
(2001) 05 P&H CK 0203
In the Punjab And Haryana At Chandigarh
Case No : C.W.P. No. 15404 of 1999

Haryana Minerals Limited	Vs	APPELLANT
Union of India and Others		RESPONDENT

Date of Decision : 22-05-2001

Acts Referred:

Citation : (2002) 4 RCR(Civil) 22

Hon'ble Judges : N.K. Sud, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : Mr. Rameshwar Malik, for the Appellant; Palika Manga and Mr. Ashok Aggarwal and Mr. Sanjay Vij, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The Petitioner, a Government Company, prays for quashing of the orders, Annexure P-12 dated 27.5.1994 and Annexure P-24 dated 23.8.1999, passed by the Director, Mines and Geology, Haryana and the Tribunal constituted by the Central Government, respectively, before advertng to the controversy. The relevant facts may first be noticed.

2. The Respondent No. 3 had submitted an application dated 19.11.1990 to the State Government for grant of lease for mining of Silica Sand and Quartzes in 178.25 hectares of the area falling in the revenue estate of Village Mewla Maharajpur, District Faridabad. The Petitioner, which was already having a five year lease for mining of road metal and masonry stone in this area, also submitted a similar application on 28.11.1990. The application of Respondent No. 3 was rejected by the State Government vide letter dated 30.12.1991 on the ground that there was no good quality Silica Sand existing in the area for which mining lease had been sought. The State Government also pointed out that similar applications of other persons had also been rejected earlier on this very ground. However, no order was passed on the Government to carry out a prospecting of the area to determine its potential for mining of Silica Sand etc. The State Government was given three months time for this purpose Both the

parties consented to this interim measure. The State Government also agreed that the future leases in this area will be granted on the basis of the outcome of the prospecting which was to be undertaken. It also undertook to refrain from making any long term commitment involved in renewing the existing leases before the completion of the prospecting. Copy of this consent order dated 16.3.1994 has been produced as Annexure P-10 with the writ petition.

3. The State Government after prospecting the area found that Silica Sand did exist in the area and, therefore, vide its letter dated 27.5.1994 issued a Letter of Intent for Silica Sand in respect of 162.905 hectares of land to Respondent No. 3. However, since Respondent No. 3 had applied for grant of lease for 178.25 hectares of land, it filed another revision petition before the Tribunal claiming that the lease should have been granted in respect of the entire area applied for by it.

4. It is, therefore, evident that there were three revision petitions of Respondent No. 3 pending before the Central Government, against the following orders:

(i) Order dated 30.12.1991 rejecting its application for lease in respect of 178.25 hectares;

(ii) Order dated 2.2.1993 granting Letter of Intent in favour of the Petitioner in respect of 15.65 hectares from out of the total area applied for by Respondent No. 3; and

(iii) Order dated 27.5.1994 whereby Letter of Intent has been granted to it only in respect of 162.905 hectares against 178.25 hectares applied for by it.

5. All the three revision petitions were disposed of by the Tribunal vide order dated 23.8.1999. The Tribunal observed that the Letter of Intent dated 27.5.1994 in respect of 162.905 hectares of land granted in favour of Respondent No. 3 had not been contested before it and, therefore, it did not comment on the same. Thus, the only dispute in the three revision petitions was against the grant of Letter of Intent to the Petitioner on 2.2.1993 in respect of 15.65 hectares out of the total area of 178.25 hectares. This Letter of Intent was set aside by the Tribunal on two grounds. Firstly, it observed that during the revision proceedings the Government itself had taken the stand that there was no good quality Silica Sand existing in the area and, therefore, it was not viable to grant mining lease for Silica Sand. It had further observed that the action of the State Government in granting this lease without any prospecting of the area could not be sustained as there was no material before the State Government on 2.2.1993 which could justify the change in its earlier view. Secondly, it was held that the application of the Petitioner dated 28.11.1990 for grant of mining lease stood rejected in view of the deeming provisions of Rule 24 of the Mineral Concession Rules, 1960 (for short "the Rules"). Reference was made to sub-rules (1) and (3) of Rule 24. A conjoint reading of the two provisions makes it absolutely clear that the application filed on 28.11.1990, in the absence of any order, was deemed to have been refused on 28.11.1992. The Petitioner not

having preferred any revision petition before the Tribunal had allowed the deemed rejection to become final. Thus, on 2.2.1993, no Letter of Intent could be issued on the basis of the application dated 28.11.1990 which stood already rejected.

6. Notice of motion was issued. A detailed written statement has been filed on behalf of Respondent No. 3. A short reply has been filed on behalf of Respondent No. 2. Counsel for the parties have been heard and record perused.

7. At the outset, the Learned Counsel for Respondent No. 3 pointed out that the Petitioner can not challenge the order dated 27.5.1994 (Annexure P-12) issuing the letter of Intent in favour of Respondent No. 3 granting mining lease for Silica Sand over an area of 162.905 hectares of land. It was pointed out that the Petitioner had not filed any revision before the Tribunal against the said order nor had it contested it in the revision proceedings filed by Respondent No. 3. He referred to the order of the Tribunal dated 23.8.1999 (Annexure P24) wherein it had clearly been observed that this order had not been contested by any party. Mr. Malik, the Learned Counsel for the Petitioner, fairly conceded this position and confined his challenge to the validity of the order of the Tribunal cancelling the Letter of Intent granted to the Petitioner on 2.2.1993 in respect of 15.65 hectares of land.

8. The tribunal has cancelled the grant of Letter of Intent dated 2.2.1993 in favour of the Petitioner on two counts viz.

(i) That there was no valid application of the Petitioner before the State Government on 2.2.1993 on the basis of which the Letter of Intent could have been granted. The application filed by the Petitioner on 28.11.1990 had already suffered the fate of deemed rejection and such rejection had become final; and

(ii) That the State Government had rejected the application of the Respondent No. 3 on the ground that no silica Sand existed in the area and yet it had granted the lease of a part of this area to the Petitioner without there being any change in the situation. More so, when the Respondent No. 3 had disputed the rejection of its application and the matter was pending before the Tribunal.

9. The Learned Counsel for the Petitioner has not been able to controvert the findings of the Tribunal. At this stage, it is relevant to notice the provisions of Rule 24 of the Rules, which read as under:

24. Disposal of application for mining lease. - (1) An application for grant of a mining lease shall be disposed of within two years from the date of its receipt.

(2) xx xx xx xx xx xx

(3) If any application is not disposed of within the period specified in sub rule (1) it shall be deemed to have been refused.

A plain reading of the aforesaid provisions clearly shows that the application filed by the Petitioner for grant of mining lease on 28.11.1990 had suffered the fate of

deemed rejection on 28.11.1992. The said rejection had become final as the Petitioner had not filed any revision petition against the same which was open to it. Thus, in the absence of any valid application pending before the State Government on 2.2.1993, no Letter of Intent could possibly have been granted in favour of the Petitioner. The provisions of law are absolutely clear and unambiguous. Thus, no fault can be found with the findings and conclusions arrived at by the Tribunal. Having said so, we would like to observe that the provisions of Rule 24 are too harsh and deserve a second look. According to this rule, a genuine application can suffer the fate of deemed rejection merely because the authorities fail to take any decision on the same within a period of two years. Such a provision is open to mischief and can be misused. For instance, a valid application can be detained by an unscrupulous/negligent member of the staff of the office and after the lapse of two years such an application is deemed to have been rejected although no one had ever applied his mind to the merits of the case. It is true that such a deemed rejection can be challenged in appeal, yet it entails unnecessary loss of time and avoidable litigation as no order of rejection without application of mind can be legally sustained. With these observations, we would leave the matter to the authorities concerned to take any suitable remedial measure, if deemed necessary.

10. We are also in agreement with the observations of the Tribunal that the State Government after having rejected the application of Respondent No. 3 on the ground that there was no good quality Silica Sand available in the area, could not have granted the mining lease to the Petitioner in respect of the same area without any change in situation. Thus, the action of the State Government in granting the Letter of Intent dated 2.2.1993 to the Petitioner is totally arbitrary and unjust and, therefore, unsustainable on this ground also.

11. No other point has been raised.

12. Consequently, we find no merit in this writ petition which is hereby dismissed. However, in the facts and circumstances of the case, there shall be no order as to costs.

Sd/- Jawahar Lal Gupta, J.