
(2004) 02 OHC CK 0021

In the Orissa High Court

Case No : Writ Petition (Civil) No. 5994 of 2003

Kabini Minerals Pvt. Ltd. and Another

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Orissa Minor Minerals Concession Rules, 1990 — Rule 6(5)

Citation : (2004) 97 CLT 723 : (2004) 1 OLR 354

Hon'ble Judges : Sujit Barman Roy, C.J;A.S. Naidu, J

Bench : Division Bench

Advocate : A.K. Parija, S.P. Sarangi, B.C. Mohanty, P. Mohanty, P. Dash, D.K. Das and N. Pathak, for the Appellant; Jayant Das, A.N. Das, A.N. Pattnaik, E.A. Das and D.K. Rout for O.P. No. 4 and Additional Government Advocate for O.P. Nos. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

A.S. Naidu, J.—The petitioner-Company, an applicant for lease of Decorative Stone Quarry, seeks to assail the decision of the State Government dated 4th June, 2003, to grant the lease over an area of Ac. 6.90 decimals situated in villages Jungia and Badadalima in the district of Mayurbhanj in favour of M/s. Oriental Trimex Ltd. (opposite party No. 4) thereby rejecting the petitioner's application dated 7th October, 2002.

2. The main ground of assailing of such decision is that the petitioner being the earlier applicant for grant of quarry lease over the self-same area was entitled to preferential consideration in consonance with Rule 6(5) of the Orissa Minor Mineral Concession Rules, 1990 (in short, "the 1990 Rules") but giving a go-bye to the said provision, the State Government decided to grant lease in favour of opposite party No. 4, a later applicant. According to the petitioner, the decision of the State Government is illegal, arbitrary and contrary to the provisions of the 1990 Rules and denies the right guaranteed under Articles 14 and 19(i)(g) of the Constitution of India.

3. Admittedly the State is the absolute owner of the quarry of decorative stones (minor minerals) situated in villages Badadalima and Jungia under Bamanghati Sub-division of Mayurbhanj district. Lease of such quarries is governed under Chapter II of the 1990 Rules. Rule 5 of the said Rule stipulates that application for quarry lease shall be made to the competent authority in Form "A" in triplicate and shall be accompanied with necessary documents morefully described in the said Rules. Rule 6 deals with the provision for disposal of the applications and Sub-rule (6-a) deals with disposal of applications in respect of all types of rocks used for decorative, industrial or export purpose including dimension stones. The said Rule reads as follows :

"(6-a) Notwithstanding anything contained in Sub-rule (6) in respect of all types of rocks used for decorative, industrial or export purpose including dimension stones the priority shall be in the following order, namely :

(i) a person who has already set up an industry for processing of such minor minerals in the State.

(ii) A person who has a definite plan for setting up of an industry in the State for processing of such minor minerals, if he has furnished a copy of his project report on the proposed processing industry and also a letter from the financing institution issued by the Chief Executive of such institution to the effect that his project report is being appraised by such financing institution :

Provided that in case of an applicant under category (ii), the initial lease shall be granted up to fifty hectares and a letter of insurance can be issued for grant of lease beyond fifty hectares before commencement of production on confirmation received from the financing institution or the Deputy Director of Mines or the Mining Officer:

(iii) a person who is a raiyat of the land;

(iv) any other category;"

4. The petitioner-Company on 7th October, 2002 filed an application before the competent authority in Form "A" for grant of quarry lease in respect of "Decorative Stones" for a period of ten years over an area of Ac. 6.90 decimals situated in villages Badadalima and Jungia vide Annexure 1. The Mining Officer, Baripada Circle, Opp. Party No. 3 on 26th October, 2002 intimated the petitioner with regard to receipt of its application dated 7th October, 2002 along with enclosed documents. It is averred in the writ petition that after submitting the application, the Managing Director of the petitioner-Company on 25th October, 2002 signed an agreement for purchase of land in Ganjam district to set up a Cutting and Polishing Unit of decorative stones. It is also averred in the writ petition that on 2nd December, 2002, the petitioner- Company placed orders for purchasing machinery for setting up its Cutting and Polishing Unit with Metcons Engineering Pvt. Ltd.. While the matter stood thus, on 5th December, 2002, opposite party No. 4 - Company filed an application before the competent

authority for grant of quarry lease in respect of "Decorative Stones" for a period of ten years over the same area of Ac. 6.90 decimals in the same villages of Badadalima and Jangia in the district of Mayurbhanj. It is alleged by the petitioner that though several communications were made with the authorities requesting them to consider the petitioner's quarry lease application on the ground that it was earlier to the application of opposite party No. 4 and though the petitioner advanced several reasons as to why its application should be considered on priority basis, the Government of Orissa in violation of the statutory Rules took a decision to grant the quarry lease in question in favour of opposite Party No. 4 overlooking the just claim of the petitioner. Being aggrieved by such decision, the petitioner, as stated earlier, has approached this Court with a prayer to quash the letter issued by the State Government stipulating the terms and conditions of the lease, in favour of opposite Party No. 4, vide Annexure 13.

5. After receiving the Rule, a preliminary counter affidavit has been filed on behalf of opposite Party No. 4. While not disputing the fact that it had applied for the lease in question on 5th December, 2002, i.e., later than the petitioner, opposite party No. 4 has taken the stand that on 28th January, 2003, opposite party No. 4 wrote a letter to the Director of Mines, opposite party No. 2/vide Annexure 3, intimating the said authority regarding purchase of a sick Unit, namely, M/s. Valley Granites (P) Ltd., from the Orissa State Financial Corporation and requesting to consider its quarry lease application dated 5th December, 2002, on priority basis in view of Sub-rules (6) and (6-a) to Rule 6 of the 1990 Rules. It is also contended that in consonance with Sub-rule (6-a) to 1990 Rules, its application needed to be considered on preferential basis as it had already set up an industry for processing of minor minerals in the State. To substantiate such claim, opposite Party No. 4 has also averred in the counter affidavit that before applying for the Mining lease, it learnt that M/s. Valley Granites Ltd., located at Rairangpur had been seized by the Orissa State Financial Corporation in exercise of power u/s 29 of the State Financial Corporations Act for default of payment and the said industry was available for sale. Opposite Party No. 4 submitted its bid on 6th January, 2003 along with others and after due negotiation, acquired the aforesaid Unit from the OSFC free from all encumbrances, Possession of the industry was handed over to Opp. party No. 4 on 31st March, 2003 who immediately brought it to operation and a functioning unit. It was also averred that the District Industries Centre had also recommended to Government of Orissa the case of Opp. Party No. 4 for being considered for grant of lease, vide Annexure B/4. On the basis of such averments, Opp. Party No. 4 submitted that the State Government taking into consideration all the facts and circumstances and on being satisfied that Opp. Party No. 4 had already set up an industry for processing minor minerals in the State, decided to grant the lease in its favour. Such decision was strictly in consonance with Sub-rules (6) and (6-a) of Rule 6 and the allegations levelled by the petitioner are devoid of any merit and the writ application is liable to be rejected in limine.

6. In course of hearing, Mr. Parija, learned counsel for the petitioner, forcefully submitted that the petitioner- Unit being an earlier applicant, was entitled to priority in grant of lease as envisaged under Sub-rules (6) and (6-a) to Rule 1990 of the Rules. According to Mr. Parija, admittedly opposite party No. 4 had filed its application two months after submission of the application by the petitioner in proper form. On the date such application was filed, Opp. party No. 4 had not set up any industry. At the other hand, the petitioner had already taken steps for setting up an industry and not only it had acquired lands, but also had placed orders for supply of machinery. According to Mr. Parija, as both the petitioner and opposite party No. 4 had not set up any industry by the dates they submitted their applications, i.e., 7th October, 2002 and 5th December, 2002 respectively, the State Government ought to have granted the lease in favour of the Company which had applied first. This cardinal principle was not kept in mind and the decision suffers from the vice of non-consideration of materials and wrong interpretation of Rules.

7. In reply to the averments advanced by the petitioner, Mr. Jayant Das, learned Senior Advocate appearing on behalf of Opp. Party No. 4, forcefully submitted that in consonance with the 1990 Rule, a person who has already set up an industry for processing of minor minerals in the State has an edge over the others and the application filed by him is to be considered on priority basis. According to Mr. Das, though Opp. Party No. 4 had not set up any industry on the date of its application, at a later date it had set up the industry and this fact was intimated to the concerned authority also. Thus, the State Government has rightly considered its application on priority basis and the order was perfectly correct and in consonance with law.

8. The learned counsel appearing on behalf of the State supporting the stand taken by Opp. Party No. 4 submitted that as the 1990 Rules require that priority should be given to a person who has already set up an industry for processing of minor minerals in the State and as Opp. Party No. 4 had set up an industry, the Government rightly decided to grant lease of the decorative stones quarry in favour of Opp. Party No. 4.

9. After hearing learned counsel for the parties, we find that most of the facts are admitted. It is not disputed that the petitioner submitted its application on 7th October, 2002; whereas Opposite Party No. 4 submitted its application on 5th December, 2002, Thus, Opposite Party No. 4 was a later applicant. Further admittedly on the date of their applications neither the petitioner nor Opp. Party No. 4 had set up any industry for processing of minor minerals. The petitioner claimed priority as it was the earlier applicant; whereas Opp. Party No. 4 claimed priority as it had set up an industry after filing the application and before the applications were considered.

10. After hearing the arguments of the parties, according to us, the only question that needs determination in the present case is whether for claiming priority, setting up an industry at the time of filing of the application for quarry lease is

necessary or if the same is set up on the date on which the applications were considered would be sufficient.

11. According to Mr. Parija, learned counsel for the petitioner, the cut-off date is the date of filing of the application and if a person has not set up any industry on the said date, setting up an industry at a later time shall not make him eligible for claiming priority. On the basis of such submission, Mr. Parija stated that none of the applicants having set up an industry, the State Government should have given priority to the first applicant. Mr. Parija also submitted that simply purchasing an industry for processing of minor minerals is not sufficient, but the same has to be in running condition and must be functioning so as to claim priority. According to Mr. Parija, though Opp. Party No. 4 claimed to have acquired an industrial unit, the same was defunct and has not started functioning as yet and as such, it could not claim priority stating to be the first applicant.

12. Mr. Das learned counsel for Opp. Party No. 4, submitted that Sub-rules (6) and (6-a) of Rule 6 expressly stipulate that a person who has already set up an industry for processing such minor minerals in the State, has to be given priority. According to Mr. Das, the Rules specifically contain the word "set-up" and not the word "running" and as such, the submissions made on behalf of the petitioner are not correct. In the alternative, Mr. Das submitted that in fact, after purchasing a closed unit Opp. Party No. 4 had made it functioning. Relying upon the decision of the Supreme Court in the case of Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, Mr. Das submitted that if an applicant has set up an industry for processing of minor minerals on the date of consideration of its application, it should claim priority over others. According to Mr. Das, Opp. Party No. 4 had not only acquired the industry but had also made it functioning and this fact was duly intimated to the concerned authority and the State has rightly taken a decision to grant the lease in its favour.

13. According to us, the State Government while considering the applications for grant of lease of the quarry should always consider and give priority and importance to one who is more suitable than others. Paramount consideration of the State while granting lease should always be to protect the interest of the State. In the present case, in paragraph 11 of the counter affidavit, the State has taken the following stand :

"That in reply to Ground (A) of the writ petition, it is submitted that on comparison of the status of both the applications, it is revealed that M/s. Oriental Trimex Ltd., comes under the category (i) of Rule 6(6-a) of OMMC Rules, 1990 whereas the petitioner comes under category (iv) of the said Rules. Further, Sub-rule (5-a) of Rule of OMMC Rules, 1990 stipulates that "Notwithstanding anything contained in Sub-rule (5), if the State Govt. is of the opinion that in the interest of mineral development, it is necessary to do so it may for the reasons to be recorded in writing grant quarry lease in preference to the applications made earlier."

14. Considering the materials available on record and keeping in mind the fact that Opp. Party No. 4 had already set up an industry for utilizing the minor minerals (decorative stones), we have no hesitation to hold that, in consonance with the provisions of the Orissa Minor Minerals Concession Rules, 1990, Opp. Party No. 4 deserved preferential treatment over the petitioner which has not set up any industry till date. In view of such conclusion, we feel it is not a fit case where the decision taken by the State Government granting the quarry lease in favour of Opp. Party No. 4 should be interfered with. Accordingly, the writ petition stands dismissed.

Sujit Barman Roy, C. J.

15. I agree.