
(2010) 09 MP CK 0063
In the Madhya Pradesh High Court
Case No : W.A. No. 560 of 2010

Focus Energy Ltd.

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 29-09-2010

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2
Mineral Concession Rules, 1960 — Rule 54
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : AIR 2011 MP 112 : (2011) ILR (MP) 53 : (2011) 1 MPLJ 361

Hon'ble Judges : S.R. Alam, C.J.;Alok Aradhe, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Alok Aradhe, J.

In this intra-court appeal preferred u/s 2 of the M.P. Uchcha Nyayalaya (Khand Nyayapeeth Ko Appeal) Adhiniyam, 2005 Appellant has challenged the legality and validity of the order dated 9-4-2010 passed by learned single Judge in Writ Petition No. 2388/2010 by which writ petition preferred by Appellant has been dismissed.

Facts giving rise to filing of the instant appeal are that Appellant, a public limited company, was granted prospecting licence over an area of 2461.754 hectares for a period of two years commencing from 23-12-1993 to 22-12-1995. Appellant carried out prospecting work and thereafter applied for grant of mining lease on 17-4-1995 over an area admeasuring 1103.273 hectares. However, application submitted by Appellant was rejected by the State Government vide order dated 2-12-2006.

Thereafter on 2-3-2007 the State Government issued a notification throwing open the area for grant of mining lease. Aforesaid notification was published in the official gazette by which applications were invited for grant of mining lease.

In response to aforesaid notification dated 2-3-2007 various applicants including Respondent No. 4 submitted the applications. Appellant did not submit any application for grant of mining lease pursuant to aforesaid notification. The State Government vide order dated 16-9-2008 sanctioned an area admeasuring 2130 hectares for grant of mining lease in favour of Respondent No. 4. The aforesaid order was challenged by Appellant in Writ Petition No. 15268/2008. The writ petition preferred by Appellant was disposed of vide order dated 7-1-2009 with a liberty to Appellant to avail the remedy of Revision available u/s 30 of the Mines and Mineral (Development and Regulation) Act, 1957 (hereinafter referred to as "the Act") read with Rule 54 of the Mineral Concession Rules, 1960 (in short "the Rules"). It was further observed in the said writ petition that in case Appellant prefers revision, the revisional authority shall consider the same on merits.

Appellant, in pursuance of liberty granted by this Court preferred revision before the Central Government. The Central Government vide order dated 7-9-2009 rejected the revision preferred by Appellant on the ground that Appellant has not assigned any cogent reason for delay and that Appellant has not clarified its locus standi how M/s Phoenix Oversea Limited firm has changed into M/s Focus Energy Limited. Thus, the revision preferred by Appellant was dismissed on the ground of delay and laches as well as on locus standi.

Thereafter Appellant challenged the validity of aforesaid order passed in revision before learned single Judge in writ petition. Learned single Judge vide order dated 9-4-2010 while deciding the preliminary objections raised on behalf of Respondent No. 4 with regard to maintainability of the writ petition dismissed the writ petition. Learned single Judge held that Appellant did not challenge the order dated 2-12-2006 by which application for grant of mining lease was rejected. Learned single Judge further found that Appellant did not submit any application in pursuance to the notification dated 2-3-2007 and allowed creation of third party right in favour of Respondent No. 4. Thus, learned single Judge held that no fault can be found with the order passed by revisional authority.

We have heard learned Counsel for parties. Shri R.S. Jaiswal, learned senior counsel appearing for Appellant contended that learned single Judge grossly erred in not appreciating that the order passed by revisional authority was in contravention of the order passed by this Court in Writ Petition No. 15268/2008 by which the revisional authority was directed to decide the revision preferred by Appellant on merits. The revisional authority instead of deciding the revision on merits, has dismissed on the ground of limitation and locus standi. It was submitted that learned single Judge erred in holding that Appellant had no locus standi to question the grant of mining lease in favour of Respondent No. 4. It was further submitted that learned single Judge has grossly erred in holding that any third party right has been created in favour of Respondent No. 4. It has been further contended that learned single Judge ought to have appreciated the order dated 19-9-2008 passed in favour of Respondent No. 4, is just a proposal for grant of mining lease subject to approval by the Central Government. It was also

argued that learned single Judge erred in not appreciating that Appellant had shown sufficient cause for condonation of delay in challenging the order dated 2-12-2006.

On the other hand Shri Ravishankar Prasad, learned senior counsel appearing for Respondent No. 4 while opposing the submissions made by learned Counsel for Appellant, contended that the Central Government did not commit any illegality in rejecting the revision preferred by Appellant on the ground of delay as well as locus standi. Issue of delay and laches has to be considered with reference to original cause of action and not with reference to date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction will erase the delay and laches. In support of aforesaid proposition learned single Judge has relied on decision of the Supreme Court rendered in Union of India (UOI) and Others Vs. M.K. Sarkar, . It has been further contended that prospecting licence issued in favour of Appellant expired on 17-4-1995. Thereafter vide notification dated 2-3-2007 applications were invited for grant of mining lease in respect of area in question. Appellant did not submit any application pursuant to aforesaid application. Contention of Appellant that it is entitled to preference in the matter of grant of mining lease is misconceived. Appellant is guilty of delay and laches and by its conduct it has permitted creation of third party interest in favour of Respondent No. 4 therefore, no interference should be made.

It was further submitted that contention of Appellant that the order of grant of mining lease in favour of Respondent No. 4 in fact is not a grant but only a proposal, is misconceived. The matter has been forwarded to the Central Government by the State Government for approval only in respect of area as the same exceeds 25 square kilometres. Limestone being minor mineral, the State Government is competent to grant mining lease in respect of the same. Learned senior counsel in support of his submission has referred to the decisions of the Supreme Court in Tilokchand and Motichand and Others Vs. H.B. Munshi and Another, , New Delhi Municipal Council v. Pan Singh and Ors., AIR 2007 SC 1.365, The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, , Hindustan Petroleum Corporation v. Dolly (1994) 4 SCC 450, State of Haryana and Anr. v. Aravali Khanij Udyog and Anr. (2008) 1 SCC 663 and Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others,

We have considered the submissions made by learned Counsel for parties. From the material, available on record, following facts emerge:

(i) After expiry of the period of prospecting licence on 23-12-1995 Appellant submitted an application for grant of mining lease which was rejected by the State Government vide order dated 2-12-2006.

(ii) From perusal of paragraph 4 of the "Notice of Demand of Justice" dated 17-9-2007 sent on behalf of Appellant it is apparent that Appellant was aware

about the notification dated 2-3-2007 by which applications were invited for grant of mining lease.

(iii) The notification dated 2-3-2007 itself states that mining lease application filed by Appellant was rejected vide order dated 2-12-2006 and therefore, the area in question is being made available for grant of mineral concession.

(iv) Appellant, being aware about the order of rejection of its mining lease application as well as gazette notification dated 2-3-2007 neither challenged the order dated 2-12-2006 by filing revision nor submitted any application for grant of mining lease pursuant to Gazette notification dated 2-3-2007.

(v) On 16-9-2008 the State Government granted an area admeasuring 2130 hectares on mining lease in favour of Respondent No. 4.

(vi) After a period of nearly one year and three months, on 18-12-2008 Appellant instead of filing a revision filed a writ petition before this Court, namely, W.P. No. 15268/2008 challenging the order dated 16-9-2008 granting mining lease in favour of Respondent No. 4.

(vii) On 18-3-2009 Appellant filed revision under Rule 54 of the Mineral Concession Rules, 1960 before the Central Government inter alia, challenging the order dated 16-9-2008 by which mining lease was granted in favour of Respondent No. 4.

(viii) In the application for condonation of delay it is stated that Appellant submitted an application on 24-10-2008 under the Right to Information Act, 2005 and the information supplied to Appellant on 3-1-2009 and thereafter it learnt about the order rejecting application submitted by it for grant of mining lease as well as issuance of notification dated 2-3-2007 which is incorrect as is perceptible from paragraph 4 of the "Notice of Demand of Justice" dated 17-9-2007 sent on behalf of Appellant.

Thus, facts stated supra leads to irresistible conclusion that Appellant is guilty of delay and la and Ors. laches. Its conduct disentitles it to any relief. In New Delhi Municipal Council Vs. Pan Singh and Others, the Supreme Court has held that delay and laches are relevant factors for exercise of equitable jurisdiction. In The Municipal Council, Ahmednagar and Another Vs. Shah Hyder Beig and Others, the Supreme Court has observed that discretionary relief can be provided to one who has not by his act or conduct given a go-bye to his rights. Equity favours a vigilant rather than an indolent litigant. In State of Haryana v. Aravali Khanij Udyog (2008) 1 SCC 663 it has been held that where third party rights are created, the High Court should not interfere. Similarly, in Shiba Shankar Mohaputra (supra) it has been held that the Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum.

Thus, if the facts enumerated in the preceding paragraph are tested on the touchstone of aforesaid legal principles, we are of the considered opinion that the

Appellant is not entitled to any relief on account of delay and laches as well as it's conduct.

It is also relevant to mention here that admittedly prospecting licence was granted to the Appellant for an area admeasuring 2461.24 hectares but the Appellant applied for grant of mining lease for a lesser area i.e. 1103.273 hectares out of 2461.74 hectares, which gives rise to presumption that Appellant was not able to carry out prospecting work in entire area in respect of which prospecting licence was awarded to the Appellant, which has ultimately resulted in loss of revenue to the State Government.

For aforementioned reasons, we do not find any merit in the writ appeal. The same deserves to and is hereby dismissed.