PETITIONER:
ASSAM SILLIMANITE LTD. AND ANR.

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT16/03/1990

BENCH:
RANGNATHAN, S.
BENCH:
RANGNATHAN, S.
AHMADI, A.M. (J)

CITATION:
1990 AIR 1417 1990 SCR (1) 983
1990 SCC (3) 182 JT 1990 (2) 248
1990 SCALE (1)545

ACT:
Mines and Minerals (Regulation and Development) Act, 1951: Section 4A--Termination of mining lease--Necessity for giving of opportunity to holder.

HEADNOTE:
The petitioner company had obtained three mining leases from the Government of Assam to extract sillimanite in the Khasi and Jaintia Hills District, for a period of 15 years.

Negotiations between the Union of India and the petitioner for having the mining leases transferred to the public sector companies, Hindustan Steel Ltd. and Bokaro Steel Ltd., having failed, the Government of Meghalaya, on the request of the Central Government, passed an order dated 7th December, 1972 prematurely terminating the mining leases in terms of section 4-A(1) of the Mines and Minerals (Regulation & Development) Act, 1957 as amended by the Mines & Minerals (Regulation and Development) Amendment Act, 1972. Thereupon, the petitioner company filed the present petition under Article 32 of the Constitution.

On behalf of the petitioner it was inter alia contended that since no notice had been issued by the State Government before terminating the leases prematurely, it amounted to denial of natural justice thus vitiating the order of termination.

State of Haryana v. Ram Kishan & Ors., [1988] 3 S.C.C. 416, relied upon.

It was further submitted that having regard to the comparatively long periods of leases and the lapse of time, the petitioner would not pray for being put back in possession of the leased premises but would be content with an award for compensation for wrongful premature termination, to be determined by any arbitrator appointed by the Court.

On behalf of the respondents it was submitted that the decision of

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this Court in Ram Kishan's case was distinguishable; that the rules of natural justice could be statutorily excluded either expressly or by necessary implication; that grant of an opportunity to the lessee would be totally meaningless and futile; that the object and purpose of the statute

clearly excluded the provision of an opportunity to the lessee before termination of the leases; that amendment of section 4-A of 1986 specifically providing for an opportunity of hearing became necessary because the grounds for premature termination set out in the new subsection (1) of section 4-A were made wider and more comprehensive; that in the writ petition the only prayer made was for quashing the order of premature termination; and that it was open to the petitioner to file a suit or take other appropriate remedies for obtaining compensation in respect of the unlawful termination.

The Barium Chemicals Ltd. and Anr. v. Company Law Board and Others, [1966] Supp. S.C.R. 311 and R.S. Dass v. Union of India and Others, [1985] Supp. S.C.C. 617, referred to,

Disposing of the writ petition, this Court,

HELD: (1) The order dated 7.12.1972 passed under section 4A of the Act whereby the leases were terminated prematurely was null and void as it violated the principles of natural justice and was passed without giving an opportunity to the lessee of being heard.

State of Haryana v. Ram Kishan & Ors., [1988] 3 SCC 416, followed.

Dharam Veer v. Union of India, AIR (1989) Delhi 227, referred to.

(2) Though it is true that the scope of section 4-A (1) has been widened, the insertion of sub-section 4-A(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 effects the rights of the lessees. [992A]

(3) It is difficult to accept the contention that because an order under section 4-A is to be passed in order to give effect to a policy of the Government, it is not necessary or useful to provide the lessees, whose leases are about to be terminated, an opportunity of hearing. [992D]

(4) It is true that the petitioner could have filed a suit or taken

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other appropriate remedies for obtaining compensation in respect of the unlawful termination. But, in the facts and circumstances of this case, it is not fair to ask the petitioner to go hack and file a suit for compensation or damages which may be barred by limitation. The writ petition was filed by the petitioner company in 1973 and has been pending in this Court for about 17 years. After a lapse of such a long time the proper course is to adopt some method for deciding the quantum of compensation and damages, which can at once be simple and expeditious and which will avoid further unnecessary litigation. [992G-H; 993A]

(5) The request made on behalf of the petitioner that the matter may be referred to arbitration is a fair one and indeed this course is also not seriously resisted by the respondents. The issue of compensation/ damages is accordingly referred to Arbitration. [993B]

(6) Having regard to the circumstances of the case, the compensation/damages should be restricted to a period of five years from the date of termination of the leases or upto the date of expiry of the original lease deeds whichever is less and not for the entire unexpired period of all the leases. [993C]

JUDGMENT:

ORIGINAL JURISDICTION: Writ Petition No. 105 of 1973.

(Under Article 32 of the Constitution of India)

Kapil Sibal, A.K. Sen, P.C. Jain, Ranbir Chandra, A. Minocha and Ms. Indu Goswami for the Petitioners.

Kuldip Singh, Additional Solicitor General, M.M. Abdul Khadar, L.N. Sinha, V.C. Mahajan, R.B. Dattar, A.K. Gangu|i, R.B. Misra, Ms. A. Subhashini, D.N. Mukharjee, R.P. Gupta, T.V.S.N. Chart, Mrs. Binu Tamta, Mrs. B. Sunita Rao, Ms. Manjula Gupta and Badrinath for the Respondents.

The Judgment of the Court was delivered by

RANGANATHAN, J. The petitioner company obtained mining leases from the Government of Assam to extract sillimanite in the Khasi and Jaintia Hills District. In pursuance thereof, three lease deeds were executed by the State Government in favour of the petitioner. The first was a lease deed dated 25.4.1952 for a period of 15 years in respect of an area of 129.60 hectares at Lalmati. The second, dated 10.4.1963, was for a period of 15 years in respect of an area of

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777.60 hectares at Nongmawait. The third one dated 8.6.1967 was for a period of 15 years and covered an area of 363 hectares at Wamsophi. The three lease deeds were to expire on 26.5.77, 9.4.78 and 7.6.82 respectively but there was a clause for further renewal.

The petitioner company had also established a refractory Plant in 1961 near Ramgarh in District Hazaribagh. It appears, however, that petitioner faced a number of difficulties in operating the refractory plant and was explaining its difficulties to the State of Maghalaya which was formed in 1970.

Between 1970 to 1972, the Union of India, through its public sector companies, Hindustan Steel Ltd. and Bokaro Steel Ltd. negotiated with the petitioner for the purchase of its refractory plant and also for having the mining leases transferred to them. Though the refractory plant was not functioning properly and was on the verge of closure, the petitioner was not willing to transfer its mining leases to the public sector companies but was willing to supply the required quantity of sillimanite to the Bakaro Steel Plant. It is also stated that some negotiations took place as a result of which the petitioner was planning to re-open the factory on 6.11. 1972. However, in the meantime on the 2nd of November, 1972, the Central Government took over the management of the-refractory plant under section 18-AA of the Industries Development & Regulation Act, 1951. Possession of the plant as well as its management was also taken over by the Hindustan Steel Ltd. on the same day. This take over was challenged by the petitioner company but its challenge was repelled by the Delhi High Court and a Special Leave Petition was filed, which is pending in this Court. We are not concerned with this issue in the present case.

On 12.9.1972, the Mines and Minerals (Regulation and Development) Act, 1951, was amended by Act No. 56 of 1972. By this amendment, section 4-A was introduced in the Act, which reads as follows:

"(1) Where the Central Government, after consultation with the State Government is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do it may request the State Government to make a premature termination of a Mining Lease in respect of any mineral other than a minor mineral, and, on receipt of such request, the State Government shall make an order making a premature termination of such mining lease and

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granting a fresh mining lease in favour of such Government

Company or Corporation owned or controlled by Government as it may think fit.
(2) Where the State Government, after consultation with the Central Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development so to do, it may, be an order, make premature termination of a mining lease in respect of any minor mineral and grant a fresh lease in respect of such mineral in favour of such Government Company or Co-operation owned or controlled by Government as it may think fit."
This amendment came into effect in September 1972.

At this juncture it may be mentioned that Act 37 of 1986 has further amended the 1951 Act and substituted section 4A by the following section, which insofar as it is relevant for our present purposes reads as follows:
"4A (1) Where the Central Government, after consultation with the State Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention 'of pollution, or to avoid danger to public health or communications or to ensure safety of buildings, monuments or other structures or for conservation of mineral resources or for maintaining safety in the mines or for such other purposes, as the Central Government may deem fit, it may request the State Government to make a premature termination of a prospecting licence or mining lease in respect of any mineral other than a minor mineral in any area or part thereof, and, on receipt of such request, the State Government shall make an order making a premature termination of such prospecting licence or mining lease with respect to the area or any part thereof.
(2) Where the State Government, after consultation with the Central Government, is of opinion that it is expedient in the interest of regulation of mines and mineral development, preservation of natural environment, control of floods, prevention of pollution or to avoid danger to public health or communications or to ensure safety'of buildings,
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monuments or other structures or for such other purposes, as the State Government may deem fit, it may, by an order, in respect of any minor mineral, make premature termination of a prospecting licence or mining lease with respect to the area or any part thereof covered by such licence or lease:
Provided that the State Government may, after the premature termination of a prospecting licence or mining lease under sub-section (1) or sub-section (2), as the case may be, grant a prospecting licenee or mining lease in favour of such Government company or corporation owned or controlled by Government as it may think fit.
'(3) No order making a premature termination of a prospecting licence or mining lease shall be made except after giving the holder of the licence or lease a reasonable opportunity of being heard.

In pursuance of the 1972 amendment, the State Government passed an order terminating the mining leases granted to the petitioner and granted fresh leases over the same areas in favour of M/s. Hindustan Steel Ltd., a Government company, fully owned by the Central Government. The order, made in the name of the Governor, reads as follows:
Dated, Shillong 7th Dec., 1972.
No. MG. 133/72: Whereas the Central Govt., having consulted the Govt. of Meghalaya, is of opinion that it is expedient in the interest of mineral regulation and development that the mining leases of sillimanite mentioned below held by M/s. Assam Sillimanite Ltd. (having its Registered Office at

13 A.T. Road, Gauhati) in Meghalaya are terminated forthwith;

And, whereas, in terms of Sec. 4A of the Mines and Minerals (Regulation & Development) Act, 1957, as amended by the Mines and Minerals (Regulation & Development) Amended Act, 1972, the Central Govt. has requested the Govt. of Meghalaya to make a premature . termination of the said mining leases held by M/s. Assam Sillimanite Ltd.;

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Now, therefore, the Govt. of Meghalaya in exercise of the powers conferred by Sec. 4A(1) of the Mines and Minerals (Regulation & Development) Act, 1957, as amended by the Mines & Minerals (Regulation & Development) Amendment Act, 1972 hereby terminates prematurely the mining leases of sillimanite mentioned below held by M/s. Assam Sillimanite Ltd. with immediate effect and grants fresh mining leases over the same areas in favour of M/s. Hindustan Steel Ltd., a Government Company, fully owned by the Central Government.

Lease No.	Locality	Area in hecteres	Period of Lease	Date of expiry
5.	Lalmati	129.60	15 years	24.4.1977
6.	Nongmawait	777.60	-do-	9.4.1978
7.	Wamsophi	363.00	-do-	7.6.1982"

The petitioner filed a writ petition in the Gauhati High Court against the order dated 7.12. 1972 but it was not able to obtain any ex 'parte interim orders. The petition was withdrawn from the Gauhati High Court and the present petition under Article 32 has been filed in this Court. On 5.3. 1973, this Court issued rule nisi and also directed the maintenance of the status quo pending notice. It, however, appears that Hindustan Steel Ltd. had taken possession of the properties in question and the interim stay was also vacated on 20th of January, 1987. The present position, therefore, is that the mining leases have been granted to the Hindustan Steel Ltd. and they have also been operating the mines for the past several years.

Though several objections have been raised to the action of the State Government in the writ petition, including a challenge to the validity of section 4A, the arguments before us were restricted by Shri P.C. Jain to only two aspects. He submitted that, admittedly, no notice had been issued by the State Government before terminating the leases prematurely. This, according to him, amounts to denial of natural justice and vitiates the order dated 7.12. 1972. The second contention is that the order does not fulfil the requirements specified in section 4-A justifying the premature termination of leases in pursuance thereof.

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This writ petition came up for hearing on earlier occasions but it was adjourned from time to time as the same issue was pending decision in this Court in the case of State of Haryana v. Ram Kishan & Ors., Civil Appeals Nos. 1472-77 of 1987. Our task in the present writ petition has been considerably simplified because the above civil appeals have been disposed of by this Court by its judgment dated 6th May, 1988, which is reported in [1988] 3 S.C.C. 416. Shri P.C. Jain, learned counsel for the petitioner company submits that the first point raised by him has been squarely decided in his favour in the above case and that, therefore, he is entitled to succeed in the present writ petition. Learned counsel also referred to a decision of the Delhi High Court reported in Dharam Veer v. Union of India, AIR 1989 Delhi 227, which has followed the decision in Ram

Kishan's case. In that case, a similar order of premature termination was set aside by the High Court and the lessees were directed to be put back in possession of the leased premises which had been taken away from them in pursuance of their unlawful order. Learned counsel submits that, in the present case, having regard to the comparatively long periods of leases and the lapse of time, be would not pray for the petitioner being put back in possession of the leased premises but he contends that the least that could be done is to award compensation to the petitioner company for, (what has now to be held to be), the wrongful premature termination of the leases. He submits that the petitioner is willing to have this aspect of the matter referred to arbitration by any arbitrator appointed by this Court.

On the other hand, Shri R.B. Datar, learned counsel for the Union of India submits that, in the State of Haryana v. Ram Kishan and Others, [1988] 3 S.C.C. 416, the Central Government had expressed its willingness to reconsider the matter after hearing the parties concerned and that, therefore, the decision of this Court in that case is distinguishable. He sought to contend, on the strength of observations made by this Court in The Barium Chemicals Ltd. and Anr. v. Company Law Board and Others, [1966] Suppl. S.C.R. 311 as well as the decision in R.S. Dass v. Union of India and Others, [1985] Suppl. S.C.C. 617 that rules of natural justice can be statutorily excluded either expressly or by necessary implication. In the present case, he submits that it became expedient in the interest of regulation of mines and mineral development, to have the mining operations in respect of raw materials necessary for the production of iron and steel entrusted to public sector companies and a policy decision to this effect had been taken by the Government. In this context, he submits, the grant of an opportunity to the lessee would be totally meaningless and futile. He

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says that the object and purpose of the statute clearly excludes the provision of an opportunity to the lessees before termination of the leases. If at all, he submits, it will be open to a lessee, whose lease is prematurely terminated under section 4-A, to challenge the order of premature termination, after it was passed, on the ground that it did not satisfy the conditions set out in section 4-A but that the section should not be construed as envisaging a hearing of the lessees before an order of premature termination is made. Referring to the amendment of section 4-A in 1986, which specifically provides for an opportunity of hearing under sub-section (3), Shri Datar says that this provision became necessary because the grounds for premature termination set out in the new sub-section (1) of section 4-A were made wider and made more comprehensive. Under the new sub-section, premature termination of leases was permissible in various other circumstances, such as: preservation of natural environment, control of floods, prevention of pollution, avoidance of danger to public health or communications, ensuring of safety of buildings, monuments and other structures, conservation of mineral resources, maintenance of safety in mines and such other purposes as the Central Government may deem fit. These were purposes in respect of which an opportunity of hearing to the lessee would be really needed and helpful but that, in the context of earlier sub-section, which was much narrower, no such opportunity of hearing was at all contemplated.

We do not propose to reconsider this matter as, in our opinion, the contention raised by Shri P.C. Jain is directly

and squarely concluded by the decision in Ram Kishan's case (supra). It is no doubt true that in that case the Central Government appears to have been willing to reheat the parties but the court did not proceed on the basis of any concession. The court discussed the provisions of section 4-A at great length and held that there was no suggestion in the section to deny the right of the affected persons to be heard and that the section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so, it was held, would be violative of the principles of natural justice. The court concluded that the lessee-respondents were entitled to be heard before a decision to prematurely terminate their leases was taken and that, since it was not done, the High Court was right in quashing the order passed under section 4-A.

In our opinion, the decision in Ram Kishan's case fully covers the present case and should be followed by us. In fact, we think that the

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subsequent amendment in 1986 lends support to the plea of the petitioners. Though it is true that the scope of section 4-A (1) has been widened, the insertion of sub-section (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 lessees. We are not able to agree with Shri Datar that under section 4-A, as it stood before 1986, no useful purpose would have been served by the giving of such an opportunity. Several situations and circumstances can be conceived of where, given an opportunity of hearing, the lessee may be able to either dissuade the Government from terminating the leases prematurely or in persuading the government to do it subject to certain safeguards for its benefit. For example, the lessee may be able to show that the public sector corporation to whom it is proposed to entrust the working of the mines is not yet adequately equipped to exploit the mines and that, atleast for some more time the status quo should continue; or, again, if there is only a short period before the leases are to expire in the normal course, the lessee may be able to persuade the Government that no great advantage would be derived by premature termination of the lease. These are only illustrative. Several such other situations can be thought of. It is very difficult, therefore, to accept the contention that because an order under section 4-A is to be passed in order to give effect to a policy of the Government, it is not necessary or useful to provide the lessees, whose leases are about to be terminated, an opportunity of hearing. We, therefore, hold, respectfully following the decision in Ram Kishan's case (supra), that the order passed under section 4-A dated 7.12.1972 is null and void as it violated the principles of natural justice and was passed without giving an opportunity to the lessees of being heard.

The next question is regarding the relief to be granted to the petitioner. Shri Datar submits that in the writ petition the only prayer made by the petitioners is for the quashing of the order dated 7.12. 1972 and that no further claim has been made in the writ petition. He submits that if the petitioners are aggrieved because of the premature termination of the leases, it is open to them to file a suit or take other appropriate remedies for obtaining compensation in respect of the unlawful termination. We do not think that this a fair course to be adopted in this case. The writ

petition was filed by the petitioner company as early as in February 1973 and has been pending in this 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 or damages. But we do not think that it should now be
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asked to go back to file a suit for compensation or damages which may be barred by limitation. After the lapse of such a long time, in our opinion, the proper course is to adopt some method for deciding the quantum of relief that could be granted to the petitioner by way of compensation and damages, which can at once be simple and expeditious and which will avoid further unnecessary litigation. We think that the request of the learned counsel that the matter may be referred to arbitration is a fair one and indeed this course is also not seriously resisted by the respondents. The short question that remains to be decided is whether the petitioners have suffered any damages as a result of the premature termination of the three leases in their favour either in the shape of loss of profits for the unexpired periods of the leases or in any other material respect. We, however, direct that, having regard to the circumstances of the case, the compensation/damages should be restricted to a period of five years from the date of termination of the leases or upto the date of expiry of the original lease deeds referred to above whichever is less and not for the entire unexpired period of all the leases. We refer this issue to arbitration.

Shri Justice S. Natarajan, retired Judge of this Court, is appointed as Arbitrator to decide the above issue. The Union of India has promised to place the services of a mining engineer/expert at the disposal of the arbitrator to assist him on the technical aspects of the matter. The name of the nominee should be communicated to the arbitrator within four weeks from today. It will be open to the arbitrator to avail himself of the services of such nominee. Parties may settle the terms of arbitration with the arbitrator. The company and Union of India should, however, deposit Rs. 10,000 each with the arbitrator as soon as the terms are settled to enable him to start the proceedings without delay. The Arbitrator may enter upon the reference within four weeks of the date of communication of this order to him. He may make his award within a period of four months thereafter. He will not be obliged to give reasons for his conclusions. A copy of this order may be sent to the learned Arbitrator by the Registry. The writ petitions disposed of in the above terms. In the circumstances, we make no order as to costs.

R.S.S. Petition disposed of.

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