
(1999) 04 KAR CK 0006

In the Karnataka High Court

Case No : Writ Appeal No. 654 of 1998 connected with Writ Appeal No's. 699 and 700 of 1998

Bhimappa @ Bhima Naik

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 15-04-1999

Acts Referred:

Arms Act, 1959 — Section 46 (1)
Constitution of India, 1950 — Article 48A
Karnataka Minor Mineral Concession Rules, 1994 — Rule 3A, 8 (2)
Mines and Mineral (Development and Regulation) Act, 1957 — Section 15

Citation : (1999) 3 KarLJ 520

Hon'ble Judges : Y. Bhaskar Rao, C.J; A.M. Farooq, J

Bench : Division Bench

Advocate : Sri Jayakumar S. Patil and Sri M.R. Achar, for the Appellant; Sri N.K. Ramesh, Government Advocate, for the Respondent

Judgement

1. For the purpose of disposing of these cases, we narrate the facts in W.P. No. 5912 of 1996 out of which W.A. No. 654 of 1998 arises.

2. The appellants are the quarry owners and they were granted quarrying lease and lease deeds were executed. Due to some delay before the quarrying started, some of the appellants had to apply for renewal of the lease. As no order was passed, writ petitions were filed in this Court. Meanwhile, the rules were amended. Therefore, this Court directed the appellants to file an application as per the amended rules and directed the respondents to consider the applications within a time frame. Accordingly, applications were made. As the renewal applications were not considered, again writ petitions were filed and there was an interim order in favour of the appellants. Meanwhile, by an order dated 31-1-1996, the application for renewal of licence for quarrying made by the appellants was rejected by the authorities concerned. In the counter filed by the respondents denying the allegations, it is submitted that the quarry lease held by the appellants has not been renewed in view of Rule 3-A of the Rules as the

same prohibits the grant or renewal of granite lease in favour of private persons. Further, the Karnataka Minor Mineral Concession Rules, 1994 ("Rules" for short) which came into effect from 28-5-1994 clearly states that no quarrying lease shall be granted in any forest land except that such lease of land may be granted by the State in favour of any undertaking owned by the Central Government or State Government after obtaining prior approval under the Forest (Conservation) Act, 1980. It is submitted that the renewal application filed by the appellants was examined by the Committee constituted under Rule 11 of the rules and after consideration of all facts, the Committee has recommended to the Government for rejection of renewal of quarry lease application of the appellants in view of Rule 8(2) of the rules which prohibits grant of quarrying lease in forest area. It is submitted that the State Government has constituted a committee of both the legislative houses to suggest measures for proper formulation of policy on minor minerals deposits. In its report, the Committee has stated that there shall be a ban on quarrying in any forest land. The committee has further opined that quarrying of granite in forest area has so far caused considerable damage to environment and ecology besides disturbing the life of flora and fauna and it is very important to protect the very tender forest cover. It is stated that as per Article 48A of the Constitution of India, protection of ecological balance, forest and environment is the policy of the State. After receipt of the report by the Joint Legislative Committee, Government constituted a cabinet sub-committee for suggestions on the said report and as per the cabinet sub-committee's suggestions, Government has made provisions for granite quarrying by Government Agencies in the forest Area in the revised rules of 1994. It is further contended that if quarrying is allowed in forest area by private persons, there will be large scale destruction of forest area and the rich resource of forest is lost. Moreover, it may not be possible to keep continuous supervision on all private quarry holders and so the Central and State Government undertakings were allowed to quarry granite in the forest to a limited extent with other conditions imposed on the said undertakings/agencies as per rules so as to facilitate the Government to intervene in the quarry operation if any violation is committed. It is submitted that Rule 8(2) and proviso made in the rules are only in the interest of protecting natural wealth for future generation and for maintaining ecological balance. Hence, the said rule is not illegal, arbitrary and ultra vires of Section 15 of Mines and Minerals (Resource and Development) Act as contended by the appellants and the action taken by the respondents rejecting the application of the appellants is correct and well within the rules.

3. The writ petitions filed by the appellants were rejected by the learned Single Judge as having been covered by an earlier decision in B.S. Suresh Vs. The State of Karnataka and others, . Hence, these appeals.

4. Learned Counsel for the appellants contended that Rule 8(2) of the rules is arbitrary and unreasonable and there is no nexus to the object of Forest (Conservation) Act or the Minor Minerals Act, It is contended that Rule 12(iii) and (iv) which provides for priorities is arbitrary as the criteria laid down therein is

discriminatory as there is no bar for exporting raw minerals by any one of the classes enumerated in Rule 12 (1)(i) to (vii).

5. Learned Government Advocate contended that in the writ petitions only the validity of Rule 8(2) is challenged and none of the contentions now raised in the appeals are raised and the learned Single Judge accordingly disposed of it as covered by the judgment cited supra, as similar Rule 8(a) was considered and decision delivered in the case and therefore, there is no merit in the appeals.

6. To decide the contentions in the writ appeals it is relevant to consider the relevant rule of the Karnataka Minor Minerals Concession Rules, 1994. In exercise of powers conferred u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the Government of Karnataka had made rules from time to time. The present rules are issued in the notification dated 28th May, 1994. Section 2(m) defines a "specified minor mineral" as meaning minor minerals specified by the State Government from time to time. Rule 3 provides quarrying to be under quarrying lease or quarrying licence. Rule 6 deals with the general conditions of quarrying lease and licence. Rule 7 empowers the competent authority to specify additional conditions. Rule 8(1) provides that no quarrying lease or licence shall be granted to any person other than an Indian citizen except with the prior approval of the Central Government. Rule 8(2) bars granting of quarrying lease in any forest land except that a lease in such land may be granted by the State Government in favour of any undertaking owned by the Central Government or State Government after obtaining prior approval under the Forest (Conservation) Act, 1980. Rule 58 of the Rules repeals the Karnataka Minor Minerals Concession Rules, 1969. However, the repeal shall not affect the previous operations of the repealed rules and anything done or any action taken thereunder shall be deemed to have been done or taken under the corresponding provisions of these rules. Rule 59 contemplates that where any person who had already applied under the repealed rules for obtaining a quarrying lease or permit and such application is pending consideration immediately prior to such commencement of these rules, such person may, within thirty days from such commencement, apply afresh for grant or renewal of quarrying lease or permit under these rules. Sub-section (2) of Section 59 provides that all applications made under the repealed rules for grant of a quarrying lease prior to the commencement of these rules and pending consideration on the date of such commencement shall abate and the fee and security deposit paid in respect of such application shall be refunded to the applicant unless he applies afresh under sub-rule (1) in which case the fee and security deposit so paid shall be adjusted towards the fee and security deposit payable in respect of the applications made afresh.

7. Learned Counsel for the appellants contended that the applications of the appellants were pending by the date of the promulgation of the 1994 Rules and as per Section 59 the said applications have abated and such applicants will have to make fresh applications under the new rules. In the new rules, notification is

not issued specifying the minor minerals as provided under the new rules. Therefore, making an application within a period of thirty days from the date of commencement of the new rules is arbitrary and illegal. Therefore, the provision has to be declared as illegal and in violation of Article 14 of the Constitution.

8. By reading Rule 59 of the Rules, it is manifest that all the applications made earlier to the commencement of the rules or on the date of the rules when it came into force are deemed to be abated and such applicants will have to make fresh applications within thirty days for fresh grant or renewal of quarrying lease or permit under the rules. Therefore, the rules provide for filing of fresh applications. The question is whether minor minerals are specified in the new rules or not. It is an admitted fact that under repealed rules notification was issued specifying minor minerals and as per Rule 58, the repeal shall not affect anything done or action taken under the repealed rules and is deemed to be done under the new rules. Therefore, the notification issued by the Government under the repealed rules specifying minor minerals continues to be a valid notification even after the said rules are repealed by virtue of the saving clause in Rule 58. Apart from it, as per the provisions of the General Clauses Act also, as per Section 24, the notification is saved. It is relevant here to refer to the judgment of the Supreme Court in *Neel alias Niranjana Majumdar Vs. The State of West Bengal*, wherein the Supreme Court observed:

"It however appears that no such notification as contemplated by Section 4 of the 1959 Act has been issued. But, in 1923 such a notification bearing reference No. Political (Police) Department Notification No. 787 PL, dated March 9, 1923 was issued u/s 15 of the earlier Indian Arms Act XI of 1878 which was in terms similar to Section 4 of the present Act. The question is, whether Act XI of 1878 having been repealed, the said notification issued u/s 15 thereof can still be said to be operative? Section 46(1) of the Arms Act, 1959 repealed the preceding Act of 1878. Its sub-section (2) provides that notwithstanding such repeal and without prejudice to Sections 6 and 24 of the General Clauses Act X of 1897 a licence granted under the repealed Act and in force immediately before the commencement of the new Act shall continue, unless sooner revoked, for the unexpired period for which it had been granted or renewed. Section 46(2) thus saves only licences issued under the Arms Act.

Section 6(b) of the General Clauses Act, however, provides that where any Central Act or regulation made after the commencement of the Act repeals any earlier enactment, then, unless a different intention appears, such repeal shall not "affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder". Section 24 next provides that where any Central Act is repealed and re-enacted with or without modification, then, unless it is otherwise expressly provided, any notification issued under such repealed Act shall, so far as it is inconsistent with the provisions re-enacted, continue in force and be deemed to have been made under the provisions so re-enacted unless it is superseded by any notification or order issued under the provisions so re-

enacted. The new Act nowhere contains an intention to the contrary signifying that the operation of the repealed Act or of a notification issued thereunder was not to continue. Further, the new Act re-enacts the provisions of the earlier Act, and Section 4 in particular, as already stated, has provisions practically identical to those of Section 15 of the earlier Act. The combined effect of Sections 6 and 24 of the General Clauses Act is that the said notification of 1923 issued u/s 15 of the Act of 1878 not only continued to operate but has to be deemed to have been enacted under the new Act".

9. Therefore, as per the principle laid down in the above cited Supreme Court judgment, the notification issued by the Government under the repealed rules is valid and is in force. So the contention of the appellants that as no notification is issued specifying the minor minerals it is not possible for them to file applications under Rule 59 within thirty days from the commencement of the rules is not tenable. Even looking towards the contents of the rule from another angle, the rule provides to file fresh applications by those applicants whose applications are pending on the date of commencement of the new rules. Therefore, the said applicant has to make application for the minerals for which his earlier application was made as it is a specific provision providing for applicants whose applications are pending on the date of the repeal and not for others. Therefore, on this ground also, the contention of the learned Counsel for the appellants is not tenable.

10. Rule 8(2) bars granting of any quarrying lease in the forest area except to State Government or Central Government undertakings after obtaining prior approval under the Forest (Conservation) Act. It is contended that the barring of the grant of lease to others other than State Government or Central Government undertakings is discriminatory.

11. In the counter affidavit filed, it is stated that the State Government has constituted a committee of both legislative houses to suggest measures for proper formulation of policy on minor minerals. The Committee in its report dated 27-8-1993 stated that there shall be a total ban on quarrying in forest land to protect the flora and fauna of the forest and also with a view to protect ecology and if quarrying permit is given to private parties there will be indiscriminate quarrying operations which will result in large scale destruction of forest area and forest resources as it is not possible to keep on going supervising on all private quarrying owners. Therefore, taking the said report into consideration Rule 8(2) was framed.

12. It is a fact that Rule 8(2) makes two classes. One is State Government and Central Government undertakings and another is, all other persons. The grouping of the two classes is a reasonable classification as both are separate and distinct classes. State Government and Central Government undertakings are not the same as private persons. An unreasonable classification is anti-thesis of Doctrine of Equality and reasonable classification is permissible i.e., classification by class. In *The State of Madhya Pradesh Vs. G.C. Mandawar*, the Supreme Court was

considering the laws made by different legislatures to consider the contentions raised therein that there is discrimination in the legislations. The Supreme Court, repelling the contention held that for the purpose of application of Article 14, laws made by different legislatures cannot be taken together for the purpose of comparison and reasonable classification is permissible. In *Budhan Choudhry and Others Vs. The State of Bihar*, , the Supreme Court held that reasonable classification is permissible. In *Mohd. Hanif Quareshi and Others Vs. The State of Bihar*, , the Supreme Court has held that reasonable classification is permissible. In view of the above stated principles where the classification is not within a class and classification makes two groups which are separate and distinct, the said classification is a reasonable classification and it is not hit by the Doctrine of Equality. Therefore, we are not able to accede to the contention of the learned Counsel for the appellants. It is further contended that there is no nexus or any rationale in the classification. We have already stated, *supra*, that the report of the Joint Legislative Committee Members and the Cabinet Sub-Committee prompted the making of the rule as the past experience shows that when quarrying licence was granted in the forest area to private parties, there was devastation of forest area. Therefore, it was decided that only Government or governmental agencies should be given quarrying licence. The nexus is to protect the forests and to maintain the ecological balance as provided under Article 48A of the directive principles of the State Policy.

13. It is next contended that Rule 12 providing preference and area to be granted to each class of persons is arbitrary. To appreciate the above contention, it is relevant to extract Rule 12:

Priorities:

1. Selection from amongst the applicants for grant of quarrying lease under this chapter shall be made in the following order of preference, namely:

i. a Corporation or undertaking owned or controlled by the State or Central Government and joint sector projects with such Government Corporations or Undertakings.

ii. Persons who have already established hundred per cent export oriented units for cutting and polishing of granites in the State;

iii. Persons who have already established a small scale industrial unit for cutting and polishing of granites in the State;

iv. Persons who hold a valid licence for establishment of a granite cutting and polishing unit within the State for the purpose of hundred per cent export and persons who hold a permanent registration certificate for establishment of a small scale industrial unit in the State.

v. A Society registered under the Karnataka Co-operative Societies Act, 1959, and the members of which belong to the Scheduled Castes and Scheduled Tribes;

vi. A Society registered under the Karnataka Co-operative Societies Act, 1959 and the members of which belong to economically weaker sections of the Society and who are also stone quarry workers by tradition;

vii. All others.

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As per the above rule, it can be seen that preference has been given for whom quarrying lease or permit should be granted.

14. It is contended that there is no ban for exporting raw granite and all can export raw granite. Therefore, the priority provided under Rule 12 is arbitrary and has no nexus to the object to be achieved. The rule provides priority taking into consideration the experience in the field and establishment of units and further to encourage small scale industries and persons who are already holding a licence for granite cutting and polishing units in the State for purpose of 100% export with a view to ameliorate the export of granite to earn foreign exchange and to societies whether the members belong to Scheduled Caste/Scheduled Tribe or weaker sections of the Society so as to encourage them to participate in quarrying activity to improve their socio-economic conditions. The object of providing priorities is to see that the export is increased and State gets the revenue by way of tax as the units are established in the State. Therefore, the fact that licensee can export raw granite itself is not a ground to contend that the priority provided is arbitrary and has no nexus to the object to be achieved. The object to be achieved is to ameliorate the export for earning foreign exchange and to encourage small scale industries and societies formed by SC/ST and weaker section of the people and to improve their socio-economic condition. Thus, it cannot be said that Rule 12 is arbitrary or without any nexus or without any rationale. Therefore, the rule is not in violation of Article 14 of the Constitution.

15. Except these points, no other point is urged before us. In view of the above stated circumstances, we do not see any ground to interfere with the order of the learned Single Judge.

16. Accordingly, writ appeals are dismissed. No order as to costs.