
(2009) 11 AHC CK 0144
In the Allahabad High Court
Case No : Writ Petition No. 9631 of 2009 (MB)

Jai Shanker Enterprises and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 09-11-2009

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 19
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Chapter 2, 6(1), 6(1)(g),
6(2), 9(2)

Citation : (2009) 11 AHC CK 0144

Hon'ble Judges : V.K.Shukla, J and Rajiv Sharma, J

Judgement

Heard Counsel for the parties.

In the instant writ petition the petitioner has assailed the order dated 27.7.2009 passed by the respondent no.1 [Secretary Department of Geology & Mines] and the consequential order dated 25.8.09 passed by the District Magistrate, Barabanki whereby a joint mining leases have been granted in favour of respondents nos. 7 to 9, namely, Dharmendra Kumar Singh son of Bhagwati Prasad, Dharmendra Kumar Singh son of Mukhtar Singh and Azad Singh son of Late Harihar Singh.

The facts giving rise to the present writ petition are that a notification dated 18.7.08 was issued inviting applications under the provisions of Chapter II of the U.P. Minor Mineral (Concession) Rules, 1963 [in short referred to as the "1963 Rules"] wherein four areas of District Barabanki were shown to be available for grant of mining lease. As per the notification, applications were to be received in the office from 18.8.09 to 25.8.08 and the areas which were notified were, namely, Khand I village Tapesipah, Tehsil Ram Nagar measuring 90 acres, Khand II, village Tepesipah Dhokaria, Tehsil Ram Nagar, measuring 90 acres, Khand III village Dhokaria, Tehsil Ram Nagar measuring 32 acres and Khand IV village Tapesipah, Tehsil Ram Nagar, measuring 90 acres. It was also provided in the notification that the applicants should submit the details of their financial resources etc. for the determination of preferential rights under Rule 9.

Pursuant to the aforesaid notification, petitioners applied for grant of mining lease of the Khand no.1, Khand no.2 and Khand No.4 on 22.8.08. Respondents no. 7 to 9 jointly applied for grant of mining lease of Khand No.1, Khand No.2 and Khand No.4 on 18.8.2008. In respect of Khand no.1 total 4 applications were received, in respect of Khand no.2 also four applications were received whereas in respect of Khand no.4 total 5 applications were received. None of the applications which were received on the first date, were complete and accordingly a notice under Rule 6(2) of the U.P. Minor Minerals (Concession) Rules, 1963 was issued to the applicants for completion of necessary formalities as per Rule 6(1) of the Rules of 1963. Pursuant to the notice dated 18.9.08 under Rule 6(2) of the Rules of 1963, petitioners as well as respondents nos. 7 to 9 completed some of the formalities as provided under Rule 6(1) of the 193 Rules on 3.10.2008.

Respondent no.3 on the basis of the recommendations of the respondent no.6 dated 10.11.2008 and 11.11.2008 forwarded the matter to the State Government. Consequently, the Director, Geology & Mining vide impugned order dated 27.7.2009 granted the prior approval for grant of mining lease in favour of the respondent no. 7 to 9 with the condition that the respondent no.3 District Magistrate shall ensure that the provisions of U.P. Minor Mineral (Concession) Rules, 1963 are adhered to but without completing the necessary formalities as required under the aforesaid 1963 Rules, the District Magistrate issued grant order of the lease in favour of respondents nos. 7 to 9.

Counsel for the petitioner has vehemently argued that the Assistant Geologist, Regional Office, Faizabad has considered the application of the respondent no. 7 to 9 visavis Mohsin Ali and illegally determined the preference under Rule 9(2) in favour of the respondent no.7 to 9 whereas the application of the petitioners have not been considered at all treating the same as not having been received on the first date. According to her, the application of the petitioners as also of the respondent nos. 7 to 9 remains incomplete even after issuance of notice under Rule 6(2) of 1963 Rules which could not have been condoned and if it was to be considered then both the applications ought to have been considered as having preferential rights of each candidates visavis the other should have been examined under Rule 9(2) 1963 rules. Moreover, after coming into force of the 29th Amendment, the applications could not have been entertained without compliance of Rule 6(1)(g). The State Authorities are not vested with the power to dispense with the mandatory provisions which requires documents, referred to in Rule 6(1)(g) and when the applications of all the candidates were incomplete, no preferential rights on the basis of said incomplete applications could have been determined.

Elaborating her arguments, learned Counsel for the petitioner submitted that respondent no.7 only has mining experience on the basis of permit granted in his favour whereas the respondents no. 8 and 9 have no mining experience. In the chart prepared by the opposite parties, the respondent no.7 has been shown to

have mining experience and financial solvency of Rs. 30 lacs has been furnished but on an application by the petitioners under Right to Information Act, the information tendered indicates that the respondent no. 7 has a solvency of Rs. 30 lacs, whereas a perusal of the chart would indicate that there exists no solvency of the respondent no. 8 at all.

On the strength of the decisions rendered in Ashok Kumar Tripathi vs. State of U.P. 2007 (25) LCD 1674, Jumma vs. State of U.P. 2007(4)ALJ 225 and Dinesh Pratap Dwivedi vs. State of U.P. and others; 1995 ALL.L.J. 872, learned Counsel for the petitioner argued that the date of completion of the application would be the date of receipt of application, and therefore, the interpretation given by the respondent no.6 was absolutely erroneous and on the basis of the same, no recommendation of preferential determination of rights could have been passed in favour of the respondents no. 7 to 9.

Summing up her arguments, learned Counsel submitted that lease grant order and the impugned order being not in conformity with the 1963 Rules is wholly illegal apart from being in gross violation of Section 19 of the Mines and Mineral (Development & Regulation)Act, 1957 and as such both the orders are liable to be set aside.

On behalf of the State, it has been submitted that the applications, pursuant to the notification dated 18.7.08, were received from 18.8.2008 to 25.8.2008. The joint application of respondents no. 7 to 9 in respect of KhandI was received on 18.8.2008 whereas petitioner application was received on 19.8.08. As per provisions of Rule 6(2) the petitioners as well as private respondents were allowed to complete the application in all respect consequently the applications were completed by the petitioners as well as respondent no. 7 to 9 on 3.10.2008 thereafter the preference has been decided under Rule 9 of 1963 rules in favour of the respondent no. 7 to 9. As regard the KhandI, preferential rights were decided under Rule 9(1) whereas in respect of KhandII, III and Khand IV, same were decided under Rule 9(2) of the said Rule.

As regard to submission of Treasury Challan, it is informed that due to strike in the Bank on 18.8.2008, the private respondents could not submit treasury challan, consequently on 19.8.08 after depositing the amount, private respondents submitted Treasury Challan. It is incorrect to say that respondent no. 7 had no financial solvency. Infact the respondent no. 7 had a financial solvency of 30 lacs and to this effect a certificate has been issued under signature of District Magistrate. The matter was referred by the District Magistrate to the State Government after applying its mind and considering the provisions of Rule 6(2) and other relevant provisions.

On behalf of respondents nos. 7,8 and 9 it has been argued that the present writ petition is liable to be dismissed on the ground of availability of alternative statutory remedy by filing Revision before the State Government, which has been bypassed.

Even otherwise, no legal rights of the petitioners have been infringed by grant of mining lease to the answering respondents as, admittedly, the applications of the petitioner were incomplete as per the Rules and, therefore, the mining lease could not have been granted to them. Moreover, after the sanction of mining lease, the lease deed has been executed in favour of the answering respondents on 24.9.2009 for grant of lease rights for a period of three years.

The Mines and Minerals (Development and Regulation Act, 1957, ("MMDR") and the Mines Act, 1952, together with the rules and regulations framed under them, constitute the rules governing the mining sector in India. The relevant rules in force under the MMDR Act, are the Mineral Concession Rules, 1960, and the Mineral Conservation and Development Rules, 1988. The health and safety of the workers is governed by the Mines Rules, 1955 created under the jurisdiction of the Mines Act, 1952. In reference to present dispute, the relevant provisions of the U.P. Minor Minerals (Concession) rules, 1963 are reproduced hereinunder:

6. Application fee and deposit for grant of mining lease:

(1) Every application for grant of mining lease shall be accompanied by

(a) a fee of one thousand rupees:

(b) a deposit of two thousand rupees for meeting the preliminary expenses, other than those specified in Rule 17, and

(c) four copies of the cadastral survey map on which the area applied for is clearly marked and in case such area is not covered by cadastral survey, four copies of topographical survey map on a scale of at least 4" = 1 mile, on which the area applied for is accurately marked,

(d) a certificate, issued by the District Officer or by such officer as may be authorised by the District Officer in this behalf, showing that no mining dues are outstanding against the applicant:

Provided further that such certificate shall not be required where the applicant has furnished an affidavit to the satisfaction of the State Government, stating that he does not hold or had not held any mining lease or any other mineral concession in the territory of the State;

(e) a certificate of caste and residence of the applicant, where the application is for mining lease of sand or morrum or bajri or boulder or any of these in mixed state;

(f) a character certificate given by the District Officer of the District, where the applicant permanently resides

(g) in case the area applied for is having annual lease amount or dead rent, as the case may be, of rupees two lacs or more, then the applicant shall also furnish no objection certificate of the following authorities:

(i) Authorized officer of the Income Tax Department,

- (ii) Authorized Officer of the Trade Tax Department,
- (iii) District Magistrate of the District, where the applicant permanently resides,
- (iv) Senior Superintendent of Police/Superintendent of Police of the district, where the applicant resides.

(2) If the application is not complete in any respect or is not accompanied by the fee, deposit or the documents mentioned in subrule (1) the District Officer or the officer authorised by the State Government in this behalf, shall, by fifteen days notice, require the applicant to complete the application in all respects or, to deposit the fee or furnish the documents within such time as may be specified in the notice and if the applicant fails to do so within the specified time, such application shall not be considered.

9. Preferential right of certain persons

(1) Where two or more persons have applied for a mining lease in respect of the same land the applicant whose application was received earlier shall have a preferential right for the grant of lease over the applicant whose application was received later:

Provided that where such application are received on the same day, the State Government may, after taking into consideration the matters specified in subrule (2), grant the mining lease to such one of the applicants it may deem fit.

(2) The matters referred to in subrule (1) are

- (a) Any special knowledge or experience in mining operations possessed by the applicant;
- (b) The Financial resources of the applicant;
- (c) The nature and quality of the technical staff employed or to be employed by the applicant;
- (d) The conduct of the applicant in carrying out mining operations on the basis of any previous lease or permit and in complying with conditions of such lease or permit or the provisions of any law in connection therewith; and
- (e) In respect of mining lease for sand or morrum or bajari or boulder or any of these in mixed state, exclusively found in the river bed, if other things are equal, preference shall be given to a person or group of persons, whether incorporated or not who belong to Socially Educationally Backward Classes (such as Mallah, Kewat, Bind, Nishad, Manjhi, Batham, Dhiwar, Themer, Chai, Sirahia, Turha, Raikwar, Kaiwrt, Khulwat, Tiya, Gaudia, Godia and Kashyap) and other such castes of citizens, as notified by the State Government from time to time who have obtained a certificate in Form MM14 from the concerned District Officer, or such other Officer authorized in this behalf by the State Government, certifying that such person/persons is/are traditionally engaged in excavation of sand/ morrum for their livelihood and who are resident of the District for which the

application has been given;

(f) Such other matters as may be considered necessary by the State Government.

(3) Notwithstanding anything contained in subrule (1) and (2), the State Government may, for any special reasons to be recorded grant a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

Section 19 of the Mines and Mineral (Development & Regulation) Act, 1957, on the strength of which it has been submitted that provides as under:

Reconnaissance permits, prospecting licences and mining leases to be void if in contravention of Act

19. Any [reconnaissance permit, prospecting licence or mining lease] granted, renewed or acquired in contravention of the provisions of this Act or any rules or orders made thereunder shall be void and of no effect.

Explanation: Where a person has acquired more than one [reconnaissance permit, prospecting licence or mining lease] [] and the aggregate area covered by such [permits, licences or leases], as the case may be, exceeds the maximum area permissible under section 6, only that [reconnaissance permit, prospecting licence or mining lease] the acquisition of which has resulted in such maximum area being exceeded shall be deemed to be void."

From the perusal of the aforesaid provisions, it is imminently clear that a defective application is no application in the eyes of law. It is only that application which is complete in all respects, will be considered for grant of mining lease and for determining preferential right under Rule 9(1) of 1963 rules. However, if the application is not complete in any respect or is not accompanied by fee, deposits or documents mentioned in subrule 1 of Rule 6 of 1963 Rules, the District Officer or the officer authorised, by 15 days notice, require the applicant to complete the application in all respect. It is also well settled that an application shall be treated to be made on the date when the discrepancies are cured by the applicant and not earlier to it, when it was made on defective basis. Rule 9(2) applies only when two or more applications are received on the same day for grant of mining lease.

The main question involved in this writ petition is that whether the application for grant of mining lease made by respondents nos. 7 to 9 was complete in all respects on the date when recommendation was made by the Collector or not.

In Ashok Kumar Tripathi's case, the Hon"ble Single Judge held in paragraph 18 as under:

" In this connection, it is necessary to point out that unless an application is moved before the authority in consonance with the requirements of subrule 1 of Rule 6 of 1963 Rules, there can be no application in the eye of law. It is only a proper application made in accordance with the said rules, gives rights of

consideration and not otherwise, therefore, by necessary implication only this much can be held that such application is treated to be made on the date only when it became in order and not earlier to it, stretching further more from the date when such application was made on defective basis, in my considered opinion, would be rewriting of the Rule 6(2) of 1963 Rules by adding some more words in the statute creating legal fiction by deeming provision to the effect that on curing the discrepancies in the application the same shall be treated to be made from the date on which it was initially made on defective basis..."

In Dinesh Pratap Dwivedi's case [supra] a division bench of this Court held that an application which is not accompanied by the required material enumerated in Rule 6(1), cannot be said to be complete and the date of the receipt of the application for the purpose of Rule 9 will be deemed to be the date on which the application is actually completed in all respects.

In the instant case, after going through the records and the submissions advanced by the parties' counsel, it comes out that neither the application of the petitioner nor of the respondents No. 7 to 9 were complete in all respects as required under Rule 6 (1)(g). Rule 6 (1) (g) requires in unequivocal words that in case the area applied for is having annual lease amount or dead rent, as the case may be, of rupees two lacs or more, then the applicant shall also furnish no objection certificate of the authorities i.e. Authorized officer of the Income Tax Department; Authorized Officer of the Trade Tax Department; District Magistrate of the District, where the applicant permanently resides; and Senior Superintendent of Police/Superintendent of Police of the district, where the applicant resides.

Admittedly, the applications submitted pursuant to the Notification dated 18.7.2008 were not complete and as such, notice was issued on 18.9.2008 under Rule 6 (2) for completing the necessary formalities. From the perusal of the record of the writ petition, it reflects that Azad Singh, Dharmendra Singh son of Mukhtar Singh had given an affidavit before the Additional District Magistrate, Barabanki to the effect that in absence of any direction, no certificate has been given by the Superintendent of Police. As regards the certificate of Trade Tax Department, an affidavit has been given by Dharmendra Singh, he is not registered with the Trade Tax Department and no tax liability is due upon him. Rule 6 (1)(g) requires certificate of the Trade Tax Department, Income Tax Department, District Magistrate and Superintendent of Police of the concerned area. There is no power vested in any authority to relax any of the condition, as enumerated in Rule 6(1). Also, by filing an affidavit, it cannot be said that compliance of Rule 6(1) (g) has been made. When a statutory provision requires certain thing to be done in a certain manner, it has to be done in that manner alone. We are unable to understand as to how Assistant Geologist, Regional Office, Faizabad, indicated in the Chart that applications are complete. The District Magistrate also while making recommendation to the State Government did not apply its independent mind and examined the matter thoroughly. Same

had happened with the Secretary, Department of Geology and Mines. It appears that authorities acted in haste in granting the mining lease.

For the reasons aforesaid, we are of the view that the impugned orders suffers from serious legal infirmities and are liable to be quashed.

The writ petition is allowed. The orders dated 27.7.2009 and 25.8.2009 passed by the respondent Nos.1 and 3 as contained in Annexure Nos. 1 and 2, respectively, to the writ petition, are hereby set aside. The opposite parties are directed to initiate fresh exercise for grant of mining lease forthwith.

As it has been brought to our notice, during the course of arguments, that necessary certificates, as mentioned in Rule 6 (1) (g), are not being given by the concerned authorities, for one reason or the other, or in the absence of any specific direction in this regard. We deem it proper to direct the Chief Secretary of the State to issue necessary instructions/circular to the authorities i.e. Trade Tax Department, Income Tax Department, all District Magistrates and Superintendent of Police so that compliance as required under Rule 6 (1) (g) may be made sincerely by the persons involved in the mining business.