
(2002) 09 MP CK 0030
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1983 of 2001

Anand Pratap Singh

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 12-09-2002

Acts Referred:

General Clauses Act, 1897 — Section 6
Madhya Pradesh General Clauses Act, 1957 — Section 10, 2(13)
Madhya Pradesh Minor Minerals Rules, 1996 — Rule 37, 38(2)

Citation : (2003) 1 MPHT 312 : (2002) 4 MPLJ 587

Hon'ble Judges : Rajendra Menon, J

Bench : Single Bench

Advocate : A.M. Naik and B.K. Agarwal, for the Appellant; K.N. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.

Petitioner, by this petition has called in question the action of the respondents in restraining the petitioner from operating the sand quarry in Survey No. 440 having an area of 5.248 hectares in Village Dhaniya Khedi, Tehsil Gyaspur, District Vidisha.

It is the case of the petitioner that in accordance with the provisions of the Madhya Pradesh Minor Minerals Rules, 1996 (hereinafter, referred to as the "Rules"), applications were invited by the Panchayat for considering the claim of eligible persons for grant of lease for mining of sand in the area in question. According to the petitioner, applications were processed and the same were considered in the meeting of the Gram Panchayat held on 25-5-2001. Petitioner's application was allowed and Patta was granted to the petitioner on the same date for a period of two years. It is the case of the petitioner that vide resolution dated 25-5-2001 Annexure P-9 it was resolved that Patta for two years be granted to the petitioner and necessary formalities for the same be

completed. The resolution was being acted upon and in pursuance thereof, necessary amount was deposited by the petitioner on 2-6-2001 vide Annexure P-10. Necessary formality for executing the agreement was completed on 2-6-2001 and the agreement itself was executed on the said date as is evident from Annexure P-11. Annexure P-11 is the agreement dated 2-6-2001 granting Patta to the petitioner for a period of two years. However, in the meanwhile, vide Notification Annexure P-12, dated 30-5-2001 Rules were amended and it was notified that quarry lease shall henceforth be granted and allotted only by auction. That being so, respondent Panchayat prohibited the petitioner from carrying on mining activities as according to the Panchayat with effect from 31-5-2001, grant of quarry lease without auction was prohibited. It is the case of the petitioner that once the resolution was passed and the Patta itself was granted by the resolution, a vested right was created in favour of the petitioner well before the amendments to the Rules and the right accrued to the petitioner could not be taken away by amendment in the Rules and in that view of the matter, it is the case of the petitioner that right of the petitioner which accrued to him on 25-5-2001 vide resolution vide Annexure P-9 could not be taken away by the amendment in the Rules.

Shri A.M. Naik, learned Senior Advocate appearing on behalf of the petitioner submitted that in the light of the provisions of Section 10 of the Madhya Pradesh General Clauses Act, right, privilege, obligation or liability acquired, accrued or incurred under any enactment repealed is protected. Interpreting the provisions of Section 10 of the Madhya Pradesh General Clauses Act it is argued by Shri Naik that right of the petitioner is protected and therefore, the respondents cannot prohibit him from carrying on mining activity. In support of his contention, he has relied upon the judgments of this Court in the following cases :--

(i) Dolumal v. State of M.P. (1970 J.L.J. 249),

(ii) Onkarlal Ganga Prashad Vs. Sardar Khan Rasool Khan and Another,

In the light of the aforesaid judgments, contention of Shri Naik is that the petitioner has acquired a right to carry on mining activity for a period of two years and, therefore, the same could not be taken away by the amending Act.

Shri K.N. Gupta, learned Counsel appearing for the respondents contended that the provisions of Section 10 of the Madhya Pradesh . General Clauses Act will not apply in the facts and circumstances of the present case because the provisions of Section 10 (c) refers to right, privilege, obligation or liability accrued or acquired under the enactment and enactment is defined in Section 2 (13) of the General Clauses Act, 1957 which includes regulation or ordinance. According to him provisions of the Rules is neither an enactment, nor a Regulation nor an Act, therefore, provisions of Section 10 will not apply. In this regard, he places reliance on the judgment of the Supreme Court in the case of Kolhapur Canesugar Works Ltd. and Another Vs. Union of India and Others, . That apart, it

is submitted by him that resolution Annexure P-9 is only a decision to grant Patta to the petitioner. After the decision was taken, right to carry on mining activity accrues to the petitioner only after the agreement is entered into. Agreement was entered into only 2-6-2001 by which date the new rules had come into force and that being so, execution of the agreement and grant of right to the petitioner was not permissible on the said date. According to Shri Gupta mere passing of a resolution does not create a right in favour of the petitioner, right accrues only when the agreement is entered into in accordance with the provisions of the Rules. Inviting attention to the provisions of the Rules, it is submitted by him that under Rule 37 applications are made to the competent authority and the same are disposed of in accordance with the provisions of Rule 38 and the right to carry on mining activity accrues only when the agreement is executed and registered in the prescribed form as contemplated under Rule 38 (2). Period of agreement is specified in Rule 22 and according to him a perusal of the agreement indicates that the period of agreement was 2nd June, 2001 to 2nd June, 2003, and that being so it is argued by him that passing of the resolution does not give any right to the petitioner. Accordingly, it is submitted that no relief can be granted to the petitioner.

I have heard the learned Counsel for the parties. A perusal of Section 10 of the M.P. General Clauses Act, 1957 on which great stress was placed by Shri Naik, learned Senior Advocate, indicates that when any Madhya Pradesh enactment repeals, then under Sub-section (c) of Section 10, right, privilege, obligation or the right accrued under the enactment are protected. From the aforesaid, it is clear that the provisions of aforesaid section are applicable only in cases where amendment or repeal is of enactment. Enactment is defined in Section 2 (13) which concludes a regulation or an order. Word "rules" is omitted in both the aforesaid sections. The question of interpretation of Section 6 of the General Clauses Act which is analogous to Section 10 of the M.P. General Clauses Act was considered by the Supreme Court in the case of Kolhapur Canesugar Works Ltd. (supra), and after considering the provisions of Section 6, the Supreme Court in the said case has held that the provisions of Section 6 will apply only when repeal is of Central Act or Regulation and not a Rule. In para 33 of the said judgment, after considering the provisions of General Clauses Act it has been held that reference to Central Act, Enactment, Regulation in the General Clauses Act clearly indicates that the provision of Section 6 will apply only if repeal is of Act or Regulation. Excluding the word "rule" in the said section clearly indicates that protection of Section 6 is not applicable in cases of repeal of rules. Considered in the light of the findings recorded by the Supreme Court in the aforesaid case, it is to be held that the provisions of Section 10 of the M.P. General Clauses Act will not be applicable when the repeal is of rules. That being so, repeal of the Rules will not be protected by Section 10. In that view of the matter, judgments relied upon by the learned Counsel for the petitioner Shri Naik may be of no help to him.

However, even if the aforesaid contention is rejected, further question that

requires determination on the basis of the judgment referred to by Shri Naik as to whether a right has been accrued in favour of the petitioner by the resolution Annexure P-9, because if a right has been accrued by the aforesaid resolution, then in the light of the law laid down by the Division Bench of this Court in the cases of *Sidha Ahir v. Devidin* (1973 MPLJ 429) and *Onkarlal* (supra) said right could not be taken away by the amending provisions of the rules. Inviting attention to the words of the resolutions, it is argued by Shri Naik that the resolution stipulates grant of Patta for a period of two years and the words used are "The Government hereby grants Patta to the petitioner for a period of two years from the date of the resolution." Referring to the aforesaid words in the resolution, it is argued by Shri Naik that Patta stood allotted to the petitioner for a period of two years with effect from the said date. Even though, prima facie the argument looks convincing and attractive, but on a close scrutiny it has to be rejected. Grant of lease or Patta in this case is governed by the statutory rules i. e., Madhya Pradesh Minor Minerals Rules, 1996. A perusal of various provisions of the said Rules clearly goes to indicate that right to start mining operation or quarry operation accrues to a person only after agreement in accordance with the statutory form as contained in Rule 37 is executed. Mere passing of a resolution does not give right to the petitioner to carry on mining activity. Resolution is only a decision on the application for permission taken in accordance with Rule 38. Thereafter Sub-rule (2) of Rule 38 itself contemplates execution of agreement in Form No. XXVII and in case the agreement is not executed within thirty days, the order of sanction is deemed to have been revoked. On perusal of Sub-rule (2) of Rule 38 indicates that a resolution is nothing but a sanction and pursuant thereto agreement has to be executed and the period of agreement has to be in accordance with Rule 22. Rule 22 gives a statutory period for various agreements and in the present case, the agreement is for two years. A perusal of the agreement which has been entered into in accordance with Rule 38 (2) as contained in Annexure P-11 goes to indicate that it was executed on 2-6-2001 and in Clause 4 of the said agreement period of agreement is indicated from 2nd June, 2001 to 2nd June, 2003. That apart page 27 of the petition indicates that this statutory form for grant of quarry permit and the permit in question is granted on 2-6-2001. Considering the aforesaid, it is crystal clear that right to carry on mining activity accrues to the petitioner only after agreements statutory in nature were executed and the resolution is nothing but an order sanctioning to grant permit to the petitioner. Even though, the words used in the resolution indicate that Patta is being granted for a period of two years from that date, but the resolution cannot be read in isolation. It has to be read in consonance with the rules which are statutory in nature and having considered in the said light and the procedure provided in the Rules, it is clear that after the sanction is granted for grant of Patta right to enter mine and carry on mining activity accrues only when the agreement in the statutory form as provided in Rule 38 (2) is entered into. In the present case, admittedly, the necessary amount was deposited by the petitioner on 26-6-2001 and the agreement was entered into on 2-6-2001 and mining

lease was granted to him on 2-6-2001 for a period of two years, in that view of the matter, it has to be held that sanction for grant of quarry lease by the resolution does not create any right in favour of the petitioner. Right is created only when the agreement is executed and the agreement having been executed on 2-6-2001, i.e., after amendments in the Rules, same being contrary to the Rules cannot be acted upon.

Even though, Shri Naik, during the course of hearing emphasized that the resolution creates right and the subsequent entering into agreement etc., are only ministerial work and formalities, it was argued by him that execution of the agreement is a ministerial action, therefore, right which accrued to the petitioner as per resolution could not be taken away. Aforesaid submission of the learned Senior Counsel is misconceived. Once the procedure is governed by the statutory rules, and when the Rule itself provides for steps to be taken for inviting applications, their consideration, sanction or refusal of the application and thereafter execution of the agreement in statutory form and finally grant of permit to enter quarry or mine in question and carry out extraction of mineral, it has to be held that right to extract mineral accrues only when the agreement is entered into in the prescribed form and permit is granted. Passing of resolution as required under Rule 38 (2) is nothing but sanction of the authority and the said sanction could not be said to create any right in favour of the petitioner.

In the light of the aforesaid discussion, I am of the considered view that in the present case, no relief can be granted to the petitioner. As the agreement entered into on 2-6-2001 being contrary to the statutory rules and as no lease could be executed after amendments in the Rules 30-5-2001, no relief can be granted to the petitioner. Accordingly, I find no merit in the petition and the same is dismissed.