A. F. R.

Court No. - 17

Case :- WRIT - C No. - 2478 of 2022

Petitioner :- M/S Radhika Constructions through its Proprietor Mr. Rakesh Tiwari

Respondent :- State Of U.P. Thru. Secy Deptt. Of Geology And Mines Lko. And anther

Counsel for Petitioner :- Mr. Shishir Chandra

Counsel for Respondent :- C.S.C.,Mr. Tushar Verma

Hon'ble Alok Mathur,J.

1. Heard Mr. Shishir Chandra, learned counsel for the petitioner as well as Sri Rakesh Bajpai, learned Standing counsel, Sri Tushar Verma, Special Counsel and Sri Ramesh Kumar Singh, Additional Advocate General for the respondents.

2. By means of the present writ petition the petitioner has challenged the order dated 16.3.2022 passed by the State Government thereby rejecting the revision preferred by the petitioner against the cancellation of mining lease vide orer dated 26.4.2021 passed by District Magistrate, Banda.

FACTS OF THE CASE :-

3. The facts in brief necessary for adjudication of the present case are that the petitioner in response to an e-tender/e-auction for mining participated in the auction and his bid was adjudged to be the highest and lease deed was executed in favor of the petitioner on 6.6.2020 for the period from 6.6.2020 to 5.6.2025. After execution of the mining lease the petitioner started mining operations but suddenly the One Time Password (O.T.P.) was stopped by the District Magistrate, Banda on 19.3.2021. Subsequently, it is stated that an inspection was conducted by a team of officers of the Directorate, Mining and Geology, Uttar Pradesh between 13.3.2021 and 18.3.2021 and some allegations with regard to the irregularities pertaining to illegal mining were found correct and on the basis of the aforesaid

inspection report a show cause notice was served on the petitioner on 22.3.2021. According to the said show cause notice issued by the District Magistrate, Banda it was mentioned that an inspection was conducted by a team where it has been found that the petitioner is involved in illegal mining and he has extracted minor minerals from the area not allotted to him and extracted mineral to a depth which was not permissible as per the lease deed. Accordingly, a notice was given as to why the lease be not cancelled. In the said show cause notice, penalty for the same offence has also been fixed as Rs.50,000/- and recovery of royalty for an amount of Rs.7,81,61,400/- has also been proposed in the said notice.

4. The petitioner in pursuance of the aforesaid show cause notice submitted reply on 30.3.2021 where they have denied the allegations leveled in the show cause notice and have stated that apart from the show cause notice no material was provided to the petitioner as directed by the court in the case of ***Ranveer Singh Vs. State of U.P. and others, 2017 (1) ADJ 240*** passed in writ C No.51986 of 2016 and further submitted that there was no credible evidence in support of the allegations and, hence, requested for setting aside the show cause notice.

5. After considering the reply of the petitioner the District Magistrate by means of its order dated 26th April, 2021 has cancelled the mining lease of the petitioner. While rejecting the reply of the petitioner the District Magistrate has recorded that the petitioner has extracted minor minerals from an area not allotted to him and extracted 12,970 cubic meters of sand/maurang in excess and 73,876 cubic meters illegally which fact has been reported by the Enforcement Team in its report dated 19.3.2021. He has further noticed that the petitioner was asked to deposit the amount of royalty of an amount of Rs.7,81,61,400/- but even the said amount has not been deposited by the petitioner and accordingly he was of the view that the said outstanding amount needs to be recovered from the

petitioner along with penalty as provided under Rule 41 (H) (1) and 59 (2) of Uttar Pradesh Minor Minerals (Concessions) Rules, 1963. He has further considered the fact that the Director, Mining and Geology, Uttar Pradesh had constituted enforcement team for physical inspection which conducted the spot inspection on 14.3.2021 which submitted report on 19.3.2021 where it was found that the petitioner had conducted mining operations of an area 3.358 hect. and extracted 73,876 cubic meters of sand beyong the area allotted to him apart from other illegal mining alleged in the said order and even the bank of the river has been extracted to a depth which is beyond the prescribed limit. In this regard a first information report was also lodged against the petitioner.

6. The District Magistrate has relied upon the inspection report and has stated that the petitioner could not produce any evidence or prove his case contrary to the findings recorded by the inspection team and, hence, rejected the reply of the petitioner and proceeded to pass order for recovery of an amount of Rs.7,81,61,400/- and also cancelled the lease deed issued in favour of the petitioner and further placed him in black list for a period of two years.

7. The petitioner being aggrieved by the order of the District Magistrate dated 26th April, 2021 had preferred a revision before the State Government which has also been decided and rejected by means of the impugned order dated 16.3.2022. The revisional authority while rejecting the revision of the petitioner and passing the impugned order has noticed the fact that an inspection was carried out on which the mining lease was granted to the petitioner and certain allegations have come forth on the basis of which the show cause notice was given to the petitioner to which reply was submitted by him on 30.3.3021. The reply of the petitioner was not found satisfactory and merely on account of the fact that the allegations against the petitioner stood concluded by the inspection team no infirmity was found in the order of District Magistrate and accordingly the revision was rejected.

8. The petitioner in the present petition has assailed the cancellation of the lease deed as well as revisional order dated 16.3.2022 and the recovery as well.

GROUNDS OF CHALLENGE :-

9. Learned counsel for the petitioner has firstly submitted that no proper opportunity of hearing was given to the petitioner before passing the order of cancellation and recovery against the petitioner. In support of his submissions he has submitted that, in fact, no inspection was actually carried out and a perusal of the show cause notice dated 22.3.2021 would indicate that no material including the copy of inspection report was supplied to the petitioner along with the show cause notice and in absence of the relevant documents and material constituting the basis of the allegations against the petitioner the entire proceedings was conducted in violation of the principles of natural justice and accordingly the same are illegal, arbitrary and deserve to be set aside.

10. Learned Standing counsel Sri Rakesh Bajpai, on the other hand, supporting the impugned orders submitted that a perusal of the show cause notice indicates that entire contents of the inspection report have been reproduced in the show cause notice. He does not dispute the fact that copy of the inspection report dated 19.3.2021 was never supplied to the petitioner.

11. Learned counsel for the petitioner has further submitted that the inspection report and all other relevant documents have been annexed by the State Government along with the counter affidavit. It is further submitted that the inspection report was submitted on 19.3.2021 to the Director, Mining and Geology, Government of Uttar Pradesh who by means of letter dated 20.3.2021 addressed to the District Magistrate, Banda forwarded a copy of the inspection report for proceedings against the petitioner. Along with the said report he had categorically given directions to the District Magistrate to pass orders as mentioned therein. The name of the petitioner finds mention

at serial No.15 of the said letter where the District Magistrate was directed to register F.I.R. against the petitioner, cancel his mining lease and place his name in the black list and with regard to the allegations of illegal mining recovery be made from him. For the sake of convenience the directions of the Director are reproduced as under:-

> *''स्वीकृत क्षेत्र से बाहर एवं सटे खण्ड के क्षेत्र में अवैध खनन तथा अन्य अनियमितता पाये जाने पर पट्टेधारक के विरूद्ध FIR दर्ज कराते हुए नियमानुसार पट्टा निरस्तीकरण एवं पट्टेधारक का नाम काली सूची में डाला जाय तथा अवैध खनन के विरूद्ध पट्टाधारक से नियमानुसार राजस्व क्षति की धनराशि वसूल किये जाने की कार्यवाही की जाय।''*

12. It has also been submitted by the petitioner that entire proceedings have been held without any application of mind by the District Magistrate and from a perusal of the directions issued by the Director, Mining and Geology, the District Magistrate, who is the subordinate to the Secretary (Mining and Geology) was duty bound to comply and, in fact, complied with the directions and consequently it is a clear case of bias and non application of mind by the District Magistrate.

13. Learned counsel for the petitioner has further assailed the impugned orders on the ground that the inspection was conducted by Team A with regard to 19 persons who were the lease holders of the lease licenses issued in their favour and in pursuance of inspection report dated 19.3.2021 action was taken against all the 19 persons and in all the cases the directions / dictates of the Director, Mining and Geology, as contained in his letter dated 20.3.2021 were duly followed and complied by the District Magistrate and the leases of all the persons included in the said list was cancelled. It is further stated that against all the cancellation orders the respective persons had filed revisions before the State Government which were again decided by the Director (Mining and Geology), the same officer who had authored the letter dated 20.3.2021 in his capacity as Secretary (Mining and Geology) of Government of Uttar Pradesh and rejected all the revisions except the revision of the revisionist at serial No.16,

namely of VAR Enterprises Pvt. Ltd. A copy of the order passed in Revision No.128 (R)/SM/2021 filed by VAR Enterprises Pvt. Ltd has been annexed along with writ petition wherein on he basis of the same report the revision of VAR Enterprises Pvt. Ltd. has been allowed holding that the inspection report had clear infirmity and could not be relied upon and there is no material to indicate that the delinquent lease holder had, in fact, was involved or has indulged in any illegal mining and in the aforesaid circumstances, the Secretary, Government of Uttar Pradesh (Mining and Geology) in exercise of the power of the revisional authority on the basis of the same material allowed the said revision vide order dated 24.2.2022.

14. Learned counsel for the petitioner claims parity of the order dated 24.2.2022 and submits that the revisional authority has discriminated against the petitioner in as much as while considering the revision in the case of of VAR Enterprises Pvt. Ltd. on the basis of the same facts and for the same reason the revision of the petitioner has been dismissed.

15. Sri Rakesh Bajpai, *per contra*, has submitted that due opportunity of hearing was given to the petitioner before passing the impugned orders. He submits that as per the provisions contained under Rule 60 and 67 of Uttar Pradesh Minor Mineral (Concession) Rules, 1963 reasonable opportunity of hearing has to be given to the petitioner before passing any cancellation or blacklisting order. He submits that the inspection was conducted by the authority prescribed under the said Rules and according to the said inspection it can safely be stated that as per the inspection report the petitioner was found to have indulged in illegal mining and, hence, was subjected to show cause notice and it is only after receiving the reply to the said show cause notice that action has been taken in accordance with the provisions contained in the said Act for cancellation of the lease deed and for imposition of the penalty. He submits that due opportunity of hearing was given to the petitioner and consequently it cannot be said

that the proceedings are dehors the law and thus supported the entire proceedings as well as the impugned orders. He has further vehemently submitted that not providing copy of the inspection report dated 19.3.2021 has not prejudiced the case of the petitioner nor prejudice has been caused to the petitioner by not supplying the inquiry report and, as such, it cannot be said that there is any violation of the principles of natural justice.

DISCUSSION :-

16. I have heard learned counsel for the respective parties and perused the record.

17. The State Government after receiving certain complaints with regard to illegal mining by various persons in District Banda proceeded to constitute three enforcement teams for inspecting various areas for which the lease was granted for the purpose of mining. The order dated 12.3.2021 passed by Director, Mining & Geology, which is on record, indicates that the said team consisted of three officers from the same department along with Surveyor. It is further submitted that the said teams conducted inspection and submitted their inspection reports on 19.3.2021 to the Director. In the said report only finding is limited to the extent of area which has been mined and the quantity of mineral extracted with regard to each of the leases has been indicated. It is further noticed that there is no mention in the said report as to when the said inspection was carried out or as to whether the lease holders were ever informed about the said inspection or the manner in which the inspection was carried out are some of the factors which did not find mention in the said inspection reports. The inspection report with regard to each of the license holders in an extremely cryptic manner has only recorded that the license holders are involved in illegal mining and the quantities have been mentioned which have been illegally extracted by all the lease holders.

18. Learned Standing counsel, on the other hand, has stated that

the said inspection was carried out and entries made in the diary of the surveyor which have also included in the counter affidavit. It is noticed that only the surveyor has signed on the reprot. It is surprising that even if this fact is accepted that certain irregularities with regard to the petitioenr was found on 17.3.2021 why the remaining members of inspection team did not sign on the said survey report is one aspect whose answer has neither been given by the respondents in the counter affidavit nor has been satisfactorily responded by the Standing counsel and, therefore, the inspection itself becomes doubtful. It is on the basis of the said inspection report which was submitted to the Secretary, Mining and Geology that the entire proceedings have been conducted against the petitioner and also against all other lease holders. It is further noticed that as per lease deed dated 6th June, 2020 the petitioner was allotted following areas:-

बिन्दु	अक्षान्तर	देशान्तर
A	25°43.419 N	80° 33.858 E
B	25°43.350 N	80° 33.977 E
C	25° 43.074 N	80° 33.810 E
D	25°43.157 N	80° 33.701 E

19. Further, the said mining area was described with reference to the other plots on the North, South, East and West of the leased area which has been described therein. It is noticed that the inspection report only records that the petitioner has made excavation and extracted minor minerals from the areas outside the mining area. It is nowhere mentioned when and where the inspection was carried out, who were present during the inspection and most importantly whether the inspection was carried out at the location allotted to the petitioner is also doubtful as the plot is identifiable by G.P.S. Coordinates and there is no mention that G.P.S. Coordinates were used for identification of the plot. These are the essential facts which go to the root of the matter. If the allegations against the petitioner is that they have illegally mined beyond the leased area then it was the duty of the inquiry team to have identified/pointed out the same but there is no

attempt to establish the case that illegal mining had, in fact, been done on area beyond the leased area. All these facts should have been given in detail as the report recorded a finding that the said extraction have been conducted in the area beyond the leased area then it should have been described by giving their coordinates in the inspection report which was not done.

20. It is in the aforesaid facts and circumstances that this Court is of the view that the allegations against the petitioner for illegal mining could not be clearly established and merely stating that large quantity of the minerals have been extracted by them would not *ipso facto* prove that the petitioner had been involved in illegal mining. It is the duty of the State to obtain and produce credible evidence in support of th eallegations to bring home the charges. The arguments in this regard have force, specially, relying on the judgment of this Court in the case of ***Ranveer Singh Vs. State of U.P. and others, 2017 (1) ADJ 240*** where this Court has held as under:-

> ***"33.*** *Once the liability was to be fastened on the shoulder of the petitioner, then it was the obligation of the State to prove by way of credible evidence available that it was the petitioner, who has indulged in illegal mining and in the said direction, apart from issuing show-cause notice, all the evidence that was sought to be relied upon, i.e., the incumbents who have carried out the search and survey and the incumbents who have come forward to depose against the petitioner their names ought to have been disclosed and they ought to have been produced to support the case of the State that petitioner, in fact, has indulged in illegal mining. Not only this, as a part of process, the petitioner was entitled to have reasonable opportunity of defending himself by questioning the veracity of evidence produced against him and by adducing his own evidence, if any. Decision maker is bound to act fairly, as under the scheme of things provided for the determination made by him will entail civil consequences, as qua the person charged with illegal mining, on charges being proved, financial liability would be shouldered and in contra situation, the State would be at loss."*

21. It is further noticed that no further evidence was adduced during the proceedings apart from the inspection report which could

indicate that the petitioner or the other persons were involved in illegal mining. No evidence in this regard has either been placed on record before this Court or during the course of inquiry conducted by the respondents culminating into cancellation of the lease licenses.

NON-SUPPLY OF DOCUMENT :-

22. With regard to non-supply of the inspection report in the present case, it is not disputed that show cause notice contained only allegations with regard to illegal mining as recorded by the inspection team. Copy of the inspection report was never supplied to the petitioner. Though there are several judgments including the judgments cited by the Standing counsel in the case of ***Gorkha Security Services Vs. Government (NCT of Delhi) and others, (2014) 9 Supreme Court Cases 105*** where it has been held that in case inquiry report is not supplied to the delinquent then the proceedings would not *ipso facto* be illegal and arbitrary and in violation of principles of natural justice but delinquent will have to show that prejudice was caused to him by not supplying a copy of the inquiry report.

23. It is noticed that in the present case the proceedings have been conducted against the petitioner only on the basis of inspection report. Undisputedly, no other material was adduced during the said inquiry nor any evidence or statement was recorded during the inquiry. No documents were ever taken on record during the said inquiry and the culpability of the petitioner with regard to illegal mining and other allegations has been decided only on the basis of inspection report. Needless to say that the inspection report, in the present circumstances of the case, constitutes an essential material / document which ought to have been supplied to the petitioner as even in the impugned orders the petitioner has been held guilty of illegal mining relying upon the inspection report dated 19th March, 2021. Once it is noticed that action is taken solely on the basis of inspection report then non supply of the said report to the person against whom

proceedings are to be carried out necessarily constitutes miscarriage of justice in as much as he has a right to receive all the material which constitutes the charge/allegations against him so as to adequately respond to the charges and defend himself effectively, while in the present case the only material/document on the basis of which the petitioner has been proceeded against has not been provided to him and, hence, it can be safely concluded that the inquiry proceedings against the petitioner in this regard are in clear violation of the principles of natural justice and the defence of the petitioner has been severely prejudiced. Even though the sum and substance of the allegations did find mention in the show cause notice but inspection report apart from establishing the allegations against the petitioner also does not explain about other aspects as to how and where (location) the inspection was conducted, as to in what manner the inspection was undertaken by the committee and as to whether the persons allegedly involved in the illegal mining were ever put to notice before conducting the said inspection, are certain factors which are very material facts for the persons, who have been proceeded against have a right to defend their actions and they have right to know all material facts and only thereafter ssail the said report. In absence of inspection report their defence was seriously prejudiced and as vested right has been snatched away which undoubtedly has civil consequences. It is not clear from perusal of the records as to what were the coordinates, where the inspection was conducted and merely recording that inquiry was conducted on the plots on which the lease has been executed are some of the factors which are necessarily to be proved by the prosecution before saddling the delinquent lease holders with penal consequences like cancellation of their leases and recovery of penalty. In the lease the area allottted for mining has been described with G.P.S. coordinates and, therefore, it was incumbent to provide the G.P.S. coordinates of the area on which inspectdion was carried out and also the coordinates of area beyond the leased area on which the petitioner has been alleged to hvae illegally mined. In

absence of any cogent material or document the charge of illegal mining has sought to be proved. This Court is of the considered view that there was no sufficient cogent material linking the petitioner with the charge of illegal mining and as per the judgment of ***Ranveer Singh Vs. State of U.P. (supra),*** the onus on the State has not been discharged and consequently the proceedings against the petitioner only on the basis of inspectdion report is arbitrary.

BIAS :-

24. Apart from violation of the principles of natural justice, it is further noticed that the proceedings itself became doubtful the moment the Director, Geology & Mining directed the District Magistrate to proceed against the lease holders in a particular manner and to cancel the license and place them in black list. It would have been appropriate for the Director, Mining and Geology to have merely forwarded the inspection report and directed the competent authority i.e. the District Magistrate to proceed in accordance with law after giving reasonable opportunity of hearing to the lease holders but by specifically directing the District Magistrate to proceed to cancel the lease of the petitioner and other similarly situated persons and put them under the black list, clearly reveals that the respondents had premeditated and preordained the result of the inquiry proceedings which the District Magistrate obediently complied with and, hence, the cancellation order has been passed without application of any mind and at the dictates of the higher authority and a perusal of the same clearly indicates that the grounds / defence taken by the petitioner in the reply have not even been considered either by the appellate or revisional authority rendering the impugned orders illegal and arbitrary.

25. While assailing the impugned order dated 16.03.2022 passed in revision by the Secretary, Government of U.P. it is submitted that the same has been decided by Dr. Roshan Jacob, who was also holding the charge of Director, Geology & Mining at the

time when she had issued later dated 20.03.2021 whereby clear directions were issued to the District Magistrate to proceed against and to blacklist him. To consider the argument regarding bias, it would be fruitful to consider the rendition of the Supreme Court in this regard.

26. In the case of ***Mustafa v. Union of India*****, (2022) 1 SCC 294** the Apex Court has held as under :-

> ***36.*** *More appropriate for our case would be an earlier decision in G. Sarana v. University of Lucknow [G. Sarana v. University of Lucknow, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] , wherein a similar question had come up for consideration before a three-Judge Bench of this Court as the petitioner, after having appeared before the selection committee and on his failure to get appointed, had challenged the selection result pleading bias against him by three out of five members of the selection committee. He also challenged constitution of the committee. Rejecting the challenge, this Court had held : (SCC p. 591, para 15)*
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> > *"15. We do not, however, consider it necessary in the present case to go into the question of the reasonableness of bias or real likelihood of bias as despite the fact that the appellant knew all the relevant facts, he did not before appearing for the interview or at the time of the interview raise even his little finger against the constitution of the Selection Committee. He seems to have voluntarily appeared before the committee and taken a chance of having a favourable recommendation from it. Having done so, it is not now open to him to turn round and question the constitution of the committee. This view gains strength from a decision of this Court in Manak Lal case [Manak Lal v. Prem Chand Singhvi, AIR 1957 SC 425] where in more or less similar circumstances, it was held that the failure of the appellant to take the identical plea at the earlier stage of the proceedings created an effective bar of waiver against him. The following observations made therein are worth quoting : (AIR p. 432, para 9)*
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> > *'9. ... It seems clear that the appellant wanted to take a chance to secure a favourable report from*

the tribunal which was constituted and when he found that he was confronted with an unfavourable report, he adopted the device of raising the present technical point.' "

37. *The aforesaid judgment in G. Sarana [G. Sarana v. University of Lucknow, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] was referred in Madras Institute of Development Studies v. K. Sivasubramaniyan [Madras Institute of Development Studies v. K. Sivasubramaniyan, (2016) 1 SCC 454 : (2016) 1 SCC (L&S) 164] , in which selection to the post of Assistant Professor was challenged on the ground that shortlisting of candidates was contrary to the Faculty Recruitment Rules. The challenge was declined on the ground of estoppel as the respondent, without raising any objection to the alleged variations in the contents of the advertisement and the Rules, had submitted his application and participated in the selection process by appearing before the committee of experts.*

38. *Equally appropriate would be a reference to the decision of this Court in P.D. Dinakaran (1) v. Judges Inquiry Committee [P.D. Dinakaran (1) v. Judges Inquiry Committee, (2011) 8 SCC 380] , in which the allegation was that one of the members of the committee constituted by the Chairman of the Council of States (Rajya Sabha) under Section 3(2) of the Judges (Inquiry) Act, 1968 was biased. This judgment extensively recites and assimilates from both domestic and foreign judgments on the question of bias and prejudice and quotes the following observations in G. Sarana [G. Sarana v. University of Lucknow, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] case : (G. Sarana case [G. Sarana v. University of Lucknow, (1976) 3 SCC 585 : 1976 SCC (L&S) 474] , SCC p. 590, para 11)*

"11. ... the real question is not whether a member of an administrative board while exercising quasi-judicial powers or discharging quasi-judicial functions was biased, for it is difficult to probe the mind of a person. What has to be seen is whether there is a reasonable ground for believing that he was likely to have been biased. In deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration."

39. Thereafter, reference is made to *Ashok Kumar Yadav* v. *State of Haryana* [*Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88] , which refers to the Constitution Bench judgment in *A.K. Kraipak* v. *Union of India* [*A.K. Kraipak* v. *Union of India*, (1969) 2 SCC 262] . *Ashok Kumar Yadav* [*Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88] was a case of selection by UPSC and following extract from this judgment is of some significance : (*Ashok Kumar Yadav case* [*Ashok Kumar Yadav* v. *State of Haryana*, (1985) 4 SCC 417 : 1986 SCC (L&S) 88] , SCC pp. 442-43, para 18)

> *"18. We must straightaway point out that A.K. Kraipak [A.K. Kraipak v. Union of India, (1969) 2 SCC 262] is a landmark in the development of administrative law and it has contributed in a large measure to the strengthening of the rule of law in this country. We would not like to whittle down in the slightest measure the vital principle laid down in this decision which has nourished the roots of the rule of law and injected justice and fair play into legality. There can be no doubt that if a Selection Committee is constituted for the purpose of selecting candidates on merits and one of the members of the Selection Committee is closely related to a candidate appearing for the selection, it would not be enough for such member merely to withdraw from participation in the interview of the candidate related to him but he must withdraw altogether from the entire selection process and ask the authorities to nominate another person in his place on the Selection Committee, because otherwise all the selections made would be vitiated on account of reasonable likelihood of bias affecting the process of selection. But the situation here is a little different because the selection of candidates to the Haryana Civil Service (Executive) and Allied Services is being made not by any Selection Committee constituted for that purpose but it is being done by the Haryana Public Service Commission which is a Commission set up under Article 316 of the Constitution. It is a Commission which consists of a Chairman and a specified number of members*

and is a constitutional authority. We do not think that the principle which requires that a member of a Selection Committee whose close relative is appearing for selection should decline to become a member of the Selection Committee or withdraw from it leaving it to the appointing authority to nominate another person in his place, need be applied in case of a constitutional authority like the Public Service Commission, whether Central or State. If a member of a Public Service Commission were to withdraw altogether from the selection process on the ground that a close relative of his is appearing for selection, no other person save a member can be substituted in his place. And it may sometimes happen that no other member is available to take the place of such member and the functioning of the Public Service Commission may be affected. When two or more members of a Public Service Commission are holding a viva voce examination, they are functioning not as individuals but as the Public Service Commission. Of course, we must make it clear that when a close relative of a member of a Public Service Commission is appearing for interview, such member must withdraw from participation in the interview of that candidate and must not take part in any discussion in regard to the merits of that candidate and even the marks or credits given to that candidate should not be disclosed to him."

40. *"Real likelihood test" applied in Ranjit Thakur v. Union of India [Ranjit Thakur v. Union of India, (1987) 4 SCC 611 : 1988 SCC (L&S) 1] , is elucidated in the following words : (SCC pp. 617-18, paras 15-17)*

"15. ... The test of real likelihood of bias is whether a reasonable person, in possession of relevant information, would have thought that bias was likely and whether Respondent 4 was likely to be disposed to decide the matter only in a particular way.

16. It is the essence of a judgment that it is made after due observance of the judicial process; that the court or tribunal passing it observes, at least

> *the minimal requirements of natural justice; is composed of impartial persons acting fairly and without bias and in good faith. A judgment which is the result of bias or want of impartiality is a nullity and the trial "coram non judice"....*
> *17. As to the tests of the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him."*

27. In light of the settled law and the pronouncements of the Supreme Court on bias, examining the facts of the present case, this Court is of the view that Dr. Roshan Jacob, who was also the Director, Geology and Mining had directed the District Magistrate to proceed against the petitioner and to cancel his mining lease, which order was duly complied, and subsequently she herself as the revisional authority against the order of cancellation of the mining lease proceeded to hear and reject the revision, which order would certainly be hit by the vice of bias. It is the particular officer who initiated proceedings against the petitioner and other similarly situated persons, who can be said to have already made up her mind with regard to the penalty to be imposed upon the petitioner which is evident from her letter dated 20.03.2021 and further proceeded to decide the revision and, therefore, she was a Judge of her own cause deciding a matter which was initiated by her and also the revision challenging the order of District Magistrate which was passed on her dictates.The ground of bias squarely applies to the facts of the present case and the order dated 16.03.2022 rejecting the revision is clearly illegal, arbitrary and is hit with vice of bias.

28. This Court has also examined the revisional order passed in the case of VAR Enterprises Private Limited in Revision No.128 (R)/ SM/2021. It is noticed that the revisionist therein was also confronted

with the same inspection report where he was also held guilty of illegal mining in an area beyond the leased area allotted to him. The revisional authority has allowed the revision only on the ground that there is no material to indicate that the lease holder was, in fact, involved in or has indulged in illegal mining. It is clear that the same revisional authority in one case has sought to distinguish the inspection report and declined to fasten any liability upon VAR Enterprises Private Limited while on the basis of the same material have held the petitioner to be guilty of illegal mining. This clearly shows the discriminatory nature in which the impugned order of punishment has been passed and, as such, the action of the administrative authority cannot be sustained.

VIOLATIONS OF RULE 58 OF THE RULES OF 1963 :-

29. The impugned order has also been assailed on the ground that the same is in violation of Rule 58 of the Rules of 1963. By means of the impugned order the District Magistrate has passed final orders in pursuance of the show cause notice dated 25.2.2021, 20.3.2021 and 12.4.2021. It is stated that the said notice was only with regard to recovery of the outstanding amount of royalty, for non payment of 2 per cent TCS amounting to Rs. 1,52,400/- and also 10 per cent of the District Mining Fund (D.M.F.) amounting to Rs.7,62,000/-.

30. In this regard Rule 58 of the Rules of 1963 provides that in consequence of non - payment of royalty or other dues the same can be recovered by the respondents only after service of notice to the lessee, to pay within thirty days of the receipt of the notice and if not paid within thirty days then on expiry of fifteen days of the notice the lease can be cancelled. In this regard it has been submitted that thirty days from the date of notice would expire only on 11.05.2021 and fifteen days beyond the said date would expire on 26.05.2021 and even according to the statutory provisions cancellation of the lease of the petitioner could not have been ordered prior to expiry of the said

period i.e. 26.05.2021 while in the present case the order of cancellation has been passed on 26.4.2021 before the expiry of statutory period, as such, it is clearly noticed that Rule 58 of the Rules of 1963 has been flagrantly violated by the respondents in cancellation of their lease in pursuance of the show cause notice dated 12.4.2021. Therefore, on this ground also the cancellation order is illegal, arbitrary and violative of Rule 58 of the Rules of 1963.

31. In view of the aforesaid facts and circumstances, this Court is of the considered view that the impugned order dated 16.3.2022 passed by the State Government in Revision No.104 (R)/SM/2021 as well as order 26.4.2021 passed by opposite party No.3 i.e. District Magistrate, Banda are illegal and arbitrary, hence, set aside.

32. Considering the seriousness of the allegations and the amount of recovery the respondents are given liberty to proceed against the petitioner in accordance with law, if they so choose.

33. In view of the above, the writ petition stands **allowed.**

Order Date :- 1.3.2023 **(Alok Mathur, J.)**

RKM.