
(2002) 07 MP CK 0080

In the Madhya Pradesh High Court

Case No : Letter Patent Appeal No's. 341 and 343 of 2002

M.P. Mineral Supply Co.

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 17-07-2002

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Mineral Concession Rules, 1960 — Rule 24(3)

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(4), 5(1)

Citation : (2003) ILR (MP) 818 : (2003) 1 MPHT 119 : (2002) 4 MPLJ 60

Hon'ble Judges : Bhawani Singh, C.J; Sugandhi Lal Jain, J

Bench : Division Bench

Advocate : P.K. Jaiswal, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

S.L. Jain, J.

As common questions of law being involved in both these appeals, they have been heard together and are disposed of by this common order.

The facts in brief and necessary for the disposal of these appeals are that the appellant is a registered partnership firm. It applied for mining lease for lime stone over an area of 41.88 hectares and 21.252 hectares in Village Degrahat, Taluk Rampur Baghelan, District Satna. As per communication No. 2713/9/12/7, dated 29-9-92 of the State Government, appellant was required to file certain documents in both the applications within the stipulated period of sixty days.

3 As the documents were not filed, appellant's application suffered deemed refusal under Rule 24 (3) of the Mining Concession Rules. Appellant filed a revision before the Central Government challenging the order of deemed refusal. The Central Government by its order No. 25/93, dated 11-2-93 set aside the deemed refusal order and directed the State Government to dispose of the applications on merits. Subsequently the applications of the appellant were

rejected by the State Government in terms of order dated 25th May, 1995 stating that the appellant did not show any interest in filing the required documents asked by the State Government in both the applications and lease was granted to M/s. Gujarat Ambuja Cements Ltd., after obtaining approval of the Central Government. The lease was granted to M/s. Gujarat Cement Ltd., as they proposed to establish a cement plant in Satna District.

Appellant challenged the rejection order dated 25-5-95 by filing revision application before the Central Government, on the ground that it filed the documents and removed all the defects by filing reply dated 18-11 -92 and that granting of lease to M/s. Ambuja Cement is in violation of the mandatory provisions of Section 11(4) of the Mines and Minerals (Regulations and Development) Act (hereinafter referred to as the "Act" for short). Government of Madhya Pradesh filed their comments to the revision petition as per Annexure A-6. A counter comments were submitted by the appellant stating that no prior approval of the Central Government was taken before passing the order dated 25-5-91. The Central Government rejected the revision petition on the ground that the approval of the Central Government was obtained and upheld the order of the State Government.

Appellant challenged the order of the Central Government dated 12-11-99 by filing writ petition in this Court. The learned Single Judge dismissed the writ petition observing that there is no infirmity in the order of the Central Government. It is against this order that the appellant has filed this appeal.

Learned Counsel appearing for the appellant submitted that the appellant applied for grant of mining lease on 3-12-90 whereas M/s. Gujarat Ambuja Cement Ltd., applied for grant of lease on 4-12-90 and it was having preference over the later and the lease could not have been granted without obtaining prior approval of the Central Government u/s 11(4) of the Act. Counsel further submitted that the State Government passed the order without obtaining the prior approval and as such the order is arbitrary and unreasonable.

In the order of the State Government dated 25-5-99 it has been clearly mentioned that before granting lease to M/s. Gujarat Ambuja Cement, the approval of the Central Government was obtained as per fetter No. 4/192/ 94-M-IV, dated 4-1-95. In the order of revision dated 12-11-99 also it has been clearly mentioned that prior approval of the Central Government was obtained. On this point, learned Single Judge has observed that a finding of fact is recorded by the State Government and the Tribunal that there has been prior approval of the Central Government and there is no reason to disbelieve the same. Therefore, it cannot be said that prior approval of the Central Government was not obtained.

Learned Counsel appearing for the appellant submitted that the approval of Central Government was obtained u/s 5(1) of the Act and not u/s 11(4) of the Act and conditions precedent were not satisfied.

The State Government has recorded reasons for granting lease to M/s. Gujarat

Ambuja Cement and also recorded the fact that prior permission of Central Government was obtained. Thus, the conditions precedent for overlooking the priority claim of the appellant were satisfied. M/s. Gujarat Ambuja Cement proposed to establish a cement plant in the backward area of District Satna. Setting up of a new cement plant in the area was found to be helpful in changing the socio-economic scenario of the area. It was found to be helpful in generating the employment opportunities and development of down stream ancillary industry, thereby enhancing revenue collection to State Government also. If keeping all this in mind preference was given to M/s. Ambuja Cement, there was nothing wrong in the order of the State Government. Even if the approval of the Central Government was not given, specifically u/s 11(4) of the Act, there was substantial compliance of the requirements. It is the substance that is important and not the form. In substance the approval of Central Government was obtained.

An application for grant of mining lease cannot be allowed automatically simply because it was submitted first in point of time, even if it is incomplete and suffers from other irregularities. The law provides for relaxation of the preference with prior approval of the Central Government and assigning of reasons for rejection. The Revisional Authority was satisfied regarding both the requirements. Jurisdiction of the High Court under Articles 226/227 of the Constitution of India cannot be invoked for setting aside finding of facts. The learned Single Judge has rightly dismissed the petition.

We do not find any infirmity in the order passed by the learned Single Judge warranting interference in these appeals. Both the appeals are wholly misconceived and devoid of substance. As such, they are dismissed in limine.