(2006) 03 PAT CK 0031

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 5181 of 2003

Abhay Stone Works, Proprietor Krishndeo Singh and Others — APPELLANT

Vs

State of Bihar and Others — RESPONDENT

Date of Decision : 30-03-2006

Acts Referred:

Citation : (2006) 03 PAT CK 0031

Final Decision : Dismissed

Judgement

Navaniti Prasad Singh, J.—These five analogous writ petitions raise common issues and seek similar reliefs. All these cases were, therefore, heard together and are disposed of by this order.

2. The petitioners in all the cases question the validity of Clauses (a) and (d) of sub-Rule (1) of Rule 7 of the Bihar Minerals (Prevention of Illegal Mining, Transportation & Storage) Rules, 2003 and contend that the impugned provisions are ultra vires Section 23C of the Mines & Minerals (Development & Regulation) Act, 1957 under which those were framed.

3. Clause (a) of Sub-rule (1) of Rule 7 provides that the number of stone crushers in a particular area/district shall be determined on the basis of the total production of stone minerals taking into account the number of leases and their capacities for extraction. Clause (d) of Sub-rule (1) of Rule 7 lays down that the grant of stone stockist licence (needed for running a stone crusher) shall be granted to the highest bidder/tenderer on the basis of public auction/tender.

4. C.W.J.C. No. 5181 of 2003, the first case in the Batch, (in which the leading submissions were made on behalf of the petitioners), was filed in May, 2003 and on 27.05.2003, an interim order was passed in favour of the petitioners restraining the authorities from issuing the (Stone Stockist) license to anyone on the basis of auction held in pursuance of the notice dated 19.05.2003 issued for the purpose. Later, on 11.07.2003 the interim order was vacated and consequently, a number of stone stockist licenses were issued. The State

supplied a list of over 400 persons to whom licenses were granted and by order dated 17.02.2004, the, licensees were impleaded as parties to the case. Some of them are represented though counsel in the Court.

5. For a proper appreciation of the issues involved and the submissions made on behalf of the petitioners, it will be useful to take a look at the relevant statutory provisions. The Mines & Minerals (Development & Regulation) Act was subjected to a number of amendments by the Amendment Act 38 of 1999. The amendments included addition of a new provision in the form of Section 23C, the marginal sub-title of which reads as:

Power of State Government to make rules for preventing illegal mining, transportation and storage of minerals.

And the contents of the section are as follows:

23C. (1) The State Government may, by notification in the Official Gazette, make, rules for preventing illegal mining, transportation and storage of minerals and for the purposes connected therewith.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

(a) establishment of check-posts for checking of minerals under transit;

(b) establishment of weigh-bridges to measure the quantity of mineral being transported;

(c) regulation of mineral being transported from the area granted under a prospecting licence or a mining lease or a quarrying licence or a permit, in whatever name the permission to excavate minerals, has been given;

(d) inspection, checking and search of minerals at the place of excavation or storage or during transit;

(e) maintenance of registers and forms for the purposes of these rules;

(f) the period within which and the authority to which applications for revision of any order passed by any authority be preferred under any rule made under this section and the fees to be paid therefore and powers of such authority for disposing of such applications; and

(g) any other matter which is required to be, or may be, prescribed for the purpose of prevention of illegal mining, transportation and storage of minerals.

(3) Notwithstanding anything contained in Section 30, the Central Government shall have no power to revise any order passed by a State Government or any of its authorised officers or any authority under the rules made under sub-sections (1) and (2).

6. In exercise of the powers conferred by Section 23C of the Act, the State

Government framed Bihar Minerals (Prevention of Illegal Mining, Transportation And Storage) Rules, 2003. Rule 7 of the Rules, insofar as relevant for the present, is re-produced below.

7. Storage of major mineral and minor mineral beyond lease hold area:-

(1) Every person who carries business of major minerals beyond any lease hold area shall obtain a stockist licence from the competent, officer or any officer authorised by the State Government in form "C" of this rule.

provided that for minor mineral the license under form ''L'' except of stone minerals used for crusher shall be obtained as per the provision of Rule 49 of Bihar Minor Mineral Concession Rules, 1972.

Provided further that for stockist license for stone mineral used for crusher shall be obtained as per the following procedure:-

(a) The number of stone stockist license for use of crusher shall be determined in inconsonance to the number of leases and its capacity of stone production of a particular area/ district as well as capacity of crusher unit.

(b) xx xx xx

(c) xx xx xx

(d) Notwithstanding anything contained contrary to this rule and in Bihar Minor Mineral Concession Rules, 1972, the grant of stone stockist license shall be strictly on the basis of Public Auction/Tender to the highest bidder/tenderer as notified by State Government. The State Government shall fix the minimum reserve deposit for the stone stockist license with the recommendation of Collector. The reserve deposit shall be fixed with regard to district, location, population, state of civil construction, state of industrial constructions, state of urbanization and place of industrial growth in different area of the State.

Provided if the applicants are less than the numbers, as fixed by the State Government, Stone Stockist License for use of crusher, Collector of a district after having a prior approval of the State Government may grant license on payment of agreed amount as decided by the Collector and approved by the State Government.

(e) xx xx xx

(f) xx xx xx

(g) xx xx xx

(h) xx xx xx

(i) The period of stone stockist license for the use of crusher shall not be more than 20 years with following condition.

(i) The auction bid/tender amount shall be deposited in yearly basis in equal installments within seven years. Each equal installment shall be deposited before 31st December.

(ii) After payment of installment of auction bid/tender amount or agreed amount up to seven years, renewal of stone stockist license for the use of crusher shall be made on the deposit of Rs. 5000/- every year up to thirteen years

(iii) The State Government shall issue a guideline from time to time in this regard.

(j) XX XX XX

(k) xx xx xx

7. The petitioners in the five cases took objection to the provisions of Clauses (a) and (d) of Sub-rule (1) of Rule 7 of the Rules. It may, however, be stated that though in the beginning, the provisions of the two clauses were assailed equally, at an early stage of hearing the challenge to Clause (a) was all but given up and the attack was focussed on Clause (d) alone that provides for the grant of stone stockist license on the basis of Public Auction/Tender.

8. Mr. Abhay Kumar Singh, Senior Advocate who appeared in C.W.J.C. Nos. 5181 and 4842 of 2003 and made the main submissions on behalf of the petitioners advanced the following points in support of the contention that the provisions of Clause (d) of Sub-rule (1) of Rule 7 of the Rules were bad and illegal and ultra vires Section 23C of the Act.

1. There was nothing in Section 23C of the Act, under which the rules were made to empower the State Government to auction the license or to charge any money for granting the license.

2. Apart from Royalty and Dead rent (leviable under Sections 9 and 9A respectively) and with the exception of some fees and costs by way of actual administrative expenses, no money of any other kind could be realised either by the Central Government or by the State Government under the provisions of the Act or the Rules framed thereunder. Certainly, no collection of revenue or making of profit was permissible in the garb of grant of license by public auction/tender.

9. Supplementing the two points further, Mr. Singh made the following additional submissions.

(i) There was no connection between adopting auction as the basis for grant of licence and the prevention of illegal mining which was the avowed object of the Rules.

(ii) The grant of license to the highest bidder in a public auction/tender would encourage the greater exploitation of the minerals and would thus adversely affect the inter-generational equity . In support of the submission, Counsel relied upon a decision of the Supreme Court in A.P. Pollution Control Board Vs. Prof. M.V. Nayadu (Retd.) and Others, .

(iii) The grant of stone stockist license to a stone crusher on the basis of auction might be justified only if stone crushing was covered by the definition of mining operation and thus a part of State privilege. The position being otherwise, the auction of the license was wholly impermissible.

(iv) The grant of license can not be used for raising revenue regardless of the object that might be quite laudable. In support of the submission, Mr. Singh relied upon certain passages from commentaries, namely, (i) Interpretation of Taxing Statute by Markandeye Katju, Second addition (1998) page 9) (ii) Coolie on Constitutional Limitation, page 1046.

(v) The process of auction would eliminate people who were monetarily weak though it should be the obligation of the State to take affirmative action in support of the weaker sections and to provide credit to them in order to make the principle of sustainable development a reality. In support of the submission, Mr. Singh relied upon a Supreme Court decision in P. Kannadasan etc, etc. Vs. State of Tamil Nadu and others [OVERRULED], .

10. Mr. Sanjeev Kumar appearing in the rest three cases adopted the submissions of Mr. Singh. He also invited our attention to Section 18 of the Act that gives to the Central Government the rule making power. He submitted that Clause (f) of Sub-section 2 of Section 18 of the Act was specifically for ''the regulation of the arrangements for the storage of minerals and stocks thereof that may be kept by any person''. He did not submit that Section 23C was bad because it overlapped an area covered by Section 18(2)(f) of the Act but still tried to pursuade us that the impugned rules were bad. The thrust of his submission was that the real intention behind the provision for grant of license on the basis of auction was not to prevent illegal mining but to raise revenue.

11. I find no merit in the challenge to the legal validity of Clause (d) of Rule 7(1) of the Rules and I am quite unimpressed by the submissions advanced on behalf of the petitioner. The petitioners want the Court to accept as an unquestioned premise that the intention of the State Government in adopting auction as the basis for grant of stone stockist license was to raise revenue and not to prevent any illegal mining. Once, that presumption is granted, all the submissions made on behalf of the petitioners would appear logical and acceptable. But to my mind the presumption is itself flawed and it results from a basic error in understanding the true import, purpose and object of the Rules.

12. From the marginal heading of Section 23C of the Act, it is evident that power was given to the State Government to make rules to prevent illegal mining, transportation and storage of minerals and the State Government framed the rules with those objectives. One of the most effective ways to prevent illegal extraction of natural resources is to limit the number of the first-stage processing units on the basis of the amount of extraction/ production by legal means. The same means was enforced in case of timber when the Supreme Court stepped in for preservation of forests. In T.N. Godavarman Thirumulkpad v. Union of India,

The Supreme Court gave a number of directions from time to time in order to safeguard the forests. One of the vital directions in the order dated 12.12.1996 reported in T.N. Godavarman Thirumulkpad Vs. Union of India and others, was as follows:

7. Each State Government should constitute within one month, an Expert Committee to assess :-

(i) the sustainable capacity of the forests of the State qua saw mills and timber-based industry;

(ii) the number of existing saw mills which can safely be sustained in the State;

(iii) the optimum distance from the forest, qua that State, at which the saw mill should be located.

13. In the same case, by order dated January 15, 1998 reported in Environment Awareness Forum Vs. State of Jammu & Kashmir and Others, , the Supreme Court made the following observations on the issue.

Even though the proliferation of wood-based industries has been the main cause of degradation of forests in the North - Eastern States, considering the extent of forests (64% of the Geographical area) and the dependence of the local people on the forest resources in the region, it is neither feasible, nor desirable, to ban completely either the timber trade or running of the wood-based industries. However, their numbers and capacities need to be regulated qua the sustainable availability of forest produce and they are also required to be relocated in specified industrial zones. Moreover, the industrial requirements have to be subordinated to the maintenance of environment and ecology as well as bona fide local needs.

14. Thus, in the case of timber, the Supreme Court put a limitation on the processing units like saw mills on the basis of the sustainable capacity of forests in the area.

15. Clause (a) of Rule 7(1) of the Rules intends to do exactly the same in case of stone mineral and thus, it appears to be perfectly reasonable and no exception can be taken to it.

16. Once the number of saw mills is restricted, one would immediately face the question as to the process of elimination/selection for the grant of licenses. One of the courses for the grant of licenses may be on the principle of first come first served but that may lead to abuses in actual practice. Another approach may be to retain the older units and to shut down the relatively newer ones, but that would put a premium on old technology and would eliminate the modern ones that are more environmental friendly. One of the options may be to make the elimination/selection on commercial basis and to give license to the highest bidder. I fail to see any objections to this process.

17. I am reminded here of a remark attributed to Cecil Rhodes, the great

colonizer and philanthropist of the 19th century. He is supposed to have said:

Philanthropy is alright but philanthropy plus two per cent is still better.

18. In the same way, if the State Government while taking steps for the preservation of stone mineral welcomes a little money in its kitty, one can take no objection to it.

19. As I see it, it is ,not difficult to assess the profit potential of a particular stone-crusher unit and the contenders in making bids would only share a margin of their profit with the State. The bidder who is willing to share with the State the greatest margin out of his profit would get the license. I find the process quite reasonable and legally valid.

20. I see no substance in the criticism that the process of auction would encourage more exploitation of the mineral, adversely affecting inter-generational equity. The supply of stone boulders to crushers would be part of the total extraction of the mineral, which would be controlled by the number of leases and their capacity. Therefore, there can be no question of any greater exploitation of the mineral.

21. I, thus, fail to see any infirmity much less any legal invalidity in Rule 7(1) (d) of the Rules. The petitioners'' challenge to the clauses (c) and (d) of Rule 7(1) of the Rules thus fails.

22. Before parting with the record, I may observe that Clause (i) of Rule 7(1) of the Rules leaves the period of licence, that may be up to 20-years, to be fixed by the Executive Officer. I would like to make two comments here. First, the right given to the Executive to fix the exact period of license smacks of double delegation which is not permission in law. Secondly, the period of 20-years appears to be very long. Normally, 25-years is taken as the span of a generation. The State Government will be well advised to consider this aspect of the matter and to make suitable corrections in the Rules.

23. In the result, all these writ petitions fail and are dismissed. There will be no order as to costs.

24. I agree.

