(2018) 05 RAJ CK 0124

In the Rajasthan High Court

Case No : Civil Writ Petition No. 14920 of 2017, 3234, 196, 204, 491, 493, 495, 496, 1412, 1458, 1461, 1670, 1884, 1886, 1888, 2904, 2909, 4922, 4948, 4961, 14919 of 2018

Madan Lal @APPELLANT@Hash State of Rajasthan & Ors.

Date of Decision : 11-05-2018

Acts Referred:

Mines and Mineral (Development & Regulation) Act, 1957 — Section 15
Limitation Act, 1963 — Section 5, 18
Rajasthan Minor Mineral Concession Rules, 2017 — Rule 63, 63(4)
Rajasthan Minor Mineral Concession Rules 1986 — Rule 43(1), 45

Citation : (2018) 05 RAJ CK 0124

Hon'ble Judges : NIRMALJIT KAUR, J

Bench : Single Bench

Advocate : D.D.Thanvi, D.L.R.Vyas, Arvind Srimali, Kuldeep Vaishnav, R.R.Kanwar

Final Decision : Disposed Off

Judgement

All the above mentioned writ petitions shall stand decided by this common order as the issue involved is identical.

For convenience, the facts are being taken from S.B.Civil Writ Petition No.14920/2017 (Madan Lal S/o State of Rajasthan & Ors.).

The writ petition is preferred against the order dated 08.08.2017, vide which, the Additional Director (Environment & Development), Mines & Geology, Udaipur

proceeded to dismiss the appeal of the petitioner under Rule 63(4) of the Rajasthan Minor Mineral Concession Rules, 2017 (for short â??the Rules of 2017â?)

holding that the appeal filed by the petitioner was beyond the period of six months and the delay could not be condoned in view of Rule 63(4) of the Rules of

2017.

The grievance of the petitioner is twofold: firstly, the appeal was filed under Rule

43(1) of the Rajasthan Minor Mineral Concession Rules 1986 (for short

â??the Rules of 1986) along with an application for condonation of delay under Rule 45 of the Rules 1986 before the Additional Director, Mines Department

against the order of cancellation of the mining lease. However, the said appeal has been dismissed under Rule 63(4) of the Rules of 2017, which came into

force w.e.f. 01.03.2017 on the ground that Rules of 1986 stand repealed, whereas, the rules cannot be applied retrospectively on the appeal having been filed

much before coming into force of the Rules of 2017. Secondly, even as per the new rules, the date of limitation should have been taken from the date of

communication of the said order, whereas, the respondent no.2-Additional Director (Environment & Development), Mines & Geology Department, Udaipur has

applied the limitation from the date of the order. Thus, depriving the petitioners of the statutory remedy of appeal both under the Old Rules and the New Rules,

which cannot be permitted.

The Mining Engineer, Mines and Geology Department, Ajmer after obtaining approval of the Superintending Engineer, Mines & Geology Department, Ajmer

cancelled the mining lease of the petitioner on 31.03.2016. Being aggrieved, the petitioner challenged the cancellation of the lease by way of filing an appeal

under Rule 43(1) of the Rules of 1986 along with an application for condonation of delay under Rule 45 of the Rules of 1986 before the Additional Director

(Environment & Development), Mines and Geology, Jaipur. Meanwhile, the State Government in exercise of the powers conferred by Section 15 of the Mines

and Mineral (Development & Regulation) Act, 1957 framed Rules of 2017. Prior to this, the Rules of 1986 were in vogue. Since the State Government while

enacting the Rules of 2017 under Rule 63 provided under sub-rule (1) that the appeal against the order of Mining Engineer etc. shall lie before the Additional

Director (Mines) authorized by the Government and subsequently vide its order dated 27.04.2017 authorized the respondent no.2 to hear appeals, the appeal of

the petitioner filed before the Additional Director (Mines), Jaipur came to be transferred to the respondent No.2, who proceeded to dismiss the appeal of the

petitioner under Rule 63(4) of the Rules of 2017 by his order dated 08.08.2017 holding that the appeal was filed before the Additional Director (Mines), Jaipur

beyond the period of six months, which is not admissible under Rule 63(4) of the Rules of 2017. Proviso to Rule 63(4) of the Rules of 2017 so far it provides for non-admissibility of appeal filed beyond the period of six months was challenged by the petitioner before the Division Bench of this Court in D.B.Civil Writ

Petition No.12797/2017 but the Division Bench vide its order dated 11.10.2017 has upheld the validity of said provision, however, it has been ordered that

dismissal of petition shall not preclude the petitioner from challenging the decision of appellate authority dismissing the appeal on other counts. The operative

part of the order dated 11.10.2017 reads as under:-

â??We do not find any force in this argument too. Any inconvenience caused to a person for certain individual eventuality cannot be a reason to declare a

provision illegal.

In view of whatever stated above, we do not find any merit in these petitions for writ. Accordingly, the same are dismissed. The dismissal of these petitions for

writ, however, will not preclude the petitioners from challenging the decision of the appellate authority dismissing the appeal on other counts.â??Â

The argument of the learned counsel for the petitioners that sub-rule (4) of Rule 63 of the Rules of 2017 are prospective in nature and the respondent no.2 has

no jurisdiction to apply the said rule retrospectively in appeal having been filed before coming into force the Rules of 2017, cannot be sustained in view of Rule

3-Repeal and Savings clause of the amending Rules of 2017. Rule

3 of the Rules of 2017 reads as under:-

â??Rule 3. Repeal and savings.-The Rajasthan Minor Mineral Concession Rules, 1986 are hereby repealed;

Provided that anything done or any action taken under the provisions of the rules so repealed shall be deemed to have been done or taken under the provisions

of these rules.â??

In view of the intention of repealing the earlier rules as well as taking into account that vires of the Rule 63 of the Rules of 2017 have been upheld by the

Division Bench of this Court vide order dated 11.10.2017, learned counsel for the petitioners gave up the argument after making submission for some time and

prayed that alternatively, their oral prayer to consider their applications of condonation of delay be accepted and the respondent No.2 be directed to decide their

applications in accordance with Rule 63 of the new Rules by taking the period of limitation of six months from the date of the communication instead-of from the date of order as the same in some cases was communicated after six months and in some was not communicated at all.Â It was contended by learned

counsel for the petitioners that whereas, under the Mines and Mineral (Development & Regulation) Act, 1957 and the rules framed thereunder, there is no

restriction for not entertaining an appeal after expiry of the extended three months as was stipulated in Rule 45 of the Rules of 1986 but under the proviso to

sub-rule (4) of Rule 63 of the Rules of 2017 restrains the entertaining of the appeal after expiry of six months from the date of the order appealed for.

Accordingly, their appeals have been dismissed without considering that the said order of cancellation (order under appeal) in itself was either not

communicated or communicated much after the lapse of six months.

For proper adjudication, it would be appropriate to reproduce Rule 63(4) of the Rules of 2017:-

Rule 63. Appeal-(1) Any person aggrieved by any order of the Superintending Mining Engineer, Superintending Mining Engineer (Vigilance), Mining Engineer,

Mining Engineer (Vigilance), Assistant Mining Engineer or Assistant Mining Engineer (Vigilance) passed under these rules shall have the right of appeal to the

Additional Director Mines authorized by the Government.

(2) xxxÂ xxxÂ xxx

(3) xxx xxx xxx

(4) An appeal shall be filed within three months ofthe date of communication of the order appealed against:

Provided that an appeal may be admitted after the said period if the appellate authority is satisfied that the appellant has sufficient cause for not filing the appeal

within the said period but the appeal shall not be admitted after expiry of six month from the date of order appealed against.â??

As per Section 3 of the Rules of 2017 as reproduced above, any action done or taken under the rules of repealed is to be considered as having done under the

provision of the new rules. The petitioners may have no right of the appeal to be considered under the old rules in absence of a Saving Clause but they definitely

have a right to have their appeals considered under the provisions of the new rules. The proviso to sub-rule (4) of Rule 63 of the Rules of 2017 provides that an

appeal can be admitted if the Appellate Authority is satisfied that the appellant has sufficient cause for not filing the appeal within three months of the date of

communication. However, the second part of the proviso, which provides that the appeal shall not be admitted after expiry of six months from the date of order

appealed against cannot be read in isolation. The right to file an appeal is a vested right.

Learned counsel for the State has placed reliance on the judgments rendered by the Apex Court in the cases of Bengal Chemists & Druggists Assn. Vs.

Kalyan Chowdhury (Civil Appeal No.684/2018) and M/s Patel Brothers Vs. State of Assam & Ors. (Civil Appeal Nos.49-50 of 2017) as well as the judgment

rendered by Madras High Court in the case of M/s Falcon types Ltd. Vs. the Customs Excise & Service Tax Appellate Tribunal & Anr. (C.M.A.

No.1161/2016), decided on 15.06.2016 to contend that a court has no power to condone the delay after the expiry of the period of six months as the courts

cannot interfere in the statute the way they have developed the common law. Further, the inherent power condoning the delay while invoking the provision of

Section 5 of the Limitation Act cannot be exercised in such a manner as to supplement the provision of the special Act.

There is absolutely no dispute with the well settled proposition of law as laid down in the judgments rendered in the cases of Bengal Chemists & Druggists

Assn., M/s Patel Brothers and M/s Falcon types Ltd. (supra). However, in the present case, we are concerned with the date from which the period of six

months have to be counted. It was in almost similar circumstances that a judgment was rendered by the Apex Court under the Land Acquisition Act, 1894 in

the case of Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Anr., reported in AIR 1961 Supreme Court 1500. The question framed

before the Apex Court was as under:

â??We must therefore enquire whether the relevant provision is capable of the construction for which the appellant contends, and that naturally raises the

question as to what is the meaning of the expression ""the day of the Collector's award"".

The Apex Court observed that under the proviso to Section 18 of the said Act, which deals with the question of limitation, it prescribed that every such

application shall be made (a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award; (b) in other cases within six weeks of the receipt of the notice from the Collector under S.12(2), or within six months from the

date of the Collector's award whichever shall first expire.Â The Apex Court after taking into account the various judicial pronouncements observed as under:-

â??â?¦...the said decision should be communicated to the said party. The knowledge of the party affected by such a decision, either actual or constructive, 'is an

essential element which must be satisfied before the decision can be brought into force. Thus considered the making of the award cannot consist merely in the

physical act of writing the award or signing it or even filing it in the office of the Collector; it must involve the communication of the said award to the party

concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it can be said to be made when

pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced

the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice

of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party

later. The knowledge of the party affected by the award, either actual or constructive, being an essential requirement of fair-play and natural justice the

expression ""the date of the award"" used in the proviso must mean the date when the award is either communicated to the party or is known by him either

actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words ""from the date of the Collector's award"" used in the proviso

to S.18 in a literal or mechanical way.

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11. A similar question arose before the Madras High Court in Annamalai Chetti v.

Col. J. G. Cloete, ILR 6 Mad 189. Section 25 of the Madras Boundary Act

XXVIII of 1860 limited the time within which a suit may be brought to set side the decision of the settlement officer to two months from the date of the award,

and (1) A.I.R 1954 Bom. 419. (2) I.L.R. 1951 Mad. 815. (3) (1883) I.L.R. 6 Mad. 1 89. so the question arose as to when the time would begin to run. The High

Court held that the time can begin to run only from the date on which the decision is communicated to the parties. ""If there was any decision at all in the sense

of the Act"", says the judgment, ""it could not date earlier than the date of the communication of it to the parties; otherwise they might, be barred of their right, of

appeal without any knowledge of the decision having been passed"". Adopting the same principle a, similar construction has been placed by the Madras High

Court in K. V. E. Swaminathan alias Chidambaram Pillai v. Letchmanan Chettiar, ILR 53 Mad 491: (AIR 1930 Mad 490) On the limitation provisions contained

in Ss. 73(1) and 77(l) of the Indian Registration Act XVI of 1908. It was held that in a case where an order was not passed in the presence of the parties or

after notice to them of the date when the order would be passed the expression ""within thirty days after the making of the order"" used in the said sections

means within thirty days after the date on which the communication of the order reached the parties affected by it. These decisions show that where the rights

of a person are affected by any order and limitation is prescribedÂ forÂ theÂ enforcementÂ ofÂ theÂ remedyÂ by the person aggrieved against the said

order by reference to the making of the said order, the making of the order must mean either actual or constructive communication of the said order to the party

concerned. Therefore, we are satisfied that the High Court of Allahabad was in error in coming to the conclusion that the application made by the appellant in

the present proceedings was barred under the proviso to S.18 of the Act.â??

The aforesaid judgment is a complete answer to the issue in hand.

The case in hand is even better. Rule 63(4) of the Rules of 2017 already provides three months from the date of communication with the proviso that the same

can be extended but not beyond six months from the date of the order appealed. Thus, the date of the order cannot be determined from the date when it was

passed. It must also consider as to when the same came to be known to the parties concerned. The mechanical construction of the words â??the date of the orderâ? would not be appropriate in the circumstances. Once the Rule provides the limitation as three months from the date of the communication, the further

extension upto six months in the proviso cannot be restricted from the date of the order as the same is granted for extension of time and not for reducing the

same. Hence, six months limitation period has to be construed from the date of the communication of such an order as also determined by the Apex Court in the

case of Raja Harish Chandra Raj Singh (supra).

The Apex Court in the said case while relying on the judgment of the Madras High Court in Muthia Chettiar Vs. Commissioner of Income-tax, Madras,

reported in AIR 1951 Mad 204 explained in the following manner:-

â??â?¦.The relevant clause under S. 33A(2) of the Indian Income-tax Act has also been similarly construed by the Madras High Court in Muthia Chettiar v.

Commissioner of Income-tax, Madras, ILR 1951 Mad 815: (AIR 1951 Mad 204). ""If a person is given a right to resort to a remedy to get rid of an adverse

order within a prescribed time"", observed Rajamannar, C.J., ""limitation should not be computed from a date earlier than that on which the party aggrieved

actually knew of the order or had an opportunity of knowing the order, and therefore must be presumed to have the knowledge of the order"". In other words the

Madras High Court has taken the view that the omission to use the words ""from the date of communication"" in S. 33A(2) does not mean that limitation can start

to run against a party even before the party either knew or should have known about the said order. In our opinion this conclusion is obviously right.â??

In the present case, Rule 63(4) of the Rules of 2017 already refers to the date of communication. Thus, the proviso from the date of order also would read

when the said order is communicated.

In view of the above discussions, the impugned orders passed by the respondent No.2- Additional Director (Environment & Development), Mines & Geology,

Udaipur dismissing the appeals of the petitioners on the ground of limitation are set aside with the direction to the respondent No.2 to decide the matter afresh

after deciding the applications for condonation of the limitation period as per Rule 63 of the Rajasthan Minor Mineral Concession Rules, 2017 by counting the

stipulated maximum period of six months from the date when the order of cancellation was communicated.

Accordingly, the writ petitions are disposed of as above.

