
(1994) 09 AHC CK 0084

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 16230 of 1994

Dinesh Pratap Dwivedi

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 09-09-1994

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15, 4(1)
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 3(2), 6(1), 6(2), 67, 9

Citation : (1994) 3 AWC 1741

Hon'ble Judges : R.R.K. Trivedi, J;Om Prakash, J

Bench : Division Bench

Advocate : S.R. Verma, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—The Petitioner was, admittedly, granted lease for mining operation for a period of five years in respect of plot Nos. 148, 149, 150, 151 and 222, total area being 3.80 acres, situate in village Misirpur, Tappa Manda, Pergana Khairagarh, Tehsil Meja, district Allahabad, by Respondent No. 1 on 21-4-1989 under the U.P. Minor Minerals (Concession) Rules, 1963 ("the Rules", for short). The said lease was due to expire on 20-4-1994 and, therefore, the Petitioner applied afresh vide application dated 21-3-1994 for obtaining lease in respect of the aforesaid plots. Respondent No. 5 also applied vide application dated 2-3-1994 for obtaining lease in respect of plot Nos. 149, 151, 222, 217-Ka and 217-Rha. In this report dated 18-4-1994 (Annexure "3" to the writ petition), the Geological Officer, Respondent No. 4, stated that the topographical map, which was not attached with the application dated 2-3-1994, was supplied by Respondent No. 5 with an application dated 24-3-1994 in which he further prayed that in place of plot No. 217, plot Nos. 148 and 150 be included in the application dated 2-3-1994. As in the opinion of the Geological Officer application dated 2-3-1994 of Respondent No. 5 was completed on 24-3-1994, he therefore, reported that the application of Respondent No. 5 be deemed to have been

completed in all Respects on 24-3-1994 within the meaning of Sub-rule (2) of Rule 6 for the purpose of Rule 9 of the Rules.

2. In paragraph 6 of the counter-affidavit it is submitted that there were two applications only-one by the Petitioner and the other by Respondent No. 5 for obtaining lease of the plots in respect of which lease was earlier granted for five years to the Petitioner.

3. After the report of the Geological Officer dated 18-4-1994, the matter was considered by the Additional District Magistrate, who gave his note dated 4-5-1994. Annexure "4" to the writ petition is the impugned order passed by the District Magistrate. Allahabad. Annexure "4" to the writ petition also contains an officer report recommending to the District Magistrate that the consent accorded in favour of the Petitioner, when he carried on mining operation under the earlier lease of five years, having been withdrawn by the owners of consecutive plot Nos. 148 to 151 and 222, the lease be granted to Respondent No. 5 in whose favour consent was given by the owners of the land. Such recommendation was accepted by the District Magistrate. Allahabad, and consequently lease for the aforesaid plots was granted in favour of Respondent No. 5 vide impugned order dated 6-5-1994 passed by the District Magistrate. Allahabad, which is sought to be quashed by the Petitioner.

4. The case of the Petitioner is though Respondent No. 3 made an application on 2-3-1994, the same was incomplete and that having been completed only on 24-3-1994, Petitioner's application dated 21-3-1994 being first in point of time, should have been accepted in view of Sub-rule (1) of Rule 9 of the Rules and that consent of the lam owners was not a relevant consideration to reject the Petitioner's application.

5. From the impugned order (Annexure "4" to the writ petition) it is manifest that the sole basis to accept the application of Respondent No. 5 was the consent having been given by the land owners. It is not disputed that there was no consent, in favour of the Petitioner for the relevant period commencing from 1994. The question for consideration is whether the application of the Petitioner dated 21-3-1994 (Annexure "2" to the writ petition) was validly rejected by the Respondents Sub-rule (1) of Rule 9 of the Rules clearly provides where two or more persons have applied for a mining lease In respect of the same land, the Applicant whose application was received earlier shall have a preferential right for the grant of lease over an Applicant whose application was received later. It clearly follows from this Rule that if two or more persons apply for identical land, then the Applicant who applied earlier than others, shall be preferred. The Petitioner applied for plot Nos. 148 to 151 and 222, for which lease was granted to him for five years in the year 1989, on 21-3-1994. Respondent No. 5 vide application dated 2-3-1994 (annexure "3" to the writ petition) firstly applied for plot Nos. 149, 151, 222, 217-Ka and 217-Kha. By another application dated 24-3-1994, which is referred to by Respondent No. 4 in hit report dated 18-4-1994 (Annexure "5" the writ petition), Respondent No. 5 sought

amendment in his application dated 2-3-1994 that in place of plot No. 217, plot Nos. 148 and 150 be substituted in the application dated 2-3-1994. This is how the Petitioner contends that application dated 2-3-1994 of Respondent No. 5 was not complete and the same was completed in so far as plot Nos. 148 and 150 are concerned, only on 24-3-1994. It is further contended by the Petitioner that if application dated 2-3-1994 is read without amendment sought by Respondent No. 5 on 24-3-1994, then it cannot be said that application dated 2-3-1994 of Respondent No. 5 and the Petitioner's application dated 21-3-1994 were "in respect of the same land" within the meaning of Sub-rule (1) of Rule 9. From the amendment sought on 24-3-1994 of Respondent No. 5 for adding plot Nos. 148 and 150 in his application dated 2-3-1994 in place of plot Nos. 217-Ka and 217-Kba, it is amply clear that application of Respondent No. 5 dated 2-3-1994 was not for the same land for which the application dated 21-3-1994 was made by the Petitioner and that the description of land in the application of Respondent No. 5 (sic) was different from that of the Petitioner's application only on 24-3-1994. This being so, the application of the Petitioner dated 21-3-1994 was certainly first in point of time and, therefore, the Petitioner shall have a preferential right for the grant of lease over Respondent No. 5, who applied for the same land much later on 24-3-1994.

6. Then comes the question whether application of Respondent No. 5 in respect of plot nos. 148 to 150 and 222 was complete on 2-3-1994 within the meaning of Sub-rule (2) of Rule 6 of the Rules, which provides that if the application is not complete in any respect or is not accompanied by the fee, deposit and maps mentioned in Sub-rule (f), the date of receipt of the application shall for the purpose of Rule 9, be deemed to be the date on which the application is actually completed in all respects. By application dated 24-3-94 Respondent No. 5 wanted to obtain lease precisely for the same plots for which the Petitioner applied on 21-3-1994 and for which the lease was granted in his favour for a period of five years in the year 1989.

7. Can the application of Respondent No. 5 dated 2-3-1994 be said to be complete in respect of plots which were sought to be added and deleted on 24-3-1994? We are of the considered view that when plots Nos. 148 and 150 were not mentioned and plot Nos. 217-Ka and 217-Kba, inter alia, were mentioned in the application dated 2-3-1994 by Respondent No. 5, the application dated 2-3-1994 was completed only on 24-3-94 when amendment in respect of plots was made and topographical map which ought to have been supplied with the application under Sub-rule (2) of Rule 6, was supplied. Under Rule 6(2) the words "is not complete in any respect or is not accompanied by" are of great significance. Only that application which is complete in all respects, will be considered for determining preferential right under Rule 9(1). If an application lacks essential particulars and if it is not accompanied by the requisite materials as enumerated in Sub-rule (1) of Rule 6, then the application remains incomplete and that will be deemed to have been completed only when necessary particulars are furnished and requisite materials are supplied. The

application Form MM-1 clearly enjoins upon an Applicant to furnish full particulars of the land in respect of which lease is sought to be obtained. An application which lacks full description of plots, cannot be said to be complete. Similarly, an application which (sic) not accompanied by the requisite materials enumerated in Rule 6(1), cannot be said to be complete and the date of receipt of the application for the purpose of Rule 9 will be deemed to be the date on which the application is actually completed in all respects. Respondent No. 5 furnished full details of the plots and filed topographical map on 24-3-1994 and, therefore, for the purpose of Rule 9, the application of Respondent No. 5 can be said to have been completed only then and not before. The application of the Petitioner, though was made on 21-3-1994, was first in point of time, as the application of Respondent No. 5 dated 2-3-1994 was cured and completed on 24-3-1994. It is only on 24-3-1994 that Respondent No. 5 came at par and if there is no other circumstance adverse to the Petitioner, then the latter shall have a preferential right under Rule 9(1).

8. Counsel for the Respondent No. 5 further urged that Respondent No. 4 illegally pointed out in his report dated 18-4-1994 (Annexure "5" to the writ petition) that the application of Respondent No. 5 was defective inasmuch as it was not accompanied by a certified topographical map. He submitted that application of Respondent No. 3 was accompanied by spot map and that was full compliance of Rule 6(1)(c). He further stated that as it may be, the fact remains that plot Nos. 148 and 150 were added and plot Nos. 217-Ka and 217-Kha were deleted by Respondent No. 5 vide his Application dated 24-3-1994 and in the absence of full description of plots, for which lease was sought to be obtained by Respondent No. 5, the application dated 2-3-1994 remained incomplete till 24-3-1994. Learned Counsel for Respondent No. 5 having no suitable answer to this, urged that lease granted to Respondent No. 5 having already become operative be restricted to the land sans plot Nos. 148 and 150. We are afraid that such submission cannot be accepted. The only question for consideration before us is whether the application of Respondent No. 5 as it stood on 2-3-1994, was complete or not. In respect of consecutive plot Nos. 148 to 131 and 222, for which lease was granted in his favour for the period of five years commencing from 1994. As already pointed out the application of Respondent No. 9 having been completed in all respects only on 24-3-1994, the application of the Petitioner dated 21-3-1994 was first in point of time and, therefore, the Petitioner deserved preferential treatment under Rule.

9. Lastly, Counsel for Respondent No. 5 vehemently argued that requirement of Government Order dated 23-11-1993 (Annexure "10" to the writ petition), i.e. furnishing consent of land owners was not fulfilled by the Petitioner and, therefore, his application was rightly rejected by the District Magistrate. Annexure "10" to the writ petition is not a Government Order but a (sic) dated 23-11-1994. It was circulated to all the District-Magistrates by the Government stating that while determining preferential treatment, besides other points, consent by land owners be also taken into consideration for the purpose of Rule

9(1). The question is if such requirement is not fulfilled by an Applicant and if all other requirements prescribed under the (sic) fulfilled, whether such Applicant who made application earlier than others in respect of same land, can be denied preferential treatment under Rule 9(1)? Rules of 1963 having been made by the Uttar Pradesh Government in exercise of powers conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (briefly "the Act") are statutory Rules, which do not enjoin upon any Applicant to obtain consent from a land owner.

10. When there is no requirement under the statutory Rules of the consent of a land owner being furnished, the District Magistrate was not right in giving preferential treatment to Respondent No. 5 merely on the ground that he furnished consent of the land owners. The circular dated 23-11-1993 (Annexure "10" to the writ petition) cannot over-ride the statutory Rules. If the Petitioner did all that what is required under the statutory Rules, his application being first in point of time in respect of plots in question, he deserved preferential treatment under Rule 9(1) and the District Magistrate committed a serious legal error in giving preferential treatment to Respondent No. 5 over the Petitioner by Impugned order dated 6-5-1974 (Annexure "4" to the writ petition).

11. The reason for not making any provision under the Rules for obtaining consent of the land owner is not for to seek. Rule 67 of the Rules reads:

No person having a right in any capacity on the land covered by a mining lease or mining permit, shall be entitled to impose any prohibition or restriction on the mining operations by the holder of the lease or mining permit of such land or to demand any sum by way of premium or royalty for the removal of minor mineral; provided that such person shall be entitled to get compensation from the said holder for the use of the surface which may be agreed upon between them. In the case of any dispute the amount of compensation shall be determined by the District Officer, and his order shall be final.

The above reproduced Rule clearly provides that no land owner shall be entitled to impose any prohibition or restriction on the mining operation by the holder of the lease or mining permit. A land owner may simply claim compensation as agreed upon between him and the holder of the lease or of mining permit and in case of any dispute relating to compensation, the same will be determined by the District Officer, whose orders will be final. Section 4(1) of the Act and Rule 3(2) of the Rules mandate that no operation can be carried (sic) by any one except in accordance with the provisions of the Act and the Rules. In view of this clear statutory prohibition and a land owner having a right only to claim compensation from the holder of the lease or of mining permit as agreed upon between them or the compensation as determined by the District Officer in the event of any dispute arising between them, the legislature in its wisdom did not consider it necessary to make a provision regarding consent from a landowner. The scheme of the Act and the Rules is such that even a land owner cannot carry on mining operation without obtaining a valid licence, mining lease or mining permit.

Consent by a land owner is not a condition precedent to carry on mining operation. If a mining lease is granted under the Rules to any one, then he becomes entitled to carry on mining operation and he cannot be stopped from doing so simply because the consent of the land owner Is not there, It is only for abundant caution that the State Government issued the impugned circular dated 23-11-1993 (Annexure "10" to the writ petition) to obviate frivolous litigation on the part of the land owners, but consent from a land owner is not a legal requirement. To this extent there being a conflict between the statutory provisions and the circular, we are of the view that not the circular but the statutory Rules would prevail. This being so, Respondent No. 5 was not entitled to preferential treatment over the Petitioner, whose application was earlier inasmuch as Respondent No. 5 cured his application dated 2-3-1994 much later on 24-3-1994.

12. In the result, the petition succeeds and is allowed, impugned order dated 6-5-1994 (Annexure "4" to the writ petition) and the lease deed, if any executed in favour of Respondent No. 5 pursuant to the said Impugned order, are quashed. Respondents Nos. 1 to 4 are directed to re-decide the application of the Petitioner dated 21-3-1994 (Annexure "?" to the writ petition) giving preferential treatment to the Petitioner under Rule 9(1) of the Rules within a week from the date a certified copy of this judgment is produced by the Petitioner before the Respondents.