

(2002) 02 RAJ CK 0089

In the Rajasthan High Court

Case No : Civil Writ Petition No. 6093 of 1993

Hakim Mohammad Abdul Rahim Khan

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 19-02-2002

Acts Referred:

Mineral Concession Rules, 1960 — Rule 26, 26(1), 26(3)

Citation : (2002) 3 RLW 1465 : (2002) 2 WLC 587

Hon'ble Judges : Shiv Kumar Sharma, J

Bench : Single Bench

Advocate : Vimal Choudhary, for the Appellant; K.K. Sharma, for Respondents 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Sharma, J.—The question that arises for consideration in the instant matter relates to interpretation of Rule 26 of Mineral Concession Rules, 1960 (in short, 1960 Rules).

2. Contextual facts depict that the petitioner submitted an application on November 21, 1988 for renewal of mining lease of mineral Garnet for an area of 56.1164 hectares near village Devkheda, Tehsil Deoli, Distt. Tonk (Rajasthan). The said application was rejected by the State Government vide order dated December 29, 1990 on the ground that the petitioner had failed to produce required documents such as certificates of income tax clearance, no dues, undertaking regarding approved plan etc. The petitioner filed revision petition against the said order before the Central Government, that was dismissed vide order dated July 14, 1993. The petitioner has filed the instant writ petition seeking quashing of the aforequoted orders.

3. Before considering rival submissions, it will be appropriate to incorporate the provisions contained in Rule 26 of the 1960 Rules which provides as under:

"26. 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 J, as the case may be, is not complete in all material 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 (3) of 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 sixty days from the date of receipt of the said notice by the applicant."

4. Sub-Rule (3) of Rule 26 mandates that if the application appeared to be incomplete, a notice is required to be served on the applicant to remove the deficiencies within a period of sixty days.

5. Earlier the time limit to remove the deficiencies was 30 days but the word "Sixty" was inserted by GSR 129 (E) dated February 20, 1991.

6. In the instant case it appears that the Assistant Mining Engineer Tonk required the petitioner vide letter dated April 5, 1989 to file working plan in five copies, no dues certificate, approved mining plan, and also the certificate to the effect that the area did not come within the forest area. The petitioner submitted replies vide letter dated April 13, 1989 and June 13, 1989 and an affidavit executed on November 16, 1988 was filed but the compliance of notice served under Sub-rule (3) of Rule 26 of the 1960 Rules was not found complete and the State Government vide order dated December 29, 1990 cancelled the application of the petitioner seeking renewal of the mining lease. The Central Government vide order dated July 14, 1998 approved the order of the State Government and dismissed the revision petition.

7. Mr. K.K. Sharma, learned counsel appearing for the respondents 2 and 3 supported the impugned orders and canvassed that as the petitioner failed to remove the deficiencies, the State Government was competent to cancel his application in view of Sub-rule (3) of Rule 26. Contention of Mr. K.K. Sharma, learned counsel is that in case of non-compliance of Sub-rule (3) of Rule 26 it was not necessary to independently comply the provisions contained in Sub-rule (1) of Rule 26.

8. In order to appreciate the contentions raised on behalf of the respondents 2 and 3, it is necessary to consider the requirement of Sub-rule (1) of Rule 26. Sub-rule (1) of Rule 26 provides that the State Government may after giving 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. A close look at the said provisions reveals that the application seeking renewal of the mining lease cannot be cancelled without providing opportunity of hearing and without assigning reasons in writing and communicated to the petitioner. Comparative study of Sub-rule (3) and Sub-rule (1) goes to show that Sub-rule (3) provides for providing an opportunity to the applicant to remove the deficiencies within a specified period and if the deficiencies are not removed within that period the application seeking renewal of mining lease can be cancelled. As per the provisions contained in Sub-rule (3) of Rule 26 the State Government has right to cancel the application but before exercising this right it is necessary for the State Government to provide an opportunity of hearing to the applicant. Provisions contained in Sub-rule (1) are independent and come into play after non-compliance of Sub-rule (3). In the instant case it was necessary for the State Government before cancelling the application for renewal of mining lease to provide opportunity of hearing to the petitioner but this has not been done. The learned counsel for the respondents invited my attention to the various letters issued by the State Government but that cannot be said to be compliance under Sub-rule (1) of Rule 26. Sub-rule (1) of Rule 26 is based on principles of audi alteram partem and rejecting the application seeking renewal of mining lease without providing opportunity of hearing to the applicant is against the principles of natural justice and such orders are violative of Article 14 of the Constitution of India. This aspect was also not considered by the Central Government while dismissing the revision petition of the petitioner.

9. In view of what I have discussed hereinabove I allow the writ petition and set aside the impugned orders dated December 29, 1989 and July 14, 1993. I direct the State Government to reconsider and decide the application of the petitioner after providing him the opportunity of hearing by a reasoned order within two months. The parties are directed to appear before the Secretary Mines on March 5, 2002 for seeking further instructions. There will be no order as to costs.