
(1990) 11 MAD CK 0026
In the Madras High Court

K. Jamal Maideen

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-11-1990

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 8

Citation : (1991) 529 MLJ 1

Hon'ble Judges : Kanakaraj, J

Bench : Division Bench

Judgement

Kanakaraj, J.—The petitioner obtained a mining lease for quarrying quartz and felspar in Survey No. 42/14, Desavilakku Village, Omalur

Taluk, Salem District over an extent of 1 acre for a period of three years. It may be stated that the petitioner asked for a lease for a period of 20

years but actually the grant was for only three years. A lease deed was executed on 15.12.1983. On 12.12.1985, the petitioner made an

application for renewal of the lease. This application not having been disposed of on or before 11.6.1986, the application is deemed to be

rejected. The petitioner thereupon filed a revision petition under Rule 54 of the Mineral Concession Rules, 1960 to the Central Government. This

revision having been made on 25.6.1986 and not having been disposed of, the petitioner sent a reminder on 10.10.1986 and a telegram on

9.12.1986. Since the period of lease was expiring, the petitioner filed W.P. No. 13523 of 1986 for the issue of a writ at mandamus to direct the

respondents to renew the lease for a further period of 5 years. Meanwhile, on 28.11.1986, the Government of India passed orders setting aside

the deemed rejection and directing the State Government to pass orders within 200 days from the date of communication of the order of the

Central Government. By, G.O. Ms. No. 1146, Industries (D) Department, dated 27.10.1986, the Government reserved the area for State

exploitation by the Tamil Nadu Minerals Limited. By a further Government Order dated 30.7.1987, the State Government passed orders rejecting

the renewal application on the ground that the area had been reserved for exploitation by Tamil Nadu Minerals. W.P. No. 7717 of 1987 is to

quash the G.O. dated 30.7.1987 and to direct the Government to renew the lease. W.P. No. 8110 of 1987 is to quash both G.O.Ms. No. 577,

Industries (D) Department, dated 30.7.1987 as well as G.O.Ms. No. 1146 Industries (D) Department, dated 27.10.1986. According to Mr. K.

Govindarajan, learned Counsel appearing for the petitioner, renewal is mandatory having regard to Clause 3 of Part VIII of the lease deed and

Rule 24-A of the Mineral Concession Rules read with Section 8 of the Mines and Minerals (Regulation and Development) Act, 1957. The second

submission is that the reasons given in the impugned Government Order dated 30.7.1987 namely that the area had been reserved for exploitation

by the Tamil Nadu Minerals is contrary to the legal provisions especially the proviso to Rule 59(1)(e). The second respondent has filed a counter-

affidavit stating that Clause 3 of Part VIII of the lease deed has been subsequently amended on 19.8.1983 by inserting the word "may" instead of

the word "shall" with regard to the option for renewal. It is also contended that renewal is discretionary on the part of the Government and not

mandatory as contended by the petitioner. Reference is made to Rule 26(1) of the Rules to say that as in the case of grant renewal also is only

discretionary. In other words, it is stated that the renewal is not automatic and the petitioner cannot claim renewal as a matter of right. But it is

interesting to note that neither in the counter affidavit filed in W.P. No. 7717 of 1987 nor in the counter affidavit filed in W.P. No. 13523 of 1986 is

there a reference to the first proviso to Rule 59(1)(e). No counter has been filed in W.P. No. 8110 of 1987. Clause 3 of Part VIII of the lease

deed is as follows:

3. To Renew: - Where the mining lease relates to any minerals not specified in the First Schedule to the Act, it shall be renewable for one period

not exceeding the period specified in Sub-section (2) of Section 8 at the Option of the lessee.

2. No doubt it is stated in the counter affidavit that the word ""shall"" has been removed and the word ""may"" has been introduced. Probably, this is to bring the lease deed in accordance with Rule 24-A which also uses the word ""may"". I accept the argument of the learned Counsel for the respondents that renewal is not mandatory. But having regard to Section 5(2) and Rule 24-A as well as the said clause in the lease deed, it cannot be disputed that an order refusing to grant lease should contain reasons. This is because a lessee might have invested heavy amounts and he might have experienced other difficulties during the period of lease and these facts have to be considered before rejecting the renewal application. No doubt, the question of mineral development and the interests of the State have also to be taken note of before granting or rejecting a renewal application.

Whatever may be the reason, the right of renewal is a valuable right so far as the lessee is concerned. I Therefore, necessity to give reasons for rejecting a renewal application becomes all the more important. In *Star Enterprises and Others Vs. City and Industrial Development Corporation of Maharashtra Ltd. and Others*, the Supreme court has emphasised the duty to record reasons and duty to communicate them as part and parcel of the principles of natural justice. Now, if we turn to the impugned order dated 30.7.1987, it no doubt, gives a single reason for rejecting the renewal application and the reason is that the land has been reserved for exploitation by the Tamil Nadu Minerals in and by G.O.Ms. No. 1146, Industries (D) Department, dated 27,10,1986. If the reasons given by the Government is a valid reason, I must accept the stand of the respondents that the order of rejection is legal and valid. This is precisely the reason why the learned Counsel for the petitioner refers to the proviso to Rule 59(1)(e). I have already pointed out that the respondents have not adverted to this aspect of the case in their counter affidavits.

Learned Counsel for the respondents is also unable to meet the points raised on the basis of the said proviso. I will now quote the relevant rules for appreciating the contention raised by the petitioner. Rule 58 is as follows:

58. Reservation of areas for exploitation in the Public Sector, etc.: - The State Government may, by notification in the Official Gazette, reserve any area for exploitation by the Government, a Corporation established by any

Central State or Provincial Act or a Government company within the meaning of Section 617 of the Companies Act, 1956 (1 of 1956).

Rule 59(1)(e) reads as follows:

59. (1) No. area....

(a) ...

(b) ...

(c) ...

(d) ...

(e) which has been reserved by the State Government (i) an entry to the effect that the area is available for grant is made in the register referred to

in Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40 as the case may be, and (ii) the availability of the area for grant is notified in the Official

Gazette and specifying a date being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette)

from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that

the lease has already expired:

Provided further that where an area reserved under Rule 58 is proposed to be granted to a Government Company, no notification under Clause (ii)

shall be required to be issued.

3. It is not disputed that G.O.Ms. No. 1146, Industries (D) Department, dated 27.10.1986, has been issued only under Rule 58 of the rules

quoted above. Therefore, it follows that in respect of the renewal of a lease in favour of an original lessee, the bar u/s 59(1)(e) shall not be

applicable. This crucial aspect of the case has been ignored by the respondents. When it has been pointed out in the affidavit of the petitioner, there

is no answer to the said contention in the counter affidavits. A bare perusal of the proviso to Rule 59(1)(e) is sufficient to come to the conclusion

that where the Government is considering a question of a renewal of a lease, the question of reservation of the area for exploitation by a

Government company should not be taken into consideration. In this case, the renewal application was made as early as on 12.12.1985 and the

respondents should have been aware of their obligations as well as the restrictions placed by the Acts and Rules, before embarking upon reserving the area for exploitation by the Tamil Nadu Minerals. In any event, the reasons given in the order of rejection dated 30.7.1987 is totally illegal and cannot, therefore, be taken as a reason at all. It follows, therefore, that the only reason given in the rejection order has to be eschewed. This is precisely the reason why I hold that the Government Order dated 30.7.1987 is an order without reasons. Inasmuch as the renewal application was pending from 12.12.1985, the Government ought not to have reserved the land in question for exploitation by the Tamil Nadu Minerals. They should have taken note of the proviso to Rule 59(1)(e) before embarking upon the reservation. Accordingly, I hold that the order of reservation is also illegal. 4. Consequently, all the writ petitions are allowed in the following terms but the claim of the petitioner for renewal for a period exceeding three years cannot be countenanced. I, therefore, direct the Government of Tamil Nadu to pass fresh orders on the renewal application without taking note of Government Order, G.O.Ms. No. 1146, Industries (D) Department, dated 27.10.1986 and pass orders as early as possible. I make it clear that till orders are passed by the Government of Tamil Nadu, the petitioner will be entitled to continue as a lessee on the same terms and conditions contained in the lease deed dated 15.12.1983. The impugned Government Orders, G.O.Ms. No. 1146, Industries (D) Department, dated 27.10.1986 and G.O.Ms. No. 557, Industries (D) Department, dated 30.7.1987 are quashed. There will be no order as to costs.