
(2000) 07 RAJ CK 0022
In the Rajasthan High Court
Case No : Civil Special Appeal No. 553 of 2000

Mohd. Nisar

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 05-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Citation : (2000) 3 WLN 676

Hon'ble Judges : Rajesh Balia, J; Mohd. Yamin, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Rajesh Balia, J.—Heard learned Counsel for the appellant.

2. The appellant has filed an application for allotment of quarry lease in respect of stone a minor mineral on 21.1.1997. In pursuance of that application the mining lease was granted in favour of the petitioner by the Mining Engineer, Jodhpur. However on 19.5.1998 the same was cancelled inter alia on the ground that the same has been granted against prohibition orders of the State Government in allotting the land for mining lease in the area surrounding the water catchment area for the City of Jodhpur and near the vicinity of ancient archaeological sites.

3. The appeal against that order of cancellation was rejected by the State Government on 27.7.1999. Aggrieved with the aforesaid order the appellant has filed the petition before this Court.

4. Apart from supporting the order on merit the respondents in their reply have raised objection to the maintainability of the petition on the ground that the conduct of the petitioner in obtaining the licence itself was not being above board.

5. Specific plea to that effect was taken by the respondents in para 4 of the reply that Mining Engineer has written letter to the Executive Engineer, P.H.E.D.

Jodhpur on 27.11.1997 to issue "No Objection Certificate" if the quarry in question does not fall within the catchment area. It was also stated that if the P.H.E.D. has no objection for grant of quarry in favour of the petitioner in respect of quarry Nos. 411 & 412 then he may be informed accordingly. It appears from the record that the Executive Engineer, P.H.E.D. Jodhpur did not send any "No Objection Certificate" directly to the Mining Engineer, Jodhpur but the petitioner himself submitted a "No Objection Certificate" along with an application, a copy whereof was submitted in reply along with application as Annexure/R1. With the application submitted for grant of lease the petitioner submitted that the Executive Engineer, P.H.E.D., Jodhpur has given him "No Objection Certificate", a copy whereof is being enclosed.

6. It has been alleged in the reply that no such "No Objection Certificate" was issued by the Executive Engineer. In support of this contention the respondents filed two documents as Annexure/R4 and Annexure/R5.

7. Learned Single Judge has noticed this fact and has found that from the reply-affidavit it is clear that somehow or the other the petitioner managed to get the order dt. 30.3.1998 and produced the same before the authorities by inserting the aforesaid last line which is clear from the perusal of Annexure/R4 issued by the Mining Engineer, Jodhpur in which the Mining Engineer has recommended the Executive Engineer vide letter to file F.I.R. against the petitioner for committing forgery in the Government record. In view of this learned Single Judge has not thought it fit to entertain the petition in exercise of his discretion for invoking extraordinary jurisdiction.

8. Learned Counsel for the appellant has urged that he was never informed about, those discrepancy in the orders. He relied on Annexure/R5 wherein it has been stated that there is no variance in the copy of the original order produced and available on record of Mining Engineer. Therefore the finding reached by the learned Single Judge is without affording him appropriate opportunity to explain. This contention of the learned Counsel for the appellant is without substance.

9. We have already referred to the specific averments made in the reply-affidavit filed on behalf of the respondent-State and the documents filed along therewith. The petitioner has filed rejoinder-affidavit in which he has denied that he has participated in any such forgery. However the issuance of the letters Annexure/R4 & Annexure/R5 have not been denied. He has also relied on Annexure/R5 wherein the Mining Engineer has stated that there is no variance in the original copy of the issuing office and the copy available on the record of Mining Engineer of the order dt. 30th March, 1998. In these circumstances it cannot be said that finding of the learned Single Judge on the question has been reached without affording any opportunity of hearing to the petitioner.

10. Reading of two letters Annexure/R4 & Annexure/R5 leaves no room of doubt that as on the date Annexure/R4 was issued on 22nd August, 1998, the Mining Engineer has emphatically stated that letter dt. 30th March, 1998 is available on

the record and purports to have been issued by Executive Engineer, P.H.E.D. reads in its last line...." But photocopy of this office retained by the P.H.E.D. Department now sent to the Mining Department does not contain this endorsement and there is variance in the two documents. Subsequently very same Officer in his letter dt. 8th Sept. 1998 turns round and states that Mining Engineer does not feel that there is any variance in the two documents. According to him as on the date he wrote letter dt. 8th Sept. 1998 in the office of the P.H.E.D. Deptt. and in the original, copy of which is available on the Mining Engineer's record, there is no variance. The only reasonable conclusion that can be drawn from these two letters from the same officer is that the record of Mining Engineer has been tampered with between 22.8.1998 and 8.9.1998. For reasons best known to Mining Engineer he has not taken care to note earlier letter dt. 28.2.1998, while writing the second letter but the fact remains that while the Mining Engineer wrote letter Ex. R/4, the copy of the communication dt. 30.3.1998 available on his record read the above endorsement but it now does not appear on his record. The beneficiary of this change in record can only be the petitioner. This is also not in doubt that in the first instance copy of order dt. 30.3.1998 has been produced by the petitioner along with his application and that is not now available on record.

11. In these circumstances the conclusion reached by the learned Single Judge that the petitioner has indulged in sharp practices in securing the mining lease is the only reasonable conclusion.

12. It needs hardly to be stated that claim to interference by this Court under Articles 226 & 227 is not a matter of right and those who seek equity must do equity. Exercise of extraordinary jurisdiction cannot be invoked in his favour who is guilty of indulging in such practices relating to the subject matter which is brought before this Court.

13. Apart from the aforesaid, from the facts disclosed before us we are further of the opinion that in the face of Rule 8 of the Rajasthan Minor Mineral Concession Rules, 1986, which govern the grant of mining lease for building stones an application for mining lease if not decided within the period of nine months of the date of application is deemed to have been rejected. Accordingly the application of petitioner was deemed to have been rejected on 21.10.1997. Unless the deemed rejection which became effective on expiry of nine months is set aside in appropriate proceedings there was no pending application which could be dealt with and disposed of by the Mining Engineer on 28.4.1998.

14. In these circumstances we are of the opinion that in the absence of any material to suggest that deemed refusal of the application has been set aside in appropriate proceeding, the grant of lease on 28.4.1998 in favour of the petitioner was itself invalid. The Court in these proceedings would not ordinarily interfere to restore any illegal order.

15. Accordingly the appeal fails and is hereby dismissed.