

(1996) 02 PAT CK 0012

In the Patna High Court

Case No : C.W.J.C. No's. 6328, 6329 and 6330 of 1994

Gupteshwar Prasad Gupta, Shri Bharat Singh and Thakur Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 02-02-1996

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2, 4
Forest (Conservation) Rules, 1981 — Rule 5, 6

Citation : (1998) 3 PLJR 696

Hon'ble Judges : Nagendra Rai, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Nagendra Rai, J.—All the aforesaid cases are connected matters, as such they have been heard together and are being disposed of by this common order.

2. The Petitioners in all the three cases have challenged the order contained in annexure - 1 in each of the writ applications passed by the Commissioner of Mines in different cases rejecting their applications for renewal of mining leases for quarrying stone in forest area.

3. It is an admitted position that the Petitioners were granted lease in 1986 for a period of five years and after expiry of the same, the Petitioners applied for renewal of the lease with regard to the plot Nos. 344 and 345 in Failpur Thana No. 233 Sasaram District - Rohtas. By the impugned order their prayer for renewal has been rejected on the ground that no prior approval of the Central Government has been obtained in terms of the provisions of the Forest (Conservation) Act.

4. The Forest (Conservation) Act does not permit mining in the forest area without compliance of the provisions contained under the Act. Section 2 of the Act provides, inter alia, that no State Government or any authority except with

the prior approval of the Central Government may direct that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority etc Section 4 of the Act gives power to the Central Government to make rules, in pursuance of which the Forest (Conservation) Rules, 1981, has been framed which provides that proposal for prior approval of the Central Government for grant of mining lease etc. shall be sent by the State Government or other authority along with particulars specified in annexure - 2 to the rules. The Central Government under Rule 5 shall refer every proposal to the Committee constituted for its advice thereon and under Rule 6, the Central Government after receipt of the advice of the Committee and after further enquiry as it may consider, may grant approval to the proposal with or without conditions or reject the same. From the aforesaid provisions it is clear that with regard to the forest area or other matters covered u/s 2 of the Act, no mining operation can be done unless there is prior approval of the Central Government which has to be obtained by the State Government or other authority in terms of the provisions as stated above. The person applying for mining lease has only to file application before the State Government and thereafter it is the duty of the State Government to seek prior approval and then to decide the question of grant of lease.

5. In this case, it appears that by the impugned order contained in annexure - 1 to the writ applications, the authorities have rejected the claim of the Petitioners only on the ground that they have failed to get permission of the Central Government. The approach of the Commissioner is contrary to law, he should not have rejected the applications on the said ground. On the other hand, once the Petitioners have filed applications, the State Government should have taken steps to obtain approval of the Central Government and only after the receipt of the order of the Central Government in terms of the provisions of the Act and Rules, the decision should have been taken. It is not incumbent upon the persons applying for grant of mining lease to move the Central Government for obtaining prior approval because the Act/Rules does not contain any such provision. As the responsibility of obtaining prior approval of the Central Government rests on the State Government or any authority, the order contained in annexure - 1 to the writ applications rejecting the applications of the Petitioners are quashed and the State Government is directed to send the proposals to the Central Government in terms of the provisions of the Act and Rules within a period of one month from the date of receipt/production of a copy of this order and thereafter the Central Government is directed to take decision in accordance with Rule 6 of the Rules within a period of two months from the date of receipt of the proposal from the State Government.

6. With the aforesaid directions, these applications are allowed.