking order especially in view of the rulings already given by this Court in the two decisions aforecited, that such dismissal of the special leave petition will not preclude the party from moving the High Court for seeking relief under Art. 226 of the Constitution. In such cases it would work extreme hardship and injustice if the High Court were to close its doors to the petitioner and refuse him relief under Art. 226 of the Constitution on the sole ground of dismissal of the special leave petition.

25. In the present case, admittedly, the Supreme Court has passed a non-speaking order and following the judgment in Indian Oil Corporation's case (AIR 1986 SC 1780) (supra) I have no hesitation to hold that the dismissal of special leave petition by the Supreme Court does not operate as a bar against the petition in the matter of challenging the revisional order of the Central Government by resort to proceedings before the High Court under Article 226 of the Constitution.

26. In this context reference may also be made to the decision of the Full Bench of Gujarat High Court in M/s. Avanti Organisation, Rajkot v. The Competent Authority and Additional Collector, Urban Land Ceiling Act, Rajkot, wherein it has been held that the refusal to entertain special leave petition by the Supreme Court is not akin to the considered decision of the Supreme Court on merits in appeal.

27. Once it is held that the refusal to entertain the petition for special leave is not akin to a considered decision of the Supreme Court on merits in appeal, there seems to be no difficulty to come to this conclusion that there is no bar for this Court in the facts and circumstances of this case to entertain the petition under Article 226 of Constitution of India.

28. Even otherwise my attention was drawn by Mr. Lekhi, counsel for the petitioner, to paragraph 20 of the petition wherein it has been stated that while refusing to intervene in the special leave petition the Supreme Court observed that jurisdiction to decide implied the jurisdiction to decide it rightly or wrongly unless the matter involves any violation of breach of the principles of natural justice or fundamental rights or any other Constitutional violation in the absence of which they would be disentitled to interfere even if the judgment was wrong but made oral observation to seek a review.

29. These averments have not been specifically denied in the counter-affidavit, in case such observations have been made by the Supreme Court, the petitioner has every right to maintain this writ petition in case there is violation of principles of natural justice or fundamental right or they may even seek a review which they in fact sought later. In the present case, the main thrust of argument of Mr. Lekhi has been that there has been violation of principles of natural justice by terminating the lease of the petitioner and in case such violation is substantiated according to the observations of the Supreme Court, the petitioner has every right to maintain this petition.

30. Having regard to all these facts and circumstances and the law laid down by the Supreme Court which squarely covers the present case, I have no hesitation to hold that the present petition under Article 226 of the Constitution is maintainable and consequently the preliminary objection raised by Mr. Sibal is rejected.

31. Mr. Lekhi, learned counsel for the petitioner, strenuously urged that the lease has been cancelled vide letter dated 27-4-1984 (annexure P-14) on the grounds not only mentioned in the show cause notice dated 10th March, 1983 (Annexure P-12) but also on additional grounds in respect of which no opportunity to explain has been given. Such an order, therefore, deserves to be set aside because of the violation of principles of natural justice.

32. A perusal of show cause notice dated 10th March, 1983 issued by the Financial Commissioner & Secretary to the Government of Haryana, Industries Department, to the petitioner, no doubt refers to the joint inspection of the area under lease by the officers of the Directorate General of Mines Safety and the General Manager, DC, Faridabad, Government of Haryana on 22-3-1982 and it was found that there were dangerous pits, depth of which were ranging from 30 to 36 metres, their sides were vertical and there were dangerous over hanging and certain other defects. On the basis of the violation of the terms of the lease deed, he was asked to rectify the breaches within the stipulated period, failing which the petitioner was informed that the lease would be determined. No doubt reference has been made to various other orders of the Central Government under Sections 22(3) of the Mines Act and the petitioner was issued show cause notice under Rule 27(5) of the Rules prohibiting him from employing

persons until the dangers are removed. The substance of the show cause notice was that there were dangerous pits on the leased area of the petitioner in violation of the terms of the deed causing danger to human life, and such defects should be removed within the stipulated period.

33. The ground on which the lease has been terminated are mentioned in paras 6 and 7 of the letter dated 27-4-1984. In paragraph 6 it has been stated that the Director, Mines letter dated 24-8-1983, provided the petitioner an opportunity to rectify the defects but inspection on 13-10-1983 by the officers of the Department of Mines Safety and the Government of Haryana revealed that the conditions in the leased area had deteriorated.

34. However, para 7 refers to the letter dated 18-1-1984 by which the petitioner was asked to form benches and employ workers for rectification of the defects mentioned in the prohibitory orders. Subsequent inspection of the leased area by the officers of the Directorate of Mines Safety on 21-2-1984 revealed that the petitioner had not complied with the provisions of Mines Act, Rules and Regulations.

35. Admittedly, no show cause notice has been given about the grounds/facts taken in paras 6 & 7 of the order of cancellation and of subsequent inspections held on 13-10-1983 and 21-2-1984 as referred to and, therefore, this cannot form the basis for cancellation of the lease.

36. If these letters and inspection reports, referred to in paras 6 & 7, relied upon by the Joint Secretary or cancellation of the lease are excluded from consideration, it cannot be predicted that the Competent Authority still would have cancelled the lease on the ground of defects as pointed out on the basis of joint inspection report dated 22-3-1982. In my I opinion, in these facts and circumstances, the order of cancellation of lease deed and the order passed in revision cannot be legally sustained being in violation of principles of natural justice and fair play.

37. 1 am fortified in taking this view of the decision of P.K. Bahri, J. in Ram Chander v. Union of India, (1989) 38 DLT 402) whereby it has been held that if the mining lease has been cancelled on the grounds mentioned in the show cause notice as also on additional grounds in respect of which no opportunity has been given, such an order cannot be legally sustained.

38. Since the very inspection dated 22-3-1982 on the basis of which first show cause notice dated 10-3-1983 was issued and the other letters referred to in the order of cancellation of lease were denied by the petitioner, this Court vide order 4-8-1992 asked the Director of Mines & Safety to place on affidavit copies of the letters alleged to have been issued by them and addressed to the petitioner, as referred to in Annexure P-14 whereby the petitioner was asked to rectify, the defects in the mine. The Director was also asked to place on record the material and documents on the basis of which he had satisfied himself and had come to the conclusion that the defects in mine have not been rectified by the petitioner.

39. In pursuance of the directions aforementioned, documents have been filed and the same are placed on record.

40. During the course of hearing, it transpires that the letter dated 18-1-1984 referred to in paragraph 7 has not been produced. Therefore, this letter obviously cannot be taken into consideration particularly when the very receipt of this letter has been denied by the petitioner.

41. Insofar as the letter dated 24-8-1983 is concerned, as referred to in para 6, the same is available on the record but this has been written by the Director of Mines safety to the Deputy Commissioner, Faridabad (Haryana) and not to the petitioner. Further, it relates to the condition of workings at Pali Bajri Mine of M/s. R. L. Sharma & Co., Faridabad District, who was operating the minor mineral. Cancellation of the lease by the Competent Authority is, therefore, without application of mind, apart from being violative of principles of natural justice.

42. Even otherwise, I have examined the grounds taken by the Competent Authority for cancellation of lease as taken in the show cause notice dated 10-3-1983 which states that joint inspection of the area under lease was carried out by the officers of the Directorate General of Mines Safety and the General Manager, DC, Faridabad, Government of Haryana on 22-3-1982 and it was reported that depth of the pits was 30 to 36 metres. The sides were vertical and there were dangerous over hanging. No attempt had been made to form benches as required under Regulation 6 of the Metallic ferrous Mines Regulation, 1961. Thus persons were engaged under dangerous conditions. Qualified Manager and other supervisory staff were not appointed as required under Regulations 34 and 116 of Metallic ferrous Mines Regulations, 1961, Helmets and footwears were not being maintained. Arrangements for supply of drinking water and first aid equipment were not made. The Central Government had already issued an order under S. 2(3) of the Act in that regard.

43. In reply (Annexure P-13) to the show cause notice, it may be noticed that the petitioner has categorically denied that there was any joint inspection on the area nor the petitioner was informed about such inspection. He has further denied existence of dangerous put in leased area. It has further been stated that the area declared under S. 22(3) did not fall in his leased area. According to him, apart from that medical facilities and drinking water were existing in the area and he had complied with all the terms and conditions of the lease deed,

44. The show cause notice has been issued substantially on the basis of joint inspection report of Director General and General Manager carried out on 22-3-1982. The joint inspection has been provided for under Cl. 7 of Form K of the covenants on the lessee/ lessees Part VII which provides:

"7. The lessee/lessees shall allow any officer authorised by the Central Government or the State Government in that behalf to enter upon the premises including any building excavation or land comprised in the lease for the purpose of inspecting, examining, surveying prospecting and making plans thereof sampling and data and the lessee/ lessees shall with proper person employed by the lessee/lessees and acquainted with the mines and work effectually assist such officer, agents, servants and workmen in conducting every such inspection and shall afford them all facilities, information connected with the working of the mines which they may reasonably require and also shall and will conform to and observe all orders and regulations which the Central and State Governments as the result of such inspection or otherwise may from time to time see fit to impose."

A perusal of this provision will show that in order to enable the State or Central Government to have inspection of the premises of the lessee, a duty has been cast on the lessee to provide for the effectual assistance with proper persons employed by the lessee and acquainted with the mine and work, to the officers concerned. It is no doubt true that non-association of the lessee with the inspection carried out by the State or Central Government may not be fatal to the inspection report and that can still be acted upon but in order to have proper inspection and to know the truth it appears to be expedient and proper that the State or Central Government gets

the assistance of the lessee with the proper persons employed by the lessee and acquainted with the mines.

45. In the present case, it would be more appropriate to have the assistance of the lessee or the persons employed by him and acquainted with the mines and work, as already stated earlier that the area in operation for minor minerals -- Bajri mine -- also falls on this very land and that according to the terms of the lease the extraction of the major minerals by the petitioner should take place only after the minor minerals have been extracted. It has further been alleged by the petitioner that these dangerous pits might have been created by R. L. Sharma & Co. which was operating the mines for extraction of minor minerals. In these peculiar facts and circumstances I fail to understand when the petitioner or his person working or acquainted with the mines were not associated in the joint inspection, how the officers could inspect the mine and find that the pits were of 30 to 36 metres deep with vertical and dangerous over-hangings and other defects were the creation of the petitioner and not of R. L. Sharma & Co.

46. Further this version of the pits of 30 to 36 metres deep taken in the joint inspection report in the order of cancellation, and before the Central Government in the revision, stands contradicted by the affidavit filed by the State of Haryana wherein they have stated that according to the map prepared by Director General Mines Safety of the area of the petitioner, the depth of the pits have been shown up to 25 metres. This version of the joint inspection that the pits were 30 to 36 metres deep is also at variance with the map of the Deputy General Mines Safety about such pits falling in the area leased to the petitioner (Ext. PA to the additional affidavit dated 26-10-1985) although it has been stated in the counter-affidavit that this report has not been approved to their knowledge. However, the fact remains that this map showing the various pits have been prepared by Director of Industries, Haryana, according to which, in the whole area there were 21 pits and those pits were from 1.5 metres to 8.5 metres.

47. The version of depth of pits of 30 to 35 metres also stands belied by letter dated 23-2-1984 (Annexure R-3) addressed by the Director of Mines Safety to the petitioner which reveals that the pits were found up to 15 metres in height.

48. Above all the above joint inspection report dated 22-3-1982 which is the basis of the show cause notice and was placed on the file of this case vide the affidavit of Shri P. K. Singh dated 7-8-1992 in pursuance of the order of the Court depicts an altogether a different story of the case inasmuch as it does not relate to major mineral, i.e., Silica Sand for which lease was granted to the petitioner and relates to minor mineral -- Pali Bajri Mines of R. L. Sharma. Therefore, from whatever angle the order of cancellation is viewed it suffers from legal infirmity and absence of application of mind.

49. It was attempted to be argued by Mr. Sibal, learned counsel for respondent No. 2 and Mr. Kathuria, learned counsel for respondent No. 3 that the lease area of operation of both of Mr. Avtar Singh, petitioner for operating major mine and of Mr. R. L. Sharma for operating the minor mine was the same. Therefore, the joint inspection report given in respect of Bajri Mine in respect of Mr. R. L. Sharma should also be considered as a joint inspection report of the petitioner Avtar Singh. In this connection, it is suffice to be stated that Bajri is a minor mineral. Silica is a major mineral. There are different sets of rules controlling the working of the mines of major minerals and the working of the mines of minor minerals. The State Government frames rules for minor minerals under S. 15 of the Act, 1957 while the Central Government frames the Rules for the working of the major minerals underS. 13 of the said Act. Different sets of terms

and conditions are required to be complied with in respect of major and minor mineral. This argument, therefore, has to be rejected.

50. The Revisional Authority in the order seems to have been swayed by the comments given by the State Government justifying the cancellation order of lease and of dangerous operations carried out by the petitioner which resulted in a fatal accident on 24-2-1983. Having regard to the various documents placed on record by the parties, I am of the opinion that the Central Government has accepted the version of the State Government mechanically, without application" of mind while the record speaks volumes otherwise, which already has been discussed above. Nothing has been shown on record that the fatal accident on 24-2-1983 occurred in the mine of the petitioner. As a matter of fact, the petitioner has filed an application dated 18-1-1986, being CMP No. 154/86, and has brought on record document (Annexure PA to PC 1) which shows that fatal accident of Shri Lal Singh look place on 23-2-1983 and he expired on 24-2-1983 while working in the mine of Shri Ram Kishan situated in Bhali within the Police Station Mehrauli in Delhi. This accident never took place in the mine being operated by the petitioner.

51. Therefore, I am of the considered view that the order of cancellation of lease deed dated 27-4-1984 and the revisional order of the Central Government and Review for the above mentioned reason cannot be upheld.

52. Furtheremore, the order of the Central Government and Review cannot be upheld and have greater validity once the order of cancellation of lease itself is struck down being violative of principles of natural justice.

53. Order of cancellation of lease again cannot be upheld having been passed in violation of principles of natural justice in the peculiar facts and circumstances of the case. The order of cancellation of lease deed has been admittedly passed under R. 27(5) of the Rules which reads as under:

"(5) If the lessee makes any default in payment of royalty as required by S.9 or commits a breach of any of the conditions other than those referred to in sub-rule (4), the State Government shall give notice to the lessee requiring him to pay the royalty or remedy the breach, as the case may be, within sixty days from the date of the receipt of the notice and if the royalty is not paid or the breach is not remedied within such period, the State Government may, without prejudice to any proceeding that may be taken against him, determine the lease and forfeit the whole or part of the 'security deposit.'

54. A perusal of this rule shows that the lessee is required to remedy the breach within sixty days from the date of receipt of the notice and in case of default his lease can be determined.

55. For cancellation of lease, the Competent Authority has to determine whether or not there has been breach of the term of the lease, and whether defects pointed out have been removed within the stipulated period. When the allegations are totally denied, as in the present case, is the personal hearing in consonance with the principles of natural justice and fair play necessary?

56. In the present case it goes without saying that the stakes are very high and involve much amount of money already invested by the petitioner and the cancellation of lease deed will lead to very serious civil consequences. In the peculiar facts and circumstances of the present case

when joint inspection report itself has been denied, the other allegations in the show cause notice have been denied and the case of the petitioner all along has been that he has fully complied with the terms and conditions entered in the lease deed and having regard to overall facts and circumstances, in my opinion show cause notice itself will not meet the requirement of the principles of natural justice, and personal hearing must be afforded.

57. In State of U.P. v. Maharaja Dharmender Prasad Singh the permission for development of land granted to a private party was cancelled on the ground that the permission was obtained by fraud and violation of covenants. The question arose whether oral hearing in such case is necessary. In para 64 (of SCC): (para 29, of AIR) of that judgment, the Supreme Court has laid down :

"The show cause nonce itself is an impalpable congeries of suspicions and fears, of relevant or irrelevant matter and has included some trivia. On a matter of such importance where the stakes are heavy for the lessees who claim to have made large investments on the project and where a number of grounds require the determination of factual matters of some complexity, the statutory authority should, in the facts of this case, have afforded a personal hearing to the lessees. Therefore, both the show cause notice and the subsequent order would require to be quashed, however, leaving it open to the statutory authority, should it consider it necessary, to issue a fresh show cause notice setting out the precise grounds, and afford a reasonable opportunity including an opportunity of personal hearing and of adducing evidence wherever necessary to the respondent-lessees."

58. In State of Haryana v. Ram Kishan, the Supreme Court has relied upon Baldev Singh v. State of Himachal Pradesh, and it has been held that where exercise of a power results in civil consequences to citizens, unless the statute specifically rules out the application of natural justice, such rules would apply. Forthermore, since there is no suggestion in the section to deny the right of the affected persons to be heard, the provisions have to be interpreted as implying to preserve such a right.

59. This decision has been followed in Assam Sillimanite Ltd. v. Union of India, . In that case also mining lease was terminated prematurely under Section 4A of the Act. It appears that there was an amendment to Section 4A of the Mines and Minerals (Regulation and Development) Act, 1957 in 1986 and according to which Clause (3) was added which provided :

"(3) No order making a premature termination of a prospecting license or mining lease shall be made except after giving the holder of the license or lease a reasonable opportunity, of being heard."

The Supreme Court while following the decision of State of Haryana v. Ram Kishan (supra) observed that the insertion of Clause (3) clearly reflects a statutory intention that an opportunity of hearing must be given before the order of termination is passed, presumably as such an order widely affects the rights of the assessed.

60. In the present case also, the lease has been terminated prematurely under R. 27(5) of the Rules but such premature termination results in civil consequences of the petitioner and in the aforementioned Rule there is no suggestion to deny the right of affected person to be heard. This rule must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity of hearing to substantiate his case. Not to do so would be violative of principles of natural justice.

61. The principle laid down in aforementioned authorities can very well be extended to the present case also.

62. Mr. Sibal, counsel for respondent No. 2, contended that the State of Haryana has acted on the directions of the Union of India. The record produced in pursuance of the order of this Court does not substantiate this submission nor Union of India has justified their case, except they have filed an affidavit in pursuance of the order of the Court about the documents available with them about the termination of the lease.

63. Mr. Sibal, learned counsel for respondent No. 2 again submitted that this Court should refrain from examining the legality or correctness of the purported cancellation of the lease, which involves disputed questions of fact and disputed questions of fact normally cannot be decided in a proceeding under Article 226 of the Constitution of India. He relied upon a case in State of U.P. v. Maharaja Dharmender Prasad Singh, . There cannot be two opinions about the principle that disputed questions of fact cannot be gone into by the High Court under Article 226 of the Constitution of India. However, in the present case, as discussed above, the Competent Authority while cancelling the lease and the Central Government while deciding the revision has approached the case from wholly erroneous angle inasmuch as they relied upon certain documents which have not been shown to exist; and they have not taken into consideration certain facts which ought to have been considered which throw light on determining the point in controversy. On the other hand, the Central Government has mechanically accepted the comments of the Haryana Government while hearing the revision petition and has arbitrarily decided the matter without application of mind which has resulted into manifest injustice to the petitioner. In such a situation the Court is within its right to issue a writ of certiorari for quashing the order of the Central Government with a view to rectify the injustice rendered to the petitioner.

64. Mr. R.P. Kathuria, appearing for respondent No. 3 adopted the arguments of Mr. Sibal, learned counsel for respondent No. 2. He further contended that the petitioner was granted lease with effec from 8-7-1981 for a period of ten years that period of lease has already expired on 7-7-1991 and, therefore, no relief can be granted to the petitioner and on this ground alone the petition should be thrown out. He has relied upon a judgment of the Calcutta High Court in A.H. Sinha v. M.C. Mukherjee, . In that case it has been held that the period for which the license was asked for has since expired, the High Court will not make any order because such order will be infrunctuous.

65. Mr. Kathuria further relied on Assam Sillimanite Ltd. v. Union of India, and submitted that since the lease has already expired, the proper course for the petitioner is to file a suit or take proper remedies for obtaining compensation in respect of this unlawful termination of lease or alternatively the matter may be referred to arbitration for determining the compensation. In Assam Sillimanite (supra) the Supreme Court observed that the writ petition was filed by the petitioner company as early as February, 1973 and has been pending in the Court for about 17 years. It is true that the petitioner could have filed a suit for the same purpose with a prayer for additional relief by way of compensation and damages. It was further observed Court that after the lapse of such a long lime, in their opinion, the proper course was to adopt some method for deciding the quantum of relief that could be granted to the petitioner by way of compensation and damages, which could at once be simple and expeditious and which would avoid further unnecessary litigation. The request of learned counsel that the matter may be referred to arbitration was considered by the Supreme Court as a fair one and indeed this course was also not seriously resisted by the respondents as well and the matter was referred to the arbitrator.

66. The plea of respondent No. 3 cannot be accepted. The Supreme Court in Assam Sillimanite case (supra) the matter was referred to for arbitration at the instance of the petitioner. However, in the present case, the petitioner has not made such a prayer. Rather, on the other hand he has insisted that his lease has been cancelled unlawfully and the period for which he has been deprived the enjoyment and benefit of the lease that should be excluded and for the remaining period the lease should be granted and he should be put back in possession of the land leased out to him. This authority, therefore, is not helpful to Mr. Kathuria.

67. The authority of Calcutta High Court also cannot advance the case of Mr. Kathuria in view of the judgment of this Court in Dharam Veer v. Union of India, , which squarely covers the point in issue and 1 am duty bound to follow this authority, in this case under Section 4A of the Mines and Minerals (Regulation and Development) Act, 1957, the lease was terminated by the Central Government in violation of the principles of natural justice and the termination was held to be illegal by the Court, However, when the matter was decided by the Court, the lease had already expired. The question arose for consideration was that in those circumstances what relief could be granted to the petitioner.

68. In this context the discussion in paras 41 to 49 may be referred to. In substance, this Court has held that where a premature termination of mining lease granted by the State Government was held to be illegal being in breach of provisions of Section 4A of Mines and Minerals Act violating principles of natural justice, the lessee would be entitled to exclusion of period of unlawful interruption in computing the period under lease. Moreover, the terms of lease provided that if through force majeure, the fulfillment by the lessee of any of the terms and conditions of the lease be delayed, the period of such delay shall be added to the period fixed by the lease and though this is not a case of force majeure in terms, on analogous principles that the unlawful interruption of enjoyment caused to the lessee by the illegal act of the State Government is something that the lessee could not reasonably prevent or control, the period of this interruption should be excluded from the term of the lease. Not to do so would result in multiplication of litigation, and depriving the lessee who has been prejudiced of substantial relief.

69. Consequently, the Division Bench issued a writ of mandamus to the respondents to restore possession to the petitioner immediately. It was further directed that the period of unlawful interruption shall be excluded in computing the three year term of the lease.

70. Following this judgment, I am of the opinion, that the petitioner shall be entitled to be restored possession of the lease granted to him and he shall also be entitled to exclusion of the period of unlawful interruption in computing the ten year term of the lease.

71. Mr. Kathuria again relied upon a judgment dated 19-3-1987 passed in appeal filed by the petitioner before the Additional, Sessions Judge, Faridabad against his conviction under Sections 69 and 72A of the Mines Act for the reason that the petitioner has not pressed the appeal on merits and accepted the guilt of the offence and he wanted only reduction in the sentence and he was accordingly released under Section 4(1) of the Probation of Offenders Act. Mr. Kathuria submits that this judgment clinches the whole issue inasmuch the allegation in the show cause notice issued to the petitioner stand substantiated and the cancellation of the lease under the circumstances was justified.

72. This argument of Mr. Kathuria is wholly untenable.

73. Suffice it to say, the judgment passed in criminal case has no relevance for determining the point in controversy. There is no mention of the criminal prosecution of the petitioner either in the show cause notice or in the termination order nor such case was ever set up before the revisional authority. Such case also has not been set up in the counter-affidavit by respondent No. 3 himself and also by respondent No. 2,

74. At the end, it may be noticed here that the lease granted to respondent No. 3 for three years, under the order of the Court, and appears to have come to an end in May 1991 and it has not been shown by him that the said lease has been renewed in his favor. Therefore, he has been left with no locus standi to oppose the petition of the petitioner.

75. In the light of what is discussed above, the writ petition is allowed and the impugned order of termination of lease dated 27-4-1984 (Annexure P-14); Order of the Central Government in Revision dated 24-11-1984 (Annexure P-1) and order passed in Review dated 3-6-1985 (Annexure P-2) are quashed. Writ of mandamus is issued to the respondents 1 & 2 to restore possession of the lease to the petitioner immediately and it is further directed that the period of unlawful interruption shall be excluded in computing 10 years term of the lease granted to the petitioner.

76. Consequently, the rule is made absolute and the petitioner will be entitled to costs of Rs. 3,000/-.

77. Petition allowed.