
(1966) 09 KAR CK 0026
In the Karnataka High Court
Case No : Writ Petition No. 1347 of 1965

Canara Minerals Private Ltd.	Vs	APPELLANT
The State of Mysore and Others		RESPONDENT

Date of Decision : 06-09-1966

Acts Referred:

Constitution of India, 1950 — Article 226
Mines and Mineral (Development and Regulation) Act, 1957 — Section 10, 11, 5

Citation : AIR 1967 Kar 141 : (1969) 1 MysLJ 133

Hon'ble Judges : Ahmed Ali Khan, J;A. Narayana Pai, J

Bench : Division Bench

Advocate : S. Ranga Raj, for the Appellant; B. Venkataswamy, High Court Government Pleader, B.S. Keshava, Central Government Pleader and N. Balagopalan, for the Respondent

Judgement

Narayana Pai, J.—The original prayer in the writ petition was to quash or set aside a prospecting licence granted by the State Government to the fourth respondent under the Mineral Concession Rules in respect of a certain mining area of Holalkere. During the pendency of the writ petition, the State Government appears to have granted to Respondent 4, a regular mining lease covering the area or a portion of the area covered by the prospecting licence. In view of this new development the petitioner has filed I. A. No. 2 to amend the petition by adding the relevant averments and a prayer to quash the lease itself.

2. The few facts which are relevant for the disposal of the writ petition, including the objections raised by the contesting respondents, may first be stated. Respondent 4's application for a prospecting licence was earlier in point of time. It was made to the State Government on February 9, 1962. The petitioner's application for a prospecting licence was made nearly two years thereafter on February 6, 1964. The State Government does not appear to have disposed of these applications for a long period exceeding nine months. The result was that both the petitioner and respondent 4 acting on the rule providing that the omission to dispose of the applications within the prescribed time has the same

effect as actual rejection of the applications, presented revision petitions to the Central Government under Rule 54 of the Mineral Concession Rules, The application of Respondent 4 was disposed of By the Central Government on May 31, 1965, with a direction to the State Government to consider the application and dispose it of according to law. The revision petition of the petitioner was disposed of subsequently on July 13, 1965 by passing a similar order. But, by then, the State Government having taken up respondent 1's application into consideration, had granted a licence to him on July 3, 1965.

3. It is not disputed, nor can it be, that the applications of both the petitioner and respondent 4 referred to, or were in respect of, the same area and that, therefore, according to Section 11 of the Mines and Minerals (Regulations and Development) Act, 1957, the application of respondent 4 being earlier in point of time, was entitled to priority of consideration. Hence, if both the applications were, in all respects, in accordance with the relevant rules, and were, therefore, fit for consideration, the grant of licence to respondent 4, pursuant to his earlier application, is not capable of being questioned by the petitioner. He could succeed only by making out that the application of respondent 4, though earlier in point of time, was not capable of being lawfully taken into consideration by the Government. He has made an attempt to make out such a position.

4. The case of the petitioner is that the application of respondent 4 was not accompanied by an Income Tax clearance certificate as required by the relevant Rule No. 9 nor was such a clearance certificate produced by him before the licence was actually granted as required by Section 5 of the Act.

5. With reference to the necessity of producing an Income Tax clearance certificate, the positive provisions of the Act are those contained in Section 5. Section 10, dealing with applications, states in its first sub-section, that the application should be in the prescribed form and should be accompanied by the prescribed fee. The necessity to produce an Income Tax certificate along with the application is found in Rule 9 of the Mineral Concession Rules, 1960, (vide Clause (b) of Sub-rule (2)). We might mention at this stage that this specific provision was not contained in the Rules of 1949, which got replaced by the present Rules of 1960. But the production of such a certificate before the grant of a licence, is made compulsory u/s 5 of the Act. It states in clear terms that no such licence shall be granted by the State Government unless, among other things, the applicant produces from the Income Tax officer concerned an Income Tax clearance certificate in the prescribed form.

6. As a matter of law, therefore, the position appears to be that the production of an Income Tax clearance certificate is absolutely essential before the grant is actually made; failure to observe that condition entails the consequence stated in Section 19, according to which, any prospecting licence granted in contravention of the provision of the Act or Rules shall be void and of no effect. It has been argued on behalf of the petitioner, that any defect in the application, or failure to observe any at the provisions of the Rule relating thereto, should also be

regarded as a contravention, within the meaning of Section 19.

7. We find it difficult to accept that position, because, the specific legal consequence stated in Section 19 flows from the grant in contravention of the provisions of the Statute or the Rules, and being penal provision, it should receive a strict interpretation. Even from the point of view of the object or the policy of the Statute, what the law guards against is an actual grant of mineral concessions in which the Government has a proprietary or paramount interest, and not merely any preliminary step taken by a prospective applicant for the purpose of obtaining those concessions.

That it is also clear from the fact that the old Rules did not contain any specific provision requiring the production of the Income Tax clearance certificate along with the application, and under the new Rules 1960, failure to produce the Income Tax clearance certificate along with the application does not entail either rejection of the application or impose a disability on the applicant to obtain the licence or a lease as the case may be for all time.

8. The question, whether the application of respondent 4 was or was not accompanied by an Income Tax clearance certificate, therefore, recedes into the background and the question that assumes all importance is whether he had or had not produced an Income Tax clearance certificate before the State Government actually came to make the grant.

9. We might mention, however, that there is some confusion or lack of clarity in the averments in relation thereto, both in the counter-affidavit on behalf of respondent 4, as well as on behalf of the State Government, from which it is not possible to come to any definite conclusion whether or not respondent 4's application was accompanied by an Income Tax clearance certificate. But, so far as its production before the grant is concerned, there is the following statement in paragraph 10 of the counter-affidavit of Mr. M.A. Aziz Siddiqui, Under Secretary to Government, on behalf of the State Government:

"Before recommending the grant of a prospecting licence, it is usual to call for the current Income Tax clearance certificate and this has been done."

10. One would have expected a clearer and a more specific statement from the State Government, because, there can be no doubt that it was dealing with important public rights and must have been in a position to state clearer particulars on the basis of the papers relating to the case in question. However, the statement to the extent it goes, is clear enough and having regard to the importance of the rights relating to public property which they were dealing with, and in the absence of any specific allegations of mala fides or favouritism, we think, we should accept the statement of the State Government, especially because, investigation into hotly disputed facts is not ordinarily undertaken in proceedings under Article 226 of the Constitution.

11. We are not, therefore, satisfied that the petitioner has made out a case that

the applications of respondent 4 suffered from such legal defect as to forfeit priority of consideration ordinarily available to it u/s 11 of the Act.

12. In view of tin's opinion regarding the grant of the prospecting licence itself it becomes unnecessary for us to consider I. A. No. 2 or the prayer for amendment made in it. If, as the petitioner states in the affidavit in support of the said interlocutory application that the lease is so directly connected with the prospecting licence or is such a direct consequence of it as to entitle him to get relief in relation to the lease in this petition itself, his failure to make out any infirmity in the grant of the licence is reason enough to reject his prayer to set aside the lease. If as the contesting respondents say the lease is an independent transaction and is not in any sense connected with or is a direct consequence of the licence, then, the proper thing for us would be not to allow I. A. No. 2 and to leave it to the petitioner, if he is so advised, to take such steps as he may consider necessary to get rid of the lease. It, however, appears to us that the correct view to take is that upon merits he fails to make out a case of any infirmity in the grant of the licence, and that there is nothing by way of additional averments to even suggest that there may be any infirmity in the grant of the lease. The other preliminary objections fairly strongly pressed by all the respondents, become quite unnecessary of consideration.

13. The wirt petition is dismissed.

14. No costs.

15. Petition dismissed.