
(1996) 10 RAJ CK 0007
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1317 of 1989

Mangilal

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 09-10-1996

Acts Referred:

Rajasthan Minor Mineral Concession Rules, 1986 — Rule 29(2), 30(2)

Citation : (1996) 3 RLW 266 : (1997) 1 WLC 294 : (1996) 2 WLN 365

Hon'ble Judges : R.R. Yadav, J

Bench : Single Bench

Judgement

R.R. Yadav, J.—The petitioner by filing the present writ petition questions cancellation of his quarry licence, Anx. 1, by Assistant Mining Engineer, Bijolia District Bhilwara vide his order dated 3.1.1989, Anx.2 to the writ petition.

2. Brief facts leading upto filing of the present writ petition are that the quarry licence to quarry No. 81, Sukhpura "C boundary was renewed on 9.12.1988 for a period upto 31.12.1989. It is averred in the writ petition that the petitioner received on 10.1.1989 an order from the Assistant Mining Engineer, respondent No. 2, dated 3.1.1989, Anx.2, cancelling his quarry licence without giving any notice to him as envisaged under Sub-rule (2) of Rule 30 of the Rajasthan Minor Mineral Concession Rules, 1986 (hereinafter referred as the "Rules of 1986").

3. After service of notices a joint return has been filed on behalf of the respondents denying the averments made in the writ petition. It is averred in the reply filed on behalf of the respondents that under the provisions of Sub-rule (2) of Rule 29 of the Rules of 1986 a quarry licence can be cancelled by the Mining Engineer/Assistant Mining Engineer without giving any notice if the licensee fails to start work at the said quarry or does not work it for a continuous period of three months without obtaining prior approval of Mining Engineer/Assistant Mining Engineer. It is further stated in the reply that in the present case Assistant Mining Engineer, Bijolia District Bhilwara made a local inspection on 28.12.1988 and found that the petitioner did not work the quarry for a continuous period of

six months, therefore, his quarry licence was cancelled under Sub-rule (2) of Rule 29 of the Rules of 1986 without giving opportunity of hearing to the petitioner.

4. I have heard the learned Counsel for the parties. Perused the materials available on record.

5. Main thrust of the argument of the learned Counsel for the petitioner Shri D.R. Bhandari before me is that in the present case no show cause notice was given to the petitioner before cancelling his quarry licence, therefore, the order impugned Anx.2 to the writ petition should be treated to be against the statutory provisions envisaged under Sub-rule(2) of Rule 30 of the Rules of 1986 and also against the principle of natural justice and fair play.

6. Learned Counsel for the respondents refuted the aforesaid argument and urged before me that the quarry licence of the petitioner can be cancelled by the respondent No. 2 without giving an opportunity of hearing to the petitioner as contemplated under Sub-rule (2) of Rule 29 of the Rules of 1986.

7. In view of the aforesaid rival contentions raised at the Bar, this Court is called upon to interpret the mandatory provisions envisaged under Sub-rule(2) of Rule 29 and Sub-rule (2) of Rule 30 of the Rules of 1986.

8. Before evolving a principle of interpretation of solve the confusing ideas emanating from Sub-rule (2) of Rule 29 and Sub-rule (2) of Rule 30 of the Rules of 1986 and also to ascertain legislative intent, it would be pertinent to quote the aforesaid relevant provisions in extenso which reads thus:

29. -Conditions of quarry licence.--(1) XXX XXX XXX XXX

XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX

(2) The licence may be cancelled by Mining Engineer/Assistant Mining Engineer without giving any notice if the licensee fails to start work at the said quarry or does not work it for a continuous period of 3 months without obtaining his prior approval. However, the Mining Engineer/Assistant Mining Engineer may refuse for such approval for reasons to be recorded.

30. -Cancellation of licence.--(1) XXXXXX XXX XXX XXX XXX

XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX XXX

(2) If the licensee commits breach of any of the terms of licence or any provision of the rules or fails to comply with the directions given by the Mining Engineer/ Assistant Mining Engineer within the period specified by him, the competent authority may after giving 15 days notice to remedy the breach or to comply the directions, impose penalty not exceeding Rs. 250/- or in the alternative may cancel the licence with forfeiture of security deposits and licence fee for the remaining period of the licence.

9. It is obvious from the close scrutiny of Sub-rule (2) of Rule 29 of the Rules of 1986 that cancellation of quarry licence is confined with failure of the licensee to start work at his quarry or does not work it for a continuous period of three months alone whereas cancellation of quarry licence under Sub-rule (2) of Rule 30 of the aforesaid Rules is wider in its scope and it comprehends within its fold about breach of any of the terms of licence by a licensee or breach of any of the provisions of the Rules of 1986 including breach of Sub-rule (2) of Rule 29 or failure to comply with the directions given by the Mining Engineer/Assistant Mining Engineer within the period specified by him.

10. It is further to be noticed that under Sub-rule (2) of Rule 29 of the Rules of 1986, cancellation of quarry licence simpliciter is permissible, whereas, under Sub-rule (2) of Rule 30 of the aforesaid Rules cancellation of quarry licence with forfeiture of security deposits and licence fee is in alternative penalty to be imposed by Mining Engineer/Assistant Mining Engineer in their discretion as the case may be. Initial penalty provided under Sub-rule (2) of Rule 30 of the Rules of 1986 is to impose penalty not exceeding Rs. 250/- and penalty of cancellation of quarry licence with forfeiture of security deposits and licence fee is only an alternative discretionary penalty.

11. With the aforesaid circumspection, this Court is to evolve a principle of interpretation removing the conflicting ideas between aforesaid two provisions of the Rules of 1986 which can said to be logical, rational and appealing to the sense of justice coupling with the fact that such solution may also advance the will of Rule making Authority.

12. In my considered opinion, since Sub-rule (2) of Rule 30 has been framed by the Rule Making Authority in quick succession after Sub-rule (2) of Rule 29 of the Rules of 1986, therefore, it must be presumed that irrespective of the fact that Rule Making Authority was conscious of Sub-rule (2) of Rule 29 yet in Sub-rule (2) of Rule 30 of the aforesaid Rules makes it incumbent that a quarry licence should not be cancelled for breach of any of the terms of licence or any of the provisions of the Rules of 1986 which includes within its fold breach of Sub-rule (2) of Rule 29 or for failure to comply with the directions given by the Mining Engineer within the period specified by him without giving 15 days notice to remedy the breach i.e. which includes remedy of breach of Sub-rule (2) of Rule 29 of the Rules of 1986 also. On the aforesaid analogy, I have no hesitation to hold that Sub-rule (2) of Rule 30 of the Rules of 1986 has over-riding effect upon Sub-rule (2) of Rule 29 of the aforesaid Rules and an argument contrary to it is not acceptable.

13. It must be imbibed that whenever and wherever such inconsistencies between two sections of same enactment or two rules of the same statutory Rules are brought to the notice of the Court then the provisions made in subsequent sections or rules would prevail over the earlier sections or rules. The aforesaid rule of interpretation can said to be only way of resolving its conflicting ideas and also can be safely said to be logical, rational and appealing to the

sense of justice and fair play having an element of objectivity. The aforementioned interpretation would also advance will of Legislature instead of defeating it.

14. From the aforesaid discussion, I am of the view that the order impugned dated 3.1.1989, Anx.2 to the writ petition which has civil consequences but has been passed without giving 15 days show cause notice to the petitioner is per se illegal, without jurisdiction and as such deserves to be quashed.

15. There is yet another reasons to arrive at the aforesaid conclusion. Indisputably, the order dated 3.1.1989, Anx.2 to the writ petition, passed by the Assistant Mining Engineer, Bijolia District Bhilwara, respondent No. 2, is amenable to writ petition and once the order impugned passed by the respondent No. 2 is found to be amenable to writ petition, this Court insists upon discloser of reasons in support of the order on two grounds, firstly, that the party aggrieved in a proceeding before the High Court or the Supreme Court may have an opportunity to demonstrate to the effect that the reasons which persuaded the authority to reject his case were erroneous, and secondly, that the obligation to record reasons operates as a deterrent against arbitrary action or order by an executive authority invested with judicial or quasi judicial power in exercise of his administrative function.

16. Now I propose to examine the facts of the case on hand on the anvil of the principle of law enunciated in preceding paragraphs. A close scrutiny of the order impugned Anx.2 to the writ petition dated 3.1.1989 as well as inspection report dated 28.12.1988, Anx. R/l to the reply, reveal that the order impugned has been passed by Assistant Mining Engineer on non-existent ground, therefore, it is erroneous and exfacie arbitrary. It is evident from Anx. 1 that the quarry licence itself was renewed in favour of the petitioner on 9.12.1988 and admittedly alleged local inspection of the quarry in question was done by the Assistant Mining Engineer on 28.12.1988 then it is not understandable as to how on the date of inspection the Assistant Mining Engineer found that the petitioner was not working on the quarry for about six months. It is further not understandable as to how in the order impugned it is mentioned that the work on the quarry in question was found to be stopped for more than three months, therefore, the quarry licence is cancelled. It is pertinent to mention that the Assistant Mining Engineer, who made the spot inspection on 28.12.1988 was the same who passed the order impugned yet in the order impugned closer of quarry is written more than three months not six months. However, for argument sake the mention in the order impugned more than three months instead of six months closure of quarry may be an error of judgment but there is no plausible explanation whatsoever to the effect that the quarry licence of the petitioner was renewed on 9.12.1988 and the spot inspection was made on 28.12.1988 within a period of 19 days, then how it has been reported in the inspection report by the Assistant Mining Engineer that on the date of his inspection he found that the quarry in question was closed for more than six months.

17. Submission of learned Counsel for the respondents to the effect that six months period should be computed from previous quarry licence prior to its renewal on 9.12.1988 is of paradoxical character and has been raised merely to be rejected hence it is hereby repelled. If the petitioner has committed breach of Sub-rule (2) of Rule 29 of the Rules of 1986 and he did not work the quarry in question for a continuous period of three months without obtaining prior approval of Mining Engineer/Assistant Mining Engineer then either of them ought to have cancelled the quarry licence and question of renewal on 9.12.1988 would not have arisen in the present case.

18. It is pertinent to observe that aforesaid submission of learned Counsel for the respondents is also not legally entertainable for the reason that breach of Sub-rule (2) of Rule 29 of the Rules of 1986 by the petitioner during the period of his previous quarry licence cannot be imported in subsequent quarry licence after its renewal on 9.12.1988. The earlier breach of Sub-rule (2) of Rule 29 of the Rules of 1986 shall be deemed to be washed off after expiry of its period and such breach cannot be legally extended after renewal of quarry licence in the present case on 9.12.1988. The previous breach of Sub-rule (2) of Rule 29 of the Rules of 1986 has no rural relationship with renewal of quarry licence of the petitioner dated 9.12.1988 hence it cannot be tagged with his renewal of licence.

19. Penultimate paragraph 13 of inspection report dated 28.12.1988, Anx.R/1 to the reply, further reveals that the Assistant Mining Engineer found at the time of his inspection of the quarry in question, firstly, there are no boundary pillars around the quarry and he found boundary pillar at one corner in dispute, secondly, it was found by him that the petitioner was involved in mining operation beyond the boundary of his quarry licence for which he was required to be given show cause notice in accordance with the Rules of 1986. But for the reasons best known to the Assistant Mining Engineer, he did not give any show cause notice to the petitioner and decided to cancel the quarry licence of the petitioner without affording an opportunity of being heard to him.

20. It is well to remember that the Assistant Mining Engineer, who had made local inspection on 28.12.1988 vide Anx.R/1 and who had passed the impugned laconic order, Anx.2, on the basis of his said inspection report cancelling the quarry licence of the petitioner, is a public servant and his salaries are being paid by citizens either directly or indirectly through taxes, they have, therefore, every right to expect a high quality of efficient service from him.

21. In the present facts and circumstances of the case the efficient service of high quality of Assistant Mining Engineer, respondent No. 2, can said to be only if he ought to have prepared the inspection report Anx.R/1 dispassionately and instead of passing order himself he ought to have referred it to the Mining Engineer to pass appropriate order who is also empowered to cancel the quarry licence of the petitioner.

22. A mere look at the order impugned Anx.2 to the writ petition reveals that

before passing the impugned order which has serious civil consequences respondent No. 2 has not applied his mind but has passed impugned order cancelling the quarry licence of the petitioner on a typed proforma. In the present case the order impugned which has serious civil consequences has been reduced to an empty formality by respondent No. 2. This Court records its serious disapproval in cancelling quarry licence of the petitioner by passing stereo typed order having serious civil consequences without application of mind to the facts and Circumstances of the case.

23. From the above discussion and also from perusal of inspection report, Anx.R/1, as well as order impugend Anx.2 passed by the Assistant Mining Engineer, it appears to this Court that respondent No. 2 has gathered impression that for preparing an exfacie perfunctory report Anx.R/1 to the reply and for passing per se arbitrary order, Anx.2 to the writ petition, neither any responsibility can be fixed upon him nor any appropriate punishment can be meted out to him. This appears to the Court to be the single most important reason for Assistant Mining Engineer to prepare a perfunctory inspection report, Anx.R/1 to the reply, and to pass such per se arbitrary order, Anx.2 to the writ petition.

24. Now the question would be how the petitioner should be compensated for mental agony and inconvenience which he suffered for such a long time due to perfunctory inspection report prepared by respondent No. 2 and exfacie arbitrary order passed by him cancelling his quarry licence. Who should bear the expenses of the present writ petition ? Another equally important question would be as to how to prevent the Assistant Mining Engineer, respondent No. 2, not to repeat such mistake in future.

25. Keeping in view that in future the confidence of mining operators and quarry licence holders may remain intact with the public officers functioning in mining department and the public servants working in mining department may have pride to be the member of service of Mining Department, I consider it just and proper in the interest of justice to award compensation of Rs. 5,000/- to the petitioner for insensitiveness shown by respondent No. 2 in preparing the inspection report dated 28.12.1988, Anx.R/1 and for passing impugned per se arbitrary order dated 3.1.1989, Anx.2 to the writ petition, cancelling his quarry licence with a warning to respondent No. 2 not to repeat such mistake in future.

26. Consequently, the instant writ petition is allowed with compensation of Rs. 5,000/- awarded to the petitioner and the order impugned dated 3.1.1989, Anx.2 to the writ petition, cancelling quarry licence of the petitioner is quashed. The amount of compensation amounting to Rs. 5,000/- would become payable to the petitioner from the respondents within three months from the date of receipt of a copy of this order to the Director, Mines and Geology Department, Udaipur from the office of Registry of this Court.

27. Office of Registry of this Court is directed to send a copy of this order to the

Director, Mines and Geology Department, Udaipur to ensure compliance of this order.

28. After dictation of this order, learned members of the Bar present in Court, made a request to make this order REPORTABLE. The request is allowed and the order is made REPORTABLE.