(2010) 03 MP CK 0106

In the Madhya Pradesh High Court

Ganesh Mines Private Limited — APPELLANT

Vs

The State of Madhya Pradesh and Another — RESPONDENT

Date of Decision : 04-03-2010

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2010) 03 MP CK 0106

Hon'ble Judges : Ajit Singh, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ajit Singh, J.—This petition under Article 226 of the Constitution is directed against the order dated 9-4-2007, Annexure P-I, passed by the State Government (respondent No. 1) whereby it has rejected the petitioner''s application for grant of mining lease and allowed the application of respondent No. 2.

2. Briefly stated the facts giving rise to this petition are that on 22-1-1999, respondent No. 2, which is a partnership firm applied for the grant of mining lease in respect of forest land bearing Compartment No. 808 area 5 hectares Village Chatera, District Balaghat. The application was filed under Rule 22 of the Mineral Concession Rules, 1960 (in short "the Rules") in prescribed Form I for the mining manganese ore. The petitioner is a private limited company registered under the provisions of Indian Companies Act. It came into existence on 10-7-2006. On 17-10-2006 the petitioner also in Form I, applied for the grant of mining lease in respect of the same land and ore. Both the applications were put up for consideration before respondent No. 1. Since the application of respondent No. 2 was prior in time it was placed above the petitioner''s application. On 13-3-2007 petitioner and respondent No. 2 submitted written arguments in support of their claim for grant of mining lease. Respondent No. 1 by the impugned order dated 9-4-2007, Annexure P-I, allowed the application of respondent No. 2 and dismissed the application of petitioner. Respondent No. 1 in

the order also accorded permission for the diversion of forest land (Compartment No. 808) in favour of respondent No. 2 with a condition that proceedings relating to grant of mining lease shall be initiated only after obtaining approval from the Government of India for diversion of that forest land. The order reveals that respondent No. 1 gave preference to the application of respondent No. 2 because it was placed first in the priority list and the offer was made by respondent No. 2 to provide land for planting trees in lieu of the forest land.

3. The petitioner has challenged the impugned order principally on the ground that its objection about the application of respondent No. 2 being incomplete and invalid has not been considered at all by respondent No. 1. According to petitioner in its written arguments a specific objection was taken that since the application of respondent No. 2 was not supported by a valid clearance certificate of payment of mining dues by the partners it became invalid in view of fourth proviso to Sub-rule (3) (1) (d) of Rule 22 and hence the same should not have been allowed.

4. Respondent No. 1 in its return has justified the passing of impugned order by stating that the application of respondent No. 2 did not become invalid because an affidavit was filed by one of the partners (Prafulla Chandra J. Trivedi) to the effect that firm Pradumankumar J. Trivedi was not holding any mining lease or prospecting licence in Madhya Pradesh. Similar stand has been taken by respondent No. 2 also in its return. Respondent No. 2 has even stated that it has vast experience of mining with a well developed infrastructure whereas the petitioner which recently came into existence virtually had no experience of mining.

5. The main question which calls for consideration in this petition is whether the application for grant of mining lease respondent No. 2 was invalid and respondent No. 1 committed an illegality in allowing the same.

6. The applications for grant of mining leases are made to the State Government under Rule 22 of the Rules and its relevant extract reads as under:

22. Applications fur grant of mining leases:

(1) An application for the grant of mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf.

(3) (i) Every application for the grant or renewal of a mining lease shall be accompanied by:

(a) a non-refundable fee of two thousand and five hundred rupees;

(d) a valid clearance certificate, in the form prescribed by the State Government of payment of mining dues, such as royalty, or dead rent or surface rent payable under the Act or rules made thereunder, from that Government or any officer or authority authorised by that Government in this behalf:

Provided that in case the applicant is a partnership firm or a private limited company, such certificate shall be furnished by all partners of the partnership firm or as the case may be, all members of the private limited company:

Provided that where any injunction has been issued by a Court of law or any other Competent Authority staying the recovery of any such mining dues or income tax, non-payment thereof shall not be treated as a disqualification for the purpose of granting or renewing the said mining lease:

Provided that where a person has furnished an affidavit to the satisfaction of the State Government stating that he does not hold and has not held a mining lease, it shall not be necessary for him to produce the said valid clearance certificate:

Provided that a properly sworn affidavit stating that no dues are outstanding shall suffice subject to the condition that the certificate required as above shall be furnished within ninety days of the date of application and the application shall become invalid if the party fails to file the certificate within the said ninety days:

Provided further that the grant of clearance certificate under sub-clause (d) shall not discharge the holder of such certificate from the liability to pay the mining dues which may subsequently be found to be payable by him under the Act or rules made thereunder.

7. Rule 26 of the Rules which is also relevant for the consideration of this case reads as under:

Refusal of application for grant and renewal of mining lease:

(1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

(2) An application for the grant or renewal of a mining lease made under Rule 22 or Rule 24-A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is nor complete in all materials particulars, or is not accompanied by the documents referred to in sub-clauses (d), (e), (f), (g) and (h) of Clause (i) of Sub-rule (22).

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the document, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.

8. Rule 22 (3) (i) and the provisos have to be read together to understand what documents must be accompanied with the application for grant or renewal of a mining lease. A valid clearance certificate in respect of no dues which is referred

to in sub-clause (d) and the first proviso and the affidavit that no dues are outstanding referred to in the fourth proviso are relevant only in cases where the person applying had earlier held a mining lease. In cases where the person held no mining lease the only relevant proviso is third proviso to Rule 22 (3) (i) which clearly states that where a person has furnished an affidavit to the satisfaction of the State Government stating that he does not hold and has not held a mining lease, it shall not be necessary for him to produce a valid clearance certificate of no dues. An affidavit on behalf of respondent No. 2 was filed to that effect as required by this proviso with which respondent No. 1 (State Government) was satisfied. Had respondent No. 1 not been satisfied it would have issued a notice to produce any other material which it required under Rule 26 (3). As in this case no such notice was issued it has to be held that respondent No. 1 was fully satisfied with the affidavit filed on behalf of respondent No. 2 and, therefore, respondent No. 1 was justified in allowing the application.

9. For these reasons, I find no merit in the petition. The petition fails and is dismissed with a cost of Rs. 1000/- payable to respondent No. 2.