
(2007) 04 AHC CK 0251
In the Allahabad High Court

Jumma Ram

APPELLANT

Vs

State of U.P. and Sri Chauhal Singh

RESPONDENT

Date of Decision : 24-04-2007

Acts Referred:

Citation : (2007) 6 AWC 5666 : (2007) 103 RD 12

Hon'ble Judges : Shishir Kumar, J;R.P. Misra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.P. Misra and Shishir Kumar, JJ.—This writ petition has been filed for quashing the order dated 29.8.2005 passed by respondent No. 3, Annexure-1 to the writ petition. Further prayers are to issue a writ in the nature of mandamus commanding the respondents to consider the application of the petitioner in the light of Rule 9 (2) and (3) of the U.P. Minor Minerals (Concession) Rules 1963 and to issue a writ in the nature of prohibition restraining the respondent No. 4 from operating the lease granted to him-vide its order dated 29.8.2005.

2. The facts arising out of the writ petition are that the petitioner was holding a mining lease of Bhattipur Majra in district- Muzaffarnagar for excavation of sand from 10.12.1998 to 9.12.2004. A procedure has been prescribed under the rules wherein the application has to be filled in form MM-1 before respondent No. 3 which is to be considered by the respondents in terms of Rules 7,8,9,10,11,12 and 13. The application is to be made accompanying the relevant documents specified in Rule 6. Rule 6 (2) which is relevant for the purpose of the present controversy is being quoted below:

6(2):If the application is not complete in any respect or is not accompanied by the fee deposit or the documents mentioned in Sub-rule (1) the District Officer or the Officer authorized by the State Government in this behalf, shall, by fifteen days notice require the applicant to complete the application in all respect 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.

A notification was issued by respondent No. 3 inviting the applications for mining lease dated 24.1.2005. It was mentioned in the said notification that the applications will be received between 25.2.2005 and 4.3.2005. Pursuant to the aforesaid notification the petitioner submitted an application on 25.2.2005 accordingly accompanied by the relevant documents mentioned in the rules. It is evident from the record that total 24 applications were received by respondent No. 3 with regard to grant of lease over the property in question. One of the aggrieved applicants namely Jai Pal Singh approached the Lucknow Bench of this Court by way of filing Writ Petition No. 3413 (M/S) of 2005 on the ground that respondent No. 3 is acting on extraneous considerations and is interested to grant lease in favour of respondent No. 4. The aforesaid writ petition was disposed of finally whereby this Hon'ble Court has laid down the principles on which the mining lease is to be granted by respondent No. 3. The order passed by the High Court was an ex parte order; therefore, the respondent No. 4 challenged the same before the Apex Court. Leave was granted and vide order dated 22.7.2005, the Apex Court allowed the appeal and modified the judgment passed by the Lucknow Bench. The petitioner has also approached this Court by filing Writ Petition No. 46418 of 2005 which was disposed of finally on 29.6.2005 directing respondent No. 3 to take the appropriate decision according to law.

3. In pursuance of the order passed by this Court and the Apex Court, respondent No. 3 has passed an order dated 29.8.2005 by which the lease right has been granted in favour of respondent No. 4. Against this order the petitioner has approached this Court.

4. It has been submitted on behalf of the petitioner that the order dated 29.8.2005 is totally against the spirit of the judgment pronounced by this Court as no finding has been recorded by the respondent No. 3 as to when the application of respondent No. 4 was complete. Respondent No. 3 has failed to notice that respondent No. 4 has taken a conflicting stand inasmuch as before the Hon'ble Supreme Court, it has been stated that his application was complete in all respect on 25.2.2005 whereas the respondent No. 3 has stated that his application was not complete on 25.2.2005 and it was completed on 14.3.2005. On account of the admitted position respondent No. 4 has completed the formalities with regard to the application on 14.3.2005. The learned Counsel for the petitioner has relied upon the finding recorded by the Lucknow Bench which basically came to be confirmed by the Apex Court which is quoted below:

But so far as the time factor is concerned, it is to be decided on the basis of the time when application complete in all respects, is received in the office of the concerned authority.

5. The observation of the Lucknow Bench has not been set aside by the Apex Court. Rule 6 (2) of the Rules is only to provide an opportunity to a person for

furnishing complete information. However, the said liberty cannot over ride the provision of Rule 9 which vests in. person completing the formalities earlier point of time. Thus the benefit of Rule 6 (2) cannot apply retrospectively in order to take away the right as provided under Rule 9. No finding has been recorded by respondent No. 3 as to whether the application submitted by respondent No. 4 was complete and complied with all the requirements as provided under Rule 6 (1). When respondent No. 3 adopted the procedure of hearing, then it was obligatory upon him to have heard all the applicants before taking the decision. Respondent No. 3 committed a grave irregularity in only hearing respondent No. 4. The rights of the petitioner has been prejudiced as no opportunity of hearing has been given to him. As this Hon'ble Court has directed to decide the application, this casts a duty upon respondent No. 3 to have issued notice to the petitioner and to have given an opportunity before deciding the same. Respondent No. 3 has not recorded any finding with regard to parameters laid down in Rule 9 (2) as to whether respondent No. 4 fulfills the criteria laid down in Rule 9 (2). Rule 9 (2) which has been amended by 26 th Amendment w.e.f. 22.6.2004 clearly shows that the stand of the petitioner is on a better footing than the respondent No. 4 as the petitioner is having special knowledge and experience in mining operation of the area in dispute and was last lessee of the area. The conduct of the petitioner was not put in question even though the petitioner operated the lease for two terms since 1998. There is no material on record to show that respondent No. 4 is possessed of better footing according to Rule 9 (2) of the Rules. In the absence of the consideration of the factors enumerated in Rule 9 (2) of the Rules, the decision of the respondent No. 3 stands vitiated and is liable to be set aside. Rules 6 and 9 of the U.P. Minor Minerals (Concession) Rules 1963 are being reproduced below:

6. Application fee and deposit for grant of mining lease.--(1) Every application for grant of a mining lease shall be accompanied by--

- (a) a fee 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 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 authorized by the District Officer in this behalf, showing that no, mining dues are outstanding against the applicant:

Provided that 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 or sand or morrum or bajri of 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.

(2) If the application is not complete in any respect or is not accompanied by the fee deposit or the documents mentioned in Sub-rule (1) the District Officer or the officer authorized by the State Government in this behalf shall, by fifteen days notice require the applicant to complete the application in all respect 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 applications are received on the same day, the State Government may after taking into consideration the matters specified in Sub-rule (2), grant the mining lease to such one of the application as it may deem fit.

(2)The matters referred to in Sub-rule (1) are--

(a) Any special knowledge or experience in mining operations possessed by the applicant;

(b) The financial resources for 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) Such other matters as may be considered necessary by the State Government.

(3) Notwithstanding anything contained in Sub-rules (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.

Aggrieved by the aforesaid order the petitioner has approached this Court.

6. Notices were issued and as the counter affidavit and rejoinder affidavit have

already been exchanged, as such the writ petition is being disposed of finally with the consent of the parties. It has further been submitted on behalf of the petitioner that the judgment passed in Writ Petition No. 3413 of 2005 *Jai Pal Singh v. State of U.P. and Ors.* the finding and the criteria which have been held by the Court have been confirmed by the Apex Court, therefore, it was obligatory on the part of the respondent No. 3 to act accordingly, but as he has not done so, the order is bad and is liable to be quashed. Reliance has been placed upon a judgment of Division Bench of this Court reported in 1995 A.L.R. 68 *Dinesh Pratap Dwivedi v. State of U.P.* and paragraphs 6, 7 and 8 of this has been referred to which are quoted below:

6. Then comes the question whether application of respondent No. 5 in respect of plot Nos. 148 to 151 and 222 was complete on 2.3.1994 within the meaning of Sub-rule (2) of Rule 6 of the rules, which provides that if the application is not complete in any respect or is not accompanied by the fee, deposit and maps mentioned in Sub-rule (1), the date of receipt of the application shall for the purpose of Rule 9, be deemed to be the date on which the application is actually completed in all respects. By application dated 24.3.1994 respondent No. 5 wanted to obtain lease precisely for the same plots for which the petitioner applied on 21.3.1994 and for which the lease was granted in his favour for a period of five years in the year 1989,

7. Can the application of respondent No. 5 dated 2.3.1994 be said to be complete in respect of plots which were sought to be added and deleted on 24.3.1994? We are of the considered view that when plot Nos. 148 and 150 were not mentioned and plot Nos. 217-Ka and 217-Kha, inter alia, were mentioned in the application dated 2.3.1994 by respondent No. 5, the application dated 2.3.1994 was completed only on 24.3.1994 when amendment in respect of plots was made and topographical map, which ought to have been supplied with the application under Sub-rule (2) of Rule 6, was supplied. Under Rule 6 (2) the words "is not complete in any respect or is not accompanied by" are of great significance. Only that application which is complete in all respects, will be considered determining preferential right under Rule 9 (1). If an application lacks essential particulars and if it is not accompanied by the requisite materials as enumerated in Sub-rule (1) of Rule 6, then the application remains incomplete and that will be deemed to have been completed only when necessary particulars are furnished and requisite materials are supplied. The application Form MM-1 clearly enjoins upon an applicant to furnish full particulars of the land in respect of which lease is sought to be obtained. An application which lacks full description of plots, cannot be said- to be complete. Similarly, an application which is not accompanied by the requisite materials enumerated in Rule 6(1), cannot be said to be complete and the date of receipt of the application for purpose of Rule 9 will be deemed to be the date on which the application is actually-completed in all respects. Respondent No: 5 furnished full details of the plots and filed topographical map on 24.3.1994, and therefore, for the purpose of Rule 9, the" application of respondent No. 5 can be said to have been

completed only then and not before. The application of the petitioner, though was made on 21.3.1994, was first in point of time, as the application of respondent No. 5 dated 23.1994 was cured and completed on 24.3.1994. It is only on 24.3.1994 that respondent No. 5 came at par and if there is no other circumstance adverse to the petitioner, then the latter shall have a preferential right under Rule 9 (1).

8. Counsel for respondent No. 5 further urged that respondent No. 4 illegally pointed out in his report dated 18.4.1994 (Annexure "5" to the writ petition) that the application of respondent No. 5 was defective inasmuch as that was not accompanied by a certified topographical map. He submitted that application of respondent No. 5 was accompanied by a spot map and that was full compliance of Rule 6 (1) (c). Be that as it may, the fact remains that plot Nos. 148 and 150 were added and plot Nos. 217-Ka and 217- Kha were deleted by respondent No. 5 vide his application dated 24.3.1994 and in the absence of full description of plots, for which lease was sought to be obtained by respondent No. 5 the application dated 2.3.1994 remained incomplete till 24.3.1994. Learned Counsel for respondent No. 5 having no suitable answer to this, urged that lease granted to respondent No. 5 having already become operative be restricted to the land sans plot Nos. 148 and 150. We are afraid that such submission cannot be accepted. The only question for consideration before us is whether the application of respondent No. 5 as it stood on 2.3.1994, was complete or not in respect of consecutive plot Nos. 148 to 151 and 222, for which lease was granted in his favour for the period of five years commencing from 1994. As already pointed out the application of respondent No. 5 having been completed in all respects only on 24.3.1994, the application of the petitioner dated 21.3.1994 was first in point of time and, therefore, the petitioner deserved preferential treatment under Rule 9 (1).

Learned Counsel for the petitioner has submitted that the Division Bench has taken a view that the application which is not accompanied by the requisite materials cannot be said to be complete and the date of 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.

7. A counter affidavit has been filed on behalf of respondent No. 4 and it has been stated that Rule 6 of the U.P. Minor and Minerals (Concession) Rules 1963 has been substituted by the Notification dated 30.6.1990 w.e.f. 7.7.90. By 23 rd Amendment dated 1.3.2001 the amendment in Rule 6 took place which is being reproduced below"

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 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 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 authorized 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 morum 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.

(2) If the application is not complete in any respect or is not accompanied by the fee deposit or the documents mentioned in Sub-rule (1) the District Officer or the officer authorized 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.

By means of the government order dated 16.10.2004 the period of 15 days has been reduced to 7 days in respect of making the application complete. Respondent No. 4 filled his application on 25.2.2005. A notice was issued on 7.3.2005 duly received by respondent No. 4 on 14.3.2005 indicating that certain columns are not filled. Similar notices were issued to the petitioner which were received by him on 9.3.2005. From the perusal of the notice dated 7.3.2005 it is clear that there was no infirmity in the application and instead it was indicated that certain columns were not filled. Whereas in the notice of the petitioner it has been stated that certain columns have not been filled and original documents like Character Certificate, Caste certificate and Residence Certificate were not attached Respondent No. 4 appeared before Mines Officer Incharge and it was found that there was no infirmity in the application which is apparent from the application duly received by the Mines Department on 25.2.2005. The petitioner has not disclosed this fact that there was any defect in the application filed by the petitioner and on the notice given he has removed the defect subsequently.

8. According to government order dated 16.10.2004 in all the accompanied applications notices shall be issued for making it complete within a period of 7 days and only after 7 days verification and scrutiny of the applications shall take

place. There was no infirmity in the application submitted by the respondent and without pursuing the same notices were issued to deponent on 14.3.2005 and subsequently, it was found that practically there was no mistake but only singular and plural specifications in the sentence column was not marked or cut in the original application submitted before District Magistrate. So far as the application of the petitioner is concerned certain documents were not filed, whether those documents were filed or not and when it was filed nothing has been mentioned in the writ petition. From the plain reading of the existing Rule 6 (after 23rd Amendment) it is clear that if the time is allowed as provided in the Statute to make the application complete, then after expiry of the stipulated period it shall not be considered. But after 7 days verification and scrutiny of the applications shall take place, then within the stipulated period, the applicants are required to make application complete. If certain period required in the Statute is given to make application complete whether "A" has completed the same within the period of one day or "B" has completed the same within a period of 3 days. If the defects have been completed within 7 days or prior to that date it will not give any preferential right to any of the applicant on this account. The relevant question for consideration before this Court is when and on which date the application was filed. The relevant requirement is whether petitioner or the defendant carried preferential right as provided in Rule (2) or not. As the application of respondent No. 4 as well as the application of the petitioner was filed on 25.2.2005, then in such contingency the petitioner cannot claim any preferential right becoming first applicant treating the date 25.2.2005. Respondent No. 4 is having preferential right on the basis of past experience in the mining operation. The relevant document was filed in this regard and it was expected by the competent authority. The impugned order clearly indicates this fact having preferential right and the respondent No. 4 has rightly been granted least in his favour.

9. The Standing Counsel has also filed a counter affidavit and has stated that the Hon"ble Court has directed the District Magistrate to consider and decide the application but one Chauhal Singh respondent No. 4 has filed an appeal before the Apex Court on the ground that he was not afforded an opportunity, therefore, the Apex Court has allowed the appeal and directed the District Magistrate to take into consideration the fact whether the application of respondent No. 3 was complete on 25.2.2005 and respondent No. 4 was directed to be afforded an opportunity to the respondent No. 4. It has further been submitted that one Jai Pal Singh has filed a revision before the State Government as provided under the rules. As the petitioner has got an alternative remedy by way of filing a revision before the competent authority, as such the writ petition is liable to be dismissed on the ground of alternative remedy.

10. We have heard the learned Counsel for the petitioner Sri Manish Goyal, Sri S.P. Singh for respondent No. 4 and the learned Standing Counsel Sri Vishnu Pratap and have perused the record. From the record it is clear that the applications of the petitioner and respondent No. 4 were filed on the same date.

It is also clear from the record that respondent No. 4's application was first. One Jai Pal Singh, as the matter was referred by the District Magistrate to the State Government for consideration of the applications filed by the petitioner and other applicants, aggrieved by the aforesaid order of the District Magistrate, he approached the High Court and the High Court vide its order dated 2.6.2005 has disposed of the writ petition directing the District Magistrate to consider the application according to law. A finding has also been recorded by the Court that if more than one applications are received on the same day, the preference will be decided in accordance with the provisions of Rule 9 (2) of the Rules of 1963. Rule 9 (2) shall apply if more than one applications are, received on the same date. A finding has been recorded that application of the petitioner i.e. Jai Pal Singh was complete in all respect but the application of respondent No. 4 was not completed on 25.2.2005 and it was complete on 14.3.2005.

11. It appears that this fact has not been brought to the knowledge of the Court in Writ Petition No. 3413 of 2005 that notices as required under Rule 6 (2) has been issued to the petitioner and Jai Pal Singh as well as respondent No. 4. In such a situation it appears that the Court has held that application of Jai Pal Singh was complete on the date when it was filed. The petitioner in the present writ petition has not disclosed this fact that a notice under Rule 6 (2) of the Rules was issued to the petitioner on 7.3.2005 requiring the petitioner to file various documents like residential proof, Character Certificate and Caste Certificate. This was done by the petitioner subsequently, therefore, in our view the petitioner cannot claim that as immediately after receiving the notice by the District Magistrate dated 7.3.2005 he has removed the defect on 9.3.2005 as such he is entitled for preference as provided under Rule 9 (2) of the Rules. The criteria for consideration of the application is that if on the same day various applications are filed and if in the first application received in the office is having no major defect and it is complete in all manner, his application is to be treated first. The case of the petitioner cannot be accepted that as the petitioner has removed the defect before respondent No. 4, as such he is entitled to the benefit.

12. A cogent finding has been recorded by the District Magistrate while considering the application of respondent No. 4 that it was in all manner complete and each and every document was enclosed and the application of respondent No. 4 was first, as such according to Rule 9 (2) he has got a preferential right. A finding to this effect has also been recorded by the District Magistrate that the application of respondent No. 4 was first application and on a notice given to him as there was some minor mistake, it was completed within time as provided under Rule 6 (2) of the Rules. Therefore, according to Rule 9, respondent not.4 has got a preferential right and he is entitled for mining lease. From the record it is clear that the application of the petitioner was at No. 6 which was submitted on 25.2.2005. According to Rule 9 it is clear that where two or more applications have been submitted for one area for grant of mining lease, then preference is to be given to application which has been received first. From the record it is clear that the application of respondent No. 4 was received first

and was complete in every manner. Only there was some minor defects, which was removed by respondent No. 4 well within time after receipt of the notice under Rule 6 (2) of the Rules. Respondent No. 3 has also recorded a finding that the application of the petitioner was received at No. 6 on 25.-2.2005.

13. In view of the aforesaid fact as the lease has been granted to respondent No. 1 in total consonance of Rule 9 of the U.P. Minor and Mineral (Concession) Rules and a finding on the basis of the relevant facts has been recorded by respondent No. 3, therefore, we are of opinion that as the petitioner was at No. 6, on the day "when he filed the application and there was major defect in his application and same was removed subsequently, as such he cannot claim the benefit of Rule 9 (2) of the Rules.

14. In view of the aforesaid fact, we find no merit in the writ petition. The writ petition is devoid of merit and is hereby dismissed.

15. No order as to costs.