
(2012) 01 MP CK 0010

In the Madhya Pradesh High Court

Case No : Writ Petition No. 185 of 2010

Ganesh Mines Pvt. Ltd.

APPELLANT

Vs

State of Madhya Pradesh and Another

RESPONDENT

Date of Decision : 19-01-2012

Acts Referred:

Madhya Pradesh Uchcha Nyayalaya (Khand Nyaypeeth Ko Appeal) Adhiniyam, 2005 — Section 2

Citation : (2012) 2 EFLT 723

Hon'ble Judges : T.K. Kaushal, J;Rajendra Menon, J

Bench : Division Bench

Advocate : Sanjay K. Agrawal, for the Appellant; Samadarshi Tiwari for the State and Kishore Shrivastava and A.P. Shrivastava, for the Respondent

Final Decision : Dismissed

Judgement

Rajendra Menon, J.—This intra-Court Appeal u/s 2 of the Madhya Pradesh Uchya Nyayalay (Khand Peeth Ko Appeal) Adhiniyam, 2005 assails the order dated 4.3.2010 passed by the Writ Court in W.P. No. 6948/07. Facts in brief indicate that a mining lease was granted with regard to certain area contained in Compartment No. 808 measuring 5 Hectares at village Chhatera, Distt. Balaghat. Vide order dated 9.4.2007, the lease was granted to respondent No. 2 firm. Assailing the aforesaid grant, the writ petition was filed by the petitioner and a learned Single Bench of this Court has dismissed the writ petition vide order dated 4.3.2010. Aggrieved; thereof, this appeal has been filed.

2. Petitioner claims to be a company incorporated under the Companies Act and it is their case that they had applied for grant of mining lease for the first time. As far as respondent No. 2 concerned, it is said to be a partnership firm and Shri Prafulla Kumar Trivedi is alleged to be a partner of the said firm, it is stated that the firm applied for mining lease and as there were various defects in the application submitted inasmuch as the application was not meeting the requirement of the Rule 22 of the Mineral Concession Rules, 1960, petitioner

raised an objection. The objection having been rejected the writ petition was filed.

3. Shri Sanjay K. Agrawal, learned Counsel for the appellant inviting our attention to the Rule 22 argued that in the application submitted under Form No. 1 as contemplated under sub-rules 1 to Rule 22, respondent did not contain the affidavit of other persons forming the partnership firm as contemplated under the 3rd Proviso to sub-rule 3 (1) of Rule 22. Taking us through the aforesaid provision, it was tried to be emphasized that the requirement of sub-rule 3 (d) (1) has to be fulfilled in the manner provided in the proviso and in the present case as the requirement under Proviso 3 and the certificate of no dues as contemplated under proviso No. 1 were not fulfilled, the application filed by respondent No. 2 was not maintainable.

4. That apart, various other grounds were tried to be canvassed at the time of hearing. Accordingly, contending that the learned Single Bench without taking note of the proviso to Rule 22 has rejected the writ petition, this appeal has been filed.

5. Shri Kishore Shrivastava, learned Senior Counsel for respondent No. 2 and Shri Samdarshi Tiwari, learned Government Advocate for the State raised a three point contention. The first contention was to the effect that the writ petition was filed against the respondent No. 2 firm through its partner Shri Prafulla Kumar Trivedi. It was pointed out that when the application for grant of lease was filed in the year 1999, Shri Prafulla Kumar Trivedi was alive but he expired on 11.1.1994 and when the mining lease was granted on 1.9.2007, he was not alive.

6. Referring to the provisions of Clause 25 (A) of the Mineral Concession Rules, 1960, it was submitted that when an application is submitted for grant or renewal of mining lease, and the applicant dies before the order granting the mining lease is allowed, the lease is deemed to have been made in favour of the legal representatives of the dead person. Accordingly, it is stated that in the present as the legal heirs of the deceased partner is not impleaded to with the lease now stands granted in view of the legal provisions, the petition itself is not maintainable. The second objection raised was that in the writ petition arguments and objections were filed by the petitioner before the State Government. The only objection raised was that no dues certificate as contemplated under the 1st Proviso to Rule 3 (1) (d) having not been submitted, the application of respondent No. 2 was not maintainable. However, now in the writ petition, a totally different stand is being taken with regard to non-filing of the affidavit by each of the partners as per the 3rd proviso to Rule 3 (1) (d).

7. Shri Kishore Shrivastava, learned Senior Counsel argues that as the firm in question i.e., respondent No. 2 was applying for mining lease for the first time, the 1st Proviso was not applicable and as the affidavit as required under the 3rd Proviso was filed, the State Government has not committed any error in rejecting the objection of the petitioner. It is argued that in the present case, the petitioner's application itself was not in accordance with the requirement of the

rule and without there being a proper application by the applicant, they cannot ventilate the grievance with regard to the defects, if any, in the application submitted by the respondent No. 2.

8. Inviting our attention to the certain principles laid down by the Full Bench of the Andhra Pradesh High Court in the case of K. Raghunatha Reddy Vs. Govt. of India and others, Shri Kishore Shrivastava prays for dismissal of this writ petition.

9. Having heard learned Counsel for the parties and on a perusal of the records, it is clear that the writ petition was filed against the respondent No. 2 firm through its partner Shri Prafulla Kumar Trivedi : Admittedly, Shri Prafulla Kumar Trivedi has expired on 11.1.2004 and after his death by virtue of the statutory provision as contained in Rule 25 (A) of the Mineral Concession Rules, 1960, the lease in question is deemed to be granted in the name of his surviving legal representatives and from the return filed by the respondent No. 2 in the writ petition W.P. No. 6948/07, it is clear that the lease was in the name of his legal representatives, even though the objection is raised in this regard by the respondent No. 2 in the writ petition, petitioner continued with the writ petition against the respondent No. 2 firm through a dead partner and even after decision of the writ petition when this writ appeal was filed, the cause title indicates that it is filed in the name of the firm through its partner Shri Prafulla Kumar Trivedi who had already expired. It is therefore a case when the writ petition and a writ appeal is filed against the dead person and on this count alone, the appeal deserves to be dismissed and it is not maintainable as it is not filed against the firm in a proper manner. That apart, if any order is to be passed by this Court as prayed for, it would have adverse effect on the rights of the partner who is granted the lease due to the death of Late Shri Prafulla Kumar Trivedi by virtue of the operation of the law i.e., Rule 25 (A) and in the absence of such persons being parties before us, no orders behind their back can be passed. On these counts, we see no ground for interference into the matter.

10. That apart, if the merits of the matter is scrutinized, it is seen from the records that when the objection was raised by the petitioner before the State Government and when the written objection was submitted vide Annexure P-6, the only ground canvassed was that respondent-firm has not filed the no objection certificate as is required under the 1st Proviso to Rule 22 (3) (1) (d). It was never the case of the petitioner before the State Government that affidavit of each of the individual partners as required under the 3rd Proviso is not filed. It is for the first time in the writ petition that such an objection is raised. The objection having not been raised before the State Government cannot be permitted to be raised in these proceedings. That apart, from the order passed by the learned Single Judge and on a perusal of the facts and circumstances of the case so also on taking note of the requirement of Rule 22 of the Mineral Concession Rules, it is clear that application for grant of mining lease is to be submitted in accordance with the requirement of sub-rule (1) of Rule 22 and the application has to be accommodated by the document contemplated in sub-rule

3 (1). Under sub-rule (d) to Rule 3 (1) it is indicated that if the applicant is already a lease holder then no dues certificate with regard to payment of mining dues have to be submitted and the 1st Proviso to this sub-rule contemplates that if the applicant is a firm or a private limited company, such certificate has to be furnished by all the partners of the partnership firm or the members of the private limited company.

11. Admittedly, in this case, the respondent No. 2 partnership firm had not carried out any mining activities in the past and as they were seeking the mining lease for the first time, this requirement was not to be fulfilled by them and to that effect as required under the 3rd Proviso, an affidavit was filed and it was after taking note of all these factors that the learned Single Judge dismissed the writ petition.

12. In doing so, we are of the considered view that no error has been committed as the respondent No. 2 firm has complied with the statutory provisions of Rule 22. That apart, the order passed by the learned Single Judge indicates that the only objection raised before the learned Single Judge was with regard to question of non-filing of the no dues certificate and no other ground was canvassed at the time of hearing and they were not adverted to.

13. However, during the course of hearing when Shri Sanjay K. Agrawal canvassed certain other grounds which was not canvassed before the learned Single Judge, the same was objected to by the respondent and this objection has to be upheld.

14. Accordingly, finding the petitioner to have raised the ground with regard to submission of no dues certificate only before the State Government and having not raised any other ground with regard to non-submission of affidavit which is raised for the first time these proceedings, we do not deem it appropriate to grant permission to raise such grounds in these proceedings when it was not raised before the State Government, as they are questions of fact and if an appropriate objection was raised, an enquiry could be conducted and the matter decided.

15. Keeping in view the above, we see no error in the order passed by the learned Single Judge dismissing the writ petition and the order passed by the State Government granting lease to respondent No. 2 and rejecting the application and objection of the petitioner. Accordingly, in the facts and circumstances of the case, finding no error in the order passed by the learned Single Judge so also in the order of the Government, the appeal is dismissed.