
(2000) 01 MP CK 0042
In the Madhya Pradesh High Court
Case No : Writ Petition No. 1722/98

Ku. Nandini Bamanian

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 06-01-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Madhya Pradesh Minor Minerals Rules, 1961 — Rule 12, 32A, 32B, 6, 7

Citation : (2001) ILR (MP) 325 : (2000) 2 J LJ 32 : (2000) 1 MPHT 687 : (2001) 4 MPLJ 155

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : A.G. Dhande, for the Appellant; Vivekananda Awasthy, Government Advocate for Respondent Nos. 1, 2, 3 and 6 and Party in person, for the Respondent

Final Decision : Dismissed

Judgement

C.K. Prasad, J.

By this writ petition filed under Articles 226 & 227 of the Constitution of India, petitioner prays for quashing of the order dated 24-12-1997 (Annexure P-15) whereby the State Government in exercise of its appellate power under Rule 32-A of the M.P. Minor Mineral Rules, 1961 has set aside the order of the Commissioner dated 01-10-1994 granting quarry lease to the petitioner for removal of sand.

Shorn of unnecessary details, facts giving rise to the present writ petition are that the petitioner applied for grant of quarry lease for removal of sand from Khasra No. 126 of Village Raipur in the District of Hoshangabad, having an area of 12 hectares. In the application, petitioner claimed herself to be an educated unemployed. Application of the petitioner for grant of quarry lease was processed by the Collector and by Communication dated 27-07-1994 (Annexure P-2), it recommended for grant of quarry lease to the petitioner; stating therein that the

same shall be in public interest. He further pointed out that prior approval of the State Government or Madhya Pradesh State Mining Corporation (hereinafter referred to as the "Corporation") shall not be necessary as the area applied by the petitioner is beyond the, radius of 5 Kms. from the area of the Corporation. It seems that the Commissioner had also made correspondence with the State Government in relation to the request made by the petitioner for grant of quarry lease to her on 24-08-1984. In response thereto, the State Government by its letter dated 07-09-1994 (Annexure P-16) communicated to the Commissioner that the area applied for by the petitioner is beyond 22 Kms. of the area of Corporation, hence he may proceed to dispose of the application filed by the petitioner. The application of the petitioner was considered by the Commissioner and by order dated 01-10-1994 (Annexure P-4), petitioner was granted quarry lease.

While deciding to grant the quarry lease to the petitioner, Commissioner took into consideration the claim of petitioner that she is an educated unemployed and belongs to other backward class and her family lives below poverty line. In pursuance of the aforesaid order of the Commissioner, petitioner was asked to complete the formalities for execution of the lease deed by letter dated 10-10-1994 (Annexure P-5).

It is common ground that before the lease deed could be executed, the Corporation preferred appeal before the State Government under Rule 32 (A) of the M.P. Minor Mineral Rules, 1961 (hereinafter referred to as the "Rules"). In the memorandum of appeal, the Corporation only impleaded the Commissioner; who has passed the order granting quarry lease in favour of the petitioner. The State Government by order dated 25-10-1994, stayed the order

of the Commissioner dated 01-10-1994 and it further directed that in case, lease deed has been executed, possession of the area be not handed over to the petitioner. Aforesaid order was passed by the State Govt. at the time when petitioner was not one of the respondents in appeal. Thereafter, the Corporation filed an application before the appellate authority for impleading the petitioner as a party and by letter dated 07-11-1994, petitioner was asked to appear before the appellate authority on 11-11-1994. Petitioner filed her statement before the appellate authority on 11-11-1994.

Thereafter, petitioner filed W.P. No. 234/95 before this Court, challenging the interim order of the appellate authority dated 25-10-1994 (Annexure P-7). Aforesaid writ petition was disposed of by order dated 26th of Nov., 1996 with a direction to the appellate authority to decide the appeal filed by the Corporation within 30 days from the date of filing of the certified copy. During the pendency of the appeal before the appellate authority by order dated 1-6-1996 quarry lease was granted to respondent No. 7 in relation to the same area which was earlier granted to the petitioner by the Commissioner and was a subject matter of dispute before the appellate authority for the period 01-06-1996 to 31-12-1997.

The appellate authority on consideration of the case of the Corporation as also the petitioner passed the impugned order dated 24-12-1997 (Annexure P-15) and set aside the order of the Commissioner dated 01-10-1994 granting quarry lease to the petitioner. While doing so, the appellate authority found that the petitioner had filed application for grant of quarry lease on 09-09-1993 and no order having been passed within a period of one year from the date of its receipt, same shall be deemed to have been refused and hence the Commissioner ought not to have passed the order for grant of quarry lease after one year on 01-10-1994. Appellate authority further took into consideration that the petitioner did not prefer any appeal when her application suffered deemed refusal. Appellate authority further pointed out that although the petitioner has claimed herself to be an educated unemployed, but according to her own pleading in W.P. No. 234/95 filed before this Court, she has stated that she was studying at the time of filing of the application and as such, she cannot be said to be educated unemployed. Further ground assigned by the appellate authority for setting aside the order of grant of quarry lease in her favour is that in view of the decision of the State Government as contained in its memorandum dated 06-03-1991 & 03-10-1992 as the area applied for by the petitioner is within the radius of 5 Kms. of the area belonging to the Corporation, same ought not to have been granted to the petitioner. Accordingly, the appellate authority set aside the order of the Commissioner.

Aggrieved by the same, petitioner has preferred this writ petition. Mr. A.G. Dhande appears on behalf of the petitioner. Respondent Nos. 1 to 3 & 6 are represented by Shri Vivekananda Awasthy. In spite of service of notice on respondent Nos. 5, 7 & 8, nobody has chosen to appear on their behalf. Respondent No. 9 appears in person.

Mr. Dhande appearing on behalf of the petitioner submits that as the application filed by the petitioner for grant of quarry lease was under consideration which would be evident from communication of the Collector dated 27-7-1994 (Annexure P- 2) and the State Govt., dated 07-09-1994, the view taken the appellate authority that the application filed by the petitioner for grant of quarry lease suffered deemed rejection, is erroneous. He submits that when the application of the petitioner was not disposed of and was under consideration, petitioner had no remedy except to wait for the decision and as such, it is wrong to say that the petitioner's application for grant of quarry lease suffered deemed rejection.

He further emphasises that petitioner cannot be held responsible for the delay in disposal of the application and he points out that nobody can be permitted to suffer on account of inaction or failure on the part of somebody else. In support of his submission, he has placed reliance on a judgment of this Court in case of *Matadin v. State of M.P.* 1985 M.P. 464, and has drawn my attention to the following passage which reads as follows :--

"On a consideration of the facts and circumstances of the case, the petition

deserves to be allowed. It cannot be disputed that a person applying earlier in time for a quarry lease, is entitled to get his application considered in preference to the subsequent applicants. There is no default or negligence on his part so as to justify withdrawal of this preference. In deed, there would be no justification whatsoever for the respondent No. 3 not to act on the application on merits. The time limit prescribed by the rules, apparently imposes an obligation on the authority to act within that period. There may be cases where the authority may not be able to decide the application on merits within the said period. But in such cases, the applicant cannot be made to suffer as the delay cannot be said to be occasioned by any default on his part. In this view of the matter, there is no justification for the view taken by the respondent Board in the impugned order. Indeed, in an earlier decision of the respondent Board of Revenue in *Matadin Mukim v. Director of Geology and Mining* (1979) R.N. 124, the Board itself records the consistent trend that the Director should be asked to dispose of the application on merits. The earlier decision apparently lay down the correct law. There appears to be no reason why the learned Member of the respondent-Board of Revenue should have ignored aforesaid decisions. In any case, the reasoning of the respondent-Board being irrelevant it is not possible to sustain the order. In this view of the matter, the proper course would be to direct the respondent-Director to consider the application of the petitioner dated 17-09-1980 on merits and dispose it of in accordance with law. 1979 R.N. 124, confirmed. Petition allowed."

Mr. Vivekananda Awasthy, however, appearing on behalf of respondents No. 1 to 3 & 6 submits that notwithstanding the fact that the application of the petitioner was under process, but as no order was passed within a period of one year from the date of its receipt, it shall be deemed to have been refused and the Commissioner ought not to have granted lease in favour of the petitioner on an application which on account of statutory provision suffered deemed refusal. Respondent No. 9 appearing in person submits that the time taken in processing the application of the petitioner has to be excluded for the purpose of counting the period of one year.

Rule 6 of the Rules inter alia provides for application for grant of quarry lease. Rule 7 of the Rules contemplates acknowledgment of application whereas Rule 8 of the Rules provides for disposal of application for grant and refusal of quarry lease. Rule 12 of the Rules provides for preferential right to certain persons. Rule 8 of the Rules which is relevant for the purpose reads as follows:--

"(8) Disposal of application for grant and renewal of quarry lease:-- (1) On receipt of an application for the grant or renewal of quarry lease, the State Government on making such inquiries as they deem fit, may sanction the grant or renewal of quarry lease to the applicant or refuse to sanction it.

(2) An application for the grant of quarry lease shall be disposed of within one year from the date of its receipt and, if it is not disposed of within that period, it shall be deemed to have been refused.

(3) Any application for the grant or renewal of a quarry lease shall be made at least one year before the expiry of the quarry lease and shall be disposed of before the expiry of the quarry lease, and if the application is not so disposed of within that period, it shall be deemed to have been refused."

Under the Scheme of the Rules, application for grant of quarry has to be filed under Rule 6 of the Rules. Acknowledgment of the filing of application is to be given forthwith as provided under Rule 7 of the Rules. Rule 8 (2) of the Rules inter alia obliges the competent authority to dispose of the application within one year from the date of its receipt. Rule 8 (2) of the Rules at the same time has created legal fiction and it provides that in case the application is not disposed of within one year from the date of its receipt, it shall be deemed to have been refused. The word "deemed" is normally used by the Legislature to create a statutory fiction and the Legislature takes recourse to creation of legal fiction for a specific purpose. Here the rule making authority by use of the expression "deemed to have been refused" has created a legal fiction and the consequence of the aforesaid legal fiction is that notwithstanding the fact that no order has not been passed, still the application filed for grant of quarry lease shall be deemed to have been refused.

As regards the authority of this Court in case of *Matadin v. State of M.P.* (supra) relied on by Mr. Dhande, same is clearly distinguishable. In the said case, application for grant of quarry lease was deemed to be rejected and thereafter on appeal preferred by the aggrieved person, the Board of Revenue took the view that the aggrieved person should file a fresh application. In that context, this Court observed that the delay was not occasioned by the applicant, he cannot be made to suffer. In fact, the question raised in the present writ petition did not fall for consideration in the aforesaid case and as such the authority is clearly distinguishable.

As pointed out earlier, Shri Dhande has submitted that in absence of any order passed by the competent authority on the application of the petitioner for grant of quarry lease, remedy of appeal was not available. In any view of the matter, Mr. Dhande points out that the application of the petitioner was under process, hence there was no occasion for her to prefer any appeal. Mr. Awasthy points out that legal fiction resulting into refusal of application is an order and could have been assailed by the petitioner in appeal under Rule 32-A of the Rules or in revision as provided under Rule 32-B of the Rules.

Having appreciated the rival submission, I find substance in the submission of Mr. Awasthy. Rule 8 (2) of the Rules uses the expression that in case application for grant of quarry lease is not disposed of within one year from the date of its receipt, it shall be deemed to have been refused. The effect of the aforesaid statutory provision is that by force of the statutory provisions, the application of petitioner was refused. In my opinion, such an order is subject to challenge. I do not find any substance in this submission of Mr. Dhande.

Mr. Dhande further submits that the State Government while passing the impugned order has taken into consideration irrelevant grounds. He points out that the application of petitioner for grant of quarry lease was considered under Rule 8 of the Rules and whether the petitioner is an educated unemployed or not has no bearing at all. As pointed out earlier, the Commissioner while deciding to grant quarry lease to the petitioner has taken into consideration that the petitioner is an educated unemployed and belongs to other backward community. In case, the aforesaid consideration is relevant, according to the finding of the appellate authority, petitioner's claim that she is an educated unemployed is erroneous and as such petitioner ought not to have been given the quarry lease on that ground. As contended by Shri Dhande, if it is taken to be irrelevant or not germane for the purpose of grant of quarry lease, same ought not to have been taken into consideration by the Commissioner while granting quarry lease to the petitioner. On any count, the impugned order of the State Govt. cannot be said to be illegal on that count.

Another ground assigned by the appellate authority to set aside the order of Commissioner is that the area applied by the petitioner being within the radius of 5 Kms. from the area of the Corporation, same ought not to have been granted to the petitioner in view of the memoranda of the State Govt. dated 06-3-1991 and 03-10-1992. Mr. Dhande states that it is factually wrong to say that the area applied by the petitioner is within the radius of 5 Kms. from the area belonging to the Corporation. In this connection, Shri Dhande has drawn my attention to the letter dated 07-09-1994 (Annexure P-16) in which the State Government, itself stated that the road distance of the area applied for by the petitioner from that of the area belonging to the Corporation, is 22 Kms. He further points out that had it been so, same area could not have been given to respondent No. 7 which in fact has been done by order dated 01-06-1996. I do not understand from what material the appellate authority while passing the impugned order has come to the conclusion that the area applied for by the petitioner was within the radius of 5 Kms. from the area of the Corporation. At one point, the stand of the State Government is that the distance of the area applied for by the petitioner and the area belonging to the Corporation is 22 Kms. while by the impugned order it has stated that it is within the radius of 5 Kms. As the impugned order is founded on various grounds and I have sustained the other grounds, it is inexpedient to give finding on this question. However, it will be appropriate for the competent authority to take a firm decision on this question before considering the prayer of persons who have applied for grant of quarry lease for the area in question. The competent authority for this purpose shall appoint a competent person duly qualified in the matter and only after such decision is taken, steps shall be taken for consideration of the application for grant of quarry lease by the competent authority in accordance with law. So long such a decision is not taken, nobody shall be allowed to extract sand or shall be granted quarry lease over the area applied for by the petitioner. It is made clear that the aforesaid direction has been given in view of the memoranda of the State

Government and I have not gone into the legality or otherwise of the same.

In the result, I do not find any merit in the writ petition and it is dismissed accordingly, with the observations made above. In the facts and circumstances of the case, there shall be no order as to cost.