(1964) 04 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 697-D of 1963

M. Dastgir Saheb APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 01-04-1964

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : AIR 1964 P&H 432

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : D.K. Aggarwal and Madan Lal Gupta, for the Appellant; S.N. Shanker, R.S. Narula and S.S. Chadha, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—This is a petition of M. Dastgir Saheb under Article 226 of the Constitution of India to challenge the validity of the prospecting licence granted by the first respondent (Union of India) by its order of 22nd of August, 1963 (Annexure B) to N.K. Ramamoorthi, the third respondent, in respect of an area of 29, 47 acres in Jaladurgam village, Taluk Dhone in Kurnook district of Andhra Pradesh. The first respondent in the impugned order reversed the earlier grant of mining lease made by the Government of Andhra Pradesh respondent 2 on 1st of December, 1960 in favour of the petitioner in respect of the same area.

2. The petitioner applied on 12th of October, 1969, for the grant of mining lease in respect of certain specified numbers in Jaladurgam village and eventually agreed to take an area of 29.47 acres. The application, however, did not contain the requisite particulars and these formal defects were removed on 21st of October, 1959. The third respondent N.K. Ramamoorthy also had applied for a prospecting licence a little earlier on 28th of September, 1959, but the application did not contain the income tax clearance certificate. This certificate was furnish by the third respondent on 26th of October, 1960. The State Government of Andhra Pradesh which is the second respondent, following the

rule of priority granted the mining lease to the petitioner being of the view that his application had been completed before that of the third respondent. The order of the second respondent in favour of the petitioner was passed on 1st of December, 1960, (Annexure A), when the Mineral Concession Rules 1980, under the Mines and Minerals (Regulation and Development) Act, 1957, had come into force. Before the enforcement of the Rules of 1960 on 26th of November, 1960, grant of licences was governed by the Mineral Concession Rules, 1949, made under the Mines and Minerals (Regulation and Development) Act, 1948.

3. The grant of mining lease in favour of the petitioner was challenged by the third respondent in revisional proceedings under clause 54 of the Mineral Concession Rules, 1960, which had come into force at that time. From the affidavit filed on behalf of the first respondent, it appears that the view was taken by the revisional authority that the Rules of 1949 did not lay down any condition for the submission of an income tax clearance certificate with the application and did not, therefore, consider the view of the second respondent to be correct that the application of the third respondent was completed on 26th of October, 1960, when this certificate was produced. The first respondent accordingly reversed the order of the Andhra Pradesh Government and granted the prospecting licence to the third respondent. Feeling aggrieved, the petitioner has sought the intervention of this Court in certiorari proceedings.

4. The submission of Mr. Aggarwal, the learned counsel for the petitioner, is that the statutory requirement of the submission of an income tax clearance certificate being an essential pre requisite for the entertainment of an application for a mining lease or a prospecting licence the application cannot be regarded as complete till this condition is complied with. The application of the third respondent, in his submission was not an application in the eye of law till the requisite certificate had been furnished on 26th of October, 1960, and this was long after the petitioner''s application had been completed on 21st of October, 1959. On 21st October, 1959, the only application which could be entertained by the appropriate authorities was that of the petitioner and on the principle of priority, to which I would make a reference shortly it was mandatory for the authority to grant the licence to the petitioner as was rightly done by the second respondent. In his ensuing contention, the counsel submits that the first respondent has caused a breach of the statutory requirement in making order in favour of the third respondent whose application was not complete before that of the petitioner and it is claimed that in such a situation this Court can interfere and recall the invalid order which had been passed by the Government of India, the first respondent.

5. We may first deal with the relevant provisions in the Mines and Minerals (Regulation and Development) Act 1957, and the Mineral Concession Rules, 1949. In the definition clauses, there is a distinction between a ''mining lease'' and a ''prospecting licence''. The former means ''a lease granted for the purpose of undertaking mining operations.'' While the prospecting licence is ''granted for

the purpose of undertaking prospecting operations,'' A mining lease'' or a "prospecting licence" u/s 4 can be granted only in accordance with the provisions of the Act. A prospecting licence is granted in the case of mica for one year and for any other mineral for a period of two years u/s 7. The mining lease, u/s 8, can be granted for longer periods extending from 20 to 30 years. Section 11 deals with the rule of priority and under sub-section (1)-

Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person". Sub-section (2) says that:

Where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later.........

Under the proviso to sub section (2) of section 11, where applications are received on the same day, the State Government may grant the prospecting licence or the mining lease to such one of the applicants as it may deem fit keeping into cons deration certain factors like special knowledge, financial resources, nature and quality of the technical staff employed and such other matters as may be prescribed. Sub-section (4) of section 11 further authorises the State Government for any special reasons to be recorded to grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

6. Clause 13 of the Mineral Concession Rules, 1949, contains restrictions on grant of prospecting licence, and sub-section (1) says that:

No prospecting licence shall be granted to any person unless he holds a certificate of approval from the State Government concerned" and further that:

No prospecting licence shall be granted to any person unless he produces before the State Government an income tax clearance certificate from the income tax Officer of the District where he resides and carries on business.

Clause 18 of the Rules again lays down the rule of priority that "if more than one application regarding the same land is received, preference shall be given to the application received first, unless the State Government, for any special reason, aid with the prior approval of the Central Government decides to the contrary.

7. The relevant provisions of the Mineral Concession Rules, 1960 of 11th of November, 1930, and enforced with effect from 26th of November, 1960, may now be set out. An application under clause 9 for a prospecting licence or its renewal has to be made to the State Government in Form B and shall be accompanied by a fee calculated in accordance with the provisions of Schedule II and an income tax clearance certificate in Form C from the income tax Officer concerned. Clause 17 says that "an application for a prospecting licence pending

at the commencement of these rules shall be disposed of in accordance with the provisions of these rules".

8. It would be observed that under the Mineral Concession Rules of 1949, the income tax clearance certificate has to be produced before any person can be granted a prospecting licence. This is in contrast with the requirement under clause 9 of the Mineral Concession Rules, 1960, for an application for a prospecting licence to be accompanied by an income tax clearance certificate. Such a certificate, though necessary for the grant of a prospecting licence, is not a condition precedent for the entertainment of an application for a prospecting licence under the Mineral Concession Rules, 1949. The application of the third respondent for the grant of a prospecting licence was made on 28th of September, 1959, though the income tax clearance certificate was not made available till 26th of October, 1960. In the submission of Mr. Shankar, the learned counsel for the respondent Union of India, the attachment of the income tax clearance certificate with the application was not essential at the time when the application was submitted. Clause 17 of the new rules cannot invalidate an application when at the time when it was made the rules did not require it to be accompanied by an income tax clearance certificate. The application of the third respondent made on 28th of September, 1959, did have an income tax clearance certificate when the order was made in favour of the petitioner on 1st of December, (960. It is true that an application which was pending at the time of the enforcement of the Mineral Concession Rules of 1960 has to be disposed of according to these rules as provided in clause 17, but at the time when the order of the State Government was made the application of the third respondent fully complied with the requirements of clause 9 and therefore, the rule of priority could not operate to the disadvantage of the third respondent who in point of time had made his application before that of the petitioner.

9. It seems to me that the order passed in favour of the third respondent far from being in breach of the statutory rules is in conformity with them. When the application of the third respondent was made, it was not essential for it to have been accompanied by an income tax clearance certificate. The application of the petitioner suffered from some formal defects which were removed by him on 21st of October, 1959. If the application of the petitioner had been disposed of after the 21st of October, 1960, when the income tax clearance certificate was furnished by the third respondent, there might have been something to be said for the contention which has been raised by Mr. Aggarwal. The applications of the petitioner and the third respondent were disposed of on 1st December, 1960, when both of them were in full compliance of the rules, both of 1949, and 1960. The position adopted by the Government of India in the order of revision parsed under clause 54 of the Mineral Concession Rules, 1960, is in harmony not only with the requirements of statutory rules but with principles of natural justice.

10. A point has been made by the learned counsel for the petitioner that he was not given any opportunity to be heard by the authority which decided the petition

for revision. It is not denied that Mr. Mukerjee, the Dy. Secretary before his transfer to another Ministry did gave a hearing to the petitioner, but there is no support for his contention that the submissions which were made on his behalf found favour with this officer, and that his successor who did not have the advantage of the arguments addressed to Mr. Mukerjee did not appreciate the position correctly. From the file which has been made available by Mr. Shanker, the learned counsel for the Union of India, it appears that the Secretary of the Ministry approached the Ministry of law for advice on this matter and took a decision after full deliberation. Clause 54 of the 1960, rules under which the petition for revision was decided by the first respondent, does not say that the parties have to be heard orally. Reference may be made to sub-rule (4) of clause 54 of the Rules which says that the Central Government "shall send a copy of the application to each of the parties impleaded under sub-rule (2) specifying a date on or before which he make his representations, if any, against the revision application". A representation was made by the petitioner and at one stage even was given an oral hearing according to his own showing. In the case of A. K. Gopalan v. The State of Madras1, Chief Justice Kania fully agreed with the speech of Lord Haldane in the House of Lords decision of the Local Government Board v. Arlidge2 which rejected the contention about the necessity of an oral hearing. Moreover, it is now well settled that it is not every error assuming in favour of the petitioner that there was an error that calls for correction in writ proceedings, The observations of their Lordships of the Supreme Court in Nagendra Nath Bora and another v. Commissioner of Hills Division and Appeals, Assam and others3 that formal or technical errors, even though of law, will not be sufficient to attract this extraordinary jurisdiction, may be usefully adopted in the present instance. The Government of India undoubtedly had jurisdiction to decide this matter and if an erroneous view was taken of the principles of "first come first serve" embodied in section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, and clause 18 of the Mineral Concession Rules of 1949, it is not such a patent error which would call for interference of this Court. The petitioner''s objections to the impugned order on the ground of absence of opportunity afforded to him to make good his case and the breach of the statutory rules have no substance.

This petition, therefore, must fail and is accordingly dismissed with costs.

