
(2010) 09 MAD CK 0027

In the Madras High Court

Case No : Writ Petition No. 31266 of 2005

Nilgiri Ruby Mica Mines

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 27-09-2010

Acts Referred:

Mineral Concession Rules, 1960 — Rule 24A, 6

Citation : (2011) WritLR 173

Hon'ble Judges : K.B.K. Vasuki, J

Bench : Single Bench

Advocate : S. Raghavan, for the Appellant; K. Balakrishnan, AGP, for the Respondent

Judgement

K.B.K. Vasuki, J.—The writ petition is filed to quash the order of the second Respondent in his Proceedings R.C. No. 378/M/2005 dated

19.8.2005 and to direct the Respondents to permit the Petitioner to transport the quarried Mica and Mica Scrap kept at the pit mouth of the

Petitioner's mine in F.S. Nos. 140/B, 141/C, 141/6B (New F.S. Nos. 666, 667/1, 667/2, 89 and 840/2) in Cherangodu Village, Gudalur Taluk,

Nilgiris District.

2. The brief facts relevant for disposal of this writ petition are as follows:

The Petitioner was granted a mining lease for Mica in Cherangode Village, Gudalur Taluk for a period of five years. The lease period expired on

12.11.1985 and the Petitioner applied for renewal of the lease on 25.5.1984. While the application for renewal was under process, the second

Respondent by notices dated 19.2.1997 and 26.2.1997 demanded the Petitioner to pay arrears of local cess and local cess surcharge, which

compelled the Petitioner to approach this Court in W.P. No. 4217 of 1997 to

quash the demand notices of the second Respondent dated 19.2.1997 and 26.2.1997 and also to direct the second Respondent to permit the Petitioner to transport the quarried materials i.e. mica and mica scraps kept at the pitmouth of the Petitioner's mine. It is contended by the learned Counsel for the Petitioner in the earlier writ petition that as his application for renewal of mining lease is not disposed of by the State Government before the date of expiry of the lease, the period of lease would be by virtue of the notification in GSR 724 (E) dated 27.9.1994 amending the provision of Sub-rule 6 of Rule 24-A of Mineral Concession Rule 1960, deemed to have been extended till such time, the State Government passes final order upon his renewal application. Pending writ petition, renewal application was disposed of by the Government on 20.4.1998 and W.P. No. 4217 of 1997 was subsequently disposed of on 12.3.2004 thereby quashing the demand of arrears of Local cess and local cess surcharge and interest thereon. While deciding so, our High court has, in respect of further relief sought for by the Petitioner to permit him to transport the mica waste, observed that it would depend upon the present situation as to whether minerals still remain to be transported and whether there are any further dues other than the Local cess and Local cess surcharge due to the Respondents and directed the Petitioner to send a representation to the Respondents for getting permission to transport the minerals and on receipt of such representation, the second Respondent/the District Collector, Nilgiris is directed to pass appropriate orders within four week , from the date of receipt of that representation. As per the direction of this Court, the Petitioner made his representation dated 1.8.2005 seeking permission for transporting Mica minerals and mica waste and the same was rejected by the second Respondent by order dated 19.8.2005 and the correctness and the validity of such order is now under challenge in this writ petition.

3. It is argued by the learned Counsel for the Petitioner that the impugned order of rejection of his representation for permission to transport mica minerals and mica scrap on the grounds which are not at all applicable and by invoking the forfeiture Clause 6 Part IX, General provision of the Mineral Concession Rule, 1960 is illegal, irregular and without jurisdiction.

4. Per contra, the learned Additional Government Pleader appearing for the

Respondents would try to justify the order mainly on the ground that the application seeking permission for transporting the mica minerals and mica scrap dated 1.8.2005 was made after determination of lease and the Petitioner even after determination of the lease, did not make any demand to remove mined mineral Mica stacked in the pit mouth of the mine and the same hence becomes vested with the Government by virtue of forfeiture clause.

5. Heard the submissions made on both sides and perused the materials available on record.

6. As already referred to, the Petitioner has already approached this Court for different relief at different stage. It is not in dispute that the Petitioner

has applied to remove mined mineral Mica before the expiry of the lease period, which is deemed to have been extended till the application for

renewal is disposed of by the Government. On the date of the application for renewal, the earlier writ petition seeking permission to remove the

mica minerals and mica scrap stacked in the pit mouth of the Petitioner's mine, was pending. While disposing of the writ petition, the High court

granted permission to the Petitioner to make a representation to the Respondents to remove the mica minerals and mica scrap stacked in the pit

mouth of the mine and the appropriate authority was also directed to dispose of such representation within the period of four weeks thereafter.

However, the application made by the Petitioner for the relief stated above was rejected by virtue of the forfeiture clause without considering the

circumstances under which the Petitioner was unable to remove mica minerals and mica scrap and without giving due opportunity through notice

and opportunity of being personally heard, if desired as contemplated under forfeiture Clause 6 in Form K, Part IX, General Provisions "6" of

Mineral Concession Rules, 1960.

7. As rightly pointed out by the learned Counsel for the Petitioner when the mica minerals and mica scrap are stacked in the pit mouth of the mine

for more than six calendar months after the expiration or determination of the said term under the provision contained in Clause 4 of part VIII of

this Schedule, the authority concerned is required to issue notice in writing to the licensee to remove the same within one month and only on the

failure on the part of the licensee to remove the same within the time specified

therein, the forfeiture clause can be invoked by the authority concerned wherein no one month notice at all is issued before invoking forfeiture clause in the instant case. Further, as the failure on the part of the Petitioner to remove the mica minerals and mica scrap stacked in the pit mouth of the mine was only due to pendency of the writ petition for the same relief, the Petitioner cannot be found fault with in not removing the stacked materials in the pit mouth of the mine. Viewing from any angle, the impugned order rejecting the Petitioner's application seeking permission to remove the materials is totally unfair, erroneous, arbitrary, against the law, without jurisdiction and is in violation of the procedure laid down under the relevant provisions of the Act as such, the same cannot be factually and legally sustained. Further, it is nobody's case that the Petitioner is liable to pay any dues to the Government. That being so, the Petitioner has to be necessarily allowed to remove the mica minerals and mica scrap stacked in the pit mouth of the mine.

8. In the result the impugned order of the second Respondent in his proceedings in R.C. No. 378/M/2005 dated 19.8.2005 is hereby quashed and the second Respondent is directed to pass appropriate order granting permission to the Petitioner to transport the quarried Mica mineral and mica scrap kept at the pit mouth of the Petitioner's mine, within four weeks from the date of receipt of copy of this order.

9. The writ petition is accordingly ordered. No costs.