

(2019) 08 PAT CK 0111

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 16000 Of 2016

M/S Dehri On Sone Labourers Cooperative Society Ltd

APPELLANT

Vs

Union Of India Through The Secretary And Ors

RESPONDENT

Date of Decision : 20-08-2019

Acts Referred:

Mines And Minerals (Development And Regulation) Amendment Act, 2015 — Section 3(e), 8(A), 8(A)(1), 8(A)(3), 8(3), 8(A)(4), 8(A)(5), 8(A)(6), 8(A)(9), 9(B)(2), 9(B)(3), 15(A), 15(4)

Mines And Minerals (Development And Regulation) Act, 1957 — Section 8(A)(3)

Citation : (2020) 1 PLJR 55

Hon'ble Judges : Sanjay Priya, J

Bench : Single Bench

Advocate : Dhananjay Kumar, Naresh Dikshit, Sumit Shekhar Pandey, Naresh Dikshit, Kaushal Kr.Jha

Final Decision : Dismissed

Judgement

1. The petitioner seeks relief of this Honâ??ble Court for issuance of appropriate writ/writs and direction for the following reliefs:

I) To issue rule in the nature of Mandamus commanding the respondents to declare the Gazette Notification dated 10.02.2015 issued by the Additional

Secretary, Ministry of Mines, Union of India, ineffective and inoperative in case of the petitioner, whereby and where under Silica Sand has been

declared and added as Minor Minerals along with other minerals.

ii) To command the respondents not to interfere with the Lease of Major Sand (Silica) granted as per Law, much before and the said Lease has been

extended for further fifty years without any impediment vide Gazette Notification No. 10 of 2015 dated 16th March, 2015 which is made effective

w.e.f. 12th January, 2015.

2. Heard Mr. Dhananjay Kumar, learned counsel for the petitioner, Mr. Naresh Dikshit, Spl. P.P. Mines and Mr. Kaushal Kr. Jha, AAG-8 for the

State.

3. Counsel for the petitioner submits that petitioner's company is a Society known as M/s. Dehri-On-Sone Labourers Cooperative Society Ltd.

registered under Societies Registration Act. The petitioner applied for grant of licence of sand through the Mines Department of the State Government

under the provisions of Mines and Minerals (Development and Regulation) Act, 1957 and its Rules, 1960. The lease of sand (Major Mineral) for the

period w.e.f. 14.3.1994 to 13.3.2014, has been granted to the petitioner by the Mines Department of the State of Bihar. The lease agreement of the

petitioner was executed on 14.3.1994 for the period noted above by the State Government. The said lease of sand was taken for the purpose of using

it in making glass Ceramic and potteries in the industry of the Society and other industries in the State or other State which manufacture all those

things.

4. Counsel for the petitioner submits that from perusal of lease, it is quite clear that the sand for which the lease granted was to be used in

manufacturing of glass Ceramic and potteries, etc. in which mainly Silica Sand is used.

5. As a matter of fact, before expiry of period of said lease, the petitioner applied with requisite fee and papers on 12.3.2013 well within the period

prescribed for renewal of licence which was going to expire one year after i.e. in the year 2014. The application for renewal of Major Mineral (Silica

Sand/Sands) was pending before Department of Mines and Minerals of the State of Bihar.

6. In the meantime, Gazette Notification S.O.423(E) dated 10th February, 2015 has been issued by the Central Government by which the Silica Sand

has been brought under the category of Minor Minerals. Photocopy of said Gazette Notification dated 10.2.2015 has been enclosed as Annexure-3 to

the writ application.

7. Counsel for the petitioner further submits that after sometime, another Gazette Notification has been issued by Ministry of Law and Justice of

Central Government, on 27.3.2015, in which Mines and Minerals (Development and Regulation) Amendment Act, 2015 has been published on

27.03.2015 which has been made effective w.e.f. 12.01.2015.

8. In terms of Provisions of Section 8A(1)(3) all mining leases granted before commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall be described to have been granted for a period of fifty years. Photocopy of aforesaid Gazette Notification has been enclosed as Annexure-4.

9. Counsel for the petitioner further submits that in the earlier Gazette Notification dated 10.2.2015 (Annexure-3), the Silica Sand which, was used as Major Minerals for the purpose of manufacturing Sodium Silicate, Ceramic and potteries glass has been placed under the category of minor minerals (general sand) under the Provisions of Section 3 (e) of the Act. The Silica Sand is used mainly in Industries of manufacturing glass, potteries, moulding, sodium Silicate, Quartz etc., for which, licence is granted by the Mines & Minerals, Department of the State of Bihar. The lease for sand of other category which comes under Minor Minerals are granted by the State Government through auction.

10. As per Notification contained in Annexure-3, the Silica Sand and other sand have been placed under the category of Minor Minerals as defined in Section 3(e) of the said Act.

11. Counsel for the petitioner submits that in view of Notification as contained in Annexure-4 the lease of petitioner shall be deemed to continue for 50 years and no interference in such continuity of the lease can be done.

12. The petitioner apprehends that after the Notification contained in Annexure-3, his lease may be interfered with by the State authority. The Notification as contained in Annexure-3 will be made effective prospectively from the date of such Notification and it will not go back to affect those who are already enjoying lease granted under the previous law.

13. During pendency of the writ application, the I.A. No. 8619 of 2017 has been filed by the petitioner, seeking indulgence of this Honâ??ble Court, to quash the order issued vide letter No. 2686 dated 14.9.2017 by the Special Secretary, Mines and Minerals, Department of the State of Bihar, whereby the renewal of the petitionerâ??s lease of Silica Sand was refused and the lease was cancelled. Photocopy of the aforesaid letter has been enclosed as Annexure-1A to the Interlocutory Application.

14. Counsel for the petitioner has submitted in the aforesaid Interlocutory Application that when an application for renewal of licence has been filed

well within time and the same was accepted with fee, in the background of this fact, the lease will be deemed to have been continuing the day on

which the Gazette Notification of the Central Government came into force.

15. Section 8(3) of Mines and Minerals (Development & Regulation) Act, 2015, clearly indicates that "All mining leases granted before the

commencement of Mines and Minerals (Development and Regulation) Act, 2015, shall be deemed to have been granted for a period of fifty years".

16. Interlocutory Application No. 7188 of 2017 has been filed by the petitioner for quashing Notice inviting Bids for Reverse e-Auction in respect of

Silica Sand of Mauza Pali, Dehri, Bastipur, having area 850 Acres under District Rohtas on 24.2.2018. The photocopy of e-auction notice published in

"Prabhat Khabar" has been enclosed as Annexure-2B to the main Interlocutory Application.

17. Counter affidavit has been filed on behalf of the Respondent No. 3 stating therein that petitioner has applied for renewal of said lease licence on

12.3.2013. The Assistant Director, Rohtas, vide letter No. 426 dated 17.5.2016 has forwarded the renewal application before the Commissioner,

Mines, with note that the application of the petitioner was incomplete as certain documents were wanting. Petitioner was informed vide letter No.

132/M dated 31.3.2014 and 309/M dated 16.7.2014 to furnish the required documents but the petitioner did not respond to such notices/letters of the

Respondents. Reminder letters were again sent on 19.9.2015 and 7.10.2015 by which the required documents were sought for by the Respondents, in

order to take any decision on renewal application. Thereafter, on the renewal application of the petitioner society, hearing was made by the

Commissioner, Mines, Bihar, in which Advocate of the petitioner society was present.

18. It has been argued on behalf of the petitioner that in the instant case Section 8A (3) of Mines and Minerals (Development and Regulation)

Amendment Act, 2015, is applicable which says that the lease period shall be deemed to have been granted for a period of fifty years.

19. The counsel for State has argued that the Commissioner (Mines), Bihar, passed reasoned order dated 29.6.2017 and rejected the renewal

application, copy of which, has been enclosed as Annexure-A to the counter affidavit.

20. The petitioner was duly informed by letter dated 14.9.2017 about the rejection of renewal application of the petitioner with reasons assigned

therein. The petitioner was directed to stop the mining activity and to hand over the area immediately. Photocopy of letter No. 2686 dated 14.9.2017

has been enclosed as Annexure-B to the counter affidavit. The respondent department has further directed the Collector, Rohtas, to initiate fresh

process of settlement of 850 Acres of Silica Sand area situated at Mauza-Pali, Dehri, Bastipur, Distt. Rohtas under the existing provisions of Bihar

Minor Mineral Concession Rules, 1972, since Silica Sand is now a minor mineral after Gazette Notification dated 10.2.2015 (Annexure-3). The

Collector, Rohtas, was directed vide letter No. 2692 dated 14.9.2017 to demarcate sand ghats and submit report.

21. The petitioner made renewal application on 12.3.2013 but after several notices/letters of the respondents to submit all the required document has

failed to respond the lease period of the petitioner has finally expired on 13.3.2014 due to incomplete documents. After proper hearing of the petitioner,

the renewal application was rejected on various grounds vide order dated 29.6.2017 passed by the Commissioner, Mines, Bihar.

22. In the meantime, the Central Government vide notification dated 10.2.2015 (Annexure-3 of the writ petition) has de-notified the Silica Sand from

the Major Mineral Category and notified it as Minor Mineral along with 31 other Minerals. The Silica Sand is no more Major Mineral after such

notification of the Union of India. Hence, Section 8A (3) of MMDR Act, 1957 as amended in 2015 is not applicable. The Silica Sand will now be

governed by the provisions of Bihar Minor Mineral Concession Rules, 1972.

23. Petitioner has filed rejoinder to the counter affidavit stating that all papers as required were already submitted. Even at the time of applying for

renewal of licence, all papers with fee and form were deposited by the petitioner which were accepted at the relevant time.

24. It has also been submitted in the reply to counter affidavit that during period of licence, no notice to show cause for taking punitive action for non-

supply of those documents were given by the department, which shows that those documents were not mandatory, rather they were directory.

Moreover, those documents were already supplied at the time of granting licence and again it was supplied.

25. During pendency of this writ application, the petitioner has filed Interlocutory Application No. 3 of 2019 seeking indulgence of the Honâ??ble

Court to quash the order dated 20.2.2017 by which the renewal application of lease filed by the petitioner in the year 2013 has been cancelled.

26. It is mentioned in the aforesaid Interlocutory Application that petitioner applied for renewal of lease well within prescribed period after depositing

requisite fee and papers which was accepted without any objection. The licensing authority had been sitting tight over the matter since last 4 years.

During the said period the Central Government, Ministry of Law and Justice, through extra-ordinary Gazette Notification, brought amendment in law

vide Mines and Minerals (Development & Regulation) Amendment Act, 2015, whereby the period of previous lease shall be deemed to have been

granted for a period of fifty years. The aforesaid Gazette Notification has been made effective from 12th January, 2015.

27. The counsel for petitioner has submitted that existing lease shall be deemed to have been extended automatically. Therefore, no order on the point

of renewal of lease was justified in the eye of law.

28. The contention of the petitioner is that at the relevant time, amendment of the Act was made effective from 12th January, 2015, the Silica sand

was well within major minerals. The subsequent Gazette Notification dated 10.2.2015 (Annexure-3) whereunder Silica Sand was made minor mineral,

will be made effective for new lease and not applicable on previous continuing lease. In similar situation, the State of Rajasthan vide its Notification

No. 1673 dated 18.2.2015 has considered and applied the said amendment and thereby extended the period of previous lease suo motu up to

11.08.2042. Photocopy of aforesaid order has been enclosed as Annexure-7 of the Interlocutory Application.

29. This Court finds that during hearing of this writ petition the main submission made by the counsel for the petitioner is that in terms of Provisions of

Section 8A of Mines and Minerals (Development and Regulation) Amendment Act, 2015, which came into force on 12th January, 2015, the period of

mining lease granted under Mines and Minerals (Development and Regulation) Act, 1957 shall be deemed to have been granted for a period of 50

years. The petitioner was granted licence for a period of 20 years, which was valid till 2014. He has filed petition for renewal of lease in the year 2013

which was pending. In the meantime, Gazette Notificate S.O423(E) dated 10.2.2015 (Annexure-3) has come by which the Silica Sand has been

placed under the category of Minor Minerals.

30. In terms of Section 8-A of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease granted before

commencement of this Act shall be deemed to have been granted for a period of fifty years.

31. The petitioner has made prayer in the instant writ application to declare the Gazette Notification dated 10.2.2015 (Annexure-3) issued by Central

Government by which "Silica Sand" has been declared and added as Minor Minerals along with other minerals (Annexure-3 of writ petition)

ineffective and inoperative in case of the petitioner.

32. It has further been prayed not to interfere with the lease of Silica Sand granted to the petitioner and to extend the said lease for further period of

50 years in the light of Notification dated 27.3.2015 which is made effective w.e.f. 12.01.2015 (Annexure-4).

33. As per Gazette Notification S.O.423(E) dated 10.2.2015 "Silica Sand" did not remain in category of major mineral. The Central Government

has notified the same under the category of minor Minerals (Annexure-3 of the writ petition). The Silica Sand after amendment in the Act, has come

in the category of "minor mineral" and thus will be governed like other minor minerals under the Provisions of Bihar Minor Mineral Concession

Rules, 1972.

34. The Central Government brought amendment in the MMDR Act, 1957 on 27.3.2015. The Mines and Minerals (Development and Regulation)

Amendment Act, 2015, came into force w.e.f. 12th day of January, 2015.

35. Section 8A(1) of Minor Minerals (Development and Regulation) Amendment Act, 2015 is quoted hereunder:

"8A(1). Period of grant of a mining lease for minerals other than coal, lignite and atomic minerals " The provisions of this Section shall

apply to minerals other than those specified in Part A and Part B of the First Schedule.

(2) On and from the date of the commencement of the Mines and Minerals

(Development and Regulation) Amendment Act, 2015 all mining leases shall be granted for the period of fifty years.

(3) All mining leases granted before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015

shall be deemed to have been granted for a period of fifty years.

(4) On the expiry of the lease period, the lease shall be put up for auction as per the procedure specified in this Act.

(5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of

commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose,

shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry

of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such

lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of

commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than

captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from

the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date

of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) Any holder of a lease granted, where mineral is used for captive purpose, shall have the right of first refusal at the time of auction held

for such lease after the expiry of the lease period.

(8) Notwithstanding anything contained in this section, the period of mining leases, including existing mining leases, of Government

companies or corporations shall be such as may be prescribed by the Central Government.

(9) The provisions of this section, notwithstanding anything contained therein,

shall not apply to a mining lease granted before the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or which has been determined, or lapsed.

36. The renewal application filed by the petitioner was rejected by the Mines Commissioner by order dated 14.9.2017 on the ground that he did not submit required documents along with renewal application. The petitioner in spite of several reminders did not produce those documents.

37. It is mentioned in the impugned order that petitioner has filed incomplete application for renewal of lease agreement. He never attempted to remove the defects. He never produced the Environmental Clearance Certificate. It is mentioned in the impugned order that period of lease has already expired in the year 2014 before coming into force the Minor Minerals (Development and Regulation) Amendment Act, 2015. The lease of petitioner was valid from 14.3.1994 to 13.3.2014 i.e. for a period of 20 years.

38. The Silica Sand has been brought as Minor Mineral by Notification of Central Government dated 10.2.2015 (Annexure-3). Since Central Government declared "Silica Sand" as "Minor Mineral", it is to be regulated under the provisions of State Rules i.e. Bihar Minor Mineral Concession Rules 1972, as amended from time to time. After change of category from Major Mineral to Minor Mineral, the laws relating to Major Mineral shall not be applicable in the present case.

39. As per Section 15(4) of Mines and Minerals (Development and Regulation) Amendment Act, 2015, the State Government by Notification, makes rules for regulating the Provisions of this Act for the following namely;

(a) the manner in which the District Mineral Foundation shall work for the interest and benefit of persons and areas affected by mining

under sub-section (2) of section 9B;

(b) the composition and functions of the District Mineral Foundation under sub-section (3) of section 9B; and

(c) the amount of payment to be made to the District Mineral Foundation by concession holders of minor minerals under section 15A.

40. This Court further finds that as per the Provisions of Section 8-A(5)(6) of the Minor Minerals (Development and Regulation) Amendment Act,

2015, there is no provision that period of lease shall be renewed automatically for 50 years.

41. The Provisions of sub clause (5)(6) and (9) of Section 8-A are quoted below:

â??5) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of

commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for captive purpose,

shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with effect from the date of expiry

of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date of grant of such

lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(6) Notwithstanding anything contained in sub-sections (2), (3) and sub-section (4), the period of lease granted before the date of

commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, where mineral is used for other than

captive purpose, shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from

the date of expiry of the period of renewal last made or till the completion of renewal period, if any, or a period of fifty years from the date

of grant of such lease, whichever is later, subject to the condition that all the terms and conditions of the lease have been complied with.

(7) xx xx xx

(8) xx xx xx

(9) The provisions of this section, notwithstanding anything contained therein, shall not apply to a mining lease granted before the date of

commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, for which renewal has been rejected, or

which has been determined, or lapsed]â??

42. In this manner, from perusal of aforesaid clause of the Act, it is apparent that period of lease shall be extended subject to the condition that all the

terms and conditions of the lease have been complied with.

43. In the instant case, it appears that documents as required by the authority were not produced by the petitioner. The petitioner also did not produce

Environmental Clearance Certificate. The Mines Commissioner found that the petitioner has filed incomplete petition. He was informed to submit all relevant documents including Environmental Clearance Certificate till the date of consideration of his renewal application. The Mines Commissioner has mentioned in the order that petitioner has merely filed renewal application but he was not serious for renewal.

44. Therefore, this Court does not find any illegality in the impugned order passed by the Mines Commissioner dated 29.6.2017 by which the renewal application filed by the petitioner has been rejected.

45. This writ petition is accordingly dismissed.