

(1996) 02 MP CK 0095

In the Madhya Pradesh High Court

Case No : Writ Petition No. 1266/95 (J)

Grasim Industries Limited

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 14-02-1996

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (1997) 1 MPJR 91

Hon'ble Judges : C.K. Prasad, J

Bench : Single Bench

Advocate : A.K. Chitale, for the Appellant; V.K. Zelawat and Shri Asudani, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

Heard Shri A.K. Chaitale Sr. counsel for the petitioner, Shri Zelawat learned G.A. for respondent 1 to 3 and Shri Asudani learned counsel for respondent no. 4.

The petitioner in this writ application prays for issuance of a writ in the nature of mandamus commanding respondents 1 to 3 for issuing prospective licence in his favour for lime stone in the area of 14.733 hectares of land comprising survey no. 39/1 in village Morka Tahsil Jawad Dist. Mandsaur. Further prayer has been made for issuance of a writ in the nature of prohibition restraining respondents 1 to 3 from issuing mining lease in favour of respondent no. 4. Further prayer has also been made for quashing of prospective licence granted in favour of respondent no. 4. Yet another prayer made by the petitioner is for issuance of a writ in the nature of prohibition restraining respondents 1 to 3 from entering into mining lease in favour of respondent no. 4.

It is relevant here to state that this writ petition was filed on 30.8.95 and after filing of the said petition, on 29.11.95 mining lease has been granted to respondent no. 4.

Shorn off the unnecessary details, the facts giving rise to the present writ petition are that on 18.1.91 (according to respondent-State, on 12. 1.91) respondent-respondent no. 4 filed an application for prospective licence. The petitioner tiled filed an an application for prospective licence on 10.3.92 and it was on 18.5.1992 that prospective licence was granted to respondent no. 4.

Shri Chitale appearing on behalf of the petitioner submits that not withstanding the fact that his application for grant of prospective licence was latter than that of respondent no. 4, respondents 1 to 3 were under obligation to consider the case of the petitioner as also respondent no. 4 on its own merits. According to his submission, the date of filing the application for grant of prospective licence is not only the relevant factor. In support of his submission, learned counsel placed reliance on a judgment of Supreme Court in the case of Indian Metals & Ferro Alloys Ltd. v. Union of India & others (AIR 1991 S.C. 18). My attention has been drawn to paragraph 16 of the judgment which reads as follows :-

16. Is S. 11 (2) Conclusive ?

Now, to turn to the contentions urged before us ; Dr. Singhvi, who appeared for ORIND, vehemently contended that the rejection of the application of ORIND for a mining lease was contrary to the statutory mandate in S. 11 (2); that, subject only to the provision contained in S. 11 (1) which had no application here, the earliest applicant was entitled to have a preferential right for the grant of a lease, and that a consideration of the comparative merits for other applicants can arise only in case where applications have been received on the same day. It is no doubt true that S. 11 (2) of the Act read in isolation gives such an impression which, in reality, is a misleading one. We think that the sooner such an impression is corrected by a statutory amendment the better it would be for all concerned. On a reading of S. 11 as a whole, one will realise that the provisions of sub-S. (4) completely override those of sub-S. (2). This sub-section preserves to the S.G. a right to grant a lease to an applicant out the turn subject to two conditions; (a) recording of special reasons and (b) previous approval of the C.G. It is manifest, therefore, that the S.G. is not bound to dispose of application only on a "first come first served" basis. It will be easily appreciated that this should indeed be so for the interests of national mineral development clearly require in the case of major minerals, that the mining lease should be given to that applicant who can exploit it most efficiently. A grant of ML, in order of time, will not achieve this result.

Shri Zelawat appearing on behalf of respondents 1 to 3 and Shri Asudani appearing on behalf of respondent no. 4 submit that the date of filing of the application for grant of prospective licence is determining factor and the petitioner having not denied the fact that the application of respondent no. 4 was earlier than that of the petitioner, respondents 1 to 3 rightly granted prospective licence to the respondent no. 4. In support of the aforesaid submission, reliance has been placed on the decision of Supreme Court in the case of M/s. Hindustan Aluminium Corporation Ltd. Vs. State of Bihar and others, . My attention has

been drawn to para 8 of the decision which reads as follows :-

8. On a careful scrutiny of the records, we find that the Central Government had by its order dated 20.4.1971, merely directed the State Government to grant a mining lease to the respondent-company. The order did not specify any particular plot or area for the purpose. The State Government had challenged the validity of the Central Government's order and during the pendency of the petition there was a compromise between the State Government and the respondent-company as a result of which latter agreed to accept mining lease for a reduced area of 327 acres instead of 362 acres. Since, the respondent-company entered into compromise with the State Government and agreed to a lesser areas, the order of the Central Government dated 20.4.1971 stood modified to that extent. The High Court in our opinion rightly directed the State Government to execute the mining lease in favour of the respondent-company with regard to the reduced area, but the High Court committed error in interfering with the mining lease granted to the appellant earlier in time. The Central Government's order could not and did not affect the validity of the mining lease granted in appellant's favour. S. 11 of the Act confers a preferential right on the party making application prior in time. Since the appellant's application for the grant of lease was earlier in time, the State Government was justified in granting lease in appellant's favour in respect of even that portion of area in respect of which the respondent-company may have also applied, we are, the before, of the opinion that the High Court was not justified in interfering with the appellant's mining lease.

Learned counsel for respondents 1 to 3 and 4 further submit that the petitioner has alternative remedy of filing a revision application against grant of prospective licence to respondent no. 4 before the Central Government. S. 30 of the Mines and Minerals (Regulation & Development) Act 1957 (hereinafter referred to as "the Act") provides for power of revision to the Central Government. The said provision reads as under :-

S. 30. Power of revision of Central Government.

The Central Government may, of its own motion or on application made within the prescribed time by an aggrieved party revise any order made by a State Government or other authority in exercise of the powers conferred on it by or under this Act.

It is relevant here to state that Rule 54 (1) of the Mineral Concession Rules 1960 (hereinafter referred to as "the Rules") prescribes for procedure as also the period for filing revision application. Rule 54 (1) of the Rules reads as under:-

RULE 54. Application for Revision : (1) Any person aggrieved by the State Govt. or other authority in exercise of the powers conferred on it by the Act or these rules may, within three months of the date of communication of the order to him apply to the Central Government in triplicate in Form N for revision of the order. The application should be accompanied by a Bank Draft for five hundred rupees

on a nationalised bank in the name of "Pay and Accounts Officer Department of Mines" payable at New Delhi or through a treasury challan for live hundred rupees under the Head of Account (853 Non-Ferrous Mining and Metallurgical Industries 102 Mineral Concession Fees, Rents and Royalties.

Provided that any such application may be entertained after the said period of three months if the applicant satisfies the Central Govt. that he had sufficient cause for not making the application within time.

Shri Chitale appearing on behalf of the petitioner submits that under S. 30 of the Act, a revision is maintainable only when an order is passed by the authority. In the present case, according to him, no order having been passed, no revision application is maintainable. He further submits that he has filed an application on 10.3.92 for grant of prospective licence and the State Government having not passed any order, the revision application as contemplated under S. 30 of the Act is not maintainable. I am afraid, the submission of the learned counsel is devoid of any substance. By order dated 15.5.92 prospective licence was granted to respondent no. 4 and if the petitioner was aggrieved by the said act of respondents 1 to 3, they could have very well filed a revision application before the Central Government under S. 30 of the Act. Further, according to the petitioner's own showing he filed an application on 10.3.92 for grant of prospective licence and in view of Rule 24 of the rules, an application filed by the petitioner shall be deemed to have been rejected and thereafter also the petitioner could have taken recourse to revisional jurisdiction of the Central Government under S. 30 of the Act. In that view of the matter, I am of considered opinion that the writ petition is not a proper remedy for redressed of grievance raised by the petitioner.

It is relevant here to state that Rule 54 (1) of the rules prescribes a period of two months for filing revision against order of the State Government and the said Rule also gives discretion to the Central Government to condone delay if sufficient cause is shown by the petitioner. If the petitioner so choses he may file an application before the Central Government as contemplated under S. 30 of the Act. In case an application with prayer for condonation of delay is filed before the Central Government, the same shall be considered on its own merits and the Central Government is free to decide as to whether the cause shown by the petitioner in approaching the Central Government at a late stage be condoned or not.

The writ petition is dismissed with the aforesaid observation. However, there shall be no order as to costs.