
(1999) 07 AP CK 0071
In the Andhra Pradesh High Court
Case No : WA No. 330 of 1983

K. Raghunatha Reddy

APPELLANT

Vs

Govt. of India and others

RESPONDENT

Date of Decision : 26-07-1999

Acts Referred:

Mining Concession Rules, 1960 — Rule 22(1), 22(3), 54
Mines and Minerals (Development and Regulation) Act, 1957 — Section 9

Citation : AIR 1999 AP 440 : (1999) 5 ALD 168 : (1999) 4 ALT 661

Hon'ble Judges : Y.V. Narayana, J; N.Y. Hanumanthappa, J; G. Bikshapathy, J

Bench : Full Bench

Advocate : Mr. V.S.R. Murthy, for the Appellant; Mr. B. Adinarayana SC for Central Govt., Government Pleader for Home and Mr. A. Jaiswal, for the Respondent

Judgement

N.Y. Hanumanthappa, J

1. In order to understand whether Rule 22(3) of the Mining Concession Rules, 1960 is mandatory or otherwise in view of the law laid down by a Division Bench of this Court in R.B. Seth Shreeram Durgaprasad Vs. Secretary, Govt. of India, Ministry of Steel and Mines, New Delhi and Others, , the Division Bench referred the matter to a Full Bench. Hence, this reference.

2. A few facts which are necessary to answer the reference are as follows :

Sri Narapa Reddy, the writ petitioner applied for mining lease in an extent of Ac.19-50 cents in S.No.30, 31 and 55/2B of Perumallapadu village of Nellore District on 19-11-1976. One Sri K. Raghunatha Reddy, the 3rd respondent also made similar request by submitting an application for grant of mining lease to an extent of Ac.35-60 cents in S.Nos.31 and 57 of the same village on 23-8-1976. The Government of Andhra Pradesh considered the applications and requested the Central Government as required u/s 11(4) of the Mines and Minerals (Regulation and Development) Act, 1957 for its approval in favour of the writ

petitioner. On 22-9-1978 the Central Government accorded its approval vide G.O. Ms. No.740, dated 22-9-1978 whereby the State granted mining lease to the petitioner in an extent of Ac. 14-66 cents. The 3rd respondent was also granted lease to an extent of Ac.16-35 cents instead of Ac.35-60 cents. Aggrieved by the said order, the 3rd respondent filed a revision petition before the Government under Rule 54 of the Mineral Concession Rules, 1960. By an order dated 15-10-1980, the Government dismissed the said application on the ground that already the lease was granted to the petitioner by the Central Government. Challenging the said order of the Central Government, the 3rd respondent filed Writ Petition No.5604/80 before this Court. This Court by an order dated 26-6-1981 allowed the said writ petition holding that the approval given by the Central Government is purely on administrative side without giving an opportunity of hearing to the party. Accordingly, remitted the matter back (o the Central Government for fresh consideration. On remand, the 3rd respondent took a contention before the Central Government that the petitioner's application was invalid as it is not accompanied by a valid mining lease certificate. Thus, non-compliance of the mandatory requirement rendered the petitioner's application invalid. Accepting the said contention, the Central Government passed an order on 16-9-1982 cancelling the licence granted to the petitioner on the ground, that the application filed by the petitioner was not accompanied by the mining dues certificate within 90 days as required under Rule 22(3) of the Rules. The said order is challenged in this writ petition.

3. It was contended before this Court that Rule 22(3) had no application in the case of the petitioner. However, mining dues certificate was produced immediately after the application. There is no delay or laches on his part to attract Rule 22(3). The reason for not producing the certificate was at the instance of the Government. On the other hand, the 3rd respondent contended that the application filed by the petitioner was not a valid application in the eye of law as the certificate was not filed within 90 days from the date of the application. Secondly, the petitioner was in due of arrears on the date of filing of the application whereas he took the certificate stating that he was not in due. The learned single Judge did not incline to accept the second ground urged by the 3rd respondent, as for the first time the said contention was raised by the 3rd respondent though such a contention was not raised earlier even when the revision was filed or in the earlier writ petitioner. The learned single Judge considered the contention raised by both the parties on the question whether the petitioner's application is valid or not. He referred to Rule position of Rule 22(3) and observed as follows:

"Clause (3) of Rules 22 says that every such application should be accompanied by a valid clearance certificate in the form prescribed and issued by the Government or any officer or authority authorised by the Government in this behalf. However, the 4th proviso to Clause (d) grants an exemption subject to certain conditions. It is as follows :

Provided that a properly sworn affidavit stating that no dues are outstanding shall suffice subject to the condition that the certificate required as above shall be furnished within ninety days of the date of application and the application shall become invalid if the party fails to file the certificate within the said ninety days."

"As per these provisions, it is clear that the application for a mining lease shall submit the clearance certificate either along with the application or within a period of 90 days therefrom provided he gives an affidavit to the effect that there are no dues outstanding. Clause (d) says that the certificate must be by an officer or authority authorised by the Government. In case the clearance certificate is not filed within 90 days, does the application automatically becomes invalid? In my opinion, it does not. The expression "fails to file the certificate" occurring in the proviso is significant. In Black's Law Dictionary, the meaning of the word "fail" is given as "guilty of neglect or omission". There must be a deliberate inaction. Where the party does all that he can do and there is no negligence or any lapse on his part, it cannot be said that there is any failure on his part especially when the Act requires to be done is not solely in his hands. Clause (d) says that the clearance certificate must be one issued by an officer or authority specified by the Government. Such certificates can be filed only after issuance. Where an application is made sufficiently in advance and the authorities take their own time for giving the certificate and the same is filed immediately after issue, the action does not fall within meaning of "fails to comply". In such circumstances, hyper technical interpretations or considerations are wholly out of place. It is also in accordance with the well established principle that no party shall suffer for the act of the Court. Though strictly it is not a case of the act of the Court, the same principle should be applied and the party cannot be denied the right due to circumstances beyond his control."

4. The learned single Judge also referred to the other decision rendered by this Court in *Nandulal Jain v. State of A.P.* 1979 (2) APLJ 155, where a question arose whether the Sarpanch incurred a disqualification u/s 25(2) of the Act for failure to convene the meetings of the Panchayat. A Division Bench of this Court considered the question of the meaning to be giving to the word "failure" and held as follows:

"The Sarpanch cannot be punished for no fault of his and he cannot be made vicariously liable for the fault of some one else. The facts were that the Sarpanch has directed the Executive Officer to issue notice for convening the meeting. But no notices were issued by the Executive Officer with the result that the meeting was not held within a period of 90 days. It was held that though the meeting was not held within the period of 90 days from the last meeting, there was no failure on the part of the Sarpanch as there was no fault on his part and it was the Executive officer who did not in fact issue the notices."

In *Krishna Kumar Mediratta Vs. Phulchand Agarwala and Others*, , the Supreme Court held as follows:

"A question arose whether an application under the Mineral Concession Rules becomes invalid when it is not accompanied by the prescribed fee. The facts were that instead of Rs.32/- a sum of Rs.24/- was paid at the time of application. After realising the mistake, the deficiency was made up. The Slate Government refused the mining lease on the ground that the application is invalid and the Central Government in exercise of its revisional power reversed the order. The High Court reversed the order of the Central Government on the ground that the application was not accompanied by the prescribed fee and the expression "shall" indicates that it is mandatory. The Supreme Court set aside the judgment of the High Court holding that in the absence of a clause saying that the application shall become invalid, it cannot be said that the Central Government was wrong in its interpretation. In considering this question, the Supreme Court observed that a right and reasonable procedure looks to substance rather than form of a transaction in order to determine its nature and that hypertechnicalities should not deny a citizen's right to have his application considered and decided.

In *Balwant Raj v. Union of India* AIR 1986 All. 14, the Allahabad High Court observed as follows:

"The words "failure to resume duty" cannot be given their literal meaning which will include failure for any cause whatsoever irrespective of whether the servant was to blame or not for several reasons and that the words should be strictly interpreted and limited to a voluntary and deliberate act or omission where it results in serious consequences."

In *Balharshah Timber Depot Vs. Commissioner of Commercial Tax and Another*, , a case arising under the Sales Tax Act. It is observed as follows:

"A person can be said to have failed to get himself registered when he does not take any steps whatsoever to obtain a registration certificate; but when he was applied for registration and has not thereafter done anything to prevent or obstruct registration but the authorities concerned are unable for some reasons or other, to complete registration before a certain time, the dealer concerned cannot be said to have "failed to get himself registered" within the meaning of Section 11(2) of the Act".

5. Taking into consideration the principles laid down in the above decisions, the date on which the application was submitted and the particulars that were subsequently produced including delay on the part of the authority in issuing the certificate with a delay of three months, the learned Judge held that there was no negligence on the part of the petitioner to produce the certificate. Hence, the application submitted by the petitioner was not defective. Aggrieved by the same, this appeal.

6. While attacking the observations of the learned single Judge, it was brought to the notice of the Division Bench of this Court that this Court while considering the effect of Rule 22(3) held that the delay in submitting the application after 90 days is not an application in the eye of law for the reasons given thereunder.

7. In order to understand how far the view earlier taken by this Court in the other decision is appropriate, it is proper to bear in mind some of the provisions of the Act. Section 5 reads as under:

"5. Restrictions on the grant of prospecting licences or mining leases :-- (1) No prospecting licence or mining lease shall be granted by a State Government to any person unless he-

(a) is an Indian National; and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted except with the previous approval of the Central Government."

8. Section 9 deals with Royalties in respect of mining leases which reads as under:

"9. Royalties in respect of mining leases:--

(1) The holder of a mining lease granted before the commencement of this Act shall, notwithstanding anything contained in instrument of lease or in any law in force at such commencement, pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area after such commencement, at the rate for the time being specified in the second Schedule in respect of that mineral.

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the second schedule in respect of that mineral.

(2-A) The holder of a mining lease, whether granted before or after commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, (56 of 1972) shall not be liable to pay any royalty in respect of any coal consumed by a workman engaged in a colliery provided that such consumption by the workman does not exceed one-third of a tonne per month.

(3) The Central Government may, by notification in the official Gazette, amend the Second Schedule so as to enhance or reduce the rate at which royalty shall be payable in respect of any mineral with effect from such date as may be specified in the notification :

Provided that the Central Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of three years."

Section 9-A and 10 read as under:

"9-A. Dead rent to be paid by the lessee:--(1) The holder of a mining lease, whether granted before or after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, (56 of 1972), shall, notwithstanding anything contained in the instrument of lease or in any other law for the time being in force, pay to the State Government, every year, dead rent at such rate as may be specified for the time being, in the Third Schedule, for all the areas included in the instrument of lease :

Provided that where the holder of such mining lease becomes liable, u/s 9, to pay royalty for any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area, he shall be liable to pay either such royalty or the dead rent in respect of that area, whichever is greater.

(2) The Central Government may, by notification in the official Gazette, amend Third Schedule so as to enhance or reduce the rate at which the dead rent shall be payable in respect of any area covered by a mining lease and such enhancement or reduction shall take effect from such date as may be specified in the notification :

Provided that the Central Government shall not enhance the rate of the dead rent in respect of any such area more than once during any period of three years.

10. Application for prospecting licences or mining leases :--(1) An application for a prospecting licence or a mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this Section, the State Government may, having regard to the provisions of this Act and any rules made, thereunder, grant or refuse to grant the licence or lease."

9. Sections 9 and 9-A deal with payment of royalty and dead rent. If properly understood, in this case the mining work was already executed. Thus, payment of royalty and dead rent does not arise in respect of the fresh grants. Rule 22 deals about granting of mining lease in respect of land in which the minerals vest in the Government. The same is extracted hereunder:

"22. Applications for grant of mining leases :--(1) An application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form-1 through such officer or authority as the State Government may specify in this behalf.

10. Sub-rule (1) of Rule 22 deals about application for grant of mining lease to the State Government in Form-1. Paragraph (3) of Form-1 deals about particulars

which are required to be accompanied to the application. Paragraph 3(v) deals about particulars of documents appended to the application. Paragraph 3(v) (a) deals about mining dues clearance certificate. 3(v) (b) says that there shall be an affidavit in lieu of mining dues clearance certificate, subject to the production of mining lease dues, clearance certificate within the period of ninety days of making application and 3(v)(c) speaks about filing of an affidavit whether it is holding mining lease. Rule 22(3) says that every application for grant or renewal of mining lease shall be accompanied by a fee of Rs.100/-. Rule 22 (3) (d) deals with a valid clearance certificate, in the form prescribed by the State Government, on payment of mining dues, such as royalty or dead rent and surface rent payable under the Act or the Rules. A proper understanding of Rule 22(1) and 22(3)(d) show that they deal about payment of royalty and dead rent, mode of submitting application, what are the particulars required to be accompanied with the application as enumerated under Rule 22(1) and 22(3)(d). Without any hesitation, we may come to the conclusion that producing the clearance certificate will arise only when a person already holding a mining lease or making an application for renewal. But this requirement does not apply in case of a person who seeks grant of fresh lease. All that has to be done for fresh lease is the application has to be accompanied with an affidavit saying that not holding any mining lease. If we compare the law that suggests in case of application for fresh grant and renewal vis-a-vis the particulars laid down by this Court, we have to hold that on facts, the law laid down by this Court, in the case of Nandulal Jain's cited (supra) has no application. Because that was a case where the applicant sought for renewal of licence but the particulars required were not accompanied for renewal of application. When that was brought to the notice of the Court, their Lordships taking into consideration the effect of Rule 22 (3) of the Act held that in such case Rule 22 (3) was mandatory. Since the question involved in the case under reference is for filing an application seeking grant of fresh lease, producing clearance certificate is not required unless there was a lease in his favour and he has not paid royalty and dead rent. Further we hold that Rule 22(3) is mandatory in case of renewal or a person already holding the lease in respect of the same other area but it is not so in case of fresh grant. For fresh grant all that is required is filing an affidavit in Form-I as stated above.

11. Having answered as above, now the writ appeal is directed to be placed before the Division Bench for consideration as to the entitlement of the parties for grant of lease, after obtaining orders from the Honourable the Chief Justice.