
(1996) 05 AHC CK 0036
In the Allahabad High Court
Case No : C.M.W.P. No. 11683 of 1996

Gopi Nishad

APPELLANT

Vs

District Magistrate/District Officer and Others

RESPONDENT

Date of Decision : 16-05-1996

Acts Referred:

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 2(6), 27, 27A, 3(1), 3(2)

Citation : (1996) 05 AHC CK 0036

Hon'ble Judges : D.P. Mohapatra, C.J;Palok Basu, J;B.M. Lal, J

Bench : Full Bench

Advocate : V.K. Upadhya, for the Appellant;

Final Decision : Allowed

Judgement

D.P. Mohapatra, C.J.—The core question that arises for consideration in this case is whether in the judgment rendered on 19th of February, 1996 in Civil Misc. Writ Petition No. 3659 of 1996 Rameshwar v. Zila Adhikari/Prabhari Adhikari (Khanij) Fatehpur and Ors. (since reported in 1996 (2) AWC 681). This Court has laid down as a proposition of law that for grant of short-term mining permit under Chapter VI of the U.P. Minor Minerals (Concession) Rules, 1963 (for short, the Rules), notice of not less than thirty days as laid down in Rules 27 and 27A of the said Rules has to be given and if so, whether that is the correct position of law?

2. The tactual backdrop of the case necessary for proper appreciation of the question may be stated thus : In pursuance of the notice dated 11.3.1996 issued by the District Magistrate, Fatehpur inviting applications for grant of mining permit for excavation of Moram from plot No. 10, area 294.10 acres of plot No. 21 of village Datauli by 18.3.1996, the Petitioner Gopi Nishad submitted an application in the prescribed form MM-8 on 18.3.1996, filed treasury challan of Rs. 400 alongwith the application and deposited by bank draft and treasury challan a further sum of Rs. 3,25,000 on the same day. When all the applications received were examined, the rate quoted by the Petitioner was found to be the

highest and, therefore, the Respondent No. 2, Officer Incharge Mines, Fatehpur, recommended the Petitioner's case to the District Magistrate/District Officer, Fatehpur, for acceptance of the offer and grant of mining permit to him. When the matter stood thus, on 19.3.1996 one Ram Bali Kewat filed an application before the District Magistrate/District Officer, Fatehpur stating, inter alia, that the notice dated 11.3.1996 issued giving only seven days' time for submitting applications for grant of mining permit was contrary to the judgment of this Court in Civil Misc. Writ Petition No. 3659 of 1996 Rameshwar v. Zila Adhikari and Ors. (supra) and the action of the authorities may amount to contempt of Court. On receiving the said application, the District Magistrate/District Officer, Fatehpur deferred the matter. Faced with the inaction on the part of the District Magistrate/District Officer, Fatehpur in the matter, the Petitioner submitted an application on 23.3.1996 bringing to his notice that the judgment in Civil Misc. Writ Petition No. 3659 of 1996 does not apply to grant of mining permit under Chapter VI of the Rules and the said judgment is not an impediment in the way of granting mining permit in his favour; but the authority took no further action in the matter.

3. Since time was running out and the District Magistrate/District Officer, Fatehpur was not inclined to take a decision in the matter, the Petitioner filed the writ petition against the District Magistrate/District Officer, Fatehpur, the Officer Incharge Mines, Fatehpur and the State of Uttar Pradesh seeking a writ of mandamus to the District Magistrate/District Officer, Fatehpur to grant mining permit to him in pursuance of the application dated 18.3.1996 (Annexure 2).

4. In the counter-affidavit filed by the Deputy Collector/Prabhari Adhikari (Khanij), Fatehpur the stand taken is that though Rules 27 and 27A of the Rules have no application for grant of mining permit, still the District Magistrate/District Officer, Fatehpur is bound by the judgment of this Court in Civil Misc. Writ Petition No. 3659 of 1996, Rameshwar v. Zila Adhikari and Ors. (supra), in which it has been laid down, inter alia, that while granting mining permit public notice as prescribed in Rules 27 and 27A should be given in public interest. Therefore, the District Magistrate/District Officer, Fatehpur could not proceed further in the matter of grant of mining permit to the Petitioner.

5. When the case was taken up by the Division Bench and attention of the Bench was drawn to the judgment in Civil Misc. Writ Petition No. 3659 of 1996, Rameshwar v. Zila Adhikari and Ors. the Bench felt that the case should go before a larger Bench for decision. The relevant portion of the reference order runs as follows:

While it is true that Rules 27 and 27A had absolutely no application, it is not perhaps open to this Court to say that no comparison between a procedure applicable for mining lease and procedure applicable for mining permit could not have been made by the Court. It is true that the judgment does not indicate such a comparison. It is also true that it is not very clear as to whether the mention to the lease-procedure was casual or purposive, yet the fact remains that since the

copy of the judgment has also been forwarded to the Government, it is not open to this Court or atleast the propriety does not require that the said judgment be bypassed by this Division Bench on the principles of or by inviting the theory of per incuriam. Not only the propriety but the Rules of the Court would require that the matter should go before large Bench.

In pursuance of the said order, the case has been listed before us.

6. Before proceeding to consider the case on its merit, it will be convenient to notice some provisions of the Rules relevant for appreciating the points raised. Rule 2 (6) defines "mining permit" to mean a permit granted under the Rules to extract a specified quantity of minor mineral within the period stipulated in the permit. In Rule 3 (1), it is laid down that no person shall undertake any mining operations in any area within the state of any minor mineral to which the Rules are applicable except under and in accordance with the terms and conditions of a mining lease or mining permit granted under the Rules. In Sub-rule (2) of the said Rules, it is laid down that no mining lease or mining permit shall be granted otherwise than in accordance with the provisions of the Rules. Chapter II of the Rules contains provisions regarding grant of mining lease. Chapter III deals with payment of royalty and dead rent; Chapter IV with Auction Lease. In Rule 27 under this Chapter, the procedure for grant of auction lease has been laid down. Under Clause (a) of Sub-rule (1) of this Rule, it is provided that at least thirty days before the date the auction is to be held the District Officer shall give notice in the manner given in the said Rule indicating the date, time and place of the auction and the terms and conditions of the lease. Chapter V deals with conditions of the mining lease. In Chapter VI of the Rules, which includes Rules 51 to 56, provisions are made in respect of mining permit. Chapter VIII contains miscellaneous provisions. In Rule 68 therein it is provided, inter alia, that the State Government may, if it is of opinion that in the interest of mineral development it is necessary so to do, by order in writing and for reasons to be recorded, authorise in any case the grant of any mining lease or the working of any mine for the purpose of winning any mineral on terms and conditions different from those laid down in the Rules. In exercise of the powers conferred under this Rule, the State Government has issued Government Orders dated 19.2.1994 (Annexure 6). dated 25.5.1995 (Annexure 7) and dated 20.7.1995 (Annexure 8) laying down the procedure, principles and guidelines to be followed for grant of mining permit for short terms (not more than three months). The period of notice prescribed in the said orders is seven days. It is relevant to state here that in accordance with the procedure laid down in the Government Orders, the District Magistrate/District Officer, Fatehpur gave seven days notice on 11.3.1996. From the provisions of the Rules, the position is manifest that there is a clear distinction between mining lease and mining permit. The criteria and the procedure for grant of mining lease and mining permit have been separately dealt with in the Rules. While Chapters II, IV and V deal with grant of mining lease. Chapter VI deals with grant of mining permit. For the purpose of the case in hand, it is very relevant to state that while Rule 27 in Chapter IV mandates

that for grant of lease at least thirty days before the auction is to be held, the District Officer shall notify the date, time and terms and conditions of the lease, there is no such provision in Chapter VI for grant of short-term mining permit. In the absence of any provision in the Rule, the State Government with a view to get over certain difficulties and to avoid loss of revenue, issued the Government Orders dated 19.2.1994 (Annexure 6), dated 25.5.1995 (Annexure 7) and dated 20.7.1995 (Annexure 8) in which provision was made, inter alia, for grant of short-term mining permit giving seven days notice. It follows, therefore, that there is neither any basis nor any Justification to lay down as a proposition of law that for grant of short-term mining permit, the provision in Rule 27 prescribing at least thirty days notice is to be followed. Such a position does not emanate expressly or by necessary implication from the provisions of the Rules. On the other hand, the clear position that emerges from the provisions contained in Chapter VI read with the Government Orders issued under Rule 68 is that seven days notice is necessary for grant of short-term mining permit. As noted earlier, the said provision had been complied with in the present case.

7. The next question that arises for determination is whether this Court in the judgment in Civil Misc. Writ Petition No. 3659 of 1996--Rameshwar v. Zila Adhikari and Ors. (since reported in 1996 (2) AWC 681), has laid down that thirty days notice prescribed in Rule 27 is to be given for grant of mining permit. We have carefully perused the judgment in the said case. That case was also one of grant/renewal of mining permit for extraction of Moram. The question for determination before the Court was whether in the facts and circumstances of that case, the mining permit granted to the Petitioner for extracting specified quantity of minor mineral (Moram) during the period specified could be renewed when the Petitioner had extracted the specified quantity before expiry of the period stated in the permit. On consideration of the relevant provisions of the Rules, including the provisions in Rules 27 and 27A, this Court held that it will be in public interest to initiate process of granting fresh permit following the procedure prescribed in the Rules and no renewal of the permit could be granted. In that context, a reference was made to the provisions of Rules 27 and 27A, which have been quoted in the judgment. Neither the question of period of notice to be given for grant of mining permit arose in the facts and circumstances of the case nor was the question considered by the Division Bench in Rameshwar's case (*supra*). From a mere reference to the provisions of Rules 27 and 27A and certain casual observations made in the judgment on the basis of the said Rules, a conclusion cannot be drawn that this Court has laid down that the provisions in the said Rules, particularly that relating to the period of notice, are required to be complied in cases of grant of mining permit. As already noticed, provisions in Rules 27 and 27A are applicable in case of grant of mining lease by auction and tender respectively and are not applicable in case of grant of mining permit. Therefore, there is no justification for the District Magistrate/District Officer, Fatehpur, Respondent No. 1 to feel any constraint in dealing with the application of the Petitioner for grant of short-term mining permit on the ground of

noncompliance of the provisions of Rules 27 and 27A. The decision in Civil Misc. Writ Petition No. 3659 of 1996, Rameshwar v. Zila Adhikari and Ors. must be confined to the facts of the said case and does not lay down the proposition that principles or provisions applicable for grant of lease may be attracted for granting short-term permit under the Minor Minerals (X-Concession) Rules.

8. Accordingly, the writ petition is allowed and the District Magistrate/District Officer, Fatehpur is directed to dispose of the Petitioner's application dated 18.3.1996 for grant of mining permit in accordance with the Rules within two weeks from the date of production of a certified copy of this judgment before him. Parties will bear their own costs.