
(1991) 02 KAR CK 0066
In the Karnataka High Court
Case No : W.P. No. 13025/1984

P. Balasubba Setty and Sons

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 20-02-1991

Acts Referred:

Citation : (1991) 2 KarLJ 109

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

Judgement

H.G. Balakrishna, J.-The petitioner, who was granted a mining lease at the first instance for a period of 20 years on 17-9-1953 over an area of 109 acres in Karadikolla village, Sandur Taluk under the Mines and Mineral Development and Regulations Act and Mineral Concession Rules, is now aggrieved because the renewal of mining lease granted to him is only for a duration of 10 years whereas in the neighbouring areas mining leases have been granted to other persons for a period of 20 years consistently. It is also pointed out that in one of the instances the lease has been renewed for a period of 30 years. It is this action which has driven the petitioner to Court with a request for quashing of the order of respondent-1 dated 23-2-1984 communicated as per letter dated 13-3-1984 vide Annexure-F and also for quashing the notification of respondent-2 dated 18-6-1983 vide Annexure-C in so far as it relates to granting renewal for 10 years and for a direction to respondent-2 to consider and grant renewal for 20 years instead of 10 years.

2. Respondent-1 is the Union of India and respondent-3 is the Director of Mines & Geology, Government of Karnataka, Bangalore. The facts are not in dispute because there are no rebuttals through any counter affidavit. It appears that the State Government did recommend renewal for 20 years in favour of the petitioner; but the Central Government granted renewal only for a period of 10 years.

3. The point for consideration is whether discriminatory treatment is meted out to the petitioner in the matter of renewal of mining lease.

4. Facts speak for themselves and the petitioner has been singled out among several persons who have been granted renewal of leases from time to time at least for a period of 20 years if not for a period of 30 years. As asserted by the learned Counsel appearing for the petitioner, there is also an instance wherein lease has been granted for a period of 30 years near about the area. It is no doubt true that as of right the petitioner may not be entitled to claim mining lease or renewal of mining lease for a period of his choice. But it could be at least said that the discretion that is vested in the authority is statutory in character and it ought to be exercised with judicious discretion informed by reasons. Statutory discretion is not intended to be exercised arbitrarily. In the absence of compelling reasons which stand in the way of grant of renewal of mining lease for a period of 20 years instead of 10 years, I do not see the rationale behind the Central Government restricting the renewal to a period of 10 years instead of 20 years despite recommendation made by the State Government. What the petitioner, in fact, is seeking is fair play in action.

5. The learned Counsel appearing for the petitioner also pointed out that when the first renewal was granted to the petitioner, the petitioner lost a period of 3 1/2 years on account of litigation and he did not have the full benefit of the total period of 10 years. The learned Counsel also brought to my notice a circular issued by the Central Government offering guide-lines in the matter of renewal and it reads thus:

"42. Renewal period not to be arbitrarily reduced: Whenever the State Government decide to renew the mining lease and thus concede the necessity of the lessee remaining in possession of the mines the period of the lease permissible under the Act should not be arbitrarily reduced unless the lessee himself asks for renewal for a shorter period. This will ensure that the lessee makes sufficient investment necessary for mechanisation of the mines to work at depths commensurate with the requirements of the planning and development of the mines. (Department of Mines and Metals letter No. 17(18)/64-MII, dated 29-3-1965)"

6. Thus even though the intendment of the Central Government as expressed through its circular is that the discretion has to be exercised rationally, it is seen that the petitioner has not been treated fairly. I am convinced that this is a fit case in which the respondents are under a statutory obligation in the exercise of discretion to consider the case of the petitioner for a grant of renewal of mining lease for a full term of 20 years instead of 10 years.

7. The impugned order passed in revision by respondent-1 is liable to be set aside since the ground on the basis of which the revision has been dismissed is that there is a possibility of the mining being take over for the purpose of public undertaking. This does not stand to reason because there are separate provisions for reservation of any area for State take-over or State control and operation. When in the neighbouring areas such a contingency has not arisen, it is rather strange now it arises only in the case of the petitioner.

8. For the reasons stated above, the writ petition is allowed and the order dated 23-2-1984 passed by respondent-1 in Final Order No. 110 of 1984 in Revision Application No. 2(471)/83-MV communicated as per letter dated 13-3-1984 vide Annexure-F and the notification dated 18-6-1983 issued by Respondent-2 in No. CI 247 MMM 82 vide Annexure-C in so far as it relates to granting renewal for 10 years, are quashed. The respondents are directed to consider the case of the petitioner for grant of renewal for 20 years instead of 10 years and pass appropriate order within sixty days from the date of receipt of a copy of this order. It is made clear that this order does not eliminate the benefit of renewal granted for 10 years, but it only directs that the period should be enlarged to 20 years instead of 10 years.