

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No.2439 of 2014**

Vimal Parakh S/o Shri Hukumchand Parakh Aged About 38 Years R/o
Mahamaya Chowk, Rajim Police Station Rajim, District Gariyaband C.G.

---- **Petitioner****Versus**

1. State Of Chhattisgarh And Ors. S/o Through The Secretary , Mining
Department Mahanadi Mantralaya New Raipur Distt. Raipur C.G.
2. The Collector Mining Branch Dhamtari District Dhamtari C.G.
3. The Mining Officer Dhamtari, Distt. Dhamtari C.G.
4. The Assistant Mining Officer Dhamtari, Distt. Dhamtari C.G.
5. The Gram Panchayat Kathouli, Through The Secretary, Gram
Panchayat Kathouli, Tahsil - Kurud, District Dhamtari C.G.

---- **Respondent**

For Petitioner	:	Shri Prateek Sharma, Advocate
For Respondent/State	:	Shri R. K. Gupta, Dy.A.G.

[Single Bench: Hon'ble Shri Justice Manindra Mohan Shrivastava]

Order On Board**13/10/2015**

This petition is directed against order dated 25-08-2014 passed by the Collector in purported exercise of power under Rule 59, reviewing earlier prayer for grant of lease and cancelling the lease of the petitioner.

2. The sole ground, on which, the impugned order assailed is that the impugned order is in excess of jurisdiction in as much as, before reviewing the order of grant of lease, the Collector has not sought prior sanction of the

Director, as mandatorily required under Rule 59 of C.G. Minor Mineral Rules, 1996 (In short “the Rules of 1996”).

3. Learned counsel for the petitioner argued that the power of review conferred on the Director/Collector on its own motion, is circumscribed by pre-conditions. If the Collector proposes to review any order, he is required to first obtain the sanction in writing of the Director. This having not been done, the order is void as mandatory pre-condition of exercise of power has not been complied with. It is next submitted that in any case, no case for review is made out because sub rule (2) of Rule 59 provides that no order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908. The grounds, on which, the lease has been cancelled reviewing earlier order of grant of lease, is based only on new objections.

4. On the other hand, learned State counsel firstly raised the objection with regard to maintainability by submitting that against the impugned order, the petitioner has remedy of filing an appeal before the Director. However, without filing the appeal, the petitioner has filed this petition. Next submission of learned counsel for the State is that the requirement of first obtaining sanction in writing of the Director has been substantially complied with in as much as earlier when lease was canceled and appeal was preferred, the appellate authority had an occasion to examine the grounds, on which, the cancellation was made. The appellate authority having found that the principles of natural justice were not followed, set aside the order of cancellation of lease and remanded the case to the Collector to pass appropriate orders on merits after affording opportunity of hearing. This, according to learned State counsel, amounts to granting sanction, therefore, after remand, the Collector was not

required to again obtain the sanction of the Director/Appellate Authority. It is next contended that the after lease was granted in favour of the petitioner, the residents of the area, particularly the agriculturist raised serious objection that if the petitioner is granted lease for operating crusher machine, it will have an adverse impact on residents of the area and surrounding agriculture fields and crop. He next submits that earlier without proper information and under mistaken belief that lease was being granted for quarry, the Gram Panchayat had given its consent. Later on, when it was clarified that in fact, the activity proposed on the said land would be that of crushing of stone by machines which is comparatively much more polluting activity, the Gram Panchayat again sent its recommendation to cancel the lease. In view of the subsequent events, the power of review has been rightly exercised.

5. After hearing learned counsel for the parties, in the considered opinion of this Court, this petition deserves to be allowed on the ground of violation of condition of first obtaining sanction in writing of the Director before passing the order of review.

6. But before I dwell upon the statutory scheme of Rule 59, I need to first deal with the objection of maintainability on the ground of alternative remedy.

7. True it is that the statutory remedy of appeal is available to the petitioner but existence of alternative remedy is not an absolute bar. The nature of illegality which has been brought before this Court on jurisdictional aspect. The challenge to the order is laid on the ground that the statutory requirement of first obtaining sanction has not been complied with. If this argument is accepted, the order is liable to be set aside on the ground of serious jurisdictional error. Therefore, for that reason, I am not inclined to throw this

petition on the ground of existence of alternative remedy particularly when the reply has been filed and the petition can be disposed off only on short legal issue.

8. In order to appreciate the solitary issue for consideration, reference to Rule 59 of Rules of 1996, is necessary, which is extracted hereinbelow:-

59. Review of orders.-- (1) The Director or Collector on his own motion review any order passed by himself or by any of his predecessors in office and pass such order in reference/thereto as he thinks fit :-

Provided that-----

- (i) if the Director thinks it necessary to review any order, he shall first obtain the sanction of the Government, and if Collector proposes to review any order, whether passed by himself or by any predecessors, he shall first obtain the sanction in writing of the Director;
 - (ii) no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order;
 - (iii) no order from which an appeal has been made, or which is the subject matter of any revision proceedings are pending, be reviewed;
- (2) No order shall be reviewed except on the grounds provided for in the Code of Civil Procedure, 1908 (V of 1908).

9. First proviso of sub rule (1) of Rule 59 of the Rules of 1996 leaves no manner of doubt that if the Collector proposes to review any order whether the order passed by himself or by any predecessor, he shall first obtain sanction in writing of the Director. This requirement of obtaining sanction prefixed by word “first” is nothing but statutory requirement of prior sanction. It is well settled that any requirement of prior sanction is a precondition for exercise of power.

Moreover, such precondition which is sine qua non for reviewing the order is mandatory in nature and cannot be held to be directory provision. That means, in cases, such provision is not complied with, entire action would be vitiated. In cases, where the provision is mandatory, the argument of substantial compliance cannot be accepted. Exercise of power can be saved on the ground of substantial compliance only in those cases, where provision is directory and not mandatory in nature.

10. It is not in dispute that before passing of order impugned, the Collector did not obtain prior sanction. The submission of learned State counsel is that as in the earlier round of proceedings, the case was remanded by the Director for consideration of the matter on its own merits after affording opportunity of hearing to the petitioner, it amounted to grant of sanction. Upon due consideration of this submission, I am unable to accept that provision is complied with.

Remand of a case by an appellate authority after holding that the order is bad for non compliance of natural justice cannot be equated with an order which the authority is required to pass while granting sanction. In the first case, the appeal has been decided by the Director acting as quasi-judicial authority whereas in the later, grant of sanction is statutory administrative function.

The nature of exercise of power in both the cases are intrinsically different and distinct from each other. Exercise of quasi-judicial power would not by itself, a substitute of exercise of power of grant of sanction and vice-versa. If the argument of learned State counsel is accepted, while granting sanction, Director would be exercising quasi-judicial power to act as appellate authority in respect of the order, for which, sanction has been granted.

Therefore, for all these reasons, I am unable to accept this submission that earlier order passed by the Director amounted grant of sanction as required under Rule 59 of the Rules of 1996.

11. The requirement being a precondition for exercise of power, non-fulfillment of the same, renders the entire action vitiated. Therefore, on this short count, the impugned order passed by the Collector cannot be sustained and is set aside. This Court is not commented upon the justifiability of any action that may be taken in the matter of cancellation of lease. If the Collector forms such an opinion, it will be open for him to act in accordance with law.

12. The petition is accordingly allowed.

**Sd/-
Manindra Mohan Shrivastava
Judge**