

(1999) 03 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 23079 of 1992

Harisingh

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-03-1999

Acts Referred:

Karnataka Minor Minerals Concession Rules, 1969 — Rule 10, 7, 7 (2)

Citation : (1999) 6 KarLJ 86

Hon'ble Judges : Tirath Singh Thakur, J

Bench : Single Bench

Advocate : Sri B.S. Patil, for the Appellant; Smt. Rosa Paramel, Government Pleader and Sri Jagadeesh D. Hiremath, for the Respondent

Judgement

1. An application seeking grant of a quarrying lease in respect of 20 guntas of land in Sy. No. 224 of Minajagi Village in Muddebihal Taluk, Bijapur District was filed by the petitioner with the Deputy Director of Mines and Geology. No intimation about the fate of that application was sent to the petitioner, although in terms of Rule 10 of Karnataka Minor Mineral Rules, 1969, such an intimation was required to be sent in case the Competent Authority refused to grant the lease. On the contrary, by a notification dated 13-7-1992 the area in question was leased out in favour of the 4th respondent for quarrying what are known as Shahabad Stones. Aggrieved, the petitioner has called in question the validity of the said notification.

2. Mr. Patil, Counsel appearing for the petitioner contended that the grant of a lease in favour of the 4th respondent only showed that an application had been received from the said respondent also. Any such application should therefore according to the learned Counsel have been considered along with the application made by the petitioner. No such consideration appears to have been accorded to the petitioner's application while that made by the 4th respondent was granted. The failure of the Competent Officer to issue an intimation in terms of Rule 10 of the rules afore-mentioned, was also according to Mr. Patil, suggestive of non-

consideration of the petitioner's application rendering the impugned notification unsustainable.

3. Mrs. Rosa Paramel, Counsel appearing for the respondents 1, 2 and 3, on the other hand argued that the application made by the 4th respondent was received on 24th of June, 1992, whereas that sent by the petitioner was received three days later on 27th of June, 1992. She urged that as per Rule 7 of the Rules, if more than one applications were received for a quarrying lease over the same area, preference had to be given to the applicant whose application was prior in point of time. The application of the 4th respondent having been received earlier than that of the petitioner, the grant of lease in his favour was according to the learned Counsel perfectly justified in the light of the statutory preference prescribed by Rule 7.

4. Rule 6 of the Rules envisages disposal of application within three months from the date of their receipt failing which the applications are deemed to have been refused. Rule 7, inter alia provides that if more than one applications are received for a quarrying lease over the same area preference shall be given to the application received earlier unless the Government for any special reason decide to the contrary. Sub-rule (2) of Rule 7 empowers the Competent Officer also to grant a quarrying lease to an applicant whose application was received later, in preference to an earlier application, with the previous approval of the Government and for reasons to be recorded. Rule 10 envisages an intimation of the rejection of the application to the applicant concerned. The rules therefore envisage a situation where more than one applications are received from the intending lessees for the same area. In any such event, while a preference can be given to the application that is received earlier in point of time, the power to grant a lease in favour of an applicant whose application is received later is specifically reserved both in favour of the Government as also in favour of the Competent Officer. Any such power to prefer a later applicant over one whose application is earlier in the point of time, would necessarily mean that the Competent Officer as also the Government have the discretion to make a choice out of the two. The process of making a choice would in turn require a comparative assessment of the merits of the two applicants having regard to such circumstances as may be relevant for the grant or refusal of the lease. It follows that the grant must notwithstanding the priority envisaged by Rule 7 proceed on an evaluation of the relative merit of the candidates. In other words, the Competent Officer as also the Government must be conscious of the possibility of the later applicant being chosen over one whose application was first in point of time. Suffice it to say, that the process of selection of the most suitable lessee where more than one applications have been received, would require the consideration of all the applications together. This is so because unless the applications are so considered there is no question of the Government or the Competent Officer exercising their discretion in preferring a later applicant over an earlier one. The power to prefer a later applicant over the earlier, will assume meaningful significance only if the process of consideration of the

applications is composite. Stated differently if the receipt of an application by itself determines the fate of the request, the power to overlook the priority envisaged by Rule 7 will become meaningless and even redundant. Any such interpretation which has the effect of rendering the power specifically vested in a statutory body, redundant must be eschewed and the provision so interpreted as to advance the purpose underlying the same. Judged thus, the least which the respondents was required to do was to consider the petitioner's application along with the request of 4th respondent and then determine whether there is any case for grant of the lease to the petitioner in preference to respondent 4 even when the petitioner's application had been received three days later. There is however nothing on record before me to suggest that the Competent Officer had considered the applications in that fashion. No statement of objections has been filed nor has the relevant record leading to the grant of lease in favour of the 4th respondent, been produced. I have therefore no option but to hold that the Competent Officer had failed to consider the application made by the petitioner in the manner the same ought to have been considered. The grant in favour of the 4th respondent is for that reason alone vitiated.

5. In the result this petition succeeds and is hereby allowed. The impugned notification is hereby quashed and the respondent directed to consider the request made by the petitioner as also that made by the 4th respondent afresh keeping in view the observations made hereinabove. No costs.