
(2002) 08 MP CK 0083

In the Madhya Pradesh High Court

Case No : Writ Petition No. 5196 of 2001

Narmada Enterprises, Hoshangabad

APPELLANT

Vs

State of M.P. and others

RESPONDENT

Date of Decision : 23-08-2002

Acts Referred:

Citation : (2003) 1 MPLJ 511

Hon'ble Judges : A.K. Mishra, J

Bench : Single Bench

Advocate : P.K. Jaiswal, for the Appellant; Ashok Agrawal for Respondent Nos. 1, 2 and 6, S. Gangele for Respondent No. 4 and M. Rajak, for the Respondent

Final Decision : Allowed

Judgement

A.K. Mishra, J.

Petitioner is challenging the grant of sand quarry made by Gram Panchayat, Bhargada, respondent No. 3 in favour of respondent No. 4 Chhotelal Uike on the ground that due publication was not made as per Rule 38 of the M.P. Minor Mineral Rules, 1996, (hereinafter referred to as "the Rules").

The relevant facts in the present writ petition indicate that respondent No. 4 Chhotelal Uike applied for grant of sand quarry lease on 21-4-2001 and on the said date itself the sand quarry lease was granted for a period of two years with effect from 3-5-2001 to 2-5-2003 as per resolution dated 21-4-2001 which is a forming part of Annexure P. 3. The meeting itself was held on 21-4-2001. Petitioner submits that Rule 38 of the Rules requires due publicity to be made for disposal of the application which has been given a total go-by in the instant case. The application was granted on the same date on which the notice R. 4 was issued for publication in terms of Rule 38. Thus, it cannot be said to be a due publication of the notice. Petitioner requested the respondent No. 5 to supply the copy of the resolution which indicates that procedure has not been followed. Petitioner preferred an appeal under rule 57(1) of the Rules. Respondent No. 6

dismissed the appeal as not maintainable. Hence, the present writ petition has been filed before this Court.

Return has been filed by respondent No. 4 contending that meeting of Gram Sabha was convened on 21-4-2001 as per notification dated 10-4-2001. In the said notification it was mentioned that applications have also to be considered for grant of quarry permit of the said quarry. The answering respondents deposited the requisite fee of Rs. 25/- and applied for grant of quarry permit. This application R. 4/2 was filed on 21-4-2001 which shows that notice was sent on 21-4-2001 for publication of the notice in the office of District Panchayat Hoshangbad, Chief Executive Officer, District office and Gram Panchayat Bhargada. The notice R. 4(4) shows that it was affixed only on the notice board of Gram Panchayat Bhargada. Gram Panchayat resolved to grant the quarry on 21-4-2002.

Respondents No. 1, 2 and 6 submits that the lease cannot be questioned and the writ petition is liable to be dismissed. They have adopted the return filed by respondent No. 3. In the return filed by respondent No. 3 it has been mentioned that meeting was held on 21-4-2001. There is no irregularity in the notice.

After hearing learned counsel for the parties, it becomes clear and not in dispute that application was itself filed on 21-4-2001 and was allowed by Gram Sabha on same day itself. Rule 38 of M.P. Minor Mineral Rules requires the application to be disposed of within 60 days from its receipt. Rule 38(1) of the Rules is quoted below:

Rule 38. Disposal of application for quarry permit.- (1) On receipt of an application for the grant of quarry permit its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Panchayat concerned of the district and Collectorate of the district concerned. It shall be disposed of by the sanctioning authority within sixty days from the date of its receipt. However a Gram Panchayat shall obtain prior approval of its Gram Sabha before final disposal of the application.

Notice R. 4(4) indicates that there is no endorsement on it of it being published on notice board of the District Panchayat, Janapad Panchayat and Collectorate. When the application was itself was filed on 21-4-2001, the same could not be allowed on the same day. It is clear that the Collectorate office situated at the distance so also the Janapad Panchayat at district office from the Gram Panchayat concerned. There was no due publication of the notice. In the instant case, Rule 38(1) has been violated. Thus, the grant of sand quarry lease in favour of respondent No. 4 cannot be allowed to be sustained and liable to be set aside. Respondents are directed to call the application afresh and to decide them in accordance with law.

Resultantly Annexure P. 3 and the order Annexure P. 4 are quashed. Writ petition is disposed of with the aforesaid directions. Costs on parties.