

(2002) 01 AHC CK 0170
In the Allahabad High Court
Case No : C.M.W.P. No. 44196 of 2001

Katwaru

APPELLANT

Vs

Special Secretary, Industrial Development Anubhag, U.P.
Govt. and Others

RESPONDENT

Date of Decision : 11-01-2002

Acts Referred:

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 9A

Citation : (2002) 1 AWC 657

Hon'ble Judges : U.S. Tripathi, J;G.P. Mathur, J

Bench : Division Bench

Advocate : S.P. Singh, for the Appellant; Ajit Kumar Singh and S.C., for the Respondent

Final Decision : Dismissed

Judgement

G.P. Mathur, J.—The petitioner was granted a mining lease to excavate sand for a period of 3 years from 28.10.1998 to 29.10.2001. Before the expiry of his lease, he made an application on 19.3.2001 for renewal of the lease for a further period of 3 years. The District Officer, Gorakhpur, by his order dated 1.10.2001 sanctioned renewal of lease for a further period of 3 years, which was to expire on 26.10.2004. Virendra Singh, respondent No. 6 moved an application before the State Government that in view of subsequent Government order dated 22.9.2001 the lease granted in favour of the petitioner on 24.10.1998 could not be renewed for a further period of 3 years. The State Government, thereafter, passed an order on 7.12.2001 by which the operation of the order dated 1.10.2001 passed by District Officer, Gorakhpur, was suspended. By the same order, the District Officer was directed to submit his comments on the application moved by Virendra Singh so that further action in the matter may be taken. Thereafter, the District Officer, Gorakhpur, passed an order on 14-12.2001 directing that the petitioner shall not be permitted to excavate sand until further orders as the renewal of lease granted in his favour on 1.10.2001 had been

suspended by the State Government, The present writ petition under Article 226 of the Constitution has been filed for quashing the order dated 7.12.2001 of the State Government and the order dated 14.12.2001 of the District Officer, Gorakhpur.

2. In exercise of power conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the State Government made the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as the Rules). Sand is a minor mineral within the meaning of Rule 2(7) of the Rules. Rule 3 provides that no person shall undertake any mining operations in any area within the State of any minor mineral to which the Rules are applicable except under and in accordance with the terms and conditions of a mining lease or a mining permit granted under these Rules. Chapter II lays down the procedure for grant of mining lease and Chapter VI lays down the procedure for grant of a mining permit. Rule 6 provides for moving an application for grant of a mining lease and Rule 6A provides that an application for renewal of mining lease may be made at least six months before the date of expiry of the mining lease. Rule 8 lays down the manner of disposal of an application moved under Rule 6 for grant of a mining lease and under Rule 6A for renewal of a mining lease. Sub-rule (1) of Rule 9A, which has a bearing on the controversy in hand, reads as follows :

"9A. Preferential right of certain persons in respect of sand, etc. -- (1) Notwithstanding anything contained in Rule 9, in respect of mining lease for sand or morrum or bajari or boulder or any of these in mixed state exclusively found in the river bed, preference shall be given in the following order to a person or group of persons, whether or not incorporated who :

(a) belong to socially and educationally backward classes of citizens, engaged in carrying on the occupation of excavation of sand or morrum as a profession and are resident of the same district in which the lease is applied for, is situate ;

(b) have established or intend to establish the aforesaid minor mineral based industry in the State.

Explanation.--For the purpose of Clause (a) the persons belonging to socially and educationally backward classes of citizens, engaged in carrying on the excavation of sand or morrum as profession means Mallah, Kewat. Bind. Nishad, Manjhi, Batham. Dhiwar, Themar. Chai, Sorahia, Turha, Raikwar. Kaiwrat, Khulwat, Tiyyar, Gaudia. Godia and Kashyap and includes such other persons as are specified as such by the State Government by notification in the Official Gazette."

3. The petitioner. Katwaru, belongs to one of the castes mentioned in the Explanation and, therefore, he is entitled to the benefit of Rule 9A of the Rules. It is not in dispute that the original lease granted in his favour on 24.10.1998 and which expired on 23.10.2001 had been granted in view of his preferential right under Rule 9A of the Rules. The constitutional vires of Rule 9A and Rule 53A of the Rules was challenged in W.P. No. 256 (M/B) of 1997, Ram Chand v. State of V.P. and Anr. and the matter was referred to a Full Bench. The Full Bench by the

judgment and order dated 27.3.2001 held that Rules 9A and 53A are ultra vires to the Constitution of India and the provisions of Mines and Minerals (Regulation and Development) Act, 1957. Thereafter, the State Government issued a Government order on 13.6.2001, copy of which has been filed as Annexure-6 to the writ petition. Para 3 of this Government order lays down that there would be no restrain or embargo on the mining leases which had been sanctioned/executed before 27.3.2001. It further provided that there is no prohibition in entertaining applications for renewal of mining leases where the question of grant of preference does not arise. The State Government also filed SLP in Hon"ble Supreme Court challenging the decision of the Full Bench in Writ Petition No. 256(M/B) of 1997. It is stated in para 14 of the writ petition that on 10.9.2001, the following order was passed :

"Permission to file SLP allowed.

Since the validity of Rules 9A and 53A is subject-matter of consideration in this bunch of cases. Leave granted.

Status quo as on today be maintained.

Intervention applications are allowed."

Thereafter, the State Government issued another Government order on 22.9.2001 to the effect that in view of the order passed by the Hon"ble Supreme Court, status quo be maintained.

4. Sri S.P. Singh, learned counsel for the petitioner has assailed the impugned orders on the ground that in view of the order passed by Hon"ble Supreme Court for maintaining status quo, the right of the petitioner to have his mining lease renewed cannot be taken away and, therefore, the impugned order of the State Government and also of the District Officer, Gorakhpur, is illegal.

5. The petitioner claimed preferential right for grant of a mining lease under Rule 9A of the Rules as he belongs to a caste which is enumerated in Explanation appended to Sub-rule (1) thereof. He was granted a mining lease on a preferential basis on 24.10.1998 for a period of 3 years. The period of his lease expired on 23.10.2001. Prior to the expiry of the lease, the Full Bench of this Court by the judgment and order dated 27.3.2001, struck down Rule 9A of the Rules as being violative of the Constitution of India and the provisions of Mines and Mineral (Regulation and Development) Act, 1957. In view of this decision, the petitioner cannot claim any preferential right to get a mining lease. Rule 6A of the Rules no doubt provides for renewal of a mining lease but the effect of renewal of a mining lease which had been granted on preferential basis would be that a right acquired under Rule 9A on preferential basis would be perpetuated or get a fresh lease of life for a further period of 3 years. The copy of the order passed by the District Officer on 1.10.2001, shows that the renewal had been granted on the same terms and conditions on which the original lease had been granted and in addition, some other conditions of minor nature has also been

imposed. The effect of the renewal would be that the mining area would continue to be operated by a person on the basis of a preferential right with effect from 24.10.2001, though the very foundation of a preferential right as provided under Rule 9A of the Rules has disappeared after the decision of the Full Bench on 27.3.2001 when the said provision was declined to be ultra vires. Therefore, any one who had got a mining lease on preferential basis under Rule 9A of the Rules cannot claim renewal of his lease under Rule 6A after the decision of the Full Bench.

6. Sri Singh has submitted that Hon''ble Supreme Court has granted special leave against the decision of the Full Bench on 10.9.2001 and has also passed an order of maintaining status quo and, consequently, the right of the petitioner to get his mining lease renewed under Rule 6A continued to exist. We are unable to accept the contention raised. It is noteworthy that the Hon''ble Supreme Court has not stayed the operation of the judgment and order dated 27.3.2001, passed by the Full Bench. Had the operation of the judgment and order been stayed, the provisions of Rule 9A of the Rules which provide for grant of a preferential right would have remained in existence on the statute book. The interim order only directs that "status quo as on today be maintained". In our opinion, the effect of this order is that the leases already granted under Rule 9A of the Rules would not be affected and the lessees would continue the right to excavate the mineral till the expiry of the lease. The interim order would only protect the existing leaseholders. After the order of renewal of lease is passed, a fresh lease has to be executed again and fresh rights are created in favour of the lessees. The order of maintaining status quo cannot mean that such lessees who had got the right on preferential basis under Rule 9A would also get a right to have a fresh lease executed in their favour which would confer them right to excavate the mineral for a further period of 3 years with effect from a date subsequent to the date on which the order of maintaining status quo was passed, namely, 10.9.2001. The earlier lease which had been granted in favour of the petitioner on 24.10.1998 expired on 23.10.2001. subsequent to the order of Hon''ble Supreme Court dated 10.9.2001. In terms of the said order, the petitioner became entitled to excavate the mineral even after the decision of the Full Bench on 27.3.2001 till the expiry of his lease. However, the interim order does not mean that he can get a fresh lease in his favour on preferential basis for a further period of 3 years,

7. Sri S.P. Singh has next submitted that the District Officer having passed an order on 1.10.2001, for renewal of lease in his favour, the said order could not be suspended without giving him an opportunity of hearing. In our opinion, the contention raised is wholly misconceived. The impugned order has been passed in view of the decision of the Full Bench. The result thereof is that Rule 9A no longer remains on the statute book and, consequently, the petitioner who had got the mining lease on the basis of the said provision, cannot claim to have his lease renewed for a further period of 3 years. In these circumstances, there was hardly any occasion to give an opportunity of hearing to the petitioner. It is

noteworthy that after the order dated 1.10.2001 had been passed by the District Officer, the petitioner had moved an application praying that the requisite agreement be executed in his favour (Annexure-11 to the writ petition). But no agreement had in fact been executed and thus, no rights had accrued to him.

8. Sri Singh has lastly urged that the Government order dated 22.9.2001, is discriminatory inasmuch as it only prohibits renewal of such leases of such persons who had been initially granted leases on preferential basis under Rule 9A but it does not prohibit renewal of other leases. The contention has hardly any merit. The Full Bench has merely struck down Rule 9A of the Rules which provide for grant of a mining lease on preferential basis and naturally this decision can only affect the right of renewal of only those persons who owe their existence to a preferential right under Rule 9A of the Rules. The decision cannot affect those who had got mining leases without claiming any preferential right and naturally, the benefit of Rule 6A which provides for renewal of a mining lease would still be available to such category of persons. The question of discrimination, therefore, does not arise.

9. It may also be mentioned here that the impugned order passed by the State Government on 7.12.2001 and the order dated 14.12.2001 passed by the District Officer have merely suspended the operation of the order by which the prayer of the petitioner for renewal of lease had been granted. The last part of the order passed by the State Government shows that comments have been called for from the District Officer to enable it to take further decision in the matter. Being merely an order of suspension, it is not at all a fit case where this Court should exercise discretion under Article 226 of the Constitution at this stage.

10. For the reasons mentioned above, we do not find any merit in the writ petition, which is hereby dismissed summarily at the admission stage.