

(2014) 02 MP CK 0013
In the Madhya Pradesh High Court
Case No : Writ Petition No. 8426 of 2013

Aman Stone Crusher

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 05-02-2014

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15
National Greens Tribunal Act, 2010 — Section 14

Citation : (2014) 1 JLJ 386

Hon'ble Judges : S.K. Gangele, J;D.K. Paliwal, J

Bench : Division Bench

Advocate : V.K. Bharadwaj and Anand V. Bharadwaj, Advocate for the Appellant;
Raghvendra Dixit, Government Advocate, Advocate for the Respondent

Final Decision : Allowed

Judgement

S.K. Gangele, J.—Short question is involved in deciding the writ petition that whether the order passed by the Collector is within his power and authority and whether it is in violation of order dated 30.1.2012 passed in Writ Petition No. 7573/2011. Respondents have also filed their reply. Hence, the petition is heard and disposed of finally. The petitioner was granted a quarry lease of a land area 4.892 hectare of survey No. 416 and 417, situate at village Mau, District Gwalior under the provisions of M.P. Minor Mineral Rules, 1996 (hereinafter referred as the "Rules of 1996") for a period often years from 19.5.2004 to 18.5.2014. He was granted NOC from the relevant departments. The petitioner established a crusher for converting minerals into B.T. Metal. He had received loans from the banks. The lease was cancelled by the Collector vide order dated 29.10.2011. He challenged the aforesaid order in a writ petition, which was registered as Writ Petition No. 7573/2011. Division Bench of this Court vide order dated 30.1.2012 disposed of the writ petition with the following directions:

(1) The impugned order, Annexure P-1, is hereby quashed subject to conditions that the petitioner shall ensure compliance of the directions mentioned in para 27

of this order and the Committee, as mentioned in the aforesaid para, shall ensure proper compliance and in the event of failure of the compliance, the department would be at liberty to take appropriate action.

(2) The M.P. Pollution Control Board has cancelled the No Objection Certificate granted in favour of the petitioner vide order dated 9.11.2011, Annexure R-6. That order has been passed on the ground that Collector had cancelled the quarry lease of the petitioner. This Court has already quashed the impugned order in regard to cancellation of quarry lease, hence the order passed by the Regional Authority of the M.P. Pollution Control Board, Annexure R-6 dated 9.11.2011 has become inoperative. However, the M.P. Pollution Control Board is at liberty to take action in accordance with law as mentioned in this order.

(3) No order as to costs.

2. The Collector granted permission to the petitioner to continue mining operations vide order dated 3.3.2012. A show cause notice was issued by the Collector on 2.4.2012 to the petitioner. By the aforesaid notice, the petitioner was directed to show cause that the petitioner installed water sprinkler system, however, the system was not sufficient to prevent air pollution and the petitioner had been using GDA roads for transportation of vehicles and he was also making deep hole blasting, hence, why the mining lease be not cancelled. The petitioner submitted reply to the aforesaid show cause notice. He denied the fact that the water sprinkler system was insufficient. He further pleaded that he constructed a tank capacity of 40,000 ltrs. The sprinklers were in operation all the time. Some tranches were also constructed so it was not possible to use roads of GDA Shatabdipuram. The petitioner further pleaded that he was not using deep hole blasting. He further submitted that he was willing to obey all the conditions, which may be imposed by the Collector.

3. In pursuance to the show cause notice, the Collector constituted a Committee to verify the facts mentioned by the petitioner in the reply. The Committee inspected the spot on 3.6.2012, prepared a panchnama and recorded following findings:

4. Another Committee was constituted by the Collector in December 2012 and it again inspected the mining sites and recorded following findings and submitted a memorandum to the Collector:

5. On the basis of findings and memorandum, the Collector passed impugned order of termination of lease on 24.12.2012.

6. Against the order of cancellation of lease, the petitioner filed a writ petition before this Court, which was registered as Writ Petition No. 18/2013. Writ Petition was withdrawn with liberty to file the petition subsequently because an appeal was pending before the Government. The petitioner filed an appeal against the order of cancellation of lease. The appellate authority vide order dated 29.6.2013 dismissed the appeal on the ground that a SLP was pending

before Hon''ble Supreme Court. The petitioner filed a revision petition before the State Government, that was also dismissed vide order dated 23.11.2013 on the ground that the enquiry committee in its report recorded findings that the petitioner had violated the directions issued by this Court.

7. In the meanwhile, Gwalior Development Authority filed SLP against the order passed by this Court alongwith other persons. It was registered as Special Leave to Appeal (Civil) No. 36873/2012. Hon''ble Supreme Court issued notices. Thereafter, the SLP was dismissed by the Hon''ble Supreme Court on the ground that the lease granted to the petitioner was cancelled and against the aforesaid order, a writ petition was filed and it was withdrawn. Hon''ble Supreme Court dismissed the SLP as infructuous. An application was also filed before the National Green Tribunal. National Green Tribunal closed the case because the matter was pending before the Hon''ble Supreme Court. Copy of the order passed by the National Green Tribunal, Bench Bhopal dated 22nd April 2013 has been filed as Annexure P-14.

8. Learned senior counsel appearing on behalf of the petitioner has contended that the Collector has not followed the mandatory provisions of rule 30(26) of the Rules of 1996 and no show cause notice was issued to the petitioner before cancellation of mining lease. He further pleaded that the petitioner was not given time to rectify the mistakes in accordance with the provisions of rules. He further contended that the petitioner had not violated any terms and conditions and the petitioner is willing to abide by all the terms and conditions which may be imposed by the authority. In support of his contentions, learned senior counsel relied on the following judgments:

(1) Satwati Deswal Vs. State of Haryana and Others,

(2) Assam Sillimanite Ltd. and another Vs. Union of India and others,

9. Contrary to this, learned Government Advocate has submitted that the petitioner has violated the terms and conditions and directions issued by this Court, hence, the Collector has rightly passed the order. Learned Government Advocate has further submitted that the petitioner could not be permitted to carry out the mining operations because he has violated terms and conditions. Learned Government Advocate has also contended that this Court has no jurisdiction to hear the petition in view of the provisions of the National Green Tribunal Act, 2010 (hereinafter referred to the "Act of 2010").

10. The petitioner was granted quarry lease in accordance with the provisions of Rules of 1996. Chapter V, rule 30 of the Rules of 1996 prescribes conditions of quarry lease. Rule 30(26) of the Rules of 1996 prescribes procedure, if there is any breach of conditions specified under the rule. The aforesaid provision is as under:

30. Conditions of quarry lease. -- (1)....

(26) In case of breach by the lessee or his transferee or assignee of any of the

conditions in sub-rule (1), (2), (3), (4), (11), (12) or (13) of this rule, the Collector/Additional Collector shall give notice in writing to the lessee, or his transferee or his assignee asking him to show cause why he should not be penalised for the breach committed and directed him to remedy the breach within sixty days from the date of the notice and if the lessee or his transferee or assignee fails to show proper cause or if the breach is not remedied within such period the Sanctioning Authority without prejudice to any other action, may determine the lease and forfeit the whole or part of the security deposit or in the alternative may receive from the lessee such penalty for the breach not exceeding four times the amount of the said half yearly dead rent as the lessor may fix.

11. From the aforesaid provision it is clear that the Collector/Additional Collector shall issue a show cause notice to the lease holder that why he should not be penalised for the breach of conditions and he shall also give 60 days time from the date of notice to remedy the breach and if the lease holder fails to show proper cause or does not remedy the breach, sanctioning authority may forfeit the whole or part of the security deposit or impose a penalty for breach not exceeding four times the amount of the half yearly dead rent. In the present case, the Collector issued a show cause notice to the petitioner on 2.4.2012. The petitioner submitted reply. He also submitted that he had not violated any terms and conditions of the order passed by this Court earlier. The Collector appointed a Committee to verify the facts that whether the reply submitted by the petitioner was correct or not. The Committee submitted its report to the Collector and findings of the Committee have been reported earlier in the order. The Committee has clearly observed that the petitioner installed a water sprinkler system and he was not using the roads of GDA Shatabdipuram and there was no deep hole blasting in the area and the mine was also covered by a wired fencing. The facts mentioned by the petitioner in reply to the show cause notice were found true.

12. Thereafter, another Committee inspected the site on 4.12.2012 all of a sudden. The petitioner was not noticed about the inspection and the Committee recorded findings that Water Sprinkler System was not in operation and the petitioner did not receive NOC and he was carrying mining operations by way of deep whole drilling. Report of the Committee was submitted to the Collector vide memorandum dt. 11.12.2012 and thereafter on 24.12.2012 the impugned order was passed. The Collector did not issue any show cause notice to the petitioner on the basis of second enquiry conducted by the Committee on 4.12.2012 neither the petitioner had been given time to remedy the breach. The statutory provision provides that the lease holder be given time to remedy the breach of 60 days and a show cause notice be also issued to him giving him an opportunity to show cause that why he should not be penalised for the breach committed by him. The Collector simply observed that earlier the show cause notice was issued and the petitioner was granted 30 days time and thereafter he filed the reply and then the Committee was constituted. The Committee inspected the spot on

4.12.2012 and found certain breach of conditions and passed the order. The order of cancellation of lease is based on the findings of the subsequent Committee dated 4.12.2012. Earlier show cause notice was issued to the petitioner on 2.4.2012. At that time, it was found that the petitioner did not commit any breach. When subsequent Committee noticed that the petitioner had committed certain breach, then it was obligatory on the part of the Collector to issue show cause notice to the petitioner and grant him time to remedy the breach in accordance with rule 30(26) of the Rules of 1996. Earlier this court in the writ petition clearly observed that if there was any violation, then the authority was at liberty to take appropriate action in accordance with law. It means that it was obligatory on the part of the Collector to follow mandatory provision of statutory rule 30(26) of the Rules of 1996, that provision has not been followed.

13. Hon"ble Supreme Court in Assam Sillimanite Ltd. and another Vs. Union of India and others, has held that in the event of premature termination of mining lease, an opportunity of hearing to the petitioner must be accorded in accordance with the principles of natural justice. The Court has held as under:

11. We do not propose to reconsider this matter as, in our opinion, the contention raised by Shri P.C. Jain is directly and squarely concluded by the decision in State of Haryana Vs. Ram Kishan and Others, It is no doubt true that in that case the Central Government appears to have been willing to rehear the parties but the Court did not proceed on the basis of any concession. The Court discussed the provisions of section 4A at great length and held that there was no suggestion in the section to deny the right of the affected persons to be heard and that the section must be interpreted to imply that the person who may be affected by such a decision should be afforded an opportunity to prove that the proposed step would not advance the interest of mines and mineral development. Not to do so, it was held, would be violative of the principles of natural justice. The Court concluded that the lessee respondents were entitled to be heard before a decision to prematurely terminate their leases was taken and that, since it was not done, the High Court was right in quashing the order passed u/s 4A.

14. The appellate authority and revisional authority have not considered the aforesaid provision of law properly. Hence, the order passed by the authority is contrary to law.

15. The argument raised by the learned Government Advocate that this Court has no jurisdiction to hear the writ petition in view of the provisions of Act of 2010 is liable to be rejected because section 14 of the Act of 2010 gives power and jurisdiction to the Tribunal to settle the dispute. The provision is as under:

14. Tribunal to settle disputes. -- (1) The Tribunal shall have the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such

question arises out of the implementation of the enactments specified in Schedule I.

(2) The Tribunal shall hear the disputes arising from the questions referred to in sub-section (1) and settle such disputes and pass order thereon.

(3) No application for adjudication of dispute under this section shall be entertained by the Tribunal unless it is made within a period of six months from the date on which the cause of action for such dispute first arose:

Provided that the Tribunal may, if it is satisfied that the applicant was prevented by sufficient cause from filing the application within the said period, allow it to be filed within a further period not exceeding sixty days.

16. The Tribunal has jurisdiction to hear the civil cases where a substantial question relating to environment and enforcement of enactments specified in Schedule 1 is involved. In the Schedule I following enactments have been mentioned:

1. The Water (Prevention and Control of Pollution) Act, 1974;
2. The Water (Prevention and Control of Pollution) Cess Act, 1977;
3. The Forest (Conservation) Act, 1980;
4. The Air (Prevention and Control of Pollution) Act, 1981;
5. The Environment (Protection) Act, 1986;
6. The Public Liability Insurance Act, 1991;
7. The biological Diversity Act, 2002.

17. In the aforesaid Schedule, there is no mention of the termination of lease granted to a lease holder. In the present case, the lease of the petitioner was cancelled. Hence, in our opinion, the jurisdiction of this Court is not ousted in view of the provisions of Act of 2010.

18. Learned senior counsel appearing on behalf of the petitioner has also made a submission that the period for which the petitioner could not operate the quarry be extended. However, this Court has no such jurisdiction to extend the period, for which the petitioner could not operate his quarry, under the provisions of Rules of 1996. Hence, this argument is rejected.

19. The arguments of learned Government Advocate that period of NOC granted to the petitioner by Pollution Control Board has expired, hence, petitioner could not operate quarry could not be accepted because on this ground lease has not been cancelled.

20. Learned Senior counsel for the petitioner has submitted that the Collector had no power and authority to cancel the lease because the area of the lease is more than four hectare.

21. Learned Government Advocate appearing on behalf of the respondents/State has contended that subsequently the rule was amended and the Collector was granted power to grant lease up to the area of 10 hectare of land, hence the order passed by the Collector is in accordance with law.

22. It is an admitted fact that the area of the lease of the petitioner is 4.892 hectare. The State Government had made amendment in the Rules of 1996 in exercise of the powers conferred by section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 (No. 67 of 1957) vide notification dated 19th April 2010. In accordance by the aforesaid notification, for rule 6, following rule is substituted:-

6. Power to grant quarry lease. - Quarry lease in respect of minerals specified in Schedule I and II shall be granted and renewed by the authority mentioned in column (2) for the minerals specified in column (3) subject to the extent as specified in the corresponding entry in column (4) thereof of the Table below:

23. When the Collector passed the order of cancellation of lease of the petitioner i.e. on 24.12.2012, on the aforesaid date, in accordance with the rule 6, which is in vogue, at that time, the Collector had no power and authority to grant or cancel the lease of minerals accorded to the petitioner because the area of the land is more than 4 hectare. The lease was for making gitti by mechanical crushing mentioned at Sl. No. 6 of Schedule I of rule 6 of the Rules of 1996.

24. The State Government subsequently vide another notification dated 23.3.2013 substituted rule 6 of the Rules of 1996 and accorded power to the Collector/Additional Collector (Senior IAS Scale) in respect of grant of quarry lease of minerals specified in Schedule I and Schedule II having an area of 10.00 hectares. The aforesaid rule is not retrospective in nature.

It came into effect from the date of publication of notification in the gazette i.e. w.e.f. 23.3.2013. Hence, the order passed by the Collector in regard to cancellation of the lease is void ab initio being without any power and jurisdiction and authority, hence, it could not be cured at subsequent stage. Consequently, the petition is allowed. The impugned orders dated 24.12.2012 (Annexure P-1), dated 29.6.2013 (Annexure P-2) and dated 23.11.2013 (Annexure P-23) are hereby quashed. The authorities are at liberty to act in accordance with law.

No order as to costs.