

(1984) 09 KAR CK 0025
In the Karnataka High Court
Case No : W.P. No. 6152 of 1984

Koira Group Panchayat

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 04-09-1984

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1969 — Rule 3

Citation : (1985) 2 KarLJ 280

Hon'ble Judges : K. A. Swami, J

Judgement

1. At the stage of preliminary hearing, respondents were notified and learned High Court Government Pleader was also directed to appear for respondents 1 to 3. Accordingly, Sri S. Udayashankar, learned Government Pleader, has obtained the records and has also received the instructions. Learned Counsel Sri Mir Noor Hussain represents respondents 4 and 5. As the matter relates to grant of mining lease, it is taken up for final disposal itself.

2. In this petition under Articles 226 and 227 of the Constitution, the petitioner, which is a Village Panchayat Committee, has sought for quashing the orders dated 29-1-1982/6-2-1982 bearing No. DMG 515 and 675/LMS/RVN 81-82 (Annexure-A); 16-12-1983 bearing No. CI 17 MRC 82, dated 16-12-1983 (Annexure-B) passed by respondents 2 and 1 respectively and the notification dated 20-2-1982 bearing No.OLS 545/NIN 91-82 41302 (Annexure-C); 20-2-1982 bearing No. 546/NIN/81-82 41312 (Annexure-D) according sanction for grant of quarry leases in favour of respondents 4 and 5 respectively by the 3rd respondent. Quarry leases in respect of two different portions in the same survey number are granted to respondents 3 and 4. Under Annexure-C respondent-3 is granted quarry lease over an area of 4-10 guntas, and under Annexure-D, respondent-4 is granted a quarry lease over an area of 4 acres in S. No. 187 of Koira village, Devanahalli taluk, for a period of 5 years.

3. The petitioner-Panchayat Committee, was granted a quarry lease in respect of the area in question, on 17-7-1976 for a period of five years. The said lease

expired on 16-7-1981. But, an application for renewal of the lease was filed by the petitioner on 19-8-1981 even though it ought to have been filed much earlier to that date. In view of the fact that the application was filed beyond the prescribed period, it was rejected. Then, the petitioner filed another application for grant of a fresh quarry lease in respect of the very same area. That application was filed on 25-8-1981. Prior to this, respondents 4 and 5 also had filed the applications for grant of quarry lease in respect of the very same area. In addition to this, there were other two persons by name, Smt. Munibachamma and Sri H. Muddu Nagaraju, who had also filed the applications for grant of quarry lease in respect of the very same area. All these applications stood rejected by reason of the provision providing for deemed rejection contained in Rule 6 of the Karnataka Minor Mineral Concession Rules, 1969 (hereinafter referred to as "the Rules"), as the said applications were not disposed of within a period of three months from the date of receipt. Smt Munibachamma and Sri H. Muddu Nagaraju did not challenge the order of deemed rejection. Whereas, the petitioner and respondents 4 and 5 challenged the same in a revision before the 2nd respondent. The revision petition filed by respondents 4 and 5 came to be allowed; whereas that of the petitioner was rejected on 29-1-1982/6-2-81 by the 2nd respondent. The petitioner went up in further revision to the State Government. That also met with the same fate. In the meanwhile, the respondents 4 and 5 came to be granted quarry leases as per the notifications dated 20th February 1982 produced as Annexures C and D. The 2nd respondent rejected the application of the petitioner on three grounds i.e., (i) that the petitioner went on operating the quarry even after the expiry of the lease period and stopped it only after the notice was issued and action was proposed to be taken; (ii) that in respect of the earlier lease, it had not paid arrears of royalty; (iii) that it being a village Panchayat Committee and not a citizen of India, no quarry lease could be granted in its favour without the prior approval of the State Government. In the second revision, the State Government has held that the Panchayat was in arrears of royalty and that the area for lease was not available on the date the application was filed by it. Another reason is that the quarry lease has already been granted in favour of respondents 4 and 5.

4. Sri M. Papanna, learned counsel for the petitioner, contends that the State Government is not right in holding that the petitioner was in arrears regarding payment of royalty; therefore, it was not entitled to get the quarry lease; that the area was not available; that the grant had already been made in favour of respondents 4 and 5. It is also further contended that Rule 3(1) of the Rules, does not require that prior approval of the State Government should be obtained for grant of a quarry lease in favour of a corporate or statutory body. Regarding operation of the quarry, it is submitted that no material was removed from the quarry; therefore, the ground that the Panchayat Committee operated the quarry after the expiry of the lease and as such it was not entitled to grant of lease, is not justified.

5. Sri S. Udayashankar, learned Government pleader appearing for respondents 1

and 2 refutes these contentions and submits that the records do show that the Panchayat Committee did operate the quarry after the expiry of the lease and the report made by the Senior Geologist in this regard amply established that the Panchayat Committee removed the stones and sold the same to several persons as evidenced from the Bill book which was seized by the Senior Geologist. It is also contended that the prior approval of the State Government for grant of lease in favour of a statutory body or Panchayat Committee is necessary. It is also submitted that the petitioner was in arrears regarding payment of royalty. Sir Mir Noor Hussain, learned Counsel appearing for respondents 4 and 5 adopts the aforesaid contentions and further states that the Panchayat Committee is not entitled to grant of lease and its application is rightly rejected.

6. Having regard to the aforesaid contentions, the following points arise for consideration:

- i) Whether respondents 1 and 2 are justified in rejecting the revision on the reasons stated in the orders ?
- ii) Whether Rule 3 of the Rules requires prior approval of the Government for grant of quarry lease in favour of a Panchayat Committee ?
- iii) Whether it is a case for interference ?

7.1. Points (i) & (ii): Points (i) and (ii) are interconnected; therefore, they are dealt together. Regarding the operation of the quarry after the expiry of the lease period, the records contain ample material. The order of the 2nd respondent also adverts to it. The lease granted in favour of the petitioner, expired on 16-7-1981 and thereafter, when the authorities noticed that the petitioner had continued to operate the quarry inspite of the notice issued by the Senior Geologist as well as the Deputy Director (competent authority for stopping the quarry operation), another notice was issued by the Senior Geologist on 12-9-1981. There was also an inspection of the quarry made by the Senior Geologist, who made a report on 11-11-1981, a relevant portion of it reads thus:

"Now the lessee is operating the quarry even after expiry of the lease in the area. One of the Assistant Geologists of this division made a surprise visit on 5-11-1981 and reported that the panchayat is still operating and at the time of visit 7 labourers were working in the area and sales bills are being issued by the panchayat for the lorries despatching building stones from the above said area. As per the sale bill book, the panchayat has despatched 755 mt. from 1-8-1981 to 3-11-1981 without permission from the Department unauthorisedly. The bill book containing counterfoil bills from 1-8-1981 to 8-10-1981 has been taken from panchayat for verification and the same is preserved in this office. Under the above circumstances. I request to kindly issue notice to panchayat to stop the illegal quarrying and also Deputy Commissioner, Bangalore District, may kindly be informed about their activities. This I submit for kind information."

Pursuant to this, a notice dated 25-11-1981 was issued. In that notice, it was

specifically stated that the petitioner was working the quarry after the expiry of the lease period. It was also brought to the notice of the petitioner that the act of the petitioner was liable for punishment; and further requested the petitioner to stop the illegal operation of the quarry. Pursuant to that, the petitioner has intimated the 3rd respondent stating that the petitioner has suspended the quarrying work since the time the official of the department has told it to stop the work; that the quarry workers were starving by the stoppage of work, therefore they were engaged only for removing earth and making road etc., around the quarry area. From the report made by the Senior Geologist on 11-11-1981, it is clear that the petitioner had removed the substantial quantity of stones from the quarry during the period from 1-8-1981 to 30 11-1981; therefore, it is not possible to hold that the petitioner did not operate the quarry after the expiry of the period of lease. The operation of the quarry after the expiry of the period of lease is a penal act as it is opposed to the provisions of the Act and the Rules. Therefore, such a person cannot be preferred or entitled to renewal or grant of a lease. This is a relevant ground which has to be taken into consideration while considering an applicant for grant or renewal of a quarry lease, (7.2) As far as payment of arrears of royalty is concerned, it appears to me that it is not established that the petitioner was in arrears and did not pay the same as and when it became due; therefore, there was no justification for respondents 1 and 2 to make this as one of the grounds to reject the application, (7.3) Another reason, given by the first respondent for rejecting the revision is that on the date the application was filed by the petitioner, the area applied for itself was not available. The application was filed by the petitioner on 25-8-1981. On that day, the area applied for, had not been leased to any of the applicants. That being so, the 1st respondent was not right in holding that the area itself was not available; therefore the action taken by the competent officer was valid. Of course, on the date when the revision petition was decided by the State Government, the area applied for had already been granted to respondents 3 and 4. But, that is not the same thing as saying that on the date of the application the area was not available. Further the revision petition was the continuation of the proceeding relating to the grant of leases in question.

(7.4). The last reason that is given by the and respondent is that the petitioner being the Panchayat Committee and there being no prior approval of the State Government for grant of quarry lease, it is not entitled to the grant. This reasoning is advanced by the 2nd respondent on the basis of Rule 3(1) of the Rules, which reads thus:

"3. Restrictions on grant of quarrying Lease.- (1) No quarrying lease shall be granted to any person other than an Indian Citizen, except with the prior approval of the Government."

This Rule came up for consideration before me in *Shivananje Gowda & ors. v State & Ord.*, reported in I.L.R. 1979(2) Kar. 2294, I have taken a view that no quarrying lease shall be granted to any person other than Indian Citizen except

with the prior approval of the State Government, and that the Panchayat Committee which is a statutory body, cannot claim to be a citizen of India and that being so, before granting quarrying lease in favour of panchayat committee, the competent authority shall have to obtain prior approval of the Government. This decision was taken up in appeal i.e., Writ Appeals 103 to 108 of 1980. Those Writ Appeals were decided on 29-4-1980. The Division Bench has disposed of the appeals with the following observations.

"4. That no prior approval of the Government had been obtained is not in dispute. The argument of the learned Counsel for the appellants is that the interpretation placed by the learned Judge on Rule 3 is not correct and by using the expression "Indian Citizen" it did not mean that only human beings could be granted and not a corporate authority or other firm etc., We do not think that the learned Judge laid down that only living human beings can apply and not companies or other bodies. Rule 4 of the Karnataka Minor Mineral concession Rules, 1969 refers to companies, syndicates, partnership or private firm. The rules have been framed by virtue of the power conferred under Sec. 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (Act LXVII of 1957). Under Sec. 3 of the said Act, certain definitions have been given and under Section 5 provision for restrictions on the grant of prospecting licences or mining leases has been made. An explanation is incorporated thereunder in which the words "Indian National" has been explained. By virtue of the explanation, a public company as defined in the Companies Act, 1956, would be recognised as Indian National if the majority of the Director of the Company are citizens of India and not less than fifty one per cent of the share capital thereof is held by persons who are either citizens of India or companies as defined in the Companies Act and in the case of a private company, only if all the members of the company are citizens of India and in the case of a firm or other association of individuals, only if all the partners of the firm or members of the association are citizens of India and in the case of an individual, only if he is citizen of India.

5. As we stated earlier, the learned Judge's observation does not amount to saying only an individual who is a citizen of India would be entitled to a mining lease. The emphasis in the order was rather on the obtaining of prior approval of the Government. That there was no such prior approval in favour of the Village Panchayat is not a matter in dispute.

6. Rule 7 of Karnataka Minor Mineral Concession Rules provides for preference being given to prior applications. For special reasons another person may be preferred. Jagannatha Shetty, J. in Sanjeevamma's case, after noticing relevant provisions, observed thus- "So, the only reason for granting the lease to the panchayat was just to afford an opportunity to supplement its income. That, in my view, can hardly be a special reason within the meaning of Rule 7."

That is also the view expressed by Swamy, J. In our opinion the view expressed by each of the learned Judges stands to reason and we are in agreement with it.

7. The learned single Judge has remanded the matter for fresh disposal in the light of the observations made in the order. We are unable to find any infirmity in the said order."

Thus, from the aforesaid decision, it is clear that the view taken by me is not over-ruled. It is also clear from the aforesaid decision that for granting a quarry lease in favour of a Village Panchayat Committee, prior approval of the State Government is necessary.

8. Sri Papanna, learned Counsel for the petitioner, contends that the expression "Other than Indian Citizen" occurring in Rule 3 (1) of the Rules, is referable to living persons who are foreign nationals and not to Indian Citizens, statutory and corporate bodies. It appears to me that is not possible to accept this contention. According to the said Rule, if a quarry lease has to be granted to any person other than Indian Citizen, it can be done only with the prior approval of the State Government. It means, the statutory bodies and the corporations and all those bodies which are not a and cannot be, considered as natural persons; therefore, as Indian citizens, can be granted a quarrying lease only with the prior approval of the State Government. The application or operation of the Rule cannot be confined only to foreign nationals and it applies to all those who are not Indian Citizens. Artificial persons such as Corporations, statutory authorities, are not natural persons and they cannot be considered as Indian Citizens even though their share-holders are Indian citizens [See: State Trading Corporation v CTO; reported in AIR 1953 S.C. 1811; B.I. Co., v Jasjit AIR 1964 S.C. 1451; Barium Chemicals v Company Law Board AIR 1967 S.C. 295; Amritsar Municipality v State of Punjab AIR 1969 S.C. 1100; Tata Engineering Co. v State of Bihar AIR 1965 S.C. 40]. According to Sec. 2(1)(f) of the Citizenship Act, 1955, "person" does not include any company or association or body of individuals, whether incorporated or not. Therefore, it is not possible to hold that a Village Panchayat Committee can claim to be a citizen. This does not mean that a village panchayat committee or any other statutory body, corporation or company, is not entitled to seek quarrying lease under the Rules. Quarrying lease can be granted to such bodies with the prior approval of the State Government. Hence, I am of the view that whenever there is an application filed for grant of quarry lease either by a statutory body like village panchayat committee or any other corporate body, before granting lease in favour of such applicant prior approval of the State Government is necessary. In the instant case, the State Government itself has rejected the revision. Therefore, it is apparent that it is not in favour of granting quarry lease to the petitioner.

9. For the reasons stated above, Points (i) and (ii) are answered as follows:

POINT NO i): Respondents 1 and 2 are justified in rejecting the revision on the grounds that the petitioner operated the quarry beyond the period of lease; that it is not an Indian Citizen, therefore no lease can be granted without prior approval of the State Government.

POINT NO. (ii): Under Rule 3 of the Rules, prior approval of the State Government is necessary for granting quarry lease in favour of the petitioner which is a Panchayat Committee.

10. POINT NO. (iii): The findings recorded on Points (i) and (ii) are sufficient to hold that it is not a case for interference. Still there is one more reason why I should not interfere with the orders of respondents 1 and 2. As pointed out in the beginning, there were following five applicants, who had filed the applications on the dates mentioned against their names:

1. Sri M. Ramanjanappa 28-7-1981
2. Sri K.M. Muniswamappa 3-8-1981
3. Smt. Munibachamma 18-8-1981
4. Sri H. Muddu Nagaraju 20-8-1981
5. Petitioner-Panchayat Committee 25-8-1981

Rule 7(1) of the Rules, specifically provides that if more than one application for a quarrying lease over the same area are received, preference shall be given to the applications in the order of date of receipt unless the Government for any special reason decides to the contrary. The proviso to the said Rule, further states that where such applications are received on the same day, the Competent Officer after taking into consideration the particulars specified in Clauses (a) to (g) of Rule 4 may grant the lease to the deserving applicant. Sub-rule (2) thereof, further provides for preferring the later applicant on special reasons recorded by the competent officer. In the instant case, respondents 4 and 5 have filed the applications on 28-7-1981 and 3-8-1981 whereas, the petitioner has filed the application on 25-8-1981. Therefore, it was not entitled to have preference over respondents 4 and 5. It is also not possible to hold that it could have been preferred by the competent officer because of the reason given by the 2nd respondent that the petitioner acted illegally in operating the quarry after the expiry of the period of lease. There are no special reasons also for holding that the petitioner should have been preferred under sub-rule (2) of Rule 7 of the Rules; therefore, it appears to me that looked from any point of view, it is not a case which calls for interference. Point No. (iii) is answered in the negative and against the petitioner.

11. For the reasons stated above, the petition fails and the same is dismissed.

12. Sri S. Udayashankar, learned High Court Government Pleader, is permitted to file his memo of appearance, for respondents 1 and 3, in six weeks.