

(2013) 07 KAR CK 0327

In the Karnataka High Court

Case No : Writ Petition No. 19011 of 2013 (GM-MM-S)

D. Sham

APPELLANT

Vs

Senior Geologist, M.R. Lakshmanappa and Joint Director

RESPONDENT

Date of Decision : 09-07-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 14, 226, 227

Citation : AIR 2013 Kar 181 : (2013) ILR (Kar) 5268

Hon'ble Judges : D.H. Waghela, C.J.;B.V. Nagarathna, J

Bench : Division Bench

Advocate : Badrivishal, for Srinivas and Badri Assts, for the Appellant; R.G. Kolle, AGA for R-1 and R-3, Sri S. Vijayshankar, a/w. Sri T. Seshagiri Rao, Advocate for R-2, for the Respondent

Judgement

D.H. Waghela, C.J.—The petitioner has invoked Articles 226 and 227 of the Constitution upon being aggrieved by the orders dated 27.11.2012 and 13.2.2013 of the Senior Geologist and the Joint Director of the Department of Mines & Geology of the State Government. By virtue of the first impugned order, the Senior Geologist has rejected the application of the petitioner for quarrying lease in an area of 6.20 acres in Survey No. 29 of Huluvanahalli Village, on the basis that the application was made in violation of Rule 8-A of the Karnataka Minor Mineral Concession Rules, 1994 (KMMC Rules). By the second impugned order dated 13.2.2013, Revision Petition No. 261/2012 of the petitioner was dismissed by the Joint Director and Revisional Authority in exercise of his powers under Rule 53(4) of the KMMC Rules. The petitioner has also prayed for a writ of mandamus directing the first respondent to grant him quarrying lease for the aforesaid land as the consequential relief. The relevant facts, in brief, are that the Government of Karnataka, Department of Mines & Geology, issued notification dated 9.1.2012 notifying under Rule 8-A(1) that two parcels of land bearing Sy. No. 29 of Huluvanahalli Village were available for grant of lease, and that applications submitted on the date not earlier than 30 days from the date of publication shall be accepted by Senior Geologist (Minerals). Pursuant to that,

the petitioner submitted his application dated 8.2.2012 with requisite fees and the application was duly processed for seeking no objection certificate from the Assistant Commissioner and the Deputy Conservator of Forests. Pursuant to that, a joint spot inspection was also carried out and a note in that regard was prepared on 8.3.2012. Thus, by letter dated 7.4.2012, no objection certificate was issued to the Senior Geologist in favour of the petitioner for the intended quarrying activities. Similarly, the Deputy Conservator of Forests also conducted joint inspection and the letter dated 19.5.2012 was issued to the Senior Geologist to state that there was no objection for awarding building stone quarrying lease in favour of the petitioner for quarrying operation on the land in question. It may be pertinent to note here that, while the notification dated 9.1.2012 was issued in respect of two parcels of land in Sy. No. 29, the land in question was the larger parcel of land admeasuring 6.20 acres and identified by previous Quarry Licence No. 25.

2. While the petitioner's application was being processed as aforesaid, Respondent No. 2 had filed a petition before this court praying inter alia to quash the orders rejecting his application for renewal of lease in respect of the same and other parcels of land. Thus, Respondent No. 2 was seeking renewal of lease granted to him, even as such applications were rejected on 23.11.2009 mainly on account of arrears and unpaid due amounts of royalty. When that petition (Writ Petition No. 44397/2011) came up for consideration and final orders, a Division Bench of this court noted that the sum of Rs. 53,26,180/- was due and payable by Respondent No. 2 herein and even otherwise, it was not possible for him to hold quarry lease in respect of total area in excess of 25 acres by virtue of the provisions of the 1994 Rules. Under the circumstances, as noted in the order dated 25.7.2012 in Writ Petition No. 44397/2011, Respondent No. 2 stated that an area measuring 4 acres in Sy. No. 29 covered by Q.L. No. 728 was renounced by him, whereby the leases in Sy. No. 29 in respect of Q.L. No. 25 and Q.L. No. 422 granted in the past would not suffer any illegality. The court also noted that, by the date of its order, the land in question was already re-notified and the court was informed that two applications for the grant of quarrying lease were already received. Under the circumstances, the court made the final order in the following terms:

4. Accordingly, if the petitioner files an application within 7 days from today, it shall be deemed that he had also filed the application within the prescribed period and along with two other applicants, his name shall be at Sl. No. 3 and shall be considered on merits.

5. The Writ Petition is allowed in these terms.

Remarkably, after the above order being made on 25.7.2012 in the petition of Respondent No. 2, the order dated 27.11.2012 impugned in the present proceeding was made to say to the petitioner that he had submitted his application prematurely, in violation of Rule 8-A of the KMMC Rules.

3. Respondent No. 2 herein has taken the stand, by filing his own affidavit, that the authorities had been hand-in-glove with the petitioner and to eliminate him, managed issuance of notification dated 9.1.2012 under Rule 8-A declaring the area to be available for grant, while his petition (Writ Petition No. 44397/2011) was pending and being heard by this court. That, even in the statement of objections filed by the Government in that petition, there was no whisper about the notification issued under Rule 8-A in respect of quarry area in question. Even on 14.6.2012, learned Government Advocate did not submit before the court that the area was notified; it was only on 27.6.2012 when advocate conceded to the demand for payment of the sum of Rs. 53,26,180/- though the dues, in fact, were Rs. 33,82,671/-, that the facts about receipt of other applications for lease of the same lands were revealed to the court.

4. The stand of the official respondents is that, pursuant to the notification dated 9.1.2012, the petitioner had submitted his application on 8.2.2012, during the black out period of 30 days, which was not only premature but also ineligible for consideration. It is submitted in writing that the application of the petitioner ought to have been rejected at the threshold itself, but "advertently" his application was taken for processing. That the second respondent Mr. Lakshmanappa had volunteered to surrender nearly 13 acres of quarrying lease area in other locations and tendered the sum of Rs. 53,26,180/- being the arrears of royalty plus interest due to the Government and on his behalf, indulgence was sought from the High Court for re storing back to him lease of the land in question. It is submitted that the petitioner herein cannot rely upon the letter dated 2.3.2012 of the Senior Geologist for grant of quarry lease. At the most, it was open to the petitioner to challenge the impugned order dated 13.2.2013 of the revising authority.

Earlier to that, the Senior Geologist has stated on oath that, he was working as Senior Geologist since 13.4.2012. The then Senior Geologist had sent proposal dated 1.1.2012 after rejection of revision application of Respondent No. 2 on 29.10.2011. Pursuant to that proposal dated 1.1.2012, the Joint Director, Mysore, had issued the notification on 9.1.2012 which came to be published in the official gazette on 19.1.2012. That the application of the present petitioner filed on 8.2.2012 ought to have been rejected at the threshold. It appeared that the then Senior Geologist, without ascertaining the eligibility, proceeded to seek no objection certificates from the revenue and forest departments, who did issue no objection certificates. That pursuant to the order dated 25.7.2012 of this court, Respondent No. 2 filed his application pursuant to the notification dated 9.1.2012 and that application was considered along with the other applications received on 8.2.2012. On proper scrutiny of the application filed by the petitioner, it was "decided" that his application was filed within the period of 30 days and hence it was rejected as premature.

During the course of hearing, the notification dated 4.3.2013 in Form-GL sanctioning grant of quarry lease to Respondent No. 2 in respect of 6.2 acres of

land in Survey No. 29 is placed on record.

5. On the basis of above material on record, it was argued by learned senior advocate Sri Vijay Shankar, appearing for Respondent No. 2, that the petition was required to be rejected only on the basis of the admitted fact that the petitioner had applied for quarry lease within the period of 30 days of publication of the notification dated 9.1.2012. He submitted that the application of the petitioner for quarry lease was practically non-est and its erroneous entertainment by the official respondent could not create any right in his favour for consideration of his application. Thereafter, the right and interest created in favour of Respondent No. 2 by the aforesaid notification dated 4.3.2013 could not be called into question by or at the instance of the petitioner. Learned senior counsel relied upon observations of the Apex Court in *Ajit Singh Vs. Union of India* and others, which are as under:

20.No fault can be found in the said Order dated 4.1.1983 when it says that "the area is available for reallocation after 15 days excluding the delay of publication of the said order". This would mean that the area became available for regrant only on 20.1.1983. The application dated 19.1.1983 submitted by Respondent 5 before the expiry of 15 days from the day of publication of the Order dated 4.1.1983 has, therefore, to be considered as premature with regard to the area covered by the area for which mining lease had been earlier granted to Babulal Modi.

Learned senior counsel also submitted that since Respondent No. 2 had held quarry lease in respect of the land in question and his litigation in respect of rejection of his application for renewal was pending and the court had granted the indulgence of ordering consideration of his application for the lease, he was by now entitled to the grant of lease, after rejection of the petitioner's application and aforesaid notification dated 4.3.2013.

6. Learned AGA appearing for the official respondents submitted that the orders in respect of rejection of the petitioner's application and revision application, which are called in question, as also the consideration and grant of sanction for quarry lease to Respondent No. 2 are valid and legal and require to be upheld. However, if any fault was found in respect of the stand of the Government, the Department of Mines & Geology would abide by such orders as may be issued by the court, including an order to renotify the land for the purpose of quarry lease.

7. Learned counsel Sri Badrivishal, appearing for the petitioner, vehemently argued that the official respondents were conveniently applying the provisions of Rule 8-A and putting convenient interpretation on the clear order dated 25.7.2012 of this court. He submitted that, after the land being renotified, the earlier connection of Respondent No. 2 with the land in question was wholly irrelevant, particularly when the application for renewal of lease was rejected on the valid grounds of huge unpaid dues to the Government from Respondent No. 2 and his holding of land on lease being found in excess of the limit set by law. It

was seen and pointed out from the earlier order dated 29.10.2011 made in Revision Petition No. 490 of 2009 of the respondent No. 2 that, dismissing that petition, the Joint Director and Revision Authority had itself directed issuance of notification in respect of the land in question, under Rule 39 and Rule 8-A and prevent unauthorized mining operations on that area. Hence, there was no question of the petitioner inspiring any initiative on the part of the official respondents. He further submitted that the petitioner was consciously given to understand by communication dated 2.3.2012 that his application was entertained, not rejected at the threshold and being duly processed. Thereafter, the official respondents had consciously made the statement before the court on 25.7.2012 so as to obtain an order to consider the application of the petitioner with the application of Respondent No. 2, whose name should be at serial No. 3. Four months thereafter, it was neither fair nor permissible for the official respondents to turn around and plead that the petitioner's application for lease ought to have been rejected at the threshold without being entertained. Therefore, the petition was required to be allowed with the direction to the respondents to consider his application as the application at serial No. 1, and the impugned orders were required to be quashed in the interest of justice, with necessary strictures in respect of unfair dealing by the official respondents, according to the submission.

8. The only relevant statutory provision to be applied and interpreted in respect of the above controversy is Rule 8-A of KMMC Rules, 1994, reproduced as under:

8-A. Availability of land belonging to the State Government to be notified for grant.-

(1) No area belonging to the State Government.-

(a) which was previously held or is being held under a quarrying lease; or

(b) the quarrying lease granted in respect of which has lapsed under Rule 6:

(c) in respect of which a notification has been issued under sub-rule (3) of Rule 8:

shall be available for grant unless the availability of the area for grant is notified in the Official Gazette and specifying the date (being the date not earlier than thirty days from the date of 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 renewal of a quarrying lease in favour of the original lessee or his legal heirs:

Provided further that where an area is reserved for use by the State or Central Government company or any body or corporation owned or controlled by the State or Central Government, issue of such notification under this rule shall not be necessary before grant of quarrying lease in respect of such area.

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

(3) Any application for grant of quarrying lease in respect of areas whose availability for grant is required to be notified under sub-rule (1) shall, if:-

(a) no notification has been issued under that rule; or

(b) whether any such notification has been issued, the period specified in the notification has not expired,

be deemed to be premature and shall not be entertained, and the application fee thereon, if any paid, shall be refunded.

9. The important facts emerging from the record which may be noted for application of the above Rule are that:

a) The application of the petitioner for grant of lease of the land in question was admittedly submitted before time and technically, on the date of application, the land was not available for grant.

b) However, the State Government had the discretion to relax the provision of sub-rule (1) of Rule 8-A in any special case, for reasons to be recorded in writing. And the Government had good reasons to exercise the discretion in favor of the petitioner as he was the only applicant for grant of the land which the competent officer was under an order to protect from unauthorized mining operations.

c) While the application of the petitioner for grant of quarrying lease was otherwise required to be deemed to be premature and not to be entertained, under the provisions of sub-rule (3) of Rule 8-A, the State Government was duty bound not to entertain the applications which were deemed to be premature and also required to refund the application fee paid by the petitioner.

d) Under the provisions of Rule 21 and 22, every application for grant of a quarrying lease to quarry non-specified minor minerals in the land belonging to the State Government, which has not been notified under Rule 8-B was required to be disposed of within 90 days from the date of its receipt and if it were not disposed within that period, the applicant has to be informed of the reasons for the delay within 15 days after the expiry of the period of 90 days. In the facts of the present case, the Government had, consciously or unconsciously, failed to discharge those statutory obligations; and deprived the petitioner of an opportunity to immediately submit a fresh and valid application for the grant of lease.

e) Instead, six months after the application of the petitioner, the State Government had given to understand even to the court, in the petition of Respondent No. 2, that the petitioner's application was received and pending. In such circumstance, the court was inclined to order that the application of Respondent No. 2 shall be deemed to have been filed within the prescribed period and along with the application of the petitioner, so as to treat the application of Respondent No. 2 as at serial No. 3.

f) The aforesaid direction issued by this court on 25.7.2012 in Writ Petition No. 44397/2011 to consider the application of Respondent No. 2 as at serial No. 3 and on merits, by necessary implication applied to the application of the petitioner. Neither Respondent No. 2 nor the State Government disclosed to the court that the application of the petitioner herein was premature and was not to be entertained.

g) Thus, there are reasons to believe and infer that the Government did or proposed to treat the application of the petitioner for grant of lease as a special case and kept it pending so as not to comply with the mandatory condition of refunding the application fees to the petitioner. Such inference is buttressed by the fact that none of the respondents have stated that even an attempt was made to challenge or have modified the order dated 25.7.2012 of this court in Writ Petition No. 44397/2011.

h) Thereafter, issuance of the impugned order dated 27.11.2012 rejecting the application of the petitioner and the notification dated 4.3.2013 sanctioning grant of quarry lease to Respondent No. 2 obviously required a plausible explanation by the respondents, which is not forthcoming on record. Instead, the stand of the Government now is that, they could as well renotify the land for the purpose of quarry lease if so ordered by the court.

10. The above analysis of relevant facts with reference to the simple statutory provisions of Rule 8-A leads to the conclusion that the respondent authorities concerned of the State Government had their own axe to grind in dealing with the petitioner as well as Respondent No. 2 and, in the end, Respondent No. 2 had succeeded in securing the sanction for grant of lease to him by operation of order of this court in such manner as was not envisaged by the court. The petitioner was justified in being aggrieved by the meticulous and mischievous denial of opportunity to even stake a legitimate claim to the grant of lease in respect of the land which was notified. It needs to be noted here that, when the Government stated before this court that two applications for lease of the same survey number were received as on 25.7.2012, in fact, only the application of the petitioner was pending in respect of the same land in question identified by its previous Quarry Licence No. 25 and upon that application being "decided" to be premature, Respondent No. 2 only remained in the fray. Thus, the petitioner was eliminated at a belated stage by conscious acts of omission and commission of the State Government.

11. As consistently held and recently clarified by the Apex Court in Natural Resources Allocation, In Re, In Re: Special Reference No. 1 of 2012, Article 14 is an injunction to the State against taking certain type of actions. However, the State action, to escape the wrath of Article 14, has to be fair, reasonable, non-discriminatory, transparent, non-capricious, unbiased, without favouritism or nepotism in pursuit of promotion of healthy competition and equitable treatment. After the judgment of the Apex Court in E.P. Royappa Vs. State of Tamil Nadu and Another, it was held in Mrs. Maneka Gandhi Vs. Union of India (UOI) and

Another, that the principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence. The concept was further elaborated in *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, to hold that wherever there is arbitrariness in State action, whether it be of the legislature or of the executive or of an authority under Article 12, Article 14 immediately springs into action and strikes down such State action. It was further clarified in *Ramana Dayaram Shetty Vs. International Airport Authority of India and Others*, that, it must be taken to be the law that where the Government is dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licences or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and, like a private individual, deal with any person it pleases, but its action must be in conformity with standard or norms which are not arbitrary, irrational or irrelevant. It was *inter alia* held in *Kumari Shrelekha Vidyarthi and Others Vs. State of U.P. and Others*, that, where no plausible reason or principle is indicated or discernible and where the impugned action *ex facie* appears to be arbitrary, the onus shifts on the State to justify its action as fair and reasonable. A public authority is, therefore, ordained to act reasonably and in good faith and upon lawful and relevant grounds of public interest.

12. Even without invoking the doctrines of promissory estoppel and legitimate expectation, it can safely be concluded, in the facts of the present case as discussed herein above, that the State Government did not act either fairly, reasonably or in accordance with law and ultimately favored Respondent No. 2 by eliminating the petitioner from the fray, defeating the purport and intent of the order dated 25.07.2012 of this Court. That, however, does not mean that the petitioner was, as a matter of right, entitled to the grant of lease of the land in question, but he was certainly entitled to consideration on merits of his application therefore. Accordingly, even as the Government failed to either record reasons for treating the petitioner's case as a special case or refund the fees within a reasonable time or dispose the application of the petitioner within prescribed period, the public interest and fairness in dealing with applications for grant of lease required that, while deciding the applications for grant of lease, the competent authority ought to have recorded the reasons for keeping and showing the petitioner's application as pending and not refunding the fees; and considered both the applications for grant of lease in respect of the same land on merits and in accordance with law without discrimination.

13. As recently held by the Apex Court in *Akhil Bhartiya Upbhokta Congress Vs. State of Madhya Pradesh and Others*, every action or decision of the State or its instrumentalities to give largesse or conferring benefit must be founded on a sound, transparent, discernible and well-defined policy. The distribution of the largesse like allotment of land, grant of quota, permit licence, etc. by the State should always be done in a fair and equitable manner and the element of favouritism or nepotism should not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State. Any allotment of

land or grant of other forms of largesse by the State or its agencies by treating the exercise as a private venture is liable to be treated as arbitrary, discriminatory and an act of favouritism violating the soul of the equality clause embodied in Article 14 of the Constitution.

14. In the facts and for the reasons discussed herein above, the petition is partly allowed, the impugned orders dated 27.11.2012 and 13.2.2013 of the Senior Geologist and the Revisional Authority respectively are set aside and the original application dated 8.2.2012 of the petitioner is ordered to be considered in accordance with law and more particularly the provisions of sub-rule (1), (2) and (3) of Rule 8-A as also other relevant rules of the Karnataka Minor Mineral Concession Rules, 1994 along with the application of Respondent No. 2, in terms of the previous order dated 25.7.2012 of this court in W.P. No. 44397/2011. As a necessary and consequential further order, it is directed that the subsequent notification dated 4.3.2013 in Form-GL sanctioning of quarry lease to Respondent No. 2 in respect of 6 acres 2 guntas of land in Sy. No. 29 of Huluvanahalli village, Bangalore South Taluk, Bangalore is quashed for a decision afresh on consideration of the application dated 8.2.2012 of the petitioner and the subsequent application of Respondent No. 2 in terms of the aforesaid order dated 25.7.2012 in W.P. No. 44397/2011. The petition is accordingly allowed to the aforesaid extent with costs of Rs. 15,000/- (Rupees fifteen thousand only) which shall be paid in equal proportion by the respondents to the petitioner within a period of one month.