(1999) 03 PAT CK 0038

In the Patna High Court

Case No : C.W.J.C. No. 1054 of 1999

Mukhlal Mahta APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 08-03-1999

Acts Referred:

Bihar Minor Mineral Concession Rules, 1972 — Rule 11A, 12, 9

Citation : (1999) 1 BLJR 791 : (1999) 1 PLJR 830

Final Decision : Allowed

Judgement

1. What is the extent of preference to which a Cooperative Society is entitled in the matter of settlement of sand as minor mineral under the provisions of the Bihar Minor Minerals Concession Rules, 1972? This is the question that falls for consideration in this case and the answer to this simple question is made difficult due to some random and disjointed amendments introduced in the rules. Before adverting to the relevant rules, however, it would be appropriate to take note of the brief facts which give rise to the aforesaid question.

2. The parties are in dispute over settlement of all the sand ghats of Barakar river falling in the district of Dumka. Respondent No. 4 is the Secretary of a Co-operative Society registered under the name of Karmoi Labour Co-operative Society Limited. He made an application dated 8.11.1998 (Annexure-A) to the Assistant District Mines Officer, Dumka for the settlement of the sand ghats in question for the year 1999 in favour of the Co-operative Society. It may be noted that the application was on plain paper; it was neither in Form "A'' nor was it accompanied by a fee of Rs. 2,000/- and the relevant documents, affidavits and declarations as required under Rule 9 of the Bihar Minor Minerals Confessional Rules (hereinafter referred to as ''the rules''). It appears that before any order was passed on the application made by Respondent No. 4, a public notice was published in the daily newspaper "Aaj" of 1.12.1998 for the settlement of all the sand ghats in the district of Dumka. The sand ghats of Barakar river, falling in the district of Dumka were mentioned at serial No. 14 of this notice. According to the notice, the settlement of the sand ghats were to be made on the basis of

public auctions scheduled to be held on December 15, 18 and 21, 1998. In response to the notice the petitioner, on 14.12.1998, deposited the security amount of Rs. 40,000/- and in the public auction held on 21.12.1998 he made the highest bid of Rs. 4,20,000/- for the settlement of the disputed ghats in his favour. It may be noted that Respondent No. 4 did not participate in the auction but at its end he approached the authorities and stated that the Society was willing to take the settlement of the ghats at the highest bid amount offered by the petitioner. It may further be noted here that for the year 1998 the settlement of the disputed ghats was made for Rs. 3,01,000/- and the offer made by Respondent No. 4 was thus more than 20% higher than the settlement amount for the preceding year. Following the auction on 21.12.1998 in which he was declared to be the highest bidder the petitioner deposited a sum of Rs. 2,12,000/- (in addition to the security amount deposited by him earlier) as required in the notice. However, he was not given any Parvana to operate the ghats and no agreement was executed in his favour. Instead, the District Mines, Officer, Dumka issued latter No. 681, dated 24.12.1998, addressed both to the petitioner and Respondent No, 4 (Annexure-2) intimating them that a fresh auction for the settlement of the disputed ghats would be held on 29.12.1998 and asking both the contenders to take part in that auction failing which an ex-parte decision would be taken. On 29.12.1998 the petitioner went to the office of the District Mining Officer but no fresh bid was held, according to the petitioner, because Respondent No. 4 failed to appear. In the counter-affidavit, filed on behalf of the State it is stated that no fresh bid was held on 29.12.1998 as Respondent No. 4 refused to take party in any bid and claimed settlement of the disputed ghats in favour of the Society under Rule 11-C of the Rules offering a sum of Rs. 4,25,000/- which was slightly higner than the bid made by the petitioner in the auction held on 21.12.1998. On the basis of the offer made of Respondent No. 4 and in the light of the report received from the District Co-operative Officer the respondent authorities decided to settle the sand ghats of Barakar river for the year 1999 in favour of Respondent No. 4 and he was accordingly informed by letter No. 710, dated 31.12.1998. The Co-operative Society then deposited a total sum of Rs. 1,52,500/- and on 1.1.1999 the Mines Inspector delivered the possession of the sand ghats to Respondent No. 4 with due permission to operate the ghats.

3. The petitioner thus having failed in his bid for the settlement of the ghats came to this Court in this writ petition, On notice being issued both Respondent No. 4 and the State respondents appeared and filed their counter-affidavits and the parties were heard for final disposal of this case on February 14 and 15, 1999.

4. In order to judge the validity of the action of the respondent authorities in making the settlement in favour of Respondent No. 4, disregarding the petitioner who was the highest bidder in the public auction on the basis of the public notice issued for the settlement of the ghats, it would be necessary to examine the relevant statutory provisions. The rules concerning grant of mining lease are

contained in Chapter III of the Rules which commences from Rule 9 and ends with Rule 26-A. Rule 9 provides for the desirous person to make an application for grant of mining leases. The application is to be made in Form "A'' and is to be accompanied by a fee of Rs. 2,000/- and a number of relevant documents, certificates, affidavits and declarations as specified in the various sub-rules of Rule 9; Sub-rule 9 of Rule 9 makes it obligatory upon the competent officer to reject the application straightway in case it was not accompanied by any of the papers as specified in Sub-rules 2, 3, 4 and 6, 7 and 8.

5. Rule 10 provides for the acknowledgment and Rule 11 for the disposal of the application. Rule 12 provides for some preferential rights subject to certain conditions. Rule 20 provides for refusal of an application for grant and renewal of mining lease. The other rules in the chapter provide for the conditions for the grant of lease and other allied matters concerning the grant of mining leases.

6. On 14.11.1985 an amendment was introduced incorporating Rule 11-A in that Chapter. The object was plainly to put sand in a special category and to make special provisions for settlement of sand as minor mineral. Rule 11-A(1) provides as follows-

Notwithstanding anything contained in these rules the settlement of sand as minor mineral will be done by public auction by the Collector to the highest bidder on annual basis.

(emphasis added)

7. The rule has some explanations and provisos but the provision relevant for our present purpose is contained in the last proviso to the rule which is as follows:

Provided further that anything contained herein before in this rule shall not prevent the Collector from exercising his power Under Rule 9 in cases covered by Rule 12(1) hereinafter.

(emphasis added)

8. This takes us to Rule 12 which as noted above, provides for some preferential rights subject to certain conditions. Originally the preferential rights were available to Government departments. Public Sector Undertakings and Local Bodies. By an amendment introduced on 16.10.1989 Co-operative Societies were also added to that category. The preferential right, however, is subject to the conditions that the lease was required for work directly concerned with the lessee. On 18.10.1995 a Co-operative Society, all the members/share holders of which belong to Scheduled Tribe or Scheduled Caste, was also added to the preferential category without being made subject to the condition that the lease was required for work directly concerned with the lessee. Rule 12, in-so-far as relevant for our purpose, and as it stands today is as follows-

12. Preferential right for obtaining mining lease - (1) In granting the mining lease, the Collector shall give preference to Government Departments, Public

Sector Undertakings of the State or Central Governments, Local body Ins. by S.O. 1063 dated 16.10.1989 (and Cooperative Society) where the lease is required for work directly concerned with the Department, Undertaking or body, if they fulfil the conditions required for the grant of mining lease.

Subs, by S.O. 5572 M dated 18.10.1995 However, the Collector may give preference to such Co-operative Society all the members/share holders of which belong to (Scheduled Tribe or Scheduled Caste) and which has duly been registered under Bihar and Orissa Co-operative Societies Act, 1935).

(Emphasis added)

9. It may be noted that while imposing the condition of self consumption though the rule enumerates the (Government) department, undertaking or body it must be held that the condition equally applies to a Co-operative Society which too indeed is a body corporate. The only Co-operative Society which can claim a preferential right independently of the condition of self-consumption is a Co-operative Society all the members/share holders of which belong to Scheduled Tribe or Scheduled Caste. Any other reading of this rule would lead to highly anomalous and absurd consequences.

10. It is thus evident that by virtue of the last proviso to Rule 11-A, the only case in which the settlement of sand ghats can be made without holding a public auction and on the basis of an application made by the desirous person would be in favour of Government Departments, public sector undertakings, local bodies and Co-operative Societies, subject to the condition of self-consumption, and in favour of a Co-operative Society all the members/share-holders of which belonged to Scheduled Tribe or Scheduled Caste independently of the condition of self consumption and even for commercial purpose.

11. In the present case, Respondent No. 4, admittedly, does not qualify for a preferential claim under Rule 12; it is not a Co-operative Society all the members/share-holders of which belong to Scheduled Tribe or Scheduled Caste and it has not taken the settlement requiring the sand for work directly concerned with the Society. According to Respondent No. 4, its claim for preference is based on Rule 11-C and the respondent authorities have also purported to act on the basis of that rule. Rule 11-C is as follows-

11-C. However, the Collector may give preference to Co-operative Society, duly registered under Bihar and Orissa Co-operative Societies Act, 1935, having its members among those persons who:

(i) usually work as labourers in the Panchayat or Panchayats in which such sand deposits occur;

(ii) are residents of the Panchayat or Panchayats for which the Society is formed;

(iii) do not own more than five acres of agricultural or homestead land;

Provided that the Society undertakes in writing to deposit an amount which is

20% higher than the amount realised as royalty from the same area in the calendar year immediately preceding.

12. It is of utmost importance to note here that any preference under Rule 11-C must be subject to the non-obstante clause used at the beginning of Rule 11-A which enjoins that the settlement of sand will be made to the highest bidder in a public auction. The only exception as noted above is a case falling under Rule 12. The Co-operative Society of the description as contained in Rule 11-C can, therefore, a claim preference, if any, only subject to Rule 11-A. It must, therefore, participate in the public auction and in order to claim preference under Rule 11-C must give an undertaking in writing before the commencement of the auction to deposit an amount, 20% higher than the settlement amount for the preceding year. Thus reading Rules 11-A and 11-C together it comes manifest that the Co-operative Society would be able to enjoy hardly, if any, preference in the matter of settlement of sand ghats. For, in case in the public auction the bids remain lower than the amount being 20% higher than the settlement amount for the preceding year or even lower than the settlement amount for the preceding year, the Society would still be bound by its undertaking in writing to deposit an amount which is 20% higher than the settlement amount for the previous year. In that situation, it would be indeed in a disadvantageous position. Very slight advantage would, however, accrue to it in case the bids in the public auction went above the amount being 20% higher than the settlement amount for the previous year. For, in that event the Society would be required only to make an offer matching the highest bid. In other words, the Society may not be required to go on raising the bid in the auction. All that it would be required is to make bid matching the highest bid.

13. I am not unconscious that, this would hardly amount to any preference to the Co-operative Society (of the description as contained in Rule 11-C but my mind this is an unescapable legal position and the preference envisaged under Rule 11-C is practically robbed of all its contents by virtue of the non-obstante clause in Rule 11-A. If any, preference is really intended to a Co-operative Society, the respondent authorities will be well advised to recast the special provisions concerning settlement of sand ghats as contained in Rules 11-A to 11-F.

14. On the basis of the discussions made above, the legal position that emerges can be summarized as follows:-

(i) For making settlement of sand as minor mineral special provisions are made in Rules 11-A to 11-F of the Rules and Ordinarily settlement of sand ghats cannot be made by the desirous person making an application as provided under Rules 9, 10, 11, 12, 20, etc. of the Rules, as in the case of all other minor minerals.

(ii) The special provision for sand as contained in Rule 11-A provides that its settlement will be made (a) on annual basis, (b) to the highest bidder, (c) in a public auction held for the purpose;

(iii) the exception from holding public auction and making settlement on the basis of an application made under Rule 9 as provided under the last proviso to Rule 11-A would apply in case where settlement is made in favour of;

(a) Government departments, public sector undertakings local bodies or Co-operative Societies provided that the requirement of sand is for work directly concerned with the settlee and provided further that the settled fulfilled all other conditions for the grant of settlement.

(b) Co-operative Society all the members/share-holders of which belong to Scheduled Tribe or Scheduled Caste even without the condition governing the Government departments, etc.

(iv) Any preference to which a Co-operative Society of the description as contained in Rule 11-C is entitled is subject to the provisions of Rule 11-A under which any settlement of sand, subject to the exception of cases falling under Rule 12, can be made only by a public auction;

(v) The Co-operative Society (of the description as contained in Rule 11-C) must, therefore, participate in the public auction and made a matching bid in case the bid amount is higher by 20% than the settlement amount for the previous year, in case the highest bid in the public auction remains below the amount being 20% higher than the settlement amount for the previous year, the Cooperative Society would be bound by the written undertaking given by it.

15. In the light of the above, it is evident that the settlement made in favour of Respondent No. 4 was contrary to the legal position. The settlement in favour of Respondent No. 4 was also bad for several other reasons and the manner in which the respondent authorities proceeded in this matter and changed their stand from time to time can only be held to be quite unreasonable and arbitrary.

16. The settlement made in favour of Respondent No. 4 is accordingly set aside and the respondent authorities are directed to make a settlement of the disputed ghats by holding a fresh public auction in the light of this order. The District Mining Officer will have a public notice issued for holding a public auction for the settlement of the disputed ghats within a week from the date of receipt/ production of a copy of this order. The date of the public auction will be so fixed as the settlement is made by March 31, 1999. The settlement will be made for the period ending 31.12.1999. Respondent No. 4 will be allowed to operate the ghats till a fresh settlement is made as directed in this order or 31.3.1999 whichever being earlier. In case fresh settlement is made in favour of Respondent No. 4 it will be allowed to continue in possession of the ghats on making the necessary payments on the basis of the fresh bid. In case, however, fresh settlement is made in favour of the petitioner or a third party the settlee will be allowed to come into possession of the ghats immediately after the settlement and Respondent No. 4 will be entitled to proportionate refund of the payments already made by it.

17. In the result, this writ petition is allowed with the aforesaid observations and directions but with no order as to costs.

18. Let a copy of this order be also sent to the Mines Commissioner for necessary action.

