

(2023) 09 J&K CK 0044

In the Jammu And Kashmir High Court

Case No : Others Writ Petition No. 969 Of 2014, IA No. 491, 1320 Of 2014

Ankit Kotwal

APPELLANT

Vs

State Of J&K And Others

RESPONDENT

Date of Decision : 21-09-2023

Acts Referred:

Jammu And Kashmir Minor Mineral Concession Rules, 1962 — Rule 27, 32
Jammu And Kashmir Minor Mineral Concession Storage, Transportation Of Minerals And Prevention Of Illegal Mining Rules, 2016 — Rule 105
Mines And Minerals (Development And Regulation) Act, 1957 — Section 5, 6, 7, 8, 9, 10, 11, 11(2), 12, 13, 14, 15

Citation : (2023) 09 J&K CK 0044

Hon'ble Judges : M A Chowdhary, J

Bench : Single Bench

Advocate : V.R. Wazir, Abhishek Wazir, K.D.S. Kotwal, Sunil Sethi, Nitin Parihar

Final Decision : Dismissed

Judgement

M A Chowdhary, J

1. Factual matrix of the case is that the official respondent Nos. 1 to 4 received two applications for grant of Minor Lease of Minor Minerals on 23.02.2013 and 04.03.2013 from the respondent No. 5 and the petitioner respectively with regard to a block in river bed of Chenab at Village Parshela, Prem Nagar, Doda comprising of Survey No. 551 and the site plans submitted by both the applicants were referred to the Coordinator, Geology & Mining Department, Jammu for physical verification, who after physical verification of the sites as per the site plans reported that the areas applied for by these applicants are completely superimposing each other.

2. Vide order 27.11.2013, a Committee of officers was constituted to examine the applications in light of the Section 11 of the Mines and Mineral (Development & Regulation) Act, 1957 (hereinafter referred to as the "Act"), enabling the respondent No. 2- Directorate of Geology & Mining, J&K to dispose of the

applications on merits. The Committee submitted its report on 11.02.2014, observing that the application of the petitioner, namely, Ankit Kotwal has superior claim over the application of respondent No. 5, namely, Saleem Raza Wani; that the report of the Committee was examined by the mineral section of the respondents and upon examination, it was noticed that the Committee had not considered the matter in its right perspective and the matter was again referred to the Committee vide letter dated 18.03.2014 for scrutiny/ re-examination in the light of the necessary notings/scrutiny conducted by the official respondents to justify their report; that the Committee vide letter dated 24.04.2014 instead of re-examining the matter and submitting a conclusive report/ recommendations, submitted para-wise reply of the observation made by the respondents, contradicted its earlier report, without specific findings; that this para-wise reply of the Committee on examination, was also found unsatisfactory and against the mandate of law by the official respondents and in absence of any specific recommendation or proposal by the Committee, in light of the provision of Section 11 of the Act, the entire report of the Committee was not accepted by them.

3. The official respondents having regard to the applications for the same block and having fulfilled the primary requirements, as prescribed under relevant rules, decided that the application of the respondent No. 5 was received by the respondents on 23.02.2013, whereas the application of the petitioner had been received on 04.03.2013, as such, the respondent No. 5 had a preferential right in terms of Sub-Section 2 of Section 11 of the Act & Rule 32 of the Jammu & Kashmir Minor Mineral Concession Rules, 1962 (hereinafter referred to as the "Rules of 1962").

4. The Directorate of Geology & Mining vide Communication No. 1522/MCC/DGM/MM/12/1047-48 dated 11.06.2014 informed the petitioner that his application for grant of Mining Lease of Minor Minerals at Village Parshela, Prem Nagar Thathri, District Doda for an area of over 2.19 hectares cannot be processed further, as the same overlapped with the area applied by the respondent No. 5 on 23.02.2013.

5. The petitioner having been aggrieved of the Communication dated 11.06.2014, filed the above titled writ petition, seeking Writ of Certiorari quashing the aforesaid Communication, declining grant of Mining Lease of the aforesaid Minor Minerals to the petitioner and any other writ, order or direction, which this Court may deem fit and proper in the facts and circumstances of the case be issued in favour of the petitioner and against the respondents.

6. Mr. V.R. Wazir, learned Senior counsel assisted by Mr. Abhishek Wazir, Advocate for the petitioner, argued that the petitioner had filed an application for Mining Lease on 04.03.2013, whereas the respondent No. 5 filed his application on 07.05.2013 and during processing of the applications of both the applicants, i.e., the petitioner as well as respondent No. 5, many deficiencies were found by the respondents and both of them were asked to complete the deficiencies,

however, the deficiencies were not removed by the respondent No. 5 and the applications, which were to be necessarily disposed of within nine months, in terms of Rule 27 of the Rules of 1962, were not disposed of within the prescribed period. He has also argued that Section 11 of the Act, which provides for 'any discretion or a preferential right of the applicant, who had applied earlier in time is not applicable in the case', as Section 14 of the Act provides that 'the provisions of Sections 5 to 13 (inclusive) shall not apply to quarry leases, mining leases or other mineral concessions in respect of minor minerals', as such, the official respondents had committed an illegality by rejecting the claim of the petitioner, on the basis of the preferential right to the applicant, who had applied earlier in time, though the same was not factually correct also in view of the fact that as per the Committee's report, the application of the respondent No. 5 had been received on 07.05.2013, whereas that of the petitioner was received on 04.03.2013.

7. Mr. Wazir has further argued that even if it is accepted that the respondent No. 5 also applied prior in time, i.e., on 23.02.2023, the applications of both petitioner as well as respondent No. 5 were not disposed of within a period of 09 (Nine) months, as the word used in the Rule 27 of the Rules of 1962 is that the application 'shall' be disposed of within nine months from the date of its receipt. He has further argued that Section 11 of the Act being not applicable to Minor Minerals in view of the provisions of Section 14 of the Act, therefore, the applicant, who had filed application earlier in time cannot have a preferential right. Moreover, there was no parity between both the applicants, as the respondent No. 5 did not complete his deficiencies as against the petitioner, whose documents were in order. It was finally prayed that the impugned order be set aside and the official respondents be directed to allot the applied Minor Mineral Block to the petitioner.

8. Mr. K.D.S. Kotwal, learned Dy. AG, appearing for official respondent Nos. 1 to 4 submitted that they had initiated this process in the year 2013 and now after a decade, the rules on the subject also got a sea change and since in view of the interim direction from this Court in this petition, the official respondents had not gone ahead with the allotment of the lease. Therefore, it will be in fitness of things that the official respondents are permitted to consider a fresh process of Lease of Mineral Block in question.

9. Mr. Sunil Sethi, learned Senior counsel, assisted by Mr. Nitin Parihar, Advocate, appearing for respondent No. 5 argued that the official respondents were within their competence to decide the preferential right of the applicants when the applicants satisfy all the conditions, which in the case had been done. He has further argued that the respondent No. 5 had applied earlier in time than petitioner, as such, in terms of Rule 32 of the Rules of 1962, the applicant, who applies earlier in time, has a preferential right, therefore, the claim of the petitioner had been rightly declined in terms of the impugned order. He has vehemently controverted the assertions of the learned Senior counsel for the

petitioner that Section 11 of the Act was not applicable in the case and submitted that Section 15 of the Act empowers the government to frame rules with regard to all the actions to be taken under the Act. He has drawn the distinction that the provisions of Sections 5 to 13 being not applicable in terms of Section 14 of the Act were only to the quarry leases, mining leases or other mineral concessions, but this does not pertain to the licensing by the government. He has also argued that in case, the assertion of the learned Senior counsel for the petitioner is accepted, the rule making power of the State Government in terms of Section 15 of the Act becomes redundant.

10. Mr. Sethi, learned Senior counsel would draw the attention of this Court towards the affidavit duly sworn by the petitioner on 30.08.2013, affirming that he did not hold any Mining Lease singly or jointly with any person as on the date applied for, which negates his claim of experience. Learned counsel for the respondent No. 5 further argued that the 09 (Nine) months' limit to dispose of the applications is not the outer limit, as the provision of nine months does not specify that in case, the applications are not to be disposed of within nine months, the same shall be rejected on that count. Therefore, without any consequential provision, the limit of nine months cannot be pressed into service. He has further drawn the attention of this Court to a Communication No.2269/70/SQ dated 18.02.2023 addressed by the Additional Deputy Commissioner, Doda to the respondent No. 3, that as per report of the Tehsildar on an application moved by the petitioner, it was communicated that petitioner had been extracting sand/stones for the last three years from the State land measuring 40 Kanals & 05 Marlas comprising of Khasra No. 551 of Revenue Village, Parshela along the bank of River Chenab and submitted that the petitioner had been stealing the Minor Minerals without any authority for over a period of three years and such a person does not have the credentials to be allotted any lease of the Minor Minerals.

11. Learned counsel for the respondent No. 5 has drawn the attention of this Court to the provision of the aforesaid SRO, which provides that the applicant, who submits an approved mining plan to the competent authority before the commencement of these rules is eligible for grant of lease or license on production of Environment Clearance Certificate. He has opposed the suggestion for a fresh process for lease and submitted that instead, the pending applications have to be considered and finalized in terms of the new rules.

12. Since it is clear in terms of Sub-Section 2 of Section 11 of the Act and Rule 32 of the Rules of 1962 that when the applicants are eligible, the applicant, who had moved the application prior in time gets a preferential right of consideration for grant of lease. The contention of learned Senior counsel for the petitioner that the respondent No. 5 had no preferential right is, thus, misplaced, as the official respondents have taken a clear stand that the respondent No. 5 had applied on 23.02.2013 against the petitioner, whose application had been received on 04.03.2013. Therefore, no illegality seems to have been committed by the official respondents in communicating to the petitioner vide order No.

1522/MCC/DGM/MM/12/1047-48 dated 11.06.2014 issued by the respondent No. 4 on behalf of respondent No. 2, declining him grant of Minor Lease due to preferential right in favour of the respondent No. 5.

13. The Jammu & Kashmir Minor Mineral Concession Storage, Transportation of Minerals & Prevention of Illegal Mining Rules, 2016 notified vide SRO 105 dated 31.03.2016, whose Rule 105 clearly specifies that:-

"(a) where the applicant has submitted an approved mining to the competent authority prior to the commencement of these rules, he shall be eligible for grant of lease or licence on production of Environment Clearance Certificate; & (b) where the applicant has not submitted an approved mining plan to the competent authority prior to commencement of these rules, his application shall be deemed to have been rejected."

14. The official respondents shall be at liberty to deal with the block sought to be leased in terms of the amended rules, as notified in terms of the aforesaid SRO.

15. For the foregoing reasons and observations made hereinabove, the instant petition filed by the petitioner is found devoid of the merit and substance and the same is, accordingly, dismissed along with connected application(s).