
(2012) 02 AHC CK 0094

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 54211 of 2011

Manoj Kumar Sood and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 13-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 63

Citation : (2012) 4 ADJ 71 : (2012) 2 EFLT 567

Hon'ble Judges : Arun Tandon, J

Bench : Single Bench

Advocate : Pushpila Bisht, Madan Lal Srivastava and Shashi Nandan, for the Appellant; R.N. Singh, A.K. Pandey, U.S. Singh and C.S.C., for the Respondent

Final Decision : Allowed

Judgement

Hon"ble Arun Tandon, J.—Petitioners, who are two in number, challenge the order of the State Government dated 07th September 2011 passed in Revision No. 172 (R)/SIGM/2011 in exercise of powers u/s 78 of the U.P. Minor Mineral (Concession) Rules, 1963 (hereinafter referred to as "1963 Rules"). Facts leading to the present writ petition are as follows: The District Magistrate, Sonbhadra published an advertisement on 18th July, 2009 inviting applications from prospective applicants for settling the mining rights in respect of excavation and transportation of Dola Stone qua plot No. 4478 Cha and 6229 Kha, area 3 acres respectively. The advertisement specifically referred to the Government order dated 30th December, 2000 and further provided that in respect of other conditions applicable the applicants may contact the office of the District Magistrate on any working day.

2. It may be recorded that although there was no mention of lease period in the advertisement but in terms of the Government order dated 30th December, 2000, in the other conditions as notified by the office of the District Magistrate dated 18.7.2009, the term of the lease was provided as ten years. The lease was

to be granted in accordance with the preference provided under rule 63 of 1963 Rules.

3. From rule 63 of 1963 Rules it is apparently clear that if other things are found equal, the person making the first application in point of time shall be entitled to preference in the matter of grant of lease rights.

4. The petitioner before this Court admittedly made the application on the first day provided there for under the advertisement to be precise on 9th September, 2009. Respondent No. 5, namely Chhatra Shakti Construction Company through its Proprietor Uma Shankar Singh, also made an application in response to the same advertisement.

5. The District Magistrate prepared a list of eligible applicants for the two plots separately in order of preference. The petitioners were placed at serial No. 1. The District Magistrate forwarded the list vide his letter dated 6th December, 2009 to the Director Mining, U.P. Government, Lucknow for approval as was then required.

6. The Director returned the papers to the District Magistrate vide letter dated 13th April, 2010 for removing the defects pointed out in the letter of the Director dated 13th April, 2010. The office of the District Magistrate again returned the recommendations vide letter dated 20.7.2010 along with Proforma-Ka after removing defects. The petitioners were again empanelled at serial No. 1. This time the Directorate vide letter dated 8.8.2010 returned the proforma along with attending document with the complaint of respondent No. 5 dated 4.1.2010 and dated 20.2.2010 requiring the Collector to take appropriate decision thereon.

7. On receipt of the aforesaid letter from the Directorate, the District Magistrate proceeded to pass an order dated 10th August, 2010 cancelling the entire proceedings taken in response to the advertisement dated 18th July, 2009 with a further direction that the plots for grant of mining lease may be re-advertised in the newspaper, namely Dainik Jagran, Aaj etc. The District Magistrate further provided that the applicants, who had submitted there application earlier in response to the advertisement dated 18th July, 2009 may apply a fresh.

8. The petitioners before this Court not being satisfied filed Writ Petition No. 51321 of 2010, which was clubbed with Writ Petition No. 51857 of 2010 filed by M/s Singh Stone Product and another. Both the writ petitions came to be decided under the order dated 13.1.2011. It would be worth while to reproduce last four paragraphs of the judgment of this Court, which read as follows:

We find, that the questions raised namely whether the exercise of discretion of the District Magistrate in re-advertising the plots, was based on valid and sufficient reasons, and whether Shri Uma Shanker Singh-th respondent No. 5 had actually submitted the application in pursuance to advertisement dated 18.7.2009, on the first date i.e. on 9.9.2009, when it is alleged that the treasury challan submitted by him was passed only on 10.9.2009, are essentially questions of facts which are required to be considered and decided by the State

Government, in a revision under Rule 78 of the Rules of 1967.

In a writ petition under Article 226 of the Constitution of India, the High Court does not ordinarily decide the disputed questions of fact. If alternate remedy is available to challenge the discretion of the District Magistrate, it is not appropriate for the High Court to decide the rights of the parties unless the statutory alternative remedy is exhausted.

In the facts and circumstances, the writ petitions are dismissed, with liberty to the petitioners in both the writ petitions to file revisions against the impugned orders of the District Magistrate, Sonbhadra, before the State Government under Rule 78 of the UP Minor Mineral (Concessions) Rules, 1963. If such revisions are filed within a period of 15 days, the competent authority in the State Government will decide the same within six weeks thereafter.

9. In order to keep the record straight, it may be noticed that an interim order was granted in the said writ petition on 17.9.2010 wherein settlement in pursuance to the subsequent advertisement was stayed.

10. The petitioners accordingly filed revision. It was stated that the advertisement was not only published in Hindi newspaper "Dainik Jagran" but was also published in two other newspaper "Kashi Varta" and "Nyayadhish". Photocopy of the advertisement was also enclosed along with the revision.

11. It was the case of the petitioner that the complaints made by Uma Shankar Singh dated 12.1.2010 were belated i.e. after four months of the last date for submission of the application. It was an after thought and an attempt to somehow or the other defeat the preference which has accrued in favour of the petitioner because of his having submitted the application for grant of the mining lease first in point of time.

12. To the revision a counter was filed by the District Magistrate, Sonbhadra. A copy whereof has been enclosed as Annexure-8 to this petition. The District Magistrate in his reply, after referring to the proceedings which had taken place in the matter of submission of the proposal dated 6.12.2009, the clarification asked for by the Director vide his letter dated 13.7.2010, reply whereof submitted along with proposal again on 3.8.2010, specifically recorded that it was only in response to the documents submitted again on 20.7.2010 that the Director vide his letter dated 03rd August, 2010 for the first time forwarded the complaint letter of Uma Shankar Singh the petitioner dated 12.1.2010 and two other letters dated 2.2.2010. The Collector further specifically recorded that during the pendency of the aforesaid proceedings persons, who had submitted their application in response to the subsequent advertisement dated 11.8.2010, had filed their objections stating therein that they could not apply in response to the earlier advertisement dated 18.7.2009 as the same had not been published widely. It is on these documents that the Collector formed an opinion that the advertisement dated 18.7.2009 had not been published widely and therefore proceeded to cancel the proceedings taken under the earlier advertisement dated

18.7.2009 vide his order dated 10.8.2010.

13. The State Government under the order impugned has recorded four reasons for upholding the exercise of discretion by the District Magistrate for cancellation of the proceedings taken with reference to the advertisement dated 18.7.2009.

(a) The advertisement published in Dainik Jagran alone was requisitioned by the District Magistrate and therefore it is not known as to how the advertisement could be published in two other papers also, namely "Kashi Varta" and "Nyayadhish".

(b) Large number of complaints were received qua the advertisement dated 18.7.2009 being not published adequately therefore cancellation of the proceedings was called for.

(c) No objection certificate from the forest department had been obtained by the petitioners themselves when such no objection should have been asked for by the District Magistrate.

(d) Lastly that the order permits all eligible applicants including the petitioners to participate in the process under the fresh advertisement and therefore it is in the larger interest of the public.

14. Sri Shashi Nanadan, Senior Advocate on behalf of the petitioner submits that all four grounds mentioned in the order of the District Magistrate are unsustainable in the eyes of law. He submits that admittedly the publication of the advertisement in three newspaper has not been found to be incorrect by the State Government. The purpose of the advertisement is that the prospective candidates are made aware of the rights which are available to be settled. Such knowledge at least to the complainant respondent No. 5 cannot be doubted, inasmuch as he himself made an application in response to the advertisement. No other person had made any complaint up to the date of the order of cancellation.

15. According to the counsel it is wholly irrelevant for the purposes of the present controversy as to how the advertisement was published in two additional newspapers when the District Magistrate had made the requisition only in respect of one newspaper i.e. "Dainik Jagran". According to the petitioner fault, if any, in publishing the advertisement in newspapers other than "Dainik Jagran", because of non-requisition by the District Magistrate, can at best be attributed to internal arrangement in the office of the District Magistrate. It cannot be the basis for ignoring the said advertisements. He then submits that the complaints, which have been received by the District Magistrate in respect of the advertisement dated 18.7.2009 being not sufficient, are all subsequent to the order of cancellation as these complaints had been filed by the prospective candidates, who had applied in response to other advertisement published on 11.8.2010. He submits that these subsequent facts and complaint received cannot be read as a justification for the decision taken by the District Magistrate for cancelling the

proceedings under his order dated 10.8.2010. The same District Magistrate at least on two occasions had earlier forwarded the recommendation in prescribed proforma-Ka in favour of the petitioners without raising any objection in respect of the publicity.

16. Sri Shashi Nandan further refers to the Division Bench judgment of this Court in the case of Awadhesh Kumar Singh, decided on 10.11.2009 wherein the Division Bench in respect of the no objection certificate issued in respect of the plots in question had held that the grant of no objection certificate by the forest department is in respect of the area concerned and not in favour of any individual person.

17. So far as the issue of larger public interest is concerned, counsel for the petitioner contended that from the counter-affidavit filed by the District Magistrate before the State Government, it is apparently clear that Uma Shankar Singh as the proprietor of Chhatra Shakti Construction Company had made applications in respect of other parts of the same plot, namely 4478 Chha and 6229 Kha of the same village in response to an advertisement dated 11.1.2010. His applications were considered and he has been granted lease in respect of the separate area of the same plots. Uma Shankar Singh did not raise any objection till making of the said applications in respect of the other part of the same plot, qua the advertisement in question being not sufficient or his application having been not accepted by the Mining Officer on the first date itself. The complaint of Uma Shankar Singh, as forwarded under the letter of the Director dated 3.8.2010, if accepted to have been made on 1st April, 2010 (as is the case of Uma Shankar Singh) would be 7 months subsequent to the date of making of the application under advertisement dated 18.7.2009, 5 months subsequent to the publication of the advertisement of other parts of the same plot i.e. dated 5.12.2009 and four months subsequent to making of the application by Uma Shankar Singh in respect of other part of the same plot. He, therefore, submits that the use of the word "larger public interest" in the order of the State Government is only a camouflage to confer an uncalled for benefit to Uma Shankar Singh and to defeat the preferential right of the petitioner accrued in his favour because of submission of the application in response to the advertisement dated 18.7.2009 first in point of time.

18. Sri R.N. Singh, Senior Advocate on behalf of Uma Shankar Singh and the Standing Counsel for respondents have taken a common stand. According to them the order impugned has done substantial justice, inasmuch as persons like the petitioner, private respondent and all other interested in obtaining mining rights are free to apply in response to the subsequent advertisement, which has already been published. He explains that in respect of first plot more than 38 applications have been received, while in respect of second plot nearly 39 applications have been received in response to the subsequent advertisement of 2010, which fact is in itself sufficient to establish that the earlier advertisement was not sufficient.

19. Sri R.N. Singh further contends that mere making of the application in response to the earlier advertisement, empanelment of the petitioners at serial No. 1 in the proposal submitted by the District Magistrate to the Director do not confer any indefeasible right in favour of the petitioners. It is only an incoherent right, which, on cancellation of the proceedings taken under the advertisement dated 18.7.2009, stood lost. Sri R.N. Singh further submits that unauthorized advertisement made in newspaper "Nyayadhish" and Kashi Varta" are liable to be ignored.

20. One further objection has been taken, namely that obtaining of the no objection certificate from the forest department by the petitioner on his own is also an indicator that the Mining Officer was colluding with the petitioner and it was his intention to confer illegal benefits upon the petitioners because of which advertisement in two other newspapers has been made, which had no wide circulation in the area.

21. I have heard learned counsel for the parties and have gone through the records of the writ petition.

Dictated on 13.2.2012

22. Under the order of the Division Bench of this Court dated 13th January, 2011 quoted herein above, the State Government was directed to examine two issues:

(a) Whether there were sufficient reasons for exercise of discretion by the District Magistrate for cancellation of the entire proceedings taken in pursuance to the advertisement dated 18th July, 2009 or not ? and

(b) Whether Uma Sanker Singh had filed an application in response to the advertisement on the first date i.e. 9th September, 2009 inasmuch as the treasury Chalan was only prepared on 10th September, 2009 or not?

23. At the very outset it may be recorded that the State Government under the order impugned has examined only first question referred to by the Division Bench of this Court. It has not been examined, for the reasons best known to the State Government, the second question as was referred under the order of the Division Bench.

So far as the first question referred to by the Division Bench is concerned, this Court may record that the State Government under the order impugned has given four reasons for upholding the exercise of discretion by the District Magistrate:

24. In the opinion of the Court all the reasons disclosed by the State Government are unsustainable in the eyes of law. Material, which did not exist on record of the District Magistrate at the time, he passed the order dated 10th August, 2010, has been illegally relied upon in support of the order.

25. As already noticed above, the District Magistrate, after considering all the applications, which were received in response to the advertisement dated 18th

July, 2009, had submitted his proposal placing the petitioners at serial No. 1 in order of preference vide his letter dated 6th December, 2009 to which certain objections were raised by the Director, Mines and Minerals, U.P. Lucknow. The papers were returned to the District Magistrate. After the defects were removed, the District Magistrate again submitted a proposal wherein petitioners were placed at serial No. 1 vide his letter dated 20th July, 2010. It is only in response to the papers received for the second time in July, 2010 that the Director vide his letter dated 3rd August, 2010 forwarded the alleged complaint of Uma Shanker Singh dated 12th April, 2010, wherein it was stated for the first time that his application had not been accepted on the first date by the Mining Officer. This complaint was made after nearly 7 months of the making of the application by Uma Shanker Singh. This Court may record that for nearly one year, there was no complaint by anybody qua advertisement having not been published adequately in the area and that they could not submit their applications. Such stand has come only after subsequent advertisement was published on 11th August, 2010 and by persons, who had responded to the second advertisement.

26. This Court has no hesitation to hold that the basis for the conclusion that earlier advertisement had not been adequately made, is based on subsequent material collected after passing of the order by the District Magistrate dated 10th August, 2010.

27. It was not the case of Uma Shanker Singh in his complaint dated 12th January, 2010, that for want of adequate publicity, he could not make application nor it could have been his case as he had filed the application in response to the advertisement in September, 2009 itself.

28. What is worst to note is that same Uma Shanker Singh had submitted an application in respect of other parts of the same plot in the same district for grant of mining rights qua the same minor minerals on 11th January, 2010. His application was considered and patta was granted in favour of Uma Shanker Singh. It has not been disclosed as to whether grant of patta of the same plots qua a different area in favour of Uma Shanker Singh had been published, otherwise, then the manner in which the advertisement was made on 18th July, 2009.

29. The publication of the advertisement in three newspapers, namely, Dainik Jagaran, Kashi Varta and Nyayadhish is not in dispute, nor has been found to be incorrect by the State Government under the order impugned. What the State Government records is that it is not known as to how the advertisement was got published in two other newspapers, namely, Kashi Varta and Nyayadhish, inasmuch as the District Magistrate had sent requisition only in respect of one newspaper i.e. Dainik Jagaran. This Court fails to understand as to how the said two advertisements are washed out merely because the District Magistrate had sent requisition, only in respect of Dainik Jagaran. The advertisement on the asking of the other officers of the department, may either be legal or illegal but the advertisements cannot be ignored.

30. This Court is, therefore, of the opinion that the finding recorded by the State Government that the advertisement dated 18th July, 2009 had not been published sufficiently is totally misconceived and is based on non-consideration of the relevant facts. Such plea was restored to by the District Magistrate in his order dated 10.8.2010, when he forwarded recommendation to the Director in favour of the present petitioner, without raising any such objection. The State Government has not recorded that said two newspapers did not have adequate circulation in the area. Even otherwise, such was not the complaint of Uma Shanker Singh, who himself had obtained patta of different area of the same plots for the same purpose in response to the another advertisement.

31. So far as the issue of obtaining of No Objection Certificate is concerned, the issue is no more res integra in view of the Division Bench Judgment of this Court dated 10th November, 2009 passed in Civil Misc. Writ Petition No. 55275 of 2009 (Awadesh Kumar Singh v. State of U.P. and others), which is in respect of the plots in question only. Therefore, the second ground taken by the State Government which ignores the Division Bench judgment made in respect of same auction also cannot be legally sustained.

32. So far as the last reason mentioned by the State Government under the order impugned is concerned, it may be recorded that same ignores the fact that on making of application in response to the advertisement, the candidate, who is first in point of time gets a preferential right of allotment. By cancellation of the proceedings taken in respect thereto, such preferential right stands denied.

33. The Doctrine of legitimate expectation comes into play in the facts of the case specifically in the circumstance, when the District Magistrate himself on two earlier occasion had submitted the proposal in the matter of grant of mining lease in favour of the petitioners after removing the defects pointed out by the Director as noticed above.

34. In the totality of the circumstances on record, this Court finds that the order passed by the State Government is totally unsustainable. It is accordingly quashed. The Director shall proceed with the recommendation forwarded by the District Magistrate, as per his letter dated 20th July, 2010 in accordance law and all necessary action shall be taken.

35. This Court may clarify that since the State Government has not examined the issue as to whether Uma Shanker Singh had submitted his application on 9th September, 2009 in response to the advertisement dated 18.7.2009 or not, such issue is directed to be examined by the Director before finally settling the lease rights in accordance with the provisions of U.P. Minor Mineral (Concessions) Rules, 1963. For the purpose the Director shall summon the original records from the office of the District Magistrate and shall satisfy himself as to whether an application can be said to be submitted complete in all respect in terms of the Advertisement and the conditions as notified by the District Magistrate without it being accompanied with the treasury Chalan, inasmuch as Uma Shanker Singh

has admittedly got the treasury Chalan prepared on 10th September, 2010.

36. Another important aspect of the matter to be examined by the by the Director is that having regard to the area of the plots in question i.e. 3 acres and further having regard to the lease rights already granted in favour of Uma Shanker Singh in 2010, does he stand disqualified from being considered, inasmuch as if the lease rights are settled in respect of the plots in question with him, the total area over which mining rights are settled with him shall exceed 3 acres, which is the maximum area permissible to a lease holder under the Government Order applicable.

The Director shall pass appropriate orders within four weeks from the date a certified copy of this order is filed before him. The District Magistrate shall do the needful immediately thereafter. The present writ petition is allowed subject to the observations made above.