

(2014) 12 AHC CK 0195
In the Allahabad High Court
Case No : Misc. Bench No. 12563 of 2014

Pranav Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-12-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 2 Rule II — Constitution of India, 1950 - Article 226

Citation : (2015) 2 ALJ 349

Hon'ble Judges : D.Y. Chandrachud, J; Krishna Murari, J.

Bench : Division Bench

Advocate : Uttam Kumar Pathak, for the Appellant

Final Decision : Dismissed

Judgement

1. We have heard learned counsel for the petitioner and learned Standing Counsel for the State respondents. Facts, in brief, necessary for decision on this writ petition are as under:

The petitioner was granted a short term mining permit dated 20 October, 2008 under Rule 52 of the U.P. Minor Mineral (Concession) Rules, 1963 (in short the "Rules 1963") to excavate 95000 Cubic meter sand within three months. The term of the permit further provided that the period shall come to an end on lifting of specified quantify of sand or on expiry of three months whichever is earlier. It appears that the petitioner, without putting pillars for demarcation of the area, started excavation work. An inspection was carried out by an inspection team constituted by the Director of Mining, which submitted a report dated 18 November, 2008 stating that the petitioner started the excavation without putting pillars to demarcate the boundary and on measurement, it was found that he was carrying excavation work beyond the allotted area, which was in violation of the provisions of the Rules 1963 and a punishable offence under Rule 21 of the Mines & Minerals (Regulation and Development) Act, 1957. Vide order dated 26 November, 2008 the Director (Geology & Mining) required the District Magistrate

to stop the mining operation. The District Magistrate vide order 28 November, 2008 directed the petitioner to stop the excavation.

2. The order dated 28 November, 2008 was challenged by the petitioner by filing writ petition No. 11195 (MB) of 2008 wherein following order was passed on 15 December, 2008:

"Heard Sri D.K. Singh, learned counsel for the petitioner and Sri N.C. Mehrotra, learned Additional Chief Standing Counsel.

It has been submitted by the petitioner's counsel that mining license/permit was granted to the petitioner for a period of three months w.e.f. 20th October, 2008. The petitioner deposited necessary fees and on receipt of complaint, area was demarcated by the Technical Assistant, Geology and Mines, Regional Office, Faizabad and report was submitted. A copy of the report has been annexed as Annexure No. 4 to the writ petition. It has been submitted by the petitioner's counsel that by the impugned order, the petitioner was stopped for mining work from 28th November, 2008 without serving any notice.

Sri. N.C. Mehrotra, learned Additional Chief Standing Counsel submits that the mining work has been stopped only with intention to demarcate the area for which the petitioner has been granted mining permit after serving notice. Learned counsel for the respondents also relied upon the impugned order dated 28th November, 2008.

It has been submitted by Sri N.C. Mehrotra that within two or three days, demarcation shall be done and the mining work shall be restored.

List/put up on 18.12.2008. It is expected that the respondents shall restore the mining work and complete the demarcation by next date."

3. In pursuance of the aforesaid order, fresh demarcation work was carried out and the District Magistrate vide order dated 17 December, 2008 permitted the petitioner to resume the mining operation.

4. Writ petition was again taken up on 18 December, 2008 when following order was passed:

"Learned Standing Counsel prays for and is granted two weeks" time to file counter-affidavit. The petitioner may file rejoinder affidavit within a week thereafter.

List immediately thereafter.

In the meantime, the respondents shall restore the mining contract of the petitioner in terms of the agreement dated 20.10.2008, containing Annexure No. 4 to the writ petition."

5. Writ petition was disposed of on 12 January, 2009 by passing the following orders:

"By the impugned order, the right to mining work was stopped on the ground that the certain demarcation was initiated by the respondents. On 15.12.2008, a statement was made by the respondents that the demarcation shall be done within two or three days and the mining work shall be restored. Now after due demarcation, the mining work has been restored.

Learned counsel for the petitioner submits that the petitioner was prevented to the mining work for twenty days. It is so, the respondents shall consider the extension of time during which the mining work was stopped in view of the law settled by the court.

Subject to above, the writ petition is disposed of finally.

For any other grievance, it shall be open to the petitioner to approach the appropriate authority.

12.01.2009

w.p. No. 11195 (M/B)/2008

Certified copy of this order shall be supplied to the learned counsel for the petitioner on payment of requisite charges within three days."

6. The petitioner thereafter, made a representation dated 16 January, 2009 to the District Magistrate for extension of period of 20 days during which he was prevented from carrying out the excavation. A perusal of the representation, which has been filed as An-nexure-11 to the writ petition, goes to show that grievance was also raised in respect of the notice dated 26 November, 2008 which required the petitioner to show cause why a sum of Rs 985320.00 be not recovered from him for carrying out illegal excavation. Another representation dated 17 January, 2009 was moved to the Director (Geology & Mining) to withdraw the notice for recovery and to permit excavation for the period of twenty days during which the mining operation was stopped.

7. The District Magistrate vide order dated 19 January, 2009 rejected the representation for extension of time on the ground that the period of three months has already expired. The representation with respect to withdrawal of the notice dated 26 November, 2008 was also rejected. The District Magistrate returned a finding that a map and the report that the petitioner was carrying out illegal excavation was provided to him along with the show cause notice but no reply has been given in that regard.

8. Aggrieved by the order dated 19 January, 2009, the petitioner filed another writ petition No. 1300 (M/B) of 2009 which was dismissed on 16 November, 2009 by passing the following orders:

"Heard Sri D.K. Singh, learned counsel for the petitioner and Sri N.C. Mehrotra, learned Additional Chief Standing Counsel.

By means of the instant writ petition, the petitioner claims following relief"s:

"i) issue writ, order or direction in the nature of certiorari quashing the impugned order dated 19/01/2009 passed by opposite party No. 3 contained in Annexure No. 1 to the present writ petition with all consequential benefits.

ii) issue writ, order or direction in the nature certiorari quashing the recovery notice dated 26/11/2008 issued by District Magistrate, Barabanki contained as Annexure No. 14 to the present writ petition with all consequential benefits.

iii) issue a writ, order or direction in the nature of mandamus commanding the opposite parties to extend the period of mining work during which mining work was stopped under the order of opposite party No. 3 dated 28/11/2008 till its restoration with all consequential benefits, Alternatively.

Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to refund an amount of Rs. 12,01,900/- to the petitioner along with penal interest @ 24% per annum.

iv) issue any other suitable writ, order or direction, which this Hon''ble Court deems fit and proper under the facts and circumstances of the case may kindly also be passed in favour of the petitioner.

v) Cost of the writ petition may also be awarded to the petitioner."

Brief facts of the case are that petitioner was granted mining permit for a period of three months for excavation of sand of 95000 cubic meters from village Karmullapur, Bhitauli, Khand-2, district Barabanki after depositing the necessary royalty and other requisite documents. Subsequently, a complaint was lodged. On receipt of complaint, an order was passed for demarcation of the area in question. The said order was passed in compliance of the order dated 26.11.2008 by the Director, Geology and Mines, Uttar Pradesh, Lucknow. The petitioner being aggrieved by the aforesaid order dated 26.11.2008, preferred a writ petition, which was numbered as writ petition No. 11195 (MB) of 2008, before this Court. The said writ petition was entertained by this Court and initially, an interim order was passed but subsequently, the said writ petition was disposed of with a direction that the respondents shall consider the extension of time during which the mining work was stopped in view of the law settled by the Court. However, it shall be open to the petitioner to approach the appropriate authority. In compliance thereof, the petitioner has filed a representation, which was rejected by means of order dated 19.1.2009, being impugned in this writ petition.

A counter-affidavit has been filed, wherein it has been stated that relief Nos. (ii) and (iii) of writ petition No. 11195 (MB) of 2008, which has been disposed of by the order dated 12.1.2009 and relief Nos. (ii) and (iii) of the present writ petition pertains to the same cause of action and are identical in nature and as such, in view of the Order II, Rule 2 of the Code of Civil Procedure as well as Chapter XXII, Rule 7 of Allahabad High Court Rules, no second writ petition for the same cause of action and on the same fact is maintainable insofar as relief claimed and

not granted amounts to refusal. Further, it has been stated that petitioner has got equally efficacious alternative remedy of filing an appeal or revision as provided under U.P. Minor Mineral (Concession) Rules, 1963, in case he is aggrieved by the order dated 19.1.2009, impugned in this writ petition.

It is not being disputed that the petitioner being restrained from excavating sand, has preferred a writ petition before this Court, which was numbered as writ petition No. 11195 (MB) of 2008 and the same was disposed of by the order dated 12.1.2009. It is only in compliance thereof the petitioner has moved an application for extension of time for the period of which mining work was stopped in pursuance to the order dated 26.11.2008 passed by the opposite party No. 2 and the consequential order dated 28.11.2008. This Court while disposing of the said writ petition has given liberty to the petitioner for raising his grievances before the appropriate authority and had not granted the relief's as prayed thereof in the said petition and as such, relief claimed and not granted amounts to refusal for quashing the orders dated 26.11.2008 and the consequential orders. Thus, for claiming the identical relief for quashing in the second writ petition is hit by the principle enunciated under Order II, Rule of the Code of Civil Procedure.

At this stage, learned counsel for the petitioner submits that he does not want to press the relief Nos. 2 and 3 of the present writ petition, to which learned Additional Chief Standing Counsel submits that for assailing the orders passed on the representation the petitioner has got equally efficacious alternative remedy by filing an appeal or revision.

In view of the above, the writ petition is dismissed on the ground of alternative remedy."

9. In pursuance of the aforesaid order, the petitioner filed a revision before the State Government. The revisional authority vide order dated 16 May, 2011 set aside the order dated 19 January, 2009 passed by the District Magistrate but left it open to the District Magistrate to get a fresh inquiry conducted and if it was found that the petitioner had carried out illegal excavation, suitable action may be taken against him. The order further records that in pursuance of the order dated 12 January, 2009 passed by this Court, the District Magistrate may permit the petitioner to carry out excavation for the period he was stopped from mining operation.

10. Vide order dated 5 July, 2011, the Additional District Magistrate/Prescribed Authority (Minerals) passed an order permitting the petitioner to carry excavation for twenty days. Despite, the mining operation could not be resumed by the petitioner on account of various orders passed by the Hon'ble Apex Court as well as this Court requiring the permit holder/lesser to obtain environmental clearance. Accordingly, a letter dated 6 July, 2011 was issued to the petitioner to obtain environmental clearance. Environmental clearance was obtained on 11 October, 2013. Thereafter, the District Magistrate referred the matter of the

petitioner to the State Government in view of the G.O. dated 9 September, 2013 which provided that in such cases where environmental clearance has been granted after 1 March, 2013 may be referred to the State Government.

11. The State Government vide order dated 27 June, 2014 rejected the claim of the petitioner for extension of period of twenty days on the ground that the mining permit is granted for lifting of specified quantify of sand for a fixed period and the same cannot be extended or renewed.

12. Learned counsel for the petitioner vehemently contended that since the revisional authority allowed the revision filed by the petitioner vide order dated 16 May, 2011 and directed the District Magistrate to permit mining operation for a period of twenty days but the mining operation could not be resumed because of the requirement of environmental clearance and the State Government had no jurisdiction to subsequently refuse mining operation for the period mining work was stopped, after the petitioner obtained the clearance.

13. Apart from the question that the petitioner was found carrying out illegal excavation of sand beyond the area allotted to him without putting pillars for demarcation of the area and thus is not entitled for interference by this Court in exercise of its equitable jurisdiction under Article 226 of the Constitution, another question which arises for adjudication is whether a short term permit granted for a fixed period and for lifting of specified quantity of sand is liable to be extended further.

14. For considering this question, it would be relevant to quote the scheme of Rules, 1963.

"U.P. Minor Minerals (Concession) Rules, 1963 defines the "Mining Permit" under Rule 2 sub-rule (6) which is quoted below:

"2(6). "Mining permit" means a permit granted under these rules to extract a specified quantity of minor mineral within the period stipulated in the permit."

Rules, 1963 contemplates Grant of Mining Lease in Chapter II, Auction Lease in Chapter IV and Mining Permit in Chapter VI.

Chapter II, which relates to Grant of Mining Lease contains Rule 5, which provides application for grant or renewal of mining lease.

Rule 5, thus specifically contemplates renewal of mining lease which is quoted below: "5. Application for grant or renewal of mining lease.-- (1) An application Form MM-1 for grant of mining lease or in Form MM-1 (a) for renewal there shall be addressed to the State Government.

(2) The application referred to in sub-rule (1) shall be submitted in quadruplicate to the District Officer or to the officer authorised in this behalf by the State Government. Such Officer shall endorse the receipt of the application on all the four copies entering the place, time and date of receipt. One copy shall be returned immediately to the person presenting the application.

(3) The application referred to in sub-rule (1) shall be entered in a register of mining application in Form MM-2."

The word "Mining Permit" as defined above, contains two stipulations. Firstly, mining permit is a grant to extract a specified quantity of minor mineral and secondly, within the period stipulated in the permit thus, the permit is co-related to extraction of specified quantity and a period stipulated in the permit. Both the above are essential ingredients of mining permit. Chapter VI deals with the mining permit. Rule 51 provides that no mining permit shall be granted to a person who is not a Indian National or for a period of more than six months. Rule 51 thus stipulates a maximum period of six months for a grant of mining permits.

Rule 52 stipulates making an application for granting mining permit in Form MM-8.

Rule 53 provides an officer authorised to grant permit may, after making such enquiries as may be deemed necessary, refuse to grant the permit or by an order grant for whole or a part of the area applied for and subject to such terms and conditions as the said officer may consider necessary.

Rule 54 thereafter contemplates deposit of royalty and Rule 55 provides for issuing of mining permit.

Rules 55 and 56 which are relevant are quoted below:

"55. Issue of mining permit.--A mining permit in Form MM-10 with such additional terms and conditions subject to which the order is made under Rule 53 shall be issued to the applicant within fifteen days of the deposit of the royalty in accordance with sub-rule (1) of Rule 54 and the permit so issued shall be valid until the date of expiry of the period specified in the permit or till such date when the permitted quantity of the mineral is removed whichever is earlier.

56. Register of mining permit--A register of all application for mining permits, which details of permits issued, shall be maintained in Form MM-9, in the office of the District Officer or the officer authorised to grant mining permits."

15. The scheme for grant of mining permit contained in Chapter VI of Rules, 1963 quoted hereinabove does not indicate any concept of renewal of mining permit or for extension of any time. Mining permit is a permission granted to excavate specified quantity of minerals within a stipulated period. The provisions of the Rules is very clear that a mining permit cannot be renewed or extended. Another question, which crops up, is the impact of the order dated 12 January, 2009 passed by the Division Bench of this Court in writ petition No. 11195 (MB) of 2008 which, according to the petitioner, directed the authorities to extend the time during which the mining work was stopped and the order dated 16 November, 2009 passed on writ petition No. 1300 (MB) of 2009 wherein the petitioner gave up some of his prayers and for the remaining relief, the petition was dismissed on the ground of alternative remedy.

16. A perusal of the order dated 12 January, 2009 passed on writ petition No. 11195 of 2008 goes to show that only direction issued by this Court was to consider extension of time during which mining work was stopped in view of the law settled by the Court. It is thus clear that there was no direction to extend the mining period and the direction was to consider extension of time. Whenever a direction is issued to an authority to consider the claim, it is to be done in accordance with law and not de hors the provisions of law. The representation made by the petitioner seeking extension of twenty days time was rejected, by the District Magistrate by order dated 19 January, 2009. By the same order, challenge made by the petitioner to the notice issued to him for carrying out illegal excavation was also rejected. Subsequent writ petition No. 1300 (MB) of 2009 filed by the petitioner challenging the recovery notice dated 26 November, 2008 for illegal excavation of mining and/or to refund of Rs. 12,01,900.00/- along with penal interest was withdrawn by him and the challenge to the order dated 19 January, 2009 was dismissed on the ground of alternative remedy. Petitioner again filed a revision before the before the State Government. The issue in respect of illegal mining and the recovery in pursuance thereof stood finally settled after the petitioner withdrew the relief's claimed by him in this regard in writ petition No. 1300 (MB) of 2009.

17. After the decision on writ petition No. 1300 (MB) of 2009, it was not at all open to the revisional authority to consider any claim of the petitioner in this regard. The only issue open in the revision was in respect of extension of a period of twenty days during which the petitioner alleges he could not do the mining operation. Revisional authority without considering this aspect of the matter that once the relief prayed before this Court in respect of the recovery notice issued for illegal mining was withdrawn, the said issue stood foreclosed, illegally and without jurisdiction entered into the said aspect of the matter and set aside the entire order of the District Magistrate dated 19 January, 2009. A perusal of the order dated 19 January, 2009 further goes to show that with regard to the issue of extension of twenty days time, the revisional authority, without adverting to the provisions in this regard contained in Rules, 1963, merely directed the District Magistrate to permit mining operation for the period it was stopped in pursuance of the direction of this Court dated 12 January, 2009. As already discussed above, there was no blanket direction by this Court to extend the period and the order only required the authority to consider the claim but the revisional authority without considering the claim, misreading the order, treated it to be a direction. The order passed by the revising authority dated 16 May, 2011, which is basis of the claim of the petitioner in this petition, is bad on this count as well.

18. In view of the facts and the discussions made hereinabove, we are of the considered opinion that mining permit granted under Chapter VI of the Rules, 1963 is not liable to be extended or renewed and thus the petitioner cannot be extended the benefit of extension of period as the mining permit was granted for a fixed period for excavating specified quantity of mineral.

19. The view taken by us also finds support from another Division Bench judgment in the case of Taranjeet Singh Vs. State of U.P. and Others, .

20. Apart from above, even if the petitioner could not lift the specified quantity of mineral on account of operation being stopped for twenty days, since he was found engaged in illegal mining, this disentitles him from invoking the extraordinary jurisdiction of the Court conferred by Article 226 of the Constitution. The petition accordingly fails and stands dismissed.