
(1990) 06 KAR CK 0026
In the Karnataka High Court
Case No : **No headnote**

N.H. Peeran Saheb (Dead) by L.Rs. and Others APPELLANT
Vs
State of Karnataka and Others RESPONDENT

Date of Decision : 12-06-1990

Acts Referred:

Mineral Concession Rules, 1960 — Rule 11

Citation : (1990) 4 KarLJ 118

Hon'ble Judges : H. G. Balakrishna, J

Judgement

1. The father of the petitioners applied for the grant of prospecting licence under Rule 11 of the Mineral Concession Rules, 1960 to the Director of Mines and Geology, Government of Karnataka, in respect of 320 acres in N.E.B. range of Sandur Taluk, looking out for iron ore.

2. On 4/5-4-1956 the application dated 2-4-1956 preferred by the applicant was acknowledged by the concerned authority. The sketch of the area applied for is Annexure-B, A letter was received by the applicant from Geologist, Bellary Division, stating that he will be visiting the site on 11-12-1957. A letter dated 2-2-1957 was received by the applicant from the Director of Mines and Geology stating that the area applied for overlaps with certain portions of blocks already granted to other parties as noted in the sketch and only the area marked in green colour is available for grant and therefore asking the applicant to intimate whether he was agreeable to have the prospecting licence on the reduced area after exclusion of the overlapping portion. The said letter also made it clear that the applicant should be agreeable to accept the actual area that would be found vacant at the time of survey and demarcation. This was followed by a letter dated 6-12-1957 from the Geologist, Bellary Division, intimating that he would be visiting the site on 11-12-1957. According to the authorities the area available for grant consisted of 39.19 acres only and accordingly the letter was received from the Director of Mines and Geology by the applicant that only 39.19 acres of land was available for grant of prospecting licence. This letter dated is 12-12-1963. On 20-9-1967 the applicant demised and he was succeeded by the

petitioner. By that time the prospecting licence had been issued on 12-12-1963 in respect of 39.19 acres only, to the applicant. On the death of Peersab the prospecting licence was transferred to the name of the petitioner in respect of the same extent of land. Later on petitioner applied for mining lease over an area of 39.19 acres in respect of which he had obtained a prospecting licence. At this stage, some litigation came in the way of grant of mining lease and when it came to an end on 7-4-1976 a mining lease was granted to the petitioner on the basis of lease deed executed on 7-4-1976. When the petitioner learnt that an extent of 26 acres of land was the subject-matter of prospecting licence granted to the 3rd respondent, the petitioner preferred a revision petition before the competent authority claiming that these 26 acres of lands really formed an integral part of total extent of 320 acres for which the applicant had made an application for grant of prospecting licence and grant of these 26 acres of land was unjustified inasmuch as the father of the petitioner was the prior applicant. However the revision petition came to be dismissed on 27-1-1981. It is this order which is in question in this writ petition.

3. The case of the petitioner is that when his father applied for grant of prospecting licence in respect of 320 acres of land on the basis of the supposed verification or surveying made by the concerned department, only an extent of 39.19 acres of land was found to be available for grant. The applicant consented to have the prospecting licence to the extent of available land believing the report of the department to be true and if he had been made aware that 26 acres were still available to be included under the prospecting licence the applicant would not have consented to restrict his claim only to the extent of 39.19 acres. Either by oversight or by mistake the department led the applicant to believe that only 39.19 acres of land was available and therefore the applicant did not have the opportunity of pressing his application for grant of prospecting licence in respect of that area also. However, it transpired that on 27-7-1980 vide Annexure-H third respondent was granted prospecting licence in respect of 26 acres of land which formed a part of the area of 320 acres originally applied for by the applicant for grant of prospecting licence. On coming to know this information, the applicant challenged the said order in revision without success.

4. It is now contended by the learned counsel appearing for the petitioner that consent given without knowledge of the fact of availability of 26 acres of land by acting on the mis-information furnished by the department should not disentitle the applicant who is now succeeded by the petitioner to the grant of prospecting licence in respect of additional area of 26 acres besides 39.19 acres already granted. For the fault or mistake of the department, it is submitted that, petitioner should not be made to suffer.

5. However, it was submitted on behalf of first and second respondent by the learned Government Pleader that once the applicant has bound himself by the undertaking given that he would restrict his application for grant of prospecting licence to an area of 39.19 acres, it is not open to the petitioner to resile from

the same and stake his claim for grant of prospecting licence in respect of additional 26 acres.

6. The point to be considered is whether in the facts and circumstances of the case the petitioner is entitled to have his claim considered for grant of prospecting licence in regard to 26 acres of land and whether Annexure-H deserves to be quashed.

7. There is hardly any complication in this case since the facts are simple and plain enough for resolving the dispute. The department concerned would not have hesitated to grant the prospecting licence to the applicant had the department discovered at the time of survey and inspection that what lands were available were actually 39.19 acres + 26 acres and not 39.19 acres only. It is not possible to imagine that if 26 acres of land were found to be available at the time when the applicant was called upon to restrict his claim only to an extent of 39.19 acres, the department would have been unwilling to oblige the applicant. After all the policy of the Government and the department is to grant prospecting licence to enterprising persons who are willing to take the risk of prospecting, duly complying with the conditions which are imposed on them subject to which the licence is granted. In the instant case on account of the bona fide impression that only 39.19 acres of land were available, the applicant was granted prospecting licence only in respect of that area. This is an undisputed fact. This grant was made on 12-12-1963 in respect of 39.19 acres. The grant of prospecting licence in respect of 26 acres was made in the year 1980 to third respondent. It is only when the petitioner came to know about the issue of an order in July 1980, the petitioner promptly preferred a revision petition which proved abortive. Hence the petitioner was compelled to approach this Court.

8. I am unable to agree with the contention of the learned Government Pleader that the applicant has tied himself up by his own commitment that he had restricted his claim for prospecting licence to an area of 39.19 acres and that he cannot back out of the same. On the other hand, I am of the opinion that, but for the mistake committed by the department the applicant would not have given such an undertaking. Mistake cannot change the factual position whether bona fide or otherwise and the fact is that 26 acres of lands were available apart from 39.19 acres of land for grant of prospecting licence in favour of the applicant. In all fairness, an undertaking obtained, in the circumstances which are misleading, cannot be regarded as an undertaking obtained validly. I am not saying for a moment that respondents-1 and 2 played fraud on the applicant but this much can be said that the applicant was misguided on account of faulty information supplied to him. The bona fides of the mistake is not in question. What is in question is denial of prospecting licence in respect of available area of 26 acres of land. If 26 acres of lands were available in 1980 for grant to third respondent there is no reason to disbelieve that this area of land was available in 1963 and earlier. In any case there is no material to hold that 26 acres of lands which were available in 1980 were not available earlier.

9. In the light of the above discussion this writ petition deserves to be allowed. Hence the following order:

ORDER

Writ petition is allowed and the rule is made absolute. The impugned order under Annexure-H is quashed and similarly the order of the revising authority under Annexure-G. Respondents-1 and 2 are hereby directed to consider the grant of prospecting licence in favour of the petitioner in respect of 26 acres of land which is the area in question in this writ petition, on merits and in accordance with law within a time limit of 45 days from the date of receipt of a copy of this order. A reasonable opportunity of hearing may be afforded to all the parties concerned while disposing of the application.