

(1990) 11 AP CK 0003

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12925 of 1989

Devangula Laxminarayana, President Stone Quarry Workers,
Labour Contract Co-operative Society

APPELLANT

Vs

The Director of Mines and Geology, Govt. of A.P. and Others

RESPONDENT

Date of Decision : 29-11-1990

Acts Referred:

Andhra Pradesh Minor Mineral Concession Rules, 1966 — Rule 12(3), 9A(3)
Constitution of India, 1950 — Article 226

Citation : (1991) 1 ALT 53

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Advocate : K. Nageswara Rao, for the Appellant; Govt. Pleader for Industries for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

M.N. Rao, J.—An extent of 1.526 hectares of land covered by Survey No. 775/1 in Bethamcherla village, Kurnool District was leased out by the Deputy Director of Mines and Geology, Cuddapah District in favour of Messrs Hussainia Slabs Polishing and Mineral Industry for a period of five years from 19-9-1984 to 18-9-1989 for exploitation of limestone slabs (a minor mineral). The lessee did not make an application for renewal within ninety days as required under Rule 12 (3) of the Andhra Pradesh Minor Mineral Concession Rules 1966. The petitioner herein-Labour Contract Co-operative Society, H. Kottala Village, represented by its President Devangula Laxminarayana - made an application for grant of lease of the same area on 24-8-1989. The third respondent herein also submitted an application in respect of the same land requesting for grant of lease on 12-7-1989. The third respondent was granted lease but the application of the petitioner was rejected by the Deputy Director of Mines and Geology the second respondent herein - on 27-9-1989 in Memorandum No. 5399/ Q 2/89, on the ground that the application is premature as per the Andhra Pradesh Minor Mineral Concession Rules, 1966. Challenging the action of the second

respondent, the present writ petition was filed for a declaration that-

".....the action of the respondents in not granting the quarry lease in Survey No. 775/1 of an extent of 1.526 He. in Bethamcharla village and Mandal, even though the petitioner society made an application as per rules and Act, as illegal, null and void and contrary to policy of the State Government and for a consequential direction directing the respondents to grant the quarry lease to the petitioner society...."

Subsequently, an application seeking amendment of the prayer in the writ petition was filed viz., WP MP No : 1877/90, and the same was ordered on 2-4-1990. The amended prayer is to the following effect:-

"It is therefore prayed that this Hon"ble Court may be pleased to declare the action of the 2nd respondent in granting the quarry lease to the 3rd respondent in S.No. 775/1, of Bathamcherla Village, Kurnool District, vide Proceedings No. 4706/Q 2/89 dated 21-9-89 as illegal null and void contrary to the policy of the State Government and for a consequential direction directing the respondents to grant the quarry lease to the petitioner-society and to pass such other order or orders.....".

2. Sri Nageswara Rao, the learned counsel for the petitioner, contends that, unless availability of the land for the purpose of mining lease is made known to the public, it is not possible to submit any application seeking lease of the land, that with great difficulty, the petitioner was able to ascertain availability of the land, and that the application of the petitioner should not be thrown out on the ground that it is premature. It is not possible for any one to ascertain whether or not the existing lessee had made an application seeking renewal within ninety days before the expiry of the lease and, therefore any application submitted for fresh grant cannot be thrown out on the ground that it was not submitted within thirty days before the expiry of the lease, or, it was premature. In opposition to this, the learned Government Pleader contends that, it is the responsibility of the petitioner to ascertain about availability of the land, and what is clearly enjoined by Sub-rule (3) of Rule 12 cannot be departed from merely because the petitioner could not obtain correct information.

3. The mineral in question viz., lime stone slabs, is a minor mineral. Sub-section (1) of Section 4 of the Mines and Minerals (Regulation and Development) Act 1957 says that, no person shall undertake any prospecting or mining operations in any area, except under and in accordance with the terms and conditions of a prospecting licence, or, as the case may be, a mining lease, granted under the said Act and the rules made thereunder. This will not apply to the Central Government, State Government or the departments specified in the second proviso to Sub-section (1) of Section 4. Sub-section (2) says that, no prospecting licence or mining lease shall be granted otherwise than in accordance with the provisions of the Act and the rules made thereunder. Sub-section (2) imposes an obligation "on the competent authority to inform the applicant acknowledging

receipt of the application "within the prescribed time and in the prescribed form". Power is conferred on the State Government to grant or refuse to grant a prospecting licence or lease having regard to the provisions of the Act and the rules.

4. By Section 15 power is conferred on the State Government to make rules for regulating grant of quarry leases, mining leases or other mineral concessions in respect of minor minerals. In exercise of that power, the Andhra Pradesh Minor Mineral Concession Rules 1966 were framed. Rule 9 of the Rules says that, every application for grant or renewal of a quarry lease in respect of a land shall be made in Form-B to the Assistant Director concerned. Rule 9-A (1) says that the Government may, by notification in official gazette, reserve any area for exploitation by the Government, a Corporation established by the Central or State Government or a Government company within the meaning of Section 617 of the Indian Companies Act, 1956. Sub-rule (2) says that the area which has been reserved under Sub-rule (1) shall not be made available for grant of quarry leases unless its availability is notified in official gazette specifying the date from which such area shall be available for grant of lease. Sub-rule (3) says that an application for grant of a quarry lease in respect of areas whose availability for grant is required to be notified under Rule 9-A (2) shall be deemed to be premature and shall not be entertained in certain conditions. Sub-rule (3) which bears the heading "Premature applications" reads :

3) Premature applications:- Applications for grant of a quarry lease in respect of areas whose availability for grant is required to be notified under Rule 9-A (2) shall if,-

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

(b) where any such notification has been issued, the period specified in notification has not expired, shall be deemed to be premature and shall not be entertained and the application fee thereon, if any paid, shall be refunded."

5. Rule 12 of the Rules deals with grant of lease. Sub-rule (1) says that, a quarry may be granted by auctioning the area, and each application for grant shall be accompanied by a treasury or bank challan for Rs. 100/-. The order of preference for granting lease is specified in Sub-rule (2). The Deputy Director is obligated to dispose of applications in the order of preference specified below :

(i) Applications of Co-operative Societies consisting exclusively of Professional/Traditional Stone Cutters (Waddaras, etc,) who work either by the manual labour of their own and their family members or by use of machinery.

(ii) Applications of Individual professional/traditional stone cutters (Waddaras, etc.)

(iii) Applications of Government Departments and Government Corporations and Government companies provided they directly undertake quarrying departmentally without sub-contracting the work to others."

Sub-rule (3) of Rule 12 reads as follows :

"In cases where the quarry lease holders fail to apply for renewal of the lease of the areas within ninety days before the expiry of the lease held by them, as required under Sub-rule (2) of Rule 13, fresh application for grant of quarry lease, in respect of those areas, will be entertained thirty days before the expiry of the lease".

6. There is no specific provision under the Rules imposing an obligation on the concerned authority to notify availability of land for fresh grant in the event of failure on the part of the existing lessee to make an application for renewal within ninety days before the expiry of the lease as enjoined by Sub-rule (3) of Rule 12. No difficulty will arise if the existing lessee makes an application within ninety days before the expiry of the lease. If such application is made, Sub-rule (xiv) of Rule 31 lays down that renewal shall be granted for not more than two times to the period of quarry except in respect of areas notified under Rule 9-A (1). If no such application is received, Sub-rule (3) of Rule 12 says-

".....fresh application for grant of quarry lease, in respect of those areas, will be entertained thirty days before the expiry of the lease".

How is it possible for any one to ascertain whether there has been a failure on the part of the existing lessee to seek renewal within ninety days - the period prescribed by Sub-rule (3) of Rule 12?

7. Prospective applicants are not supposed to make secret enquiries in the offices in order to submit applications for grant of fresh leases. The latter limb of Sub-rule (3) of Rule 12 regarding making of fresh application, I think, is intended only to enable the existing lessee who failed to apply for renewal within ninety days before the expiry of the lease, to submit an application seeking fresh grant within thirty days before the expiry of the lease and, in such an event, his application will be considered along with the applications of others. I am inclined to think that the Rules do not intend exclusion from consideration of the claims of existing lessee who, either due to inadvertence or negligence, failed to make an application seeking renewal within ninety days before the expiry of the lease but diligent enough to submit fresh application within thirty days before the expiry of the lease. But, entirely a different situation emerges if the existing lessee did not make even a fresh application within thirty days before the expiry of the lease.

8. Availability of the land for grant of lease must be made known to the public either by publication in news papers or in official gazette. Unless such a step is taken, it is utterly unreasonable to insist upon any limitation of time for consideration of the applications received. In the interest of good Government, it is obligatory to notify availability of the land for grant of lease. Any act which results in encouraging secrecy in the running of administration is contrary to public policy. It is, therefore, incumbent on the part of the concerned authority to notify, either in official gazette or in newspapers, about availability of the land for grant of lease and then prescribe the period within which applications should be

submitted. In the absence of such a notification, any application received cannot be termed "premature" or defective. The impugned order, therefore, must be held to be bad.

9. For these reasons, the writ-petition is allowed. The impugned orders i.e., Memo No. 5399/Q2/89, dated 27-9-1989 and Proceedings No. 4706/Q. 2/89 dated 21-9-1989 granting lease in favour of the third respondent are set aside. Respondents 1 and 2 herein are directed to notify the availability of the land in question, either in official gazette or in one or more local daily newspapers having circulation over the area in question for grant of lease prescribing the period within which applications would be received and then dispose of the applications so received in accordance with the provisions of the Act and the Rules made there under. No order as to costs. Advocate's fee Rs. 350/-.