

(1997) 09 PAT CK 0049
In the Patna High Court
Case No : C.W.J.C No. 1990 of 1996 (R)

Mrs. Aruna Mehra

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-09-1997

Acts Referred:

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

Citation : (1997) 2 BLJR 1576

Hon'ble Judges : Narayan Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Narayan Roy, J.—Heard Mr. Devi Prasad, learned Counsel appearing on behalf of the petitioner, Mrs. Indrani Sen Choudhary, S.C. 1 for the State and Mr. Anil Kumar Sinha, learned Counsel appearing on behalf of the intervener.

2. The intervention petition filed on behalf Sita Mehra, at Flag "A", is allowed after hearing the parties. It shall form part of the main writ application.

3. By this writ application, the petitioner has prayed for quashing the order as contained in Letter No. 2288M dated 14-6-1996, as contained in Annexure-1, passed by the respondent No. 2, whereby and whereunder the application filed by the petitioner for grant of mining lease over an area of 5.93 acres in village Kathkoka, Police Station Tisri, District Giridih has been rejected and fresh notification has been issued without giving an opportunity of being heard to the petitioner.

4. Mr. Devi Prasad, learned Counsel appearing on behalf of the petitioner, submitted that the petitioner was granted prospecting lease vide order dated 20-6-1994 for two years with effect from 23-8-1994 and even during the existence of the grant his application for grant of mining lease over the same area has been rejected.

5. learned Counsel for the petitioner further submitted that since the petitioner was having prospecting license over the lease hold area, she has a preferential right and, therefore, her application for fresh grant could not have been rejected without hearing her.

6. learned Counsel further submitted that in view of Rule 26(1) of the Mineral Concession Rules, 1960, the impugned order could not have been passed without affording opportunity of hearing to the petitioner.

7. On the other hand, learned Counsel appearing on behalf of the State and Mr. Anil Kumar Sinha, learned Counsel appearing for the intervenor, submitted that the petitioner was not entitled to get a fresh grant as there had been a complaint of illegal mining by one Jogendra Mehra in some part of this area and a First Information Report was also lodged.

8. Mr. Anil Kumar Sinha, learned Counsel for the intervenor, further contended that some complaints were also made before the Lok Ayukta and the Lok Ayukta has also recorded finding against the petitioner, and, in that view of the matter, the order passed by the authority concerned, as contained in Annexure-1, cannot be said to be unreasonable.

9. So far as the contention of Mr. Devi Prasad, learned Counsel appearing on behalf of the petitioner that the petitioner had a preferential right for grant of fresh lease is concerned, it appears from reading, of Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, that "where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land, provided that the State Government is satisfied that the licensee--(a) has undertaken prospecting operation to establish mineral resources in such land: (b) has not committed any breach of the terms and conditions of the prospecting licence; and (c) is otherwise a fit person for being granted the mining lease.

10. From the impugned Annexure-1, it appears that there had been some illegal mining one Jogendra Mehra in the leasehold area of the petitioner and a First Information Report was lodged, the petitioner cannot be said to be otherwise a fit person for being granted the mining lease. The impugned order, as contained in Annexure-1, therefore, cannot be said to be arbitrary and unreasonable.

11. However, coming to the second limb of his argument that no notice whatsoever was served upon the petitioner to show cause before passing of the impugned order, it appears that Rule 26(1) of the Mineral Concession Rules, 1960 contemplates as follows:

(1). The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

(2) An application for the grant of renewal of a mining lease made under Rule 22 or Rule 24-A, as the case may be, shall not be refused by the State Government

only on the ground that Form I or Form J, as the case may be is not complete in all material particulars, or is not accompanied by the documents referred to in sub-clauses (b), (e), (i), (g) and (h) of Clause (i) of Sub-rule (3) of Rule 22.

12. A bare reading of Section 26 of the Mineral Concession Rules, 1960, it appears that the authorities were required to give opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, the application filed by the petitioner could have been rejected for grant of or renewal of mining lease over the whole or part of the area applied for.

13. From the materials on record, it appears that no notice whatsoever was served upon the petitioner as required under Rule 26 of the Rules and, therefore, on this score alone, without going into the merit of the case, the impugned order as contained in Annexure-1, is not sustainable in law. The authority concerned before passing of the order, as contained in Annexure-1, could have issued notice to the petitioner and only after hearing her could have passed the necessary orders, either rejecting or granting mining lease to the applicant. Since it has not been followed, the order impugned, as contained in Annexure-1 must be held to be without jurisdiction.

14. I, therefore, allow this writ application on this ground alone and quash the order, as contained in Annexure-1, and the matter is remitted back to the State Government for reconsideration of the matter in accordance with law.