

(1995) 01 AHC CK 0101
In the Allahabad High Court
Case No : C.M.W.P. No. 37688 of 1994

Kanhaiya Lal Mallah

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision : 10-01-1995

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 17A
Uttar Pradesh Minor Minerals (Concession) (Twentieth Amendment) Rules, 1994 —
Rule 23, 23(1), 24, 72, 72(1)

Citation : (1995) 01 AHC CK 0101

Hon'ble Judges : Om Prakash, J;B. Dikshit, J

Bench : Division Bench

Advocate : Mukesh Prasad, for the Appellant;

Final Decision : Allowed

Judgement

Om Prakash, J.—The short question for consideration In this writ petition is whether availability of the area for grant of lease In respect of minor minerals under the U.P. Minor Minerals (Concession) Rules, 1963 (briefly, the Rules) was validly notified by Impugned notice dated 24.9.1994 (Annexure-1 to the writ petition) as envisaged by Sub-rule (1) of Rule 72, inserted in the Rules by the Uttar Pradesh Minor Minerals (Concession) (Twentieth Amendment) Rules, 1994, as published In the gazette dated August 27, 1994.

2. The Impugned notice states that a declaration Under Rule 24 of the Rules In respect of plain sand/Moram available In the bed of rivers-Belan/Tons-situate In district Allahabad, was made and published In the gazette dated 27.9.1994 and as per that declaration the aforesaid area would" become available for granting lease with effect from October 1, 1994 under Chapter II of the Rules.

3. The entire argument of the Petitioner revolves around the interpretation of Rule 72(1) of the Rules, which runs as follows:

"(1) If any area, which was held under a mining lease or reserved u/s 17A of the

Act, becomes available for regrant, the District Officer shall notify the availability of the area through a notice inviting applications for grant of mineral concessions specifying a date, which shall not be earlier than thirty days from the date of notice and giving description of such area and a copy of such notice shall be displayed on the notice board of his office and shall also be sent to the Tehsildar of such area and the Director."

(Emphasis Supplied)

It is averred by the Petitioner that availability of an area for granting lease within the meaning of Rule 72(1) of the Rules is required to be notified through a notice which shall not be earlier than thirty days and that the impugned notice dated 24.9.1994 having declared the availability of the aforesaid area with effect from October 1, 1994 is not of thirty days within the meaning of Rule 72 and hence, is Invalid.

4. On the other hand, the contention of the standing counsel is that a notice of thirty days as contemplated Under Rule 72 of the Rules, is not referable to an area which has become available for granting a lease as a result of declaration made Under Rule 24. It is submitted by him that a notice of thirty days as envisaged by Rule 72(1) is required only in respect of that area which was under a lease granted under Chapter II or under a lease by auction, granted Under Rule 23, falling in Chapter IV, or where the area reserved u/s 17A of the Mines and Minerals (Regulation and Development) Act, 1957, has become available for regrant. The submission of the standing counsel is that the declaration Under Rule 24 was made in the gazette dated August 27, 1994 clearly stating that the area would become available for grant of lease under Chapter II with effect from October 1, 1994 and, therefore, the prospective applicants had the notice of more than thirty days and no further notice as envisaged by Rule 72(1) need be given in such cases.

5. The submission of learned Counsel for the Petitioner is that Rule 72(1) does not make any distinction between two types of applicants: (i) those who want to apply for grant of lease under Chapter II upon the expiry of an earlier lease granted under that chapter, or upon the expiry of a lease envisaged by Rule 23 under Chapter IV ; and (ii) those who want to apply in respect of an area which is denotified by a declaration, made Under Rule 24. His submission in short, is that Rule 72(1) refers to a mining lease and that a lease either granted under Chapter II upon the expiry of an existing lease or lease granted upon the expiry of a lease, envisaged by Chapter IV, or a lease granted in respect of an area for which a declaration is made Under Rule 24, are all mining lease and there is no difference between them except that they are granted under different modes. It is, therefore, urged that thirty days" notice is uniformly required Under Rule 72(1), for all types of such lease.

6. We find substance in the submission of learned Counsel for the Petitioner. The subtle distinction made by (he standing counsel, does not persuade us to hold

that no notice of thirty days is required for declaring the availability of an area for grant of lease in respect of which a declaration was made Under Rule 24. Simply because the declaration made Under Rule 24 which was published in the gazette dated August 27, 1994 stated that the area which was notified under Sub-rule (1) of Rule 23, was withdrawn with effect from October 1, 1994 it cannot be said that the notice of thirty days as envisaged by Rule 72(1) was inbuilt in the said declaration.

7. Rule 24 simply states that the State Government may by notification in the gazette, withdraw any area notified under Sub-rule (1) of Rule 23 or a part thereof from the system of lease by auction and from the date of withdrawal specified in the notification which shall not be the date during the subsistence of an auction lease granted under this Chapter, the provisions of Chapters II, III and VI of the Rules shall become applicable to such area. The declaration contemplated by Rule 24 does not refer to any notice as envisaged by Rule 72(1). The declaration Under Rule 24 is confined to withdrawal of any area which was earlier notified Under Rule 23(1) and that has nothing to do with the giving of notice of not less than 30 days as envisaged Rule 72(1). After an area notified Under Rule 23(1) is withdrawn by a declaration made under Rule 24, a notice of not less than thirty days is required to be given Under Rule 72(1) declaring that the area which stood withdrawn by virtue of a declaration made Under Rule 24, has become available for regrant of lease within the meaning of Rule 72(1). By declaration dated August 27, 1994 published in the gazette, availability of the area for regrant as envisaged by Rule 72(1) was not declared but what was declared, is that the area which was earlier covered by Rule 23(1), stood withdrawn Under Rule 24. Withdrawal of any area within the meaning of Rule 24 is one thing and making a declaration that the said area has become available for regrant of lease within the meaning of Rule 72(1), is altogether a different thing.

8. Withdrawal of the area Under Rule 24 with effect from October 1, 1994 by the declaration dated August 27, 1994 does not tantamount to giving a notice of not less than thirty days for making the area available for regrant Under Rule 72(1) of the Rules.

9. For the reasons, the submission of the standing counsel deserves to be rejected. Otherwise also, cardinal principle of law is that a statutory rule as far as possible should be so interpreted as to give full effect to its plain and unambiguous language without importing into it any foreign words and without subtracting there from any word. The legislation is so far as it is free from ambiguity, should be understood as it stands. If the contention of the standing counsel is accepted, then that would amount to reading down into Rule 72(1) what, in fact, does not exist therein. We are; therefore, loathe accepting the submission of the standing counsel. The argument canvassed by the standing counsel if accepted, would lead to endless confusion. There is nothing in Rule 72(1) to indicate that no notice for making the area, in respect of which a

declaration is made Under Rule 24, available for regrant, is required and that such notice is needed only when an existing lease granted under Chapter II or a lease envisaged by Rule 23, In Chapter IV, expires.

10. For the reasons, we hold that a notice of not less than thirty days as envisaged by Rule 72(1) of the Rules, is required in respect of an area which has become available for regrant as a result of declaration made Under Rule 24 of the Rules, in the same way as it is required in other two situations when the area has become available for regrant of lease upon the expiry of an existing lease granted under Chapter II, or upon expiry of a lease, envisaged by Rule 23, under Chapter IV of the Rules.

11. The impugned notice dated 24.9.1994 (Annexure-1 to the writ petition) stating that the area mentioned therein has become available for grant of lease with effect from October 1, 1994 by virtue of declaration made Under Rule 24 of the Rules, is held to be invalid and inoperative, as that is clearly of less than thirty days.

12. In the result, the petition succeeds and is allowed. The impugned notice dated 24.9.1994 (Annexure 1 to the writ petition) is quashed with the observation that the Respondents are free to issue a fresh notice of not less than thirty days as required by Rule 72(1) of the Rules in respect of the area for which declaration dated August 27, 1994 was published.