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SUPREME COURT

A

THE DIRECTOR OF MINES

v.

SITA MINERALS LIMITED

B

[SUPREME COURT—Madhoji J., 25 October 1982]

Appellate Jurisdiction

M. J. Scott for Appellant
H. M. Patel for Respondent

C *Director of Mines—not obliged to raise with applicant for mining licence applicant's financial resources—previous record and history of accredited agent (Mining Act S.15) relevant to Director's consideration—Nature of Appeals.*

D

Appeal by Director of Mines (the Director) under S.10(7) of the Mining Act Cap. 146 (the Act) against the decision of the Mining Appeals Board (the Board) given on 30 September 1981 whereby the Board allowed the present respondent's appeal against a decision of the Director rejecting respondent's application for Prospecting Licence under the Act. The learned appellate judge after considering authorities cited found that the appeal to the Board was a rehearing wherein the Board was entitled to substitute its own discretion for that of the Minister. Further, the appeal to the Supreme Court (Order 55 Rule 3) was by way of rehearing and its decision final.

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S.15 of the Act required that where e.g. a Company applied for a licence it must register an accredited agent personally responsible for all matters, as if the licence had been granted to the agent personally as his own.

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The court noted that by S.17 of the Act the Director could if he chose to do so call upon any applicant for a Mining Licence to prove that he had necessary finance for working capital, payment of compensation and otherwise be in a position to carry out efficient prospecting or mining.

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The court referred to the previous record and history of the accredited agent in this matter.

The findings of the learned appeal judge reflect the issues discussed in the appeal.

H

Held: The Appellant Director when considering an application from a company was not obliged to raise with the respondent the question of its financial resources: though pursuant to S.17 (supra) of the Act he was entitled to do so.

There was no evidence before the court of any unfairness or bias on the part of the Director. There was no basis for the Board's conclusion that the respondent company had been denied a fair and reasonable consideration of its application on the merits. A

The Director when dealing with an application from a company was entitled to consider whether the accredited agent and those controlling the applicant company were fit and proper persons.

The agent put forward here was also the Managing Director of the respondent and. (with his wife) the majority shareholder. The Director was entitled to equate him with the respondent company. Having regard to the aims, objects and provisions of the Act and the personal record and history of the accredited agent, the appellant was bound to take into consideration that previous record e.g. as to whether the agent was a person who bona fide would carry out his duties under the Act. B C

Cases referred to:

Stepney Borough Council v. Joppe (1949) 1 K.B. 599

Croydon Corporation v. Thomas (1947) 1 K.B. 386

Sagnata Investments Ltd. v. Norwich Corporation (1971) 2 Q.B. 614

Associated Provincial Picture Houses v. Wednesbury Corporation (1948) 1 K.B. 223 D

Lennards Carrying Company v. Asiatic Petroleum Company (1915) A.C. 705

Tesco Supermarkets v. Natrass (1971) 2 All E.R. 127

Federal Commissioner of Taxation v. Whitfords Beach Pty. Ltd. 12 A.T.R. 692. E

Director of Mines v. Manganex Ltd. Suv. Sup. Ct. App. 8/75.

Madhoji, Mr Justice.

Judgment

This is an appeal by the Director of Mines as appellant under section 10(7) of the Mining Act, Cap. 146 against the decision of the Mining Appeals Board given on the 30th September 1981, whereby the Board allowed the respondent's appeal to the Board against a decision of the Director of Mines rejecting the respondent's application for a prospecting licence on the following grounds: F

- (1) That the Mining Appeals Board erred in law in supposing that the appellant had an obligation to raise with the respondent the question of its financial resources whereas the respondent had the positive obligation to satisfy the appellant affirmatively that it possessed adequate resources. G
- (2) That the Mining Appeals Board erred in law in alleging that the respondent's application was not "fairly considered" and that the appellant acted unreasonably, without assigning any cause for such grave allegations.
- (3) That the Mining Appeals Board erred in law in supposing that the previous mining record of Ravindra Singh f/n Bindeshwari Singh was not relevant in considering the fitness of the respondent to be awarded a prospec- H

A ting licence, in view of the said Ravindra Singh's relationship with the said respondent.

- (4) That the Mining Appeals Board erred in law in purporting to substitute its own opinion of the respondent's mining record and credentials for that of the appellant.

B On the 29th November 1979 the respondent applied to the Director of Mines for a prospecting licence to search for precious metals and metalliferous minerals upon 200 hectares of land at Malomalo Tikina, in the Nadroga and Navosa provinces in Viti Levu.

Under sections 18 and 26 of the Mining Act the Director of Mines has a discretion whether or not to issue such a licence. The formalities for such an application are prescribed by Mining Regulations 16, 17, 18 and 19.

C Section 15(1) of the Mining Act provides that:

"Every partnership of company which applies for a mining tenement shall at the time of such application register at the office of the Director the name of an accredited agent residing in Fiji, and such agent shall, when registered be personally responsible under the provisions of this Act for all matters, acts, and omissions in connexion with such tenements in the same manner as if such tenement were granted in his name as his own property."

D This section refers to a mining tenement. Under section 2 a prospecting licence is a mining tenement.

E As the respondent was a company it appointed Mr Ravindra Singh f/n Bindeshwari Singh as its accredited agent under section 15(1). Besides being so appointed as accredited agent Mr Ravindra Singh was at all material times the governing director of the respondent company and the holder of 1050 out of the company's 3000 issued shares, his wife holding another 1050 shares.

F The record of the evidence before the Board shows that Mr Ravindra Singh had a history as far as the Director of "Lands" (sic) was concerned in respect of other applications with which he was associated. It appears in detail in the record and in the decision of the Board and these facts were not disputed. The history includes Mr Ravindra Singh's failure to satisfy the Director's financial requirements, failure to answer queries, failure to submit adequate reports of prospecting operations, application being made in respect of a company which did not exist, applications being made in respect of areas covered by existing licences or in respect of closed areas and in one case failure to mark out an area stated in the application to have been marked out and supplying misleading photographs as to such marking out.

G After receiving the application the Director of Lands (sic) wrote to the respondent on 28th February, 1980 enclosing copies of notice of application which, in accordance with Regulation 19 of the Mining Regulations, was required to be advertised. The respondent duly advertised the notice of application in the *Fiji Times* of 4th March, 1980 and the *Fiji Royal Gazette* of 28th March, 1980.

H By a letter dated 5th May, 1980 the respondent made objection to an application by Nullabor Holdings Limited in respect of the same area and with its letter of objection it submitted a proposed exploration programme in respect of its own application.

On the 24th November, 1980 the Director of Lands (sic) informed respondent as follows:

"I am directed to inform you that application for prospecting licence for 200 hectares in an area known as Nanqiri Creek has been rejected."

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On 23rd December, 1980 Nullabor Holdings Limited's application was also rejected by the Director of Lands.

On 16th December, 1980 the respondent appealed against the decision of the Director of Lands under section 10 of the Mining Act. After hearing the appeal the Mining Board for the reasons given in its decision dated 30th September, 1981 allowed the appeal by the respondent.

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In its decision the Board noted that:

"Neither the letter from the Director of Mines nor the agreed statement of facts quoted above gave any indication of the reasons for the rejection of the application. At the Board's request Mr M. J. Scott, counsel for the Director of Mines, advised that the Director did not consider Mr Ravindra Singh, the accredited agent of and the person controlling the company, a fit and proper person to be granted a prospecting licence either in his name or in the name of the company he controlled."

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The Board then referred to and discussed Mr Ravindra Singh's background and history and continued:

"On the record as recited above the Director of Mines concluded that Mr Ravindar Singh was not a suitable or fit and proper person, and accordingly rejected the appellant's application for a prospecting licence, in view of the fact that the appellant controlled the appellant company and was its accredited agent."

D

The present Director of Mines Mr H. G. Plummer stated in evidence that in the case of this application (i.e. of Sita Minerals Ltd) no request was made by the Director as to capital resources to carry on prospecting in accordance with the programme submitted by the appellant.

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Mr Scott informed the Board that the decision to reject the application was made by the previous Director of Mines, Mr Ron Richmond, the present Director Mr Plummer could not say why the question of financial resources was not raised with the applicant in this particular case.

F

An applicant for a prospecting licence has no right to a licence. However he has a right to expect his application would be fairly considered and the Director would not act unreasonably.

We doubt if the Director has the authority to form an opinion as to the suitability of a person and then to proceed to reject an application where that person is the accredited agent and or the applicant, or in control of the applicant company, as happened in this particular case.

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Be that as it may, we are of the opinion that Mr Ravindra Singh's role in the applications (1) to (11) detailed above did not warrant such a conclusion.

We are therefore of the unanimous opinion that Sita Minerals Ltd was denied a fair and reasonable consideration of its application for prospecting licence on the merits of its application.

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Accordingly we would allow the appeal by Sita Minerals Ltd.

We would add, lest this issue lead to further difficulties in future that the mere offer of a company or person to provide finances for prospecting licence, or the mere assertion by an applicant that he has the necessary means to carry on efficient prospecting, is not proof enough. The Director of Mines has to be satisfied on this issue by the applicant. Of course, based on his knowledge or reputation of an applicant the Director of Mines may well be satisfied by a simple assertion in this regard, but he may quite properly require more tangible evidence from another applicant."

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The Director of Mines now appeals from this decision of the Board in pursuance of the statutory right of appeal given him by section 19(7) of the Act. The appeal to this Court is final. This Court hears this appeal under Order 55 Rule 3 and the appeal is by way of rehearing. Under Rule 7 this Court has very wide powers. Where the appeal is from findings of fact the principle to be followed is that this Court would not lightly interfere with such findings. However, in this appeal the facts are not in dispute. In such circumstances this Court is in as good a position as the Board to evaluate the undisputed facts and draw inferences and conclusions therefrom.

C

I will first consider the powers and jurisdiction of the Mining Appeals Board in appeals to it under section 10(3) of the Act. This matter is raised in ground 4 of the appeal.

D

It has been submitted that in the only previous appeal to this Court under section 10(7) of the Mining Act, namely, *Director of Mines v. Manganex Limited* Civil Appeal No. 8 of 1975, it was held that the Mining Appeals Board is an appellate body in the strict sense and that it cannot substitute its opinion for that of the Director or exercise its own discretion.

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The Mining Appeals Board is constituted under section 10(1) of the Act which provides that the Board shall consist of three members appointed by the Minister one of whom is required to be a barrister and solicitor.

Section 10(3) states:

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"Any person aggrieved by any decision of the Director made under the provisions of this Act, may, within thirty days of the date of the receipt of such decision or such longer period as the Board may in any case allow, appeal from such decision to the Board. Every such appeal shall be in writing and shall state the grounds thereof."

G

Section 10(4) gives the Board power to summon and examine witnesses on oath and affirmation and to require production of documents but states that the Board shall not be bound by rules of evidence in civil or criminal proceedings. Section 10(5) makes it an offence for a person summoned to attend to fail to attend or to answer questions put to him. Section 10(6) empowers the Board to make rules as to procedure for appeals under the Act.

In "Judicial Review of Administrative Action" 3rd Edition by S.A. de Smith the learned author says at page 249:

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"One matter that can be conveniently referred to at this point is the effect of providing a right of appeal to a court of law from the exercise of discretion vested in a local authority. Usually the appeal will lie to a county court or a magistrates' court The extent to which the courts below are entitled to review the exercise of the discretion depends on the construction of each individual act. In many cases the right of appeal by a party aggrieved is to be construed as

empowering the court to substitute its own opinion for the opinion of the authority which made the decision if it is satisfied that the decision was wrong though due regard ought to be paid to the competence of the local authority in its original decision. Thus, inferior courts have been held to have power to determine de novo on appeal whether the opinion of a borough council that a street trader was unfit to hold a licence was well founded” A

The case referred to by the author as authority for this proposition is that of *Stepney Borough Council v. Joppe* (1949) 1 K.B. page 599. The headnote reads as follows: B

“By section 21 subsection 3 of the London County Council (General Powers) Act 1947, a borough council may revoke a licence granted by it to a street trader if '(a) the licensee is on account of misconduct or for any sufficient reason in their opinion unsuitable to hold such a licence”

Section 25, subsection 1 provides that any person aggrieved (inter alia) by the revocation by a borough council of a licence may appeal to a petty sessional court and that “in any such appeal the court may confirm, reverse or vary the decision of the borough council” C

The facts were briefly as follows.

Three holders who had been granted licences were convicted of selling goods at prices exceeding the maximum fixed by the order made under the Defence (General Regulations) 1939. The Council accordingly revoked their licences being of the opinion that by reason of their convictions they were unsuitable to hold the licences. D

The three holders appealed from those decisions to a Magistrate. The Council contended, on the hearing of these appeals, (i) that the Magistrate was not entitled to substitute his opinion as to the suitability of the traders to hold licences for that of the Council, (ii) that he was not empowered to review at large the merits of the matter for the purpose of deciding whether each of the traders was suitable or not and (iii) that his jurisdiction was limited to considering whether or not there was any material on which the Council could reasonably have arrived at their decisions to revoke their licences. E

The Magistrate, being of the opinion that the traders were, in fact, still suitable to hold the licences and holding that he was empowered, and bound, to consider the whole merits of the matter de novo in the case of each trader and that his jurisdiction was not limited as contended by the Council allowed the appeals but at the request of the council stated the question for the opinion of the Court whether he had come to a correct decision as to the extent of his powers on the hearing of an appeal against the decision of the borough council. F

The Court held that section 25, subsection 1, gives a street trader an unrestricted right to appeal against a decision under section 21 subsection 3(a); that once he appeals, the petty sessional court is bound to form an opinion of its own as to the suitability of the trader to hold a licence; and that the petty sessional court is entitled to substitute its opinion for that of the Council. G

At page 602 of the case Lord Goddard says: H

“ It is said that on an appeal under s.25(1) . . . against the revocation of a licence under s.21(3) of that Act on account of misconduct or for any suffi-

A cient reason rendering the licensee unsuitable to hold such licence, the
 B magistrate was not entitled to substitute his opinion for the opinion of the
 C borough council; that all he can decide is whether there was evidence upon
 D which the Council could come to that conclusion. I find myself quite unable
 E to accept that argument. If that argument be right, the right of appeal
 would be purely illusory. Such an appeal would really be only an appeal
 on the question of law whether there was any evidence upon which the
 borough council could have formed an opinion. If their decision were a mere
 matter of opinion and that opinion were to be conclusive, I do not know that
 the borough council would be obliged to have any evidence. They could
 simply say: 'In our opinion this person is unsuitable to hold a licence'. It is
 true they must give a sufficient reason, but they could give any reason they
 liked and say: 'That is sufficient in our opinion'. I do not know how a court
 could then say on appeal that that was not a sufficient reason. If the reason
 need only be one which is sufficient in the opinion of the borough council, it
 is difficult to see how any court of appeal could set aside their decision. It
 seems to me that s.24(1) gives an unrestricted right of appeal, and if there is an
 unrestricted right of appeal, it is for the court of appeal to substitute its opi-
 nion for the opinion of the borough council. That does not mean to say that
 the court of appeal, in this case the metropolitan magistrate, ought not to pay
 great attention to the fact that the duly constituted and elected local authority
 have come to an opinion on the matter, and it ought not lightly, of course, to
 reverse their opinion. It is constantly said . . . that the function of a court of
 appeal is to exercise its powers when it is satisfied that the judgment below is
 wrong, not merely because it is not satisfied that the judgment is right. The
 magistrate is given power to 'confirm, reverse or vary the decision of the
 borough council', and that being so, it seems to me that once the licensee
 appeals to him, he is bound to form an opinion upon the matter and confirm,
 reverse or vary the decision of the borough council according to the judg-

In the same case Humphreys J. states at p. 604:

F " I see no reason to withdraw or to differ from what I said in this Court in
Fulham Borough Council v. Santilli, namely, that, 'It is a matter of common
 knowledge and entirely beyond doubt in an ordinary case that a right of
 appeal is a right to a rehearing of the whole matter in dispute, the appellate
 tribunal not being confined to the particular reasons which have been given
 by the court below as the ground of their decision'."

In *Croydon Corporation v. Thomas* (1947) 1 K.B. 386 the headnote reads:

G "Section 75(1) of the Public Health Act, 1936, gives power to any local
 authority who have undertaken the removal of household refuse within their
 district, to require the owner or occupier of any building within the district to
 provide covered dustbins. A wide discretion is given to the authority in deter-
 mining whether to place the burden on the owner or the occupier, but a right of
 appeal to a court of summary jurisdiction, entirely unrestricted in terms, is
 provided by the section for any person aggrieved by the requirements of the
 authority, and on such appeal the justices are at liberty to consider the equities
 as between the owner and occupier."

H The right of appeal in this case was worded as follows:

"Any person aggrieved by a requirement of the local authority may appeal to a court of summary jurisdiction".

Lord Goddard, C. J., referring to and construing such a right of appeal said:

" If you take the first part of subsection 1 alone, it appears to put the widest possible discretion into the hands of the local authority. It appears to enable them, by administrative action, to require either the owner or the occupier to provide the dustbin It is not a discretion on the face of it which requires to be exercised judicially; it is an administrative discretion. But when you find that any person aggrieved by a requirement of the local authority may appeal to a court of summary jurisdiction, it is obvious that Parliament intends the discretion which has been exercised by the local authority to be subject to an appeal, and the final determination, in the event of an appeal, is left to the justices and not to the local authority."

In the same case Humphreys J., in construing the appeal section, said:

" It is about as wide and general as an appeal section can possibly be There is no restriction of any sort or kind on the appeal court to consider this question: Was the requirement of the local authority a proper one in the circumstances? I think they may consider any matter which is relevant which will enable them to decide that question."

In *Sagnata Investments Ltd. v. Norwich Corporation* (1971) 2 Q.B. 614, a case dealing with the Betting, Gaming and Lotteries Act which provided that the grant of a permit for amusements with prizes should be "at the discretion of the local authority". Schedule 6 provided that where a local authority refused an application for a permit the applicant could appeal in accordance with the provisions of the Quarter Sessions Act, 1849 to quarter sessions. A company's application for a permit for the provision of amusements with prizes was refused by the licensing committee of the authority. The company appealed to Quarter sessions where the recorder dealt with the appeal de novo with unfettered discretion. The court of appeal upheld the recorder's decision and held that appeal to Quarter sessions was a rehearing. Phillimore L. J. in the course of his judgment said at p. 638:

"I must, however, turn for a moment to the question of appeal to quarter sessions. What sort of appeal is it? Is the recorder to look at the reasons of the committee and give effect to them unless they are so lacking in grammar or so obviously wrong on the face of them that certiorari would lie?"

The position seems to me to be so well established that it is not susceptible of legal subtlety. The hearing of an appeal at quarter sessions is a rehearing. It cannot be less so if the decision from which the appeal is brought is an administrative decision by the committee of a local authority which heard no evidence, before which no one took an oath or was cross-examined."

At page 640 he continues:

"I think the recorder must hear evidence—all the more so because none was called before the committee. I think he must give effect to that evidence and reach what he regards as a just conclusion."

Of course, he will bear in mind the views expressed by the local authority and will be slow to disagree"

Section 10(3) of the Mining Act says any person aggrieved by the decision of the Director made under the provisions of the Act may appeal to the Mining Board. In hearing the appeal the Board is empowered to hear evidence on oath or affirmation and call for the production of documents. This appeal section is completely unrestricted in its terms. In the words of Humphreys J. in *Croydon Corporation v. Thomas* (supra) "it is about as wide and general as an appeal section can be" There is no restriction of any kind on the Board hearing the appeal. In my view, in view of the authorities I have referred to, the appeal to the Mining Board is a rehearing and the Board is entitled to substitute its discretion for the discretion of the Director. This, of course, does not mean that the Board ought not to pay great attention to the fact that the Director with his knowledge and experience in these matters has come to an opinion on the matter and it ought not lightly to reverse or disagree with that opinion. Reference has been made to certain cases which deal with executive discretion and it has been argued that such discretion can only be challenged in court in a limited class of cases. However, these cases can be distinguished. They are not cases where Parliament has given an unrestricted right of appeal as in the present case and the authorities I have referred to earlier. In *Associated Provincial Picture Houses v. Wednesbury Corporation* (1948) 1 K.B. 223 Lord Greene M. R. refers to this distinguishing feature at page 228 as follows:

"When an executive discretion is entrusted by Parliament to a body such as the local authority in this case, what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case. As I have said this is not a court of appeal."

At page 234 he says:

"The power of the court to interfere in each case is not as an appellate authority, but as a judicial authority which is concerned, and concerned only, to see whether the local authority have contravened the law by acting in excess of the powers which Parliament confided in them."

I now turn to the other grounds of appeal in this case.

As to the first ground I agree that the Director is not under any obligation to raise with the respondent the question of financial resources. Mining Regulations 16 to 22 deal with applications for mining tenements. Regulation 16 provides that the application for a mining tenement is to be Form 1. This form has no questions relating to financial resources or whether the applicant is in a position to carry on efficient prospecting. Rules 17 to 22 deal with plans, proof by agent signing application of his authorisation to sign it, posting of notices of application and advertisements, withdrawal and priority of applications and adjustment of boundaries.

Section 17 of the Act reads:

"The Director may call upon any applicant for a mining tenement to prove in such manner as he may direct, and to his satisfaction, that the applicant has the working capital necessary to prospect or mine the area in question and for the payment of compensation which may be payable to owners or occupiers of the land in respect of which the tenement is required, and is in a position to carry on bona fide and efficient prospecting or mining."

It is clear that the Director of Mines has a discretion whether or not to exercise his powers under section 17 to call upon an applicant to prove his financial resources to carry on bona fide and efficient prospecting or mining after an application is made to him. He is certainly not obliged to do so. A

I will deal now with grounds 2 and 3 of the appeal together.

The Board in its decision said:

“We doubt if the Director has the authority to form an opinion as to the suitability of a person and then to proceed to reject an application where that person is the accredited agent and/or the applicant or in control of the applicant company as happened in this particular case. B

Be that as it may we are of the opinion that Mr Ravindra Singh's role in applications (1) to (11) detailed above did not warrant such conclusion.

For this reason the Board found that the respondent company Sita Minerals Limited, was denied a fair and reasonable hearing on the merits of its application and allow the appeal.” C

As I noted earlier, Mr Ravindra Singh's previous history with the Director of Mines was not in dispute at the hearing of the appeal before the Board. The record shows this history in detail and the Board summarised it in its decision.

It was also not in dispute and the Board found that the Director of Mines had rejected the respondent company's application because Mr Ravindra Singh, who was the respondent company's accredited agent and who also controlled the respondent company as its managing director and as holder, together with his wife, of the majority of shares in the respondent company, was not, in view of his previous record and history with the Director of Mines, a suitable or fit and proper person. D E

In my view the Director, when considering an application from a company is entitled to consider whether the accredited agent of the company and those controlling the company are suitable and fit and proper persons. It is very important and relevant from the mining and prospecting point of view and in deciding how to exercise the discretion vested in him.

It is clear from section 15(1) of the Mining Act that the position of an accredited agent of an applicant company is not a mere formality. According to this section an accredited agent when registered is made “personally responsible under the provisions of this Act for all matters, acts and omissions in connexion with such tenement in the same manner as if such tenement were granted in his name as his own property”. F

Now in addition to being its accredited agent Mr Ravindra Singh was also the managing director and the holder together with his wife of a majority of shares in the company. The respondent company would therefore be acting through him and it would be his mind that would be directing the affairs of the company. I am of the opinion that the Director was entitled to equate him with the company. G

In *Lennards Carrying Company v. Asiatic Petroleum Company* (1915) A.C. 705 it was held that a company was not exempted from liability for loss occurring without its “actual fault or privity”, because its managing director was to blame and Viscount Haldane said at p. 173: H

A "For if Mr Lennard was the directing mind of the Company his action must have been an act of the Company itself."

In *Tesco Supermarkets v. Natrass* (1971) 2 All E.R. 127 at 131 is it said of a person controlling a company. "His mind is the mind of the company. If it is a guilty mind then that is the guilt of the company." At page 148 reference is made to "officers of a company who may be identified with it, as being or having its directing mind and will".

B This principle is further illustrated on taxation law by the case of *Federal Commissioner of Taxation v. Whitfords Beach Pty Ltd* 12 A.T.R. 692 at 701 where companies controlling shares in another company were equated with it, they controlling what it did and its mind has held to be their mind.

C So in this case Mr Ravindra Singh being the accredited agent and also the person controlling the company the Director of Mines was entitled to equate Mr Ravindra Singh with Sita Minerals Limited, the respondent company, and then exercise his discretion having regard in so doing to objects and the provisions of the Mining Act.

D Under section 3 of the Mining Act all the mineral resources of the country are deemed to be the property of the Crown. The Director of Mines and his officers are appointed for carrying into effect the provisions of the Act (section 7). Section 18 empowers the Director to grant prospector's rights, prospecting licences etc. The discretion is vested in him. subject to the provisions of the Act and to any directions of the Minister to grant or refuse such licences etc. He is empowered to call upon any applicant for a mining tenement to prove in the manner directed by him and to his satisfaction that the applicant has the working capital necessary to prospect or mine the area for which application is made and to pay compensation provided under the Act and to satisfy himself that the applicant "is in a position to carry on *bona fide and efficient* prospecting or mining" (section 17). There is in every mining tenement an implied condition that the holder thereof "will use the land *continuously and bona fide* for the purpose for which the mining tenement was granted and in accordance with the Act" (section 20).

F These and other provisions of the Act are matters which the Director has to keep in mind when exercising his discretion to grant or refuse a licence. He has to be satisfied that the applicant is a person who will *bona fide* carry out all his duties and obligations under his licence. It is to be noted that the holder of a prospecting licence is given the exclusive right to prospect for minerals specified in the licence on the land which is the subject of his licence (section 27(1)).

G Having regard, therefore, to the aims and objects of the Mining Act and the duties of the Director of Mines thereunder and in view of the fact that in respect of the application before him by the respondent company Mr Ravindra Singh was the accredited agent and person in control of the respondent company, the Director of Mines was not only entitled to but was bound to take into consideration, as an important factor in the exercise of his discretion, the previous record and history of Mr Ravindra Singh, the evidence relating to which was undisputed at the hearing before the Board.

H There was no proper evidence before the Board of any unfairness or bias on the part of the Director in dealing with the respondent company's application. I am also satisfied that there was no basis for the Board's conclusion that the respondent com-

pany was denied a fair and reasonable consideration of its application on the merits by the Director. There was no evidence to support this conclusion. I am further satisfied that the undisputed facts before the Director justified and warranted his decision and that the Board although it had the right to substitute its own discretion failed to properly evaluate the evidence or draw the proper inferences and conclusions from the facts before it having regard to all the circumstances. A

I therefore allow this appeal with the result that the Director of Mines decision shall stand. B

Appeal allowed.