
(2003) 08 OHC CK 0030
In the Orissa High Court
Case No : Writ Petition (C) No. 6322 of 2003

M+ Granites

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 01-08-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Orissa Minor Minerals Concession Rules, 1990 — Rule 9(2), 9(3)

Citation : (2003) 96 CLT 278

Hon'ble Judges : Sujit Barman Roy, C.J; L. Mohapatra, J

Bench : Division Bench

Advocate : Sanjit Mohanty, D.K. Samantaray, H.K. Panigrahi and C. Samantaray, for the Appellant; B. Sarangi, P.K. Rout, P.K. Kar for O.P. No. 4 and A.G.A. for O.Ps. 1 to 3, for the Respondent

Final Decision : Allowed

Judgement

L. Mohapatra, J.—The petitioner in this writ application has prayed for quashing the order No. 5507/IV(E)(DS) SM.4/2003 dated 22.5.2003 in which quarry lease for decorative stone covering an area of 73.50 acres or 29.744 hectares of land in Titilagarh Tahasil in the district of Bolangir has been renewed in favour of the opposite party No. 4 and for further direction to the opposite party No. 1 to consider application of the petitioner for grant of quarry lease in it's favour.

2. Case of the petitioner is that quarry lease of decorative stone covering 73.50 acres/29.744 hectares of land in village Gandhargola No. 95 in Titilagarh Tahasil in the district of Bolangir had earlier been granted in favour of one Jitendra Kumar Lohia for a period of 10 years and the period of lease expired on 10.2.2003. During subsistence of the lease said Jitendra Kumar Lohia transferred the quarry lease in the name of opposite party No. 4 on 7.2.2003. Prior to expiry of the lease period said Jitendra Kumar Lohia had applied for renewal of the lease on 11.10.2002 and after transfer of the lease in favour of the opposite party No. 4 a fresh application was submitted by opposite party No. 4 on 7.2.2003 for

renewal of the lease in its favour, The petitioner alleges that considering the application dated 7.2.2003 of the opposite party No. 4 for renewal of the lease as continuation of the application filed by Jitendra Kumar Lohia, renewal was granted in favour of the opposite party No. 4. The specific case of the petitioner is that it has established a processing plant by taking financial help from the Orissa State Financial Corporation. It had also applied for lease of the decorative stone quarry on 11.2.2003, but the said application was not considered and renewal of lease was granted in favour of opposite party No. 4 even though such renewal application was not in accordance with the provisions of the Orissa Minor Mineral Concession Rules, 1990.

3. Counter affidavit has been filed by the opposite party No. 4 wherein it is stated that the original quarry lease was granted in favour of one Jitendra Kumar Lohia who is also a Director of the opposite party No. 4-company. Lease deed was executed on 11.2.1993 for a period of 10 years and expired on 10.2.2003. During subsistence of the lease period of opposite party No. 4 vide letter dated 4.5.1993 informed the Director of Mining and Geology, Bhubaneswar of its intention to set up a granite cutting and polishing unit at Rayagada. However, keeping in mind viability of the unit proposed to be set up at Rayagada it was decided to set up the unit at Titilagarh and permission was obtained from the District Industries Centre to set up the unit. After formation of the company with Jitendra Kumar Lohia as one of the its Directors, an application was filed on 15.10.1998 for transfer of the quarry lease in favour of the opposite party No. 4-company, but no orders were passed till 7.2.2003. Since no orders were passed on the application filed by the opposite party No. 4 for transfer of the lease in its favour, its Director Jitendra Kumar Lohia who was original lessee applied for renewal of the lease on 11.10.2002 indicating therein that the same is subject to consideration of the transfer application dated 15.10.1998. Since the transfer of lease was granted vide order dated 7.2.2003 in favour of the opposite party No. 4, there were hardly three days left for expiry of the lease period and by abundant caution an additional application was filed by the opposite party No. 4 on 7.2.2003 for renewal of the lease in its favour. According to the opposite party No. 4, the application filed by the opposite party No. 4 on 7.2.2003 is only a continuation of the earlier application dated 11.10.2002 filed by Jitendra Kumar Lohia and therefore there was compliance of the provisions of the Orissa Minor Mineral Concession Rules (hereinafter referred to as the Rules). Learned Additional Government Advocate though has not filed any counter, produced the records before the Court and submitted that Jitendra Kumar Lohia, the original lessee being director of the opposite party No. 4-company, the application submitted by him on 11.10.2002 should be deemed to be an application filed on behalf of the opposite party No. 4-company and therefore there was compliance of the relevant Rules.

4. Shri Sanjit Mohanty, learned senior advocate appearing on behalf of the petitioner drew attention of the Court to Rules 6 and 9 of the Rules. According to Sri Mohanty, Rule 6 prescribes the manner in which application for grant of lease

shall be disposed of and Rule 9 prescribes the mode of renewal. It is submitted by him that under Rule 6 of the Rules, all applications received by the competent authority shall be entered in the Register of Applications for quarry leases and shall be disposed of in the manner prescribed in the said Rule. Under Rule 9, a quarry lease may be granted for a period of not exceeding five years for leases referred to in Clauses (i) and (ii) of Sub-rule (6) of Rule 6 and three years for leases referred to in Clauses (iii) and (iv) thereof. Under Rule 9(2), an application for renewal of a quarry lease shall be made in Form-E at least ninety days before the expiry of lease, to the competent authority and shall be accompanied with a fee of two hundred rupees. An application for renewal of quarry lease shall be disposed of before expiry of the lease term and if the application is not so disposed of within that period it will be deemed to have been refused, The proviso to Rule 9(2) prescribes that applications for renewal of quarry leases of rocks used for decorative, industrial and export purposes including dimension stones which are deemed refused may be reconsidered by the State Government in the Department of Steel and Mines on application made to them within 30 days of the date of deemed refusal by the party aggrieved. Referring to proviso to Rule 9(3) Sri Mohanty contended that no second renewal shall be granted unless the lessee has set up a plant for processing such stones using at least twenty-five per cent of the stones quarried from the lease hold area. On the basis of said rule it was contended by Sri Mohanty that the original lessee was one Jitendra Kumar Lohia and he had taken lease in his individual capacity. There was an application for renewal by said Jitendra Kumar Lohia on 11.10.2002. There was no application for renewal of lease by the opposite party No. 4 and no such application for renewal of lease could have been filed by the opposite party No. 4 since the lease had not been granted in its favour. Only on 7.2.2003 lease was transferred in favour of the opposite party No. 4-company and on that date i.e., three days prior to the expiry of the lease period, application for renewal was filed by the opposite party No. 4. According to Sri Mohanty under no stretch of imagination application filed by the opposite party No. 4-company dated 7.2.2003 can be treated to be an application for renewal and is not in terms of Rule 9(2) of the Rules. Shri Mohanty further submitted that the company is a separate and distinct legal entity and therefore its application for renewal could at best be considered as fresh application under Rule 6 and renewal of lease in favour of opposite party No. 4 is in contravention of Rule 9 of the said Rules. He also submitted that the opposite party No. 4 having not set up any plant for processing stones, renewal could not have been granted in its favour.

Shri Sarangi, learned counsel for the opposite party No. 4, on the other hand, submitted that Jitendra Kumar Lohia who had taken lease initially is the Director of the opposite party No. 4-company. After formation of the company in the year 1993, information was given to the competent authority for transfer of the lease in favour of the opposite party. No. 4-company, but the same was kept pending till 7.2.2003. In view of the above conduct on the part of the competent authority, the opposite party No. 4 had no occasion to file an application for

renewal 90 days prior to expiry of the lease and therefore its Director Jitendra Kumar Lohia who was the original lessee applied for renewal of the lease within time. Shri Sarangi, further submitted that the application filed by Jitendra Kumar Lohia in time is to be treated as an application on behalf of the opposite party No. 4-company and the competent authority has treated the application as such and granted renewal of lease. According to Sri Sarangi there has been compliance of the Rule 9 of the Rules and therefore this Court should not interfere with the lease granted in favour of opposite party No. 4-company. Learned Additional Government Advocate, on the other hand, referring to the records submitted that the opposite party No. 4 has already set up plant for processing stones and therefore there has been compliance of proviso to Rule 9(3) of the Rules. So far as Rule 9(2) of the Rules is concerned, it was submitted by the learned Additional Government Advocate that the opposite party No. 4 also complied the said provision since Jitendra Kumar Lohia, original lessee is a director of the opposite party No. 4-company and no order for renewal of lease having been passed on the application filed by Jitendra Kumar Lohia, it was deemed to be refused and under proviso to Rule 9(2) application of the opposite party No. 4 was considered and renewal of lease was granted.

5. On consideration of the averments made in the writ application as well as counter-affidavit filed by the opposite party No. 4 and on consideration of the arguments advanced by learned counsel appearing for the parties, it is found that there is no dispute that the original lease was granted in favour of Jitendra Kumar Lohia and the lease deed was registered on 11.2.1993 for a period of ten years. Said lease was granted to Sri Lohia in his individual capacity and not as Director of the opposite party No. 4-company. Though there is no mention about the date on which the opposite party No. 4-company came into existence in the counter filed by the opposite party No. 4, it appears that on 4.5.1993 the opposite party No. 4 informed the Director of Mining and Geology, Bhubaneswar intimating its intention to set up a granite cutting and polishing unit at Rayagada. Though an application, as it appears from the counter, was filed by Jitendra Kumar Lohia for transfer of the lease in favour of the opposite party No. 4-company on 15.10.1998, no orders were passed on the said application till 7.2.2003. Therefore, it is deemed that the lease continued in favour of Jitendra Kumar Lohia till 6.2.2003. Lease period expired on 10.2.2003. According to Rule 9(2) of the Rules, at least 90 days prior to expiry of the lease application for renewal is to be filed. There is no dispute that Jitendra Kumar Lohia had in fact filed an application for renewal of lease 90 days before expiry of the lease. For convenience Rule 9(2) and (3) are quoted below :

"Rule 9(2). "An application for renewal of a quarry lease shall be made in Form-E at least ninety days before the expiry of lease, to the competent authority and shall be accompanied with a fee of two hundred rupees. An application for renewal of quarry lease shall be disposed of before expiry of the lease term and if the application is not so disposed of within that period it will be deemed to have been refused :

Provided that applications for renewal of quarry leases of rocks used for decorative, industrial and export purposes including dimension stones which are deemed refused may be reconsidered by the State Government in the Department of Steel and Mines on application made to them within 30 days of the date of deemed refusal by the party aggrieved."

Rule 9(3). Notwithstanding anything contained in Sub-rule (1), the lease period of quarry for all types of rocks to be used for decorative industrial and export purposes including dimension stones shall not exceed ten years in case of non-captive uses and twenty years in case of captive uses. The lease may be renewed for one or more period of tea years at a time only in respect of leases having processing industry in the State ;

Provided that no second renewal shall be granted unless the lease has set up a plant for processing such stones using at least twenty-five per cent of the stones quarried from the lease hold."

6. Now the question that arise for consideration is whether after transfer of the lease in favour of opposite party No. 4-company on 7.2.2003, application filed by the opposite party No. 4 for renewal of lease on 7.2.2003 can be treated a continuation of the application filed by Jitendra Kumar Lohia for renewal of lease on 11.10.2002. In this context, reference may be made to a decision of the Apex Court in the case of M/S. Electronics Corporation of India Ltd. Etc. Etc. Vs. Secretary, Revenue Department Govt. of Andhra Pradesh and Others Etc. Etc., The Apex Court in the aforesaid judgment held as follows :

"A clear distinction must be drawn between a company and its shareholder, even though that shareholder may be only one and that the Central or a State Government. In the eye of the law, a company registered under the Companies Act is a distinct legal entity other than the legal entity or entities that hold its shares."

In view of what has been decided by the Apex Court it cannot be said that the application filed by Jitendra Kumar Lohia in his individual capacity for renewal of lease on 11.10.2002 can be treated as an application for renewal by the opposite party No: 4-company or the application dated 7.2.2003 for renewal of lease by opposite party No, 4 can be treated as a continuation of the application for renewal filed by Jitendra Kumar Lohia in his individual capacity on 11.10.2002. Therefore, in the eye of law there is no application for renewal by the opposite party No. 4. Moreover since no lease had been granted in favour of opposite party No. 4, it could not have filed any application for renewal. Merely because Sri Jitendra Kumar Lohia is a director of opposite party No. 4-company, it cannot be said that the application filed by the company for renewal on 7.2.2003 is to be treated as continuation of the application filed by Jitendra Kumar Lohia on 11.10.2002 in his individual capacity.

It was argued at the bar as to whether there can be judicial review of administrative action. In this connection reference may be made to a decision of

the Apex Court in the case of Tata Cellular Vs. Union of India, The Apex Court in the said decision held as follows:

"The principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. ***

Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justifiable and the need to remedy any unfairness. Such an unfairness is set right by judicial review. The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action. Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision making process itself.

The duty of the Court is to confine itself to the question of legality. Its concern should be :

- (1) Whether a decision-making authority exceeded its powers ?
- (2) committed an error of law;
- (3) committed a breach of the rules of natural justice;
- (4) reached a decision which no reasonable Tribunal would have reached; or
- (5) abused its powers.

Same view has also been taken by this Court in the case of Yash Granites v. State of Orissa and Ors., reported in 1999(1) OLR 151. In the present case, we find there has been contravention of Rule 9(2) of the Rules while granting renewal of lease in favour of opposite party No. 4-company and accordingly the competent authority committed an error of law. On perusal of records produced before us by the learned Additional Government Advocate, we find that the opposite party No. 4-company has set up a plant for processing stones. Therefore, there has been no contravention of proviso to Rule 9(3) of the Rules.

7. Having held that there could not be any renewal of lease in favour of opposite party No. 4-company and there has been contravention of Rule 9(2) of the said Rules, we have no other option except allowing the writ application by quashing the renewal of lease granted in favour of opposite party No. 4-company. We, therefore, allow the writ application, quash the renewal of lease granted in favour of opposite party No. 4-company and direct the competent authority to treat the application of the opposite party No. 4-company as fresh application under Rule

6 of the said Rules and consider the application of the petitioner as well as the opposite party No. 4-company under Rule 6 of the said Rules and pass necessary orders.

Sujit Barman Roy, C.J.

I agree.