

STATE OF GOA AND ORS.

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v.

M/S. A. H. JAFFAR AND SONS

SEPTEMBER 9, 1994

[R.M. SAHAI AND N.P. SINGH, JJ.]

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Mines and Minerals Regulation and Development Act, 1957 :

Sections 10(3), 26 and 30.

C

Mineral Concessions Rules, 1969 : Rules 11 and 54. Mining lease—Application for grant of—Rejection—Remedy against—Held proper remedy is revision before Government and not before High Court—Applicant bona fide pursuing remedy before High Court—Direction that applicant shall approach the Revising Authority and application should not be treated as time barred.

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The Respondent made an application for grant of a lease for mining mineral boxite in Goa which was not disposed of within 12 months as stipulated in Rule 11 of the Mineral Concession Rules, 1960 and was thus deemed to have been rejected. They filed a Revision, under Section 30 of the Mines and Minerals Regulation and Development Act, 1957, to the Central Government and pursuant to the direction issued by the Central Government the State Govt. considered the application but rejected the same. The High Court set aside this order and directed the State Govt. to decide the application afresh after hearing the respondents and considering the applicability of the amendment to the Act. Thereafter, the application was heard by the Commissioner and Secretary for Industries to the Govt. of Goa but was rejected. Against this order, the respondents approached the State Government and the order was set aside by the Minister for Mines and a direction was issued to grant the lease to the respondents. The order of the Minister was set aside by the Government Respondents challenged this order before the High Court which quashed the order of the Government and restored the Minister's order. Against the judgment of the High Court, State of Goa filed an appeal in this Court.

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Allowing the appeal and setting aside the order of High Court, this Court

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A **HELD :** The remedy of revision having been provided by Section 30 of the Minerals Regulation and Development Act, 1957, the proper course for the respondent was to approach the Central Government and not the High Court. Proviso to rule 54 of the Mineral Concession Rules, 1960 empowers the revising authority to condone delay if it is satisfied that the revision could not be presented for sufficient cause within time. Since the
 B respondent was pursuing its remedy in High Court *bona fide*, it would be a sufficient cause to condone the delay. The revision, if preferred within four weeks from today, shall not be dismissed as being barred by time. The Central Government shall decide the same in accordance with law.

[261-F, G, 262-A]

C **CIVIL APPELLATE JURISDICTION :** Civil Appeal No. 6040 of 1994.

From the Judgment and Order dated 26.2.93, 1.3.93, 2.3.93 & 3.3.93 of the Bombay High Court in W.P. No. 449 of 1992.

D Siraj Seth, H.O. Pathak and P.D. Sharma for the Appellants.

A.S. Nambiar, T.V.S. Ratna and Ms. A. Subhashni for the Respondents.

E The following Order of the Court was delivered :

Leave granted.

This appeal filed by the State of Goa and others, is directed against the judgment and order of the Bombay High Court, (Goa Bench). The
 F respondents made an application for a lease for mining mineral boxite in Mopa, Chandal, Warkhan, Kasarwarne Villagers of Pernem Taluk in Goa. As this application was not disposed of by the State Government within 12 months as stipulated in Rule 11 of the Mineral Concession Rules, 1960 the application was deemed to have been rejected. Against this order of
 G deemed rejection the respondents filed a revision under Section 30 of the Mines and Minerals Regulation and Development Act, 1957 (hereinafter referred to as 'the Act') to the Central Government in which a direction was issued to the State Government to dispose of the respondents' application on merits. In pursuance of the direction issued by the Central Government the State Government decided the application of the respondent and
 H rejected it on 18th August 1987. This order was set aside by the High Court

and the State Government was directed to decide the application, afresh, after hearing the respondents and deciding the applicability of the amendment to the Act which had come into force with effect from 10th February 1987. The application was heard this time by the Commissioner and Secretary for industries to the Government of Goa who being a delegate of State Government by virtue of notification issued under Section 26 of the Act was empowered to decide the application. The application was rejected in exercise of power under sub-section (3) of Section 10 the Act. Against this order the respondents approached the State Government. The order was set aside by the Minister for Mines and direction was issued to grant the lease. What happened thereafter is not necessary to be narrated. But the order of the Minister was set aside by the Government. Validity of this order was challenged in the High Court under Article 226 of the Constitution of India. Various issues were raised. They were decided in favour of the respondents. The order of the Government dated 14.1.1993 was quashed and that of the Minister dated 31.10.1991 was restored. It is the correctness of this order that has been challenged by the State.

The appeal has been argued at length. Shri Siraj Sait has attempted to support the judgment with industry and precision. But it does not appear necessary to decide whether the finding recorded by the High Court that the order of Commissioner being administrative in nature it could be reviewed by the State Government nor it is necessary to decide whether the Minister could exercise any power where the grant of lease is regulated by the Statute as in our opinion the remedy of revision having been provided by Section 30 of the Act, the proper course for the respondent was to approach the Central Government and not the High Court. Learned counsel for the respondent expressed apprehension that the period for limitation provided in rule 54 of the Minerals Concession Rules, 1960 having expired, the revision might not be entertained. The proviso to the rule, however, empowers the revising authority to condone delay if it is satisfied that the revision could not be presented for sufficient cause within time. Since the respondent was pursuing its remedy in High Court *bona fide*, it would be sufficient cause to condone the delay and we trust that the revision if preferred within four weeks from today shall not be dismissed as being barred by time.

In the result, this appeal succeeds and is allowed. The order of the

A High Court is set aside subject to the observations made above that the respondent shall be entitled to approach the revising authority, namely, the Central Government within four weeks from today which shall decide the same in accordance with law.

B Parties shall bear their own costs.

T.N.A.

Appeal allowed.