

(2009) 04 KAR CK 0116
In the Karnataka High Court
Case No : Writ Petition No. 31272 of 2008

C. Shashi Kumar

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 06-04-2009

Acts Referred:

Mineral Concession Rules, 1960 — Rule 59 (1), 59 (2)
Mines and Mineral (Development and Regulation) Act, 1957 — Section 10, 11

Citation : AIR 2009 Kar 2538 : (2009) 6 KarLJ 320 : (2009) 2 KCCR 1456

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : S.N. Aswathnarayana, for the Appellant; Basavaraj Kareddy, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

P.D. Dinakaran, C.J.—The petitioner herein seeks a mandamus directing the respondent-authorities to consider the application dated 23-9-2004, No. 100 APL 2004/9378 filed by the petitioner for grant of prospecting licence on the ground that he had applied for the same as early as on 29th March, 2004.

2. In this regard it is relevant to refer to the provisions dealing with the grant of mining lease under the Mines and Minerals (Development and Regulation) Act, 1957 (for short, "the MMDR Act") and the Mineral Concession Rules, 1960 (for short, "the MC Rules").

3. Sections 10 and 11 of the MMDR Act read as hereunder:

10. Application for prospecting licences or mining leases.—(1) An application for a reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under Sub-section (1), there shall be sent to

the applicant an acknowledgement of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the permit, licence or lease.

11. Preferential right of certain persons.-(1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person:

Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be.-

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(c) has not become ineligible under the provisions of this Act; and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the- expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

(2) Subject to the provisions of Sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section:

Provided further that, where any such applications are received on the same day, the same Government, after taking into consideration the matter specified in Sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may be deem fit.

(3) The matters referred to in Sub-section (2) are the following.-

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) such other matters as may be prescribed.

(4) Subject to the provisions of Sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in Sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in Sub-section (2), but subject to the provisions of Sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier:

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section.

4. Rule 59(1) and 59(2) of the Mineral Concession Rules, 1960 reads as hereunder:

59. Availability of area for regrant to be notified.-(1) No area.-

(a) which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease; or

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or

(c) in respect of which the order granting a permit or licence or lease has been revoked under Sub-rule (1) of Rule 7-A or Sub-rule (1) of Rule 15 or Sub-rule (1) of Rule 31, as the case may be; or

(d) in respect of which a notification has been issued under Sub-section (2) or Sub-section (4) of Section 17; or

(e) which has been reserved by the State Government or u/s 17A of the Act,

shall be available for grant unless:-

(i) an entry to the effect that the area is available for grant is made in the register referred to in Sub-rule (2) of Rule 7-D or Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40, as the case may be; and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under Rule 58 or u/s 17A of the Act is proposed to be granted to a Government company, no notification under Clause (ii) shall be required to be issued:

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of Sub-section (1) of Section 11, no notification under Clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of Sub-rule (1) in any special case.

5. Therefore, unless the Competent Authorities, referred to in the above provisions, take appropriate decision for granting the prospecting licence under Rule 59(1) or 59(2) of the MC Rules, as the case may be, read with Sections 10 and 11 of the MMDR Act, the petitioner has no right under the statute to seek a mandamus as prayed for.

6. Subject to the above observation, this petition is dismissed.