
(2007) 05 AHC CK 0150
In the Allahabad High Court

Awadhesh Kumar

APPELLANT

Vs

State of U.P., Industrial Development Department, District
Magistrate/District Officer, Kunwar Shailendra Singh and
Harihar Minerals

RESPONDENT

Date of Decision : 14-05-2007

Acts Referred:

Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226
Constitution of India, 1950 — Article 226

Citation : AIR 2007 All 190 : (2007) 4 AWC 3339 : (2007) 103 RD 85

Hon'ble Judges : Shishir Kumar, J; R.P. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. The present writ petition has been filed for quashing the notice dated 16.2.2006 issued by the District Magistrate, Hamirpur (Annexure 1 to the writ petition). Further a writ in the nature of mandamus commanding the District Magistrate, Hamirpur to issue fresh notice in accordance with 1963 Rules.

2. The facts arising out of the present writ petition are that a notice dated 17th September, 2006 issued under Rule 72 of the U.P. Minor Minerals (Concession) Rules, 1963 is liable to be set aside as this is in contravention of Rule 24 of the Rules. The aforesaid notice has never been pasted on notice board or any publication in two newspapers have been made. Rule 72(1) of the 1963 Rules provides for a declaration that a particular area has been one available for re-grant of mining leases specifying a date from which applications will be invited. The said date shall not be earlier than thirty days from the date of notice. Rule 72 is being quoted below:

Rule 72. Availability of area for re-grant of mining lease to be notified.

(1) In any area, which was held under a mining lease under Chapter-II or reserved u/s 17-A of the Act, becomes available for re-grant of mining lease, the

District Officer shall notify the availability of the area through a notice inviting applications for grant of mining lease specifying a date, which shall not be earlier than thirty days from the date of notice and give a description of such area and a copy of such notice shall be displayed on the notice board of his office and shall also be sent to the Tehsildar of such area and the Director.

(2) The applications for grant of mining lease under Sub-rule (1) shall be received within seven working days from the date specified in the notice referred to in the said sub-rule. If, however, the number of applications received for any area is less than three, the District Officer may further extend the period for seven more working days and if even thereafter, the number of applications remain less than three, the District Officer shall notify the availability of the area afresh in accordance with the said sub-rule.

(3) An application for grant of mining lease for such area which is already held under a lease or notified under Sub-rule (1) of Rule 23 or reserved u/s 17-A of the Act and whose availability has not been notified under Sub-rule (1) shall not be considered and the application fee thereon, if paid shall be refunded.

3. From the perusal of the aforesaid rule, it is clear that the notice should specify a date from which the applications for grant of mining lease are to be submitted. It further provides that notice is to be issued after the area becomes available for re-grant and not during the subsistence of the mining lease, therefore, if any notice has been issued during subsistence of the lease is in contravention of Rule 72 and is liable to be quashed only on this ground.

4. The petitioner who is a prospective applicant is engaged in mining for his livelihood and has been deprived of being granted the mining lease on account of illegal action of the respondents. The petitioner and other prospective applicants had no information regarding the alleged notice issued in September, 2006 and inviting application from 17.10.2006 to 27.10.2006. It was in the month of December, the petitioner came to know that the notice has already been issued. No priority list till date as contemplated under Rule 7 of the Rules has been prepared by the District Magistrate and the areas mentioned in the aforesaid notice are still lying vacant. If proper notice under Rule 72 is issued, the genuine applicants can make an application. According to Rules, no mining lease or permit can be granted otherwise in accordance with the provision of 1963 Rules.

5. It has been submitted by the petitioner that the notice dated 16th September, 2006 for withdrawal of area from auction or tender or auction-cum-tender and mentioning that the area will be available for mining lease under Sub-Rule 1 of Rule 23. It provides that withdrawal of specified area shall not be the date during the subsistence of a lease granted under this Chapter, the provisions of Chapters II, III and VI of these Rules shall become applicable to such area or areas. Rule 24 is being quoted below:

24. Withdrawal of area from auction or tender or auction-cum-tender-

The State Government may by declaration withdraw any area or areas declared under Sub-rule (1) of Rule 23 or part thereof from any system of lease referred to therein and from the date of withdrawal specified in the declaration which shall not be the date during the subsistence of a lease granted under this Chapter, the provisions of Chapters II, III and VI of these rules shall become applicable to such area or areas.

6. According to rules it is not permissible. The intention of the legislature is that during the existing lease non notification can be issued for the purposes of withdrawal or availability of an area under Rule 24 of the Rules. It is undisputed that on 16th September, 2006, the areas mentioned in notice was not available for the purpose of mining lease, therefore, the notice published itself is bad and is liable to be quashed.

7. On the other hand, Sri Vishnu Pratap, learned Standing Counsel who appears for the respondents has submitted that no cause of action accrue to the petitioner. As at no point of time lease was ever granted in favour of the petitioner in District Hamirpur and even the petitioner is not a prospective applicant. The areas which were earlier granted by way of auction lease in favour of one M/s Chaudhari Associates was coming to an end on 22.12.2006 and after the aforesaid date, M/s Chaudhari Associates has not right to conduct the mining operations over the land. Rule 72 of Uttar Pradesh Minor Mineral (Concession) Rules 1963 provides that availability of area for re-grant of mining lease is to be notified. If the area has been granted by way of auction lease it can be withdrawn from the auction system under the provision of Rule 24 of rules and there is no statutory requirement of declaring its availability under Rule 72 of the Rules, though it has been mentioned in Rule 24 of the Rules, that no declaration under Rule 24 be made during the subsistence of lease.

8. The further submission has been made by learned Counsel for the respondents that the State Government has issued a notification/Government order dated 21st December, 2005 to the effect that mining lease granted adopting the procedure of auction, steps can be taken before expiry of lease for the purposes of granting mining lease according to Rule 72. The Government Order has been issued in view of the Judgment of the Apex Court reported in 2001(3) A.W.C 1956 (S.C.) A-One Granities v. State of U.P. and Ors. It is incorrect to state that withdrawal of the area as provided in Rule 24 as well as the notification according to Rule 72 was not published on 17.9.2006 in widely circulated two newspapers and the same was not pasted on the notice board. The contention of the petitioner to this effect is incorrect that it was never published. As the petitioner is not a prospective allottee or applicant, therefore, he has got no cause of action and in view of Article 226 of the Constitution of India the petitioner has got no locus-standi to approach this Court under Article 226 of the Constitution of India. The petitioner does not come under the definition of "aggrieved person." It has further been submitted that any area which has been granted by way of auction, can be withdrawn from the auction system under the

provision of Rule 24 of Rules 1963. Now in view of the Apex Court Judgment in A-One Grenities (Supra) the Apex Court has held while interpreting Rule 72 that object of having such provision is transparency in the matter of granting mining lease and to restrict any underhand dealing with the minerals by the permit granting authority. Observation made in Para 17 is being quoted below:

17. The language used in Rule 72(1), on a literal meaning being given, would undoubtedly support the contention of Mr. Das and Mr. Sanghi, appearing for the appellant that this procedure would not apply when the area in question had been held under a lease not under Chapter II but under Chapter IV, But such an interpretation should be avoided in as much as the very purpose for which Rule 72 has been engrafted in the rules will totally get frustrated. The object of having such provision is transparency in the matter granting mining lease and to restrict any underhand dealing with the minerals by the permit granting authority. The object of notifying the availability through a notice by the District Officer is to bring it to the notice of the public at large, so that an interested applicant can make an application and such application could be considered on its own merit, when more than one application is received in respect of the same area. The lease under Chapter II of the rules could be granted for a period not exceeding ten years, as provided in Sub-rule (1) of Rule 12 and under Sub-rule (2) of Rule 12, if the State Government is of the opinion that it would be necessary in the interest of mineral development, it may grant the lease for any period exceeding ten years but. not exceeding fifteen years. The rules also contemplate renewal of such lease. Rule 19(2) empowers the State Government to determine any lease on the grounds indicated thereunder, after giving the lessee a reasonable opportunity of stating his case. The area which was being operated upon on the basis of a lease obtained under Chapter 11 when becomes available for re-grant if the prescribed procedure under Rule 72 is not followed, then it may lead to favouritism and bias, ultimately resulting in corruption of the permit granting authority. It is to prevent such abuse, the Legislature has brought into the rules, the procedure prescribed under Rule 72, the duty of notifying the availability of the area by the District Officer. In case of auction lease, it is not necessary, since the procedure prescribed for grant of auction lease in Rule 27 itself indicates that the District Officer or the Committee authorised is duty bound to at least give a notice of 30 days before the date of auction in the manner indicated under the rules by providing the date, time and place of auction and if for any reason, the auction is not completed on the notified date, then a fresh auction could be held after giving a shorter notice of at least seven days. Thus, the procedure followed for grant of lease by auction as provided under Rule 27 or tender as provided under Rule 27(A) or auction-cum-tender, as provided under Rule 27(B) is itself sufficient notice to the public to enable them to participate in the auction/tender/ auction-cum-tender and question of any clandestine dealing in such case would not arise. But in a case when the area was held under auction/tender/auction-cum-tender under Chapter IV and the State Government withdraws the area from the said procedure, whereafter provisions of Chapter II, the normal

procedure for granting lease becomes applicable as in the case in hand, then if Rule 72 is interpreted in the manner, as contended by the learned Counsel for the appellant, then it would frustrate the purpose of transparency and openness engrafted in Rule 72 and such an interpretation will be against the legislative intent. It is a cardinal principle of construction that the Courts must adopt a construction which would suppress the mischief and advance the remedy. In other words, the Court must adopt a purposive interpretation of the provisions under consideration. So construed, it is difficult for us to accept the contention of Mr. Das appearing for the appellant that Rule 72 has no application to the case in hand merely because the area in question had been held by the previous lessee for some period under auction/tender basis under Chapter IV, particularly when on 30th of March, 1995 the District Magistrate withdrew the area held under auction/tender system to the normal procedure of grant of mining lease under Chapter II w.e.f 1.4.1995.

9. We have heard Sri H.R. Misra, learned Counsel for the petitioner and Sri Vishnu Pratap, learned Standing Counsel appearing for the respondents and have perused the record.

10. There is no dispute to this effect that Rule 24 of the Rules of U.P. Minor, Minerals (Concession) Rules, 1963 states that the State Government shall not withdraw a specified area during the date of subsistence of existing lease but the intention of the legislature cannot be taken in a very strict proposition. Earlier, various areas were granted to various person on the basis of auction of tender or auction-cum-tender but now in view of the Apex Court judgement, the Apex Court has held that mining lease be granted in accordance with Rule 72 of the Rules to maintain the transparency and the tender system should not be adopted. It is clear from the record that earlier the areas notified by the respondents in the impugned notice was under the auction system. It has been notified withdrawing the area as provided under Rule 24 and giving various prospective applicants to make an application. From the perusal of the notification it is also clear that the time as prescribed under Rule 72 of the Rules has strictly been followed. The main question for consideration before this Court is that whether in view of the submission made by the petitioner the notice dated 16th September, 2006 itself is invalid and in contravention of Rule 24. This fact has been admitted by the petitioner that he was neither earlier a lease holder or prospective allottee on the basis of advertisement dated 16th September, 2006. In such circumstances, we are of the view that petitioner is not a aggrieved person as defined under Article 226 of the Constitution of India, therefore, the petitioner has got no locus-standi to Challenge the said order.

11. The person aggrieved has already been interpreted by the Apex Court in various judgements. The rule generally expressed in the proposition that a person not affected in his private rights may not sue for declaratory relief. Sometime the rule is expressed more liberally. In truth it reflects a natural reluctance on the part of the Courts to exercise jurisdiction otherwise than at the

instance of person who has an interest in the subject matter of the litigation in conformity with the philosophy that it is for the Courts to decide actual controversies between parties. Reflection on the considerations which underlie the rule do not provide much assistance in defining the nature of the interest which a plaintiff must possess in order to have locus standi. However, it does indicate that the plaintiff must be able to show that he will deprive some benefit or advantage over and above that to be deprived by the ordinary citizen if the litigation ends in his favour. However, some general tests have been devised to ascertain whether an applicant is eligible for this category so as to have the necessary locus standi or "standing" to invoke certiorari jurisdiction See *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*,

12. The meaning of the words "a person aggrieved" is that a person will be held to be aggrieved by a decision if that decision is materially adverse to him. Normally, one is required to establish that one has been denied or deprived of something to which one is legally entitled in order to make one "a person aggrieved". Again a person is aggrieved if a legal burden is imposed on him.

13. Supreme Court has laid down in a number of decisions that in order to have the locus-standi to invoke the extraordinary jurisdiction under Article 226, an applicant should ordinarily be one who has a personal or individual right in the subject matter of the application, though in the case of some of the writs like habeas corpus or quo warranto this rule is relaxed or modified. In other words, as a general rule infringement of some legal interest in hearing in the petitioner is necessary to give him a locus standi in the matter. See *The State of Orissa Vs. Madan Gopal Rungta, Dr. Satyanarayana Sinha Vs. S. Lal and Company (P) Ltd.*,

14. The expression "ordinarily" indicates that this is not a cast iron rule. It is flexible enough to take in those cases where the applicant has been prejudicially affected by an act or omission of an authority. That apart, in exceptional cases even a stranger or a person who was not a party of the proceedings before the authority, but has a substantial and genuine interest in the subject matter of the proceedings will be covered by this rule. In the context of locus-standi the applicant aggrieved though a procrustean approach should be avoided, as a rule, the Court should not interfere at the instance of a stranger unless there are exceptional circumstances involving a grave miscarriage of justice having an adverse impact of public interests. On the contrary, the result of the exercise of these discretionary powers in favour of the applicant will, on balance, be against public policy.

15. In view of the aforesaid discussions, it comes out that petitioner is lot aggrieved person, as such, has no locus-standi to file the present writ petition.

16. But in spite of the aforesaid fact after perusal of the rule, it appears that notification dated 21.12.2006 has been issued only to facilitate that no area after expiry of the lease period kept vacant for the purposes of mining lease. If the mining lease has been granted during the period when the lease period is

existing then it can be treated to be illegal act on the part of the respondents. But if notice itself mentioned that it will be effective after the date of expire of the earlier lease because in making advertisement, verification and till the execution of lease deed in favour of person who has been granted lease it takes about three, four months and during that period according to Rules nobody is permitted to operate the mining lease till the execution of lease deed. Therefore, it appears that the legislature to avoid that the areas should not be left vacant without operation of mining lease for certain period, has taken step according to Rule 72 of the Rules. The notice dated 16th September, 2006 clearly states that the area which has already been auctioned or patta has been granted they will be permitted to continue till they complete the full time according to the agreement and it will not give any adverse effect to them. The fresh lease will be granted after the expiry.

17. In view of the aforesaid fact, we are of the opinion that the action of the respondents cannot be said that it is contrary to the Rule 24 and Rule 72 of the Rules. That as the petitioner was not a person who was having mining lease or is a prospective applicant, therefore, in our opinion also he has got no locus-standi to challenge the action of the respondents.

18. In view of the aforesaid fact, the writ petition is devoid of merits and is hereby dismissed.

19. No order as to costs.