
(2013) 12 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2019 of 2008

Panna Lal Patel

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 20-12-2013

Acts Referred:

Citation : (2014) 1 CDR 186

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Judgement

Gopal Krishan Vyas, J.—Instant writ petition has been filed by the petitioner to quash the order dt. 28.04.1995 (Annex.-3) passed by the Assistant Mining Engineer, Dungarpur, order dt. 02.01.1996 (Annex.-7) passed by the Deputy Secretary, Mines, Government of Rajasthan, Jaipur rejecting the revision petition only on the ground of delay as well as orders dt. 09.08.2004 (Annex.-13) and 12.04.2006 (Annex.-20) communicated by letter dt. 24.11.2007 rejecting the consideration of the petitioner under Rule 65 may be quashed and set aside. Further, it is prayed that the respondents may be directed to consider the application of the petitioner for grant of lease without being affected by clause 9 of the Marble Policy, 1994 in view of the guidelines laid down by the Directorate dt. 24.10.1994 and, in the alternative, it is prayed that the Deputy Secretary, Mines, Government of Rajasthan, Jaipur may be directed to consider and decide the revision petition on merit after providing opportunity of hearing to the petitioner. As per facts of the case, the petitioner applied for grant of mining lease ML No. 604/91 for the mineral serpentine near village Rohanwara Tehsil and District Dungarpur. Alongwith application, map and other required documents as per the Rajasthan Minor Mineral Concession Rules 1986 were furnished in the office of the Assistant Mining Engineer, Dungarpur on 27.08.1991. The petitioner's application was kept pending for unlimited time, therefore, the petitioner preferred a revision petition against the deemed refusal before the revisional authority by way of filing revision petition No. 717/1992. The revisional authority did not find any valid reason to sit over the application,

therefore, passed an order on 14.10.1992 whereby the deemed refusal was set aside and direction was issued to the Assistant Mining Engineer, Dungarpur to dispose of the application of the petitioner within 100 days from the date of the order on merit.

2. After the judgment, the petitioner deposited demarcation fee on 23.08.1994 and technical staff of the respondent No. 3 conducted demarcation on 25.08.1994 and, thereafter, vide communication dt. 31.08.1994 the respondent Department sent a communication to the District Collector, Dungarpur with a request for revenue NOC. The District Collector issued NOC on 06.02.1995 but the Deputy Conservator of Forest did not issue the NOC, therefore, respondent No. 3 rejected the application filed by the petitioner vide order dt. 28.04.1995 on the ground that the petitioner has failed to produce the NOC and with effect from 06.10.1994 new Marble Policy has come into force according to which pending applications are required to be rejected.

3. In the writ petition, it is stated by the petitioner that the application of the petitioner was not decided within 100 days from 14.10.1992 as ordered by the revisional authority vide order dt. 14.10.1992 and, in the meantime, new Marble Policy 1994 came into force with effect from 6.10.1994 and when notification was issued in exercise of the powers conferred on the State by Rule 65 of the Rules of 1986 the application of the petitioner was rejected while applying Rule 9 of the said policy. The petitioner being aggrieved by order dt. 28.04.1995 preferred revision petition before respondent No. 2 but the respondent No. 2 without going into the merit of the case dismissed the revision petition solely on the ground of limitation vide order dt. 02.01.1996. Being aggrieved by order dt. 02.01.1996, the petitioner preferred review petition before respondent No. 2.

4. In the review petition, the petitioner filed medical certificate for condonation of delay but respondent No. 2 did not decide the review petition inspite of application submitted by the petitioner to decide the review petition.

5. As per contention of the petitioner, number of reminders were submitted before respondent No. 2 to decide the review petition or to apprise the status of the review petition; but, nothing was conveyed inspite of the repeated persuasion and, on 25.10.2002, the revisional authority sent a letter mentioning that the State has decided to hold Camp Court at Jodhpur and Udaipur for early hearing of pending cases and, inspite of making request by the petitioner that his matter may be hear at Jaipur itself, the respondent authority without fixing any date of hearing and without providing opportunity of hearing, by a two-line letter dt. 09.08.2004 informed the petitioner that there is no provision in the rules for review of an order passed in revision petition.

6. As per contention of the petitioner since 1996 the petitioner made his all efforts to get his case heard; but, ultimately, in August 2004 it is inferred by the respondent that there is no provision in the rules to review the order passed in the revision petition. The petitioner stated in the writ petition that the Mining

Department of the State Government while exercising power of relaxation under Rule 65 even for allotment of mining lease granted relaxation to M/s. R.K. Marbles Pvt. Ltd. but, in the case of the petitioner, no relaxation is granted.

7. Contention of the petitioner in the writ petition is that after lapse of more than eight years during which the revision petition was kept pending the petitioner made detailed representation to the respondents narrating all the above facts with a request to do justice by exercising power of relaxation under Rule 65 as has been done in the case of one Sripati Usha Choudhary in whose case order passed by the revisional authority was modified by the State Government. The petitioner approached the authorities of the Mining Department and Ministry of Mines and other authorities but his representations were not decided. The petitioner preferred S.B. Civil Writ Petition No. 3826/2005 before this Court in which the High Court passed an order on 08.07.2005 whereby direction was issued to the Government to decide the representation of the petitioner within two months. In pursuance of that, by order dt. 12.04.2006, the representation of the petitioner was rejected and communicated to the petitioner vide letter dt. 23.11.2007.

8. In para 22 of the writ petition, it is stated by the petitioner that he has come to know after rejection of the claim of the petitioner that now the respondents are going to declare the area free for allotment to other persons and if that is allowed, then, all the efforts made by the petitioner during Last 16 years will go in waste and cause irreparable loss to the petitioner. Therefore, the petitioner has preferred this writ petition to quash all the orders impugned in this writ petition for seeking direction to the respondents to consider the case of the petitioner.

9. Learned counsel for the petitioner vehemently argued that action of the respondents for keeping application of the petitioner pending for long time is totally wrong and pendency of the review petition of the petitioner for near about 8 years was also not justified. The main emphasis of the petitioner is on the ground that there is power left with the Government for granting relaxation under Rule 65, therefore, obviously the State Government was under obligation to consider his case for deciding the application of the petitioner for grant of mining lease as prayed by him in the application filed on 27.08.1991 for ML No. 604/1991.

10. Learned counsel for the petitioner submits that the order of Assistant Mining Engineer, Dungarpur rejecting the application of the petitioner dt. 28.04.1995 (Annex.-3) on two grounds is totally illegal because inspite of the clear direction issued by the revisional authority vide order dt. 14.10.1992 against the deemed refusal the application of the petitioner was to be decided within 100 days but the application was not decided by the Assistant Mining Engineer as ordered by the revisional authority within 100 days and, in the meantime, new Marble Policy came into force with effect from 06.10.1994 and while deciding the application of the petitioner the respondents rejected the application solely on the ground that NOC is not produced by the petitioner as per the policy, therefore, the rejection

of the petitioner's application was wrong but neither the revisional authority nor the reviewing authority considered the petitioner's prayer for setting aside the order dt. 28.04.1995 and to direct the Assistant Mining Engineer to consider the application of the petitioner in accordance with the rules. Therefore, the orders impugned are totally illegal.

11. White challenging the validity of order passed by the revisional authority dt. 02.01.1996, it is submitted that the revisional authority rejected the application of the petitioner solely on the ground of delay observing that impugned order was passed on 28.04.1995 whereas revision has been filed on 16.10.1995 and there is no sufficient ground on record to condone the delay. Learned counsel for the petitioner submits that the above order was passed by the revisional authority in absence of the petitioner or petitioner's counsel, therefore, a review petition was filed by the petitioner before the revisional authority on 19.02.1996 in which it is categorically stated by the petitioner that the revisional authority was under obligation to inform the petitioner at the time of filing revision petition that revision petition has been filed after expiry of period of limitation so as to grant an opportunity to the petitioner to file an application for condonation of delay with cogent evidence but it has not been done, therefore, all the orders impugned deserve to be quashed.

12. Per contra, learned Government Counsel Mr. R.K. Soni as well as counsel for respondent No. 4 Srichand Jain, Senior Advocate Mr. M.S. Singhvi vehemently argued that the petitioner is not only guilty of misleading this Court but also earlier obtained an order on 25.03.2008 that if the respondents are going to decide mining leases the application of the petitioner may also be considered. Against the said order, D.B. Civil Special Appeal (Writ) No. 4037/2009 (DRJ) was filed by Srichand Jain, in which, the Division Bench of this Court set aside the order dt. 25.03.2008 vide order dt. 08.12.2010 and disposed of the special appeal with request to the learned Single Judge to hear and decide the matter afresh on merit after hearing the appellant and giving an opportunity to file reply also. Therefore, in this case, it is obvious from the facts that the petitioner has not only misled this Court but filed review petition against the order of the revisional authority dt. 02.01.1996 passed in revision No. 171/1992. In the review petition, it is specifically pleaded by the petitioner that due to mistake application for condonation of delay was not filed and, if it is found by the Court that revision petition is time-barred, then, it was the duty of the Court to inform the petitioner to argue on the question of limitation also or to give an opportunity to file documentary evidence for condonation of delay but without providing opportunity to file documents for condonation of delay the revision petition has been wrongly rejected on the ground of delay. The respondent authority specifically informed the petitioner that there is no provision of review against the order of revision, therefore, it cannot be said that any illegality was committed by the revisional authority to dismiss the revision petition filed by the petitioner after long delay. Learned counsel for the respondent Department further argued that there is no force in the contention of the petitioner that his

revision petition and review petition has been decided illegally by the respondents; more so, it is a case of misleading not only the respondent authorities but this Court also, therefore, this writ petition may be dismissed.

13. It is also pointed out by the respondents that even facts mentioned in the review petition were also totally wrong because no application for condonation of delay was filed along with the revision petition. Learned counsel for the respondents submit that there was no illegality in the order impugned dt. 28.04.1995, therefore, the instant writ petition may be dismissed.

14. With regard to non-applicability of the Marble Policy 1994 it is submitted that the day on which the application of the petitioner was decided by the Assistant Mining Engineer, Dungarpur the notification of New Marble Policy 1994 dt. 06.10.1994 was in existence, so also, the petitioner has failed to file NOC from the Forest Department, therefore, this writ petition may be dismissed.

15. After hearing learned counsel for the parties, I have considered the rival submissions made by both the parties.

16. From the facts, it emerges that the petitioner is claiming his right for allotment in pursuance of an application filed by him on 27.08.1991 for ML No. 604/91 situated near village Rohanwara Tehsil & District Dungarpur. Admittedly, the application of the petitioner was not decided for some time and the petitioner preferred a revision petition before the revisional authority against deemed rejection of the application and, admittedly, the revisional authority passed an order on 14.10.1992 to decide the application of the petitioner and, in pursuance of that, the Assistant Mining Engineer, Dungarpur decided the application of the petitioner vide order dt. 28.04.1995 in which following reasons are mentioned :

17. Against the said order, undisputedly the petitioner preferred revision petition before the Deputy Secretary, Mines Department, Government of Rajasthan, Jaipur which is evident from Annex. 6 placed on record. I have perused the document Annex.-6 which is revision petition filed under Rule 47 of the Rules in prescribed proforma along with grounds of revision. In para 8 of the form of revision, following information was to be given by the petitioner which reads as under:--

8. Whether the revision application has been filed within 3 months of the order passed by the Competent Authority.

9. If not, the reasons for not presenting it within the prescribed limit as provided for in proviso to sub-rule 1 of Rule 47 of the Rajasthan M.M.C.R. 1986.

meaning thereby, in the prescribed form itself, it was specifically mentioned that whether the revision application has been filed within three months of the order passed by the competent authority and petitioner gave reply . It is strange that the petitioner himself gave reply to the para 8 of the form of revision that he has filed revision within three months but, in the review application, following ground is taken by the petitioner to review the order, which reads as under:--

18. In support of the aforesaid review petition (Annex.-8), an affidavit was filed by petitioner Panna Lal which is also on record along with the review petition. After perusing the aforesaid assertion made by the petitioner, I am of the firm view that totally wrong assertions were made by the petitioner to review the order passed by the revisional authority dt. 02.01.1996. Therefore, it is a case in which the petitioner has not only persuaded this Court to pass an order on the basis of review application but he is also guilty of filing review petition on false grounds because in the form of revision application specific information was sought for the petitioner whether he has filed the revision petition within three months of the order passed by the competent authority and petitioner replied "FT" Therefore, there is no question of saying that no opportunity was given by the revisional authority to furnish grounds and reasons for condonation of delay.

19. It appears from the facts that the petitioner has not only mentioned wrong facts in the review petition but also misled this Court that his application is pending so as to obtain order from this Court on 25.03. 2008 which was subsequently quashed by the Division Bench in D.B. Civil Special Appeal (W) No. 4037/2009 vide order dt. 08.12.2010 and disposed of the special appeal with request to the learned Single Judge to hear and decide the matter afresh on merit.

20. In view of above, at this stage, in the year 2013, no case is made out for quashing order dt. 28.04.1995 passed by the Assistant Mining Engineer, Dungarpur and to quash order dt. 02.01.1996 passed by the revisional authority.

Consequently, this writ petition is hereby dismissed,

S.B. Civil Writ Petition No. 3726/2009:

In view of the dismissal of S.B. Civil Writ Petition No. 2019/2008 and upon consideration of the fact that the orders impugned in this writ petition dt. 16.05.2008 (Annex.-8), 31.05.2008 (Annex.-9), 16.06.2008 (Annex.-12) and 24.07.2008 (Annex.-14) were issued in pursuance of earlier order dt. 25.03.2008 passed in the aforesaid writ petition and that order was quashed by the Division Bench and the above writ petition has been dismissed, therefore, S.B. Civil Writ Petition No. 3726/2009 is hereby allowed. All the above impugned orders are hereby quashed and set aside.