

(2005) 05 AHC CK 0129

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 18800 of 2005

Charan Singh

APPELLANT

Vs

State of U.P. and Smt. Bachchi Devi

RESPONDENT

Date of Decision : 05-05-2005

Acts Referred:

Constitution of India, 1950 — Article 14
Mineral Conservation and Development Rules, 1988 — Rule 3
Minor Mineral Concession Rules, 1963 — Rule 68

Citation : AIR 2005 All 230 : (2005) 3 AWC 2302 : (2005) 99 RD 6

Hon'ble Judges : R.P. Misra, J;A.P. Sahi, J

Bench : Division Bench

Advocate : Pankaj Mithal and Shubham Agrawal, for the Appellant; Yogesh Saxena, C.L. Pandey, Y.K. Saxena, T.K. Tripathi and S.C., for the Respondent

Final Decision : Allowed

Judgement

R.P. Misra and A.P. Sahi, JJ.—The petitioner is aggrieved by the action of the respondent - State Government in respect of the grant of mining lease to the respondent No. 3 over plot No. 29/3, Area 30 Acres, Buksha Khadar, Tehsil Mahauda, District - Hamirpur, by the impugned order dated 2.4.2004 and the consequential lease dated 5.4.2004. The petitioner contends that the right of the petitioner to apply for the aforesaid area has been arbitrarily taken away by the respondents by not resorting to publication of any notice making the land available to the public at large and, as such, the petitioner and such alike persons have been denied their right to participate in the proceedings for grant of mining lease. The order has been challenged on the aforesaid grounds and also that none of the ingredients of Rule 68 of the Minor Mineral Concession Rules 1963 exist so as to warrant exercise of power therein by the State Government in favour of the respondent No. 3 whose earlier lease had been cancelled and facts with regard to which have been set out in detail in the report of the District Magistrate dated 28.2.2004. The petitioner has further urged that in the event the order dated 2.4.2004 is set aside, the writ petition filed by the

respondent No. 3 being Civil Misc. Writ Petition No. 3367 of 2005 will not survive to the extent the relief claimed for in the present writ petition.

2. When the instant writ petition was moved initially, we had directed the present writ petition to be listed along with the writ petition No. 3367 of 2005 after hearing learned Senior Counsel Shri S.P. Gupta assisted by Shri Shubham Agrawal on the previous occasion. The matter was listed on 1.4.2005 and 6.4.2005 on which date Shri C.L. Pandey, learned counsel for the respondent No. 3 - Bachchi Devi, sought time to file reply to the instant writ petition, which was granted, and the matter was posted for 13.4.2005. On 13.4.2005 Shri Y.K. Saxena put in appearance on behalf of Smt. Bachchi Devi - the respondent No. 3, who is the petitioner in Writ Petition No. 3367 of 2005 and a short-counter-affidavit along with an application has been filed putting contest to the present writ petition.

3. We have heard Shri Pankaj Mithal and Shri Shubham Agrawal, learned counsel for the petitioner and Shri Yogesh Saxena for Smt. Bachchi Devi, who is respondent No. 3 herein and the petitioner in writ petition No. 3367 of 2005.

4. That facts as borne out from the records are that respondent No. 3 - Smt. Bachchi Devi was favoured with an order dated 31.3.1997 for grant of lease for the same plot of land referred to herein above. The writ petition was filed against the same in which an interim order was passed staying the settlement of the lease in favour of Smt. Bachchi Devi. The interim order according to the report of the District magistrate dated 28.2.2004 became inoperative on 5.5.1997 but vide Government order dated 9.5.1997 all applications which were received including the application of the petitioner for grant of lease were directed to be treated to have been cancelled. The respondent No. 3 - Smt. Bachchi Devi was, accordingly, intimated about the same vide letter dated 12.5.1997 to the effect that her application for grant of lease was cancelled and the petitioner should immediately seek refund of the amount deposited by her. Another writ petition had been filed with regard to Govt. Order dated 9.5.1997 in which the direction given to settle the lease by permit was quashed with a further direction to settle the leases in accordance with law. Accordingly, the areas meant for mining operation including the plot in question was advertised vide advertisement dated 16/19.6.1997. It has also been brought on record that no applications arrived in respect of the plot in question, as a result whereof it was re-advertised on 15.11.1997. Again no application was received and the claim of the respondent No. 3 which she had made vide representation dated 28.11.1998 was also rejected on 6.3.1999.

5. A conspectus of the aforesaid facts clearly indicate that the claim of the respondent No. 3 - Smt. Bachchi Devi was already rejected finally and she did not prefer any appeal or revision against the same. However, the respondent No. 3 - Smt. Bachchi Devi filed a writ petition before this Court being Civil Misc. Writ Petition No. 15360 of 2003 after a lapse of almost 4 years and an order was passed by this Court to decide the representation of Smt. Bachchi Devi which order is appended as Annexure-3 to the writ petition. The District Magistrate,

Hamirpur, vide order dated 29.4.2003 rejected the representation of Smt. Bachchi Devi. No fact has been demonstrated before us by the respondent No. 3 indicating any challenge to the order dated 29.4.2003 which order has been appended as Annexure-4 to the writ petition. The aforesaid facts have not been stated by Smt. Bachchi Devi in her writ petition No. 3367 of 2005. The report dated 28.2.2004 of the District Magistrate which discloses all the aforesaid facts and which has been referred to in the order dated 2.4.2004 has nowhere been disclosed in the writ petition No. 3367 of 2005. It is, thus, clear from the facts narrated herein above that the claim of grant of lease in respect of the plot in question already stood fore closed in the aforesaid manner against the respondent No. 3 - Smt. Bachchi Devi, Smt. Bachchi Devi had absolutely no claim surviving thereafter.

6. It appears that another application was moved by Smt. Bachchi Devi to grant mining lease to her. This application was moved before the State Government with a prayer to grant the mining lease by exercising the power under Rule 68 of the Minor Mineral Concession Rules 1963, On this application, the District Magistrate submitted a report dated 28.2.2004 which is Annexure-5 to the writ petition. The said report has narrated all the facts, which have been stated herein above. The respondent - State Government thereafter has passed the order impugned dated 2.4.2004 by extending the benefit of grant of lease under Rule 68 referred to herein above.

7. The petitioner has challenged the aforesaid order on the ground indicate in the opening paragraph of the judgment and has urged that Rule 68 could not have been applied and in fact none of the ingredient of Rule 68 are available to justify and sustain the order dated 2.4.2004. The learned counsel for the petitioner has invited our attention to Rule 68 which is quoted herein below:

"68. Relaxation of rules in special cases.-The State government may, if it is of opinion that in the interest of mineral development it is necessary so to do, by order in writing and for reasons to be recorded authorized in any case the grant of any mining lease or the working of any mine for, the purpose of winning any mineral on terms and conditions different from those laid down in these rules."

8. A perusal of the said Rule clearly indicates that an application for grant of mining lease in special circumstances can be allowed in the interest of development of minor minerals by an order in writing for reasons to be recorded in support thereof. A perusal of the impugned order indicates that the only reason given in the order is that since in spite of the best efforts the plot in question could not be leased out earlier, therefore, the powers under Rule 68 were being invoked and the amount already deposited by Smt. Bachchi Devi way back in 1997 deserves to be accepted and her application was, accordingly, allowed. Shri Pankaj Mithal, learned counsel for the petitioner, has urged that the claim of Smt. Bachchi Devi had already come to an end which fact has been completely ignored while passing the impugned order. The State Government could have published another notice and in case such a notice would have been

published, the petitioner would have also applied as he was also desirous of obtaining the lease of the plot in question. Shri Pankaj Mithal, on instructions from his client, has orally stated before the Court that the petitioner undertakes to deposit the same amount as offered by Smt. Bachchi Devi for grant of lease and is ready to compete with the offer made by her. Shri Mithal urged that this offer was made to indicate the bona fide of the petitioner to the effect that had notice been again published making available the aforesaid plot for lease, the petitioner would have definitely applied for the grant of the same. There is no reason to disbelieve the aforesaid offer of the petitioner.

9. On the other hand Shri Y.K. Saxena contended that the present petition has been filed in almost the same fashion as the writ petition filed by one Shri Dinesh Singh before Lucknow Bench being Civil Misc. Writ Petition No. 5778 of 2004 in which Affidavits have been exchanged and no order has been passed up till now in respect of the order dated 2.4.2004. Shri Y.K. Saxena has urged that the present writ petition cannot be treated to be a public interest litigation and the petitioner who had not applied earlier, is not a bona fide litigant and has been set up by Shri Dinesh Singh, who could not succeed before the Lucknow Bench. The aforesaid submission of Shri Y.K. Saxena is totally misconceived inasmuch as the filing of a writ petition by another person before Lucknow Bench cannot take away the right of the petitioner to challenge the impugned order before us inasmuch as the petitioner, in our opinion, has an independent right to seek his remedy in view of the fact that the petitioner is also ready and prepared to take lease of the plot in question on the same terms and conditions as was being extended to Smt. Bachchi Devi. It is further to be noted that Smt. Bachchi Devi having failed all through out succeeded in getting her application allowed by the impugned order. Having examined the aforesaid facts and the provisions of Rule 68, we find that there is no such special circumstances or reason, which would have warranted the exercise of power under Rule 68. There is no finding recorded that the order was being passed in the interest of mineral development. In effect the order extends benefits to Smt. Bachchi Devi in a circumvented fashion after Smt. Bachchi Devi had failed in her earlier attempt to get the lease executed, in her favour. This is also evident from the recital in the impugned order that Smt. Bachchi Devi is being given the lease for the same period which was given to her in the earlier proceedings. We are satisfied on the basis of the record before us that the respondent No. 3 has failed to justify the invoking of Rule 68 in her favour.

10. Learned counsel for the respondents has relied on the decision of Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, , Subhash Chandra Chaudhari and Ors. v. Ram Milan and Ors. JT 1997 (2) SC 503, and Beg Raj Singh Vs. State of U.P. and Others, . A perusal of the aforesaid decisions would indicate that none of these decisions will apply in the facts and circumstances of the present case. The petitioner before us is not a mere busy body and has genuinely shown his concern for grant of mining lease and has also given an undertaking before us through his counsel as recorded earlier in this judgment.

The respondent No. 3, therefore, succeeded in getting the impugned order passed in an unfair manner thereby violating Article 14 of the Constitution of India. The impugned order has been passed only with a view to favour a single individual thereby causing loss to the exchequer and also preventing person like the petitioner from participating any settlement proceedings in respect of the land in question. The action of the respondents is, therefore, unfair, unreasonable and arbitrary.

11. Accordingly, the writ petition is allowed and the order dated 2.4.2004 is quashed. The State Government is directed to notify the land in question afresh and thereafter proceed to settle the lease in respect of the plot in question. To ensure that the claim of the petitioner is bona fide, we further direct that the petitioner shall deposit the same amount of money as has been accepted by the respondent No. 2 from the respondent No. 3 Suit. Bachchi Devi. The deposit shall be made by the petitioner within a period of 15 days from today before the District Magistrate, Hamirpur, in the manner as may be directed by the District Magistrate, Hamirpur. The said deposit shall be treated to be only an offer on behalf of the petitioner in respect of the notification, which shall be made and published by the District Magistrate, Hamirpur, in respect of the plot in question. The claim of the petitioner shall be considered along with claim of all such persons on whose behalf the applications are received and it shall be open to the respondent No. 3 as well to apply afresh pursuant to our directions given herein. The publication shall be made in accordance with Rules and the proceedings with regard to settlement shall also be conducted in the manner prescribed in law.

12. The scope and powers under Rule 68 has been subject matter of interpretation by this Court in several decisions. The two recent decisions on this aspect are that of Achhey Lal v. District Officer/Collector, Mau, 1997 (3) AWC 1831 (Paras 8 & 9) and the second decision is Inam Vs. State of U.P. and Others, . The aforesaid decisions clearly ruled that Rule 68 cannot be invoked to move an application inasmuch as Rule 68 does not provide for a third mode for grant of lease or permit. The only mode of grant of lease are provided under the provisions of Chapter II and Chapter IV. Tire mining lease cannot be granted by invoking powers under Rule 68 to a person of the choice of the respondent ignoring the requirements of Chapter II and Chapter IV In the present case, the respondents have not resorted to either Chapter II or Chapter IV before proceeding to consider the application of the respondent - Bachchi Devi. Even otherwise the aforesaid decisions make it amply clear that an application cannot be moved under Rule 68. The respondent - Smt. Bachchi Devi admittedly had modified moved an application for invoking the powers under Rule 68 without any of the procedures having been followed in her case under Chapter II or Chapter IV. In view of this, the impugned order having been passed under Rule 68 cannot be sustained.

13. The Rule of relaxation is only in the interest of mineral development. Mineral development has not been defined under the 1963 Rules. The only definition of

development has" been indicated in the Minerals Conservation and Development Rules 1988 which rules, however, do not apply to Minor Minerals. Yet the definition clause therein can illustrate as to what development means in the inkiest of development of minerals. Rule 3 (i) is quoted herein below:-

"3.(i) "development" means the driving of an opening to, or in an ore-body or seam or removing overburden or unproductive or waste materials as preparatory to mining or stopping;"

14. A perusal of the aforesaid definition would indicate that the interest of development is that of mining minerals and not providing any individual benefit to a particular person as has happened in this case by-passing the procedure under Chapter II and Chapter IV of 1963 Rules. The ordinary meaning of the word "development" is to unfold; to bring to life by efforts; to work out in detail; to bring gradually to a more complete condition; to progress from a lower to a higher State; to proceed by evolution; to increase the strength or other qualities of something. A perusal of the aforesaid ordinary meaning would indicate that development in essence means to bring about a qualitative improvement by systematic evolution and change is implicit in development. The process of betterment and effective progress are the factors that ultimately manifest into development. It is these factors, which deserve to be kept in mind while exercising powers under Rule 68. The impugned order in the present case does not even remotely suggest that power was exercised to bring about the development of minerals in the light of what has been stated herein above. The impugned order, therefore, is a mere mechanical order having been passed to extend the benefit to a particular individual without applying mind and without recording any reasons for the exercise of such power.

15. The writ petition, therefore, is allowed in the terms indicated herein above. However, in the event of failure on the part of the petitioner to deposit the amount as undertaken by him, it shall be open to the District Magistrate, Hamirpur, to take recourse to such proceedings ignoring the benefit claimed by the petitioner in the present writ petition. The writ petition is, accordingly, disposed of with no order as to cost.