
(2009) 09 OHC CK 0013
In the Orissa High Court

Narayan Granites

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Citation : (2009) 108 CLT 798 : (2009) 2 OLR 1046 Supp

Hon'ble Judges : B.P. Ray, J;B.P. Das, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Das, J.—This Writ Petition has been filed with a prayer to quash the letter dated 6.9.2005 issued by the Under Secretary to Government of Orissa in the Department of Steel & Mines-Opposite Party No. 2, under Annexure-5 & to direct Opposite Parties 1 to 3 to grant quarry lease over an area of 15.443 hecets. in respect of the Petitioner's application dated 28.10.2004. Prayer has also been made to quash the Order Dated 3.4.2006 passed by the State Government in Annexure-6 granting quarry lease in favour of Opposite Party No. 4 for the aforesaid area so also the lease deed executed with Opposite Party No. 4.

2. Notice in this case was issued on 28.9.2005 & on the same day, this Court passed an interim order in Misc. Case No. 12229 of 2005 directing that the lease in favour of Opposite Party No. 4 might be executed but the same should not be allowed to be operated till the next date. Thereafter, hearing of the case was concluded on 27.10.2006 & Judgment was reserved. The matter was then listed under the heading "To Be Mentioned" on different dates including on 27.2.2008, on which date the interim order passed on 28.9.2005 was modified to the effect that pendency of the Writ Petition would not be a bar on the part of the lesser or lessee for operating the lease & such operation would be subject to the result of the Writ Petition. Thereafter the Petitioner filed SLP (C) No. 6673 of 2008 before the Apex Court challenging the Order Dated 27.2.2008 passed by this Court modifying it's earlier interim Order Dated 28.9.2005. On 7.8.2009, the Apex Court granted leave in the aforesaid SIP & allowed the appeal by pasting the

following order:

Heard Learned Counsel for the parties.

Leave granted.

This appeal is directed against the interim Order Dated 27.2.2008 passed by a Learned Division Bench of the High Court of Orissa at Cuttack whereby the interim Order Dated 28.9.2005 has been modified. On the facts & circumstances of the case, we are of the opinion that the High Court was not justified in passing the impugned order especially when the matter was reserved for Judgment. Therefore, we set aside the impugned order & allow this appeal. However, the High Court is directed to deliver the Judgment as expeditiously as possible. We make it clear that the High Court will decide the case uninfluenced by any observation made by us in this order.

Appeal allowed. No order as to the costs.

3. The facts, as delineated in the Writ Petition, are as follows. The Petitioner, M/s. Narayan Granites, is a partnership firm & carries on its business in the State of Orissa. The Petitioner is having its Granite Processing Factory in SSI Sector at Chandaka Industrial Estate in Bhubaneswar & is also having the permanent registration certificate issued by the District Industries Centre, Bhubaneswar, vide Annexure-1. The Petitioner applied for grant of Prospecting Licence over an area of 15.443 hec. in village Palli under Chikiti Tahasil of Ganjam district for quarrying of decorative stones. The Mining Officer received, the application along with the documents enclosed therewith from the Petitioner & granted the receipt under Annexure-2.

The quarry in question was initially leased out to M/s. Arya Stone International Pvt. Ltd. (in short M/s. Arya Stone) for a period of ten years commencing from 25.1.1990. M/s. Arya Stone did not undertake any prospecting operation of the quarry as a result of which the lease was evoked by the Government on 29.9.2004. Opposite Party No. 4 applied for Mining Lease in respect of the said quarry on 12.2.2004 during the subsistence of the quarry lease granted in favour of M/s. Arya Stone. The Petitioner on the other hand made the application for grant of Prospecting Licence for the same quarry on 28.10.2004, i.e., after revocation of the lease granted in favour of M/s. Arya Stone. In other words, the Petitioner & Opposite Party No 4 were the applicants for the same quarry.

4. According to Learned, Counsel for the Petitioner, the Director of Mines, Orissa, Opposite Party No. 3 on receipt of the applications from the Petitioner & Opposite Party No. 4, considered the case of both the parties in accordance with the provisions of the Orissa Minor Mineral Concession Rules, 2004 & after a thorough enquiry submitted his report vide Annexure-3 recommending the application of the Petitioner to the Govt. for grant of Prospecting Licence for decorative stone & for rejection of the application of Opposite Party No. 4. In the meantime, the Petitioner had also made a representation on 2.5.2005 to the Minister, Steel &

Mines, Orissa vide Annexure-4, but no action was taken thereon. On the other hand, Opposite Party No. 2 by order of Opposite Party No. 1, issued the letter dated 6.9.2005 (Annexure-5) directing Opposite Party No. 4 to execute the lease deed in respect of the quarry in question on the terms & conditions mentioned therein.

According to the Petitioner, the application made by Opposite Party No. 4 for grant of lease of the quarry could not have been accepted as the same was made on 12.2.2004 when the area for which the Mining Lease was applied for was held under lease for decorative stone by M/s Arya stone. In other words, according to the Petitioner, no area was available for consideration of the application of Opposite Party No. 4 for grant of lease. Annexures 6 & 7 filed by the Petitioner are certain information received by it under the Right to Information Act. Annexure-6 is the order passed by the Government on 3.4.2006 granting quarry lease in favour of Opposite Party No. 4 & Annexure- 7 is the office note in the concerned file dealing with grant of Mining Lease for the, quarry in question. According to the Petitioner, Opposite Party No. 3-the Director of Mines, after considering the applications of both the Petitioner & Opposite Party No. 4, by the letter dated 14.1.2005 issued to the Addl. Secretary to Government, recommended for grant of Prospecting Licence for decorative stone in favour of the Petitioner & forwarded the application of Opposite Party No. 4 for rejection. Since the State Government decided to grant Mining Lease in favour of Opposite Party No. 4 without considering the aforesaid fact, such decision of the Government is highly illegal, arbitrary & is liable to be quashed & the application of the Petitioner should be considered for grant of Prospecting Licence.

In support of his contention, Learned Counsel for the Petitioner drew our attention to Rule-16 of the Orissa Minor Minerals Concession Rules. 2004 which dealt with disposal of the applications, & submitted that when more than one application relating to any of the categories mentioned in Clauses (ii) & (iii) of Sub-rule (2) of the aforesaid Rule, are received for the same area, the interse priority shall be decided on the basis of the installed capacity, technical knowledge & experience in prospecting & quarrying of decorative stones.

5. A counter affidavit has been filed by the State, Opposite Parties 1 & 2, indicating therein that Opposite Party No. 4 had applied for grant of quarry lease of decorative stone over an area of 15.443 hectrs. in village Palli on 12 2 2004 under the Orissa Minor Mineral Concession Rules. 1990 The area applied for by Opposite Party No. 4 was overlapping with the area leased out in favour of M/s. Arya Stone & the lease was executed for a period of ten years commencing from 25.1.1990 & the term of the said lease had expired on 24.1.2000. Renewal of the quarry lease was granted in favour of M/s. Arya Stone by the Government vide proceeding dated 3.2.2000 with a direction to execute the lease deed within three months from the date of the order But as no deed was executed within the stipulated period, nor the grantee had requested for extension of time for execution of the deed, revocation proposal was submitted to the Director of

Mines by the Mining Officer, Berhampur & the renewal grant order was revoked by the Government vide proceeding dated 29.9.2004. According to the State, Opposite Party No. 4 applied for grant of quarry lease on 12.2.2004 under the Orissa Minor Mineral Concession Rules, 1990 & by then though the renewal was granted in favour of M/s. Arya Stone vide proceeding dated 3.2.2000, deed was yet to be executed, for which the question of subsistence of lease beyond 24.1.2000 absolutely did not arise. That apart, there was no irregularity in accepting the application of Opposite Party No. 4. Admittedly the Petitioner had made its application for grant of Prospecting Licence over the said area on 28.10.2004, i.e. eight months after the application was filed by Opposite Party No. 4 under the old rules & after commencement of the new rules, i.e. Orissa Minor Mineral Concession Rules, 2004.

The further case of the State is that since two applications were received for the same area & the applicants belonged to the same category, both were considered together to decide the inter-se priority & preferential right under the provisions of Rule 20 (2) as well as Rule 16(2) of OMMC Rules, 2004. According to the State, the annual installed capacity of the granite industry of the Petitioner firm was less than that of Opposite Party No. 4, but the case of the Petitioner was recommended to Opposite Party No. 1 for grant of Prospecting Licence over the application of Opposite Party No. 4. But Opposite Party No. 1 by letter dated 20.9.2005 (Annexure-A/2) intimated Opposite Party No. 3 that Government was considering to grant Mining Lease for decorative stone over the area of 15.443 hect. in favour of Opposite Party No. 4 & directed Opposite Party No. 3 to dispose of the application of the Petitioner as per law, as no area was available for consideration in favour of the Petitioner.

Further case of the State is that while comparison was made on the basis of annual installed capacity of granite industry, the capacity of Opposite Party No. 4's industry was found to be much higher than that of the Petitioner's industry. In addition to that, Opposite Party No. 4 had their factories in two different places in the State of Orissa & had better infrastructure in comparison to the Petitioner firm. Apart from that, Learned Counsel for the State submitted that the applied for area was held under quarry lease of decorative stone, which was previously known as quarry lease but in 2004 Rules it was called as Mining Lease, whereas the Petitioner has applied for Prospecting Licence. The applications were not received on the same date or on different dates within a period of 30 days to attract the provision of Rule 11 (4) of CMMC Rules, 2004.

6. Opposite Party No 4 in its counter affidavit has indicated that the application for lease of the aforesaid area was not filed on the same date. According to it, for the sake of argument if it is presumed that the applications were received on the same date, the same shall be dealt with in terms of Rule 16(2)(ii) as well as Rule 16 (2)(iii) of the OMMC Rules, 2004. For the sake of brevity, the aforesaid rules are quoted hereunder:

16. Disposal of applications

(1) ...

(2) Where two or more persons have applied for a mining lease in respect of same land or area the priority shall be in the following order, namely:

(i) (ii) the applicant whose application was received earlier shall take precedence in consideration for grant over an applicant whose application was received later;

(iii) a person who has already set up an industry for processing of decorative stone in the State & does not have any quarry lease for decorative stone in the State;

xxx xxx xxx

According to Opposite Party No. 4, its case was considered taking into consideration its installed capacity, technical knowledge & experience, machinery under its possession & investment proposed to be made. But, according to him, all these aspects would arise only when two or more persons have applied for a mining lease in respect of same land or area. When the Petitioner has applied for Prospecting Licence & the area in question had already been mined for a quite long period & Opposite Party No. 4 has applied for Mining Lease for the same area, the question of giving priority to the Petitioner, as claimed, absolutely does not arise, because according to the Opposite Party No. 4, both of them stood on different footings. According to Learned Counsel for Opposite Party No. 4, the Opposite Party-State has clearly considered the case of Opposite Party No. 4 looking at the aforesaid five criteria & has granted lease in favour of Opposite Party No. 4. That apart, the question of inter-se priority between the Petitioner & Opposite Party No. 4 does not arise as because the Petitioner had applied for Prospecting Licence, whereas Opposite Party No. 4 had applied for Mining Lease.

7. It is a fact that initially the mining lease was granted in favour of M/s: Arya Stone on 25.1.1990, as indicated above, for a period of ten years & the same was renewed with a direction to M/s. Arya Stone to execute the lease deed within a period of three months from the date of the order. As M/s. Arya Stone did not execute any lease deed nor prayed for any extension of time, the area was free after 24.1.2000.

8. Let us now see what is the meaning of "Mining Lease" & "Prospecting Licence". Sub rules (1) (o) & (1)(q) of Rule-2 of the Orissa Minor Mineral Concession Rules, 2004 defines "Mining Lease" & "Prospecting-Licence" as follows:

2. Definitions.(i)

(o) "Mining Lease" means a lease granted on tenure basis for a period not exceeding 30 years for extraction and/or removal of decorative stones over a compact area;

(q) "Prospecting Licence" means a license granted for the purpose of undertaking any operation for the purpose of exploring, locating or proving the deposits of decorative stones over a compact area;"

Chapter-II of the 2004 Rules deals with grant of prospecting licence for decorative stone. Application for prospecting licence is granted under Rule-9 of the OMMC Rules, 2004 & Rule-10 of the said Rules deals with disposal of the application. In the instant case, initially mining lease was granted in favour M/s. Arya Stone & it operated the area for the period the area was under its occupation. So, after the mining lease was granted & the area was operated, the question of grant of prospecting licence absolutely does" not arise. Further granting prospecting licence in the instant case also does not arise as the purpose for granting such prospecting licence as per rules as indicted above, is for exploring, locating or proving the deposits of decorative stones over a compact area, which has already been done over the area in question.

9. Learned Counsel for the Petitioner referred to a decision of the Apex Court in case of Ajit Singh Vs. Union of India and others, . The aforesaid Judgment held that in absence of any renewal & pursuant registration, the previous mining lease holder has no surviving right under law after lapse of initial period of lease.

In paragraph-5 of the aforesaid Judgment, the questions raised before the Apex Court for consideration were indicated as follows:

5. Two questions broadly arise for consideration in this appeal, viz. (1) whether the first application dated October, 20, 1982 submitted by Respondent No. 5 was premature; & (ii) whether the second application dated January 19, 1983 submitted by Respondent No. 5 was premature.

10. Here is a case where the Petitioner has not applied for mining lease. It has applied for Prospecting Licence. So the ratio decidendi of the case of Ajit Singh (supra) cannot be made applicable to the present case as the Petitioner & Opposite Party No. 4 stand totally on different footings. The case in hand also differs from the facts involved in the aforesaid case because the area sought to be leased out for mining was covered under a pre-existing mining lease, which was not the case in the case of Ajit Singh (supra).

11. The Petitioner further cited a decision of the Apex Court in the case of M.C. Mehta Vs. Union of India (UOI) and Others, . The said case is also in no way relevant to the present case as it is not the case of the Petitioner that the area in question is a forest area & no mining activities can be done. In this case, the Petitioner also cannot claim for grant of Prospecting Licence.

12. In the aforesaid facts & circumstances, we do not find any wrong or illegality in the decision making process of the Government in granting Mining Lease to Opposite Party No. 4, which requires interference of this Court. The Writ Petition is devoid of merit & accordingly, the same is dismissed, but in the circumstances, without cost.

M.M. Das, J.

13. I agree.