
(1977) 09 RAJ CK 0018
In the Rajasthan High Court
Case No : Civil Writ Petition No. 144 of 1977

Prem Lata Gupta

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-09-1977

Acts Referred:

Constitution of India, 1950 — Article 136, 19, 226, 299, 31
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 14, 30, 4

Citation : (1977) WLN 413

Hon'ble Judges : M.L. Jain, J

Bench : Single Bench

Judgement

M.L. Jain, J.—The facts of this writ petition are that M/s Bikaner Clays & Chemicals, Bikaner respondent No 3 made an application on 8-1-1970 for mining lease for red ochre and fire clay in an area of 412 hectares near village Indokabala, District Bikaner. Since in the same land, one Shri A M Bengani had applied on 14-8-68 for mining lease for Fuller's earth in an area of 412 79 hectares, the Assistant Mining Officer, Bikaner, by his letter dated 30.1.70 informed the respondent No 3 that the area applied for by them conflicts with some sanctioned and applied for area and as such the fire area is only 342-35 hectares. He enclosed a report in 5 copies for signatures of the respondent No 3 and return within 3 days. One more letter was issued by the Assistant Mining Engineer Bikaner on 19-11-1970 saying that as a matter of fact, the free area was only 252 52 acres. In reply to this letter, the respondent No 3 wrote to the Assistant Mining Officer Bikaner that they had accepted and desisted the description requested 242 35 hectares by their letter dated as early as 22 1970 and they were not prepared to reduce the area to 252 52 acres, that there was conflict of some earlier application. Some minor mineral by Bengani was not admitted by them and the entire area was claimed free for exploration of the major minerals. Thereafter it appears, the State Government did not pass any order and making out a case of deemed refusal under Rule 54 of the Mineral

Concession Rules, 1960, respondent No 3 filed an application on 16-12-1971 with the Central Government. The Central Government by its order dated 24-12-1971 directed the State Government to dispose of the application of respondent No 3 dated 8-1-1970 for mining lease over 342-35 hectares. The State Government thereupon, by its order dated 15-1-1972 granted to the respondent No 3 a mining lease over an area of 252-52 hectares. Later on, it was discovered that the area was to be mentioned in acres and not in hectares. The State Government therefore, issued a corrigendum on 11-8-1972 altering 252 52 hectare to 252.52 acres equal to 102-26 hectares.

2. The lease deed was also executed and signed by the respondent No. 3 but it remained to be signed on behalf of the State Government.

3. Meanwhile, the respondent No.3 felt aggrieved by the reduction of the area and filed another revision petition before the Central Government on 31-1-1972. Upon it, the State Government sent their comments on 6-7-1972. In these comments, the State Government maintained that only an area of 252-52 hectares (later altered to acres) was available as Bengani had already applied for lease for Fuller's earth as early as 14-8-1968 and had a preferential claim over the respondents. Earlier in a report dated 12-4-1972 sent by the Joint Director which also appears to have been placed before the Central Government, the Joint Director stated that most of the major minerals found in the area applied for are ochre and clays and in that case the choice falls for Fuller's earth which is a costly mineral paying higher dead rent and royalty to the State Government.

4. The State Government on 6-3-1973 granted lease for minor mineral over an area of 311.9 hectares to Bengani. But since Bengani failed to execute the deed of lease, the grant in his favour was revoked on 5-6-1973 and the area sanctioned in his favour was declared free for fresh grant, while the revision of the respondent No. 3 was still pending decision before the Central Government.

5. Out of the area so released, the petitioner applied for grant of mining lease for fire clay for an area of 309.7 hectares on 19-4-1973. On 1-12-1973 however, the State Government directed to defer to grant any concession (lease) until the decision of the aforesaid revision. The petitioner represented to the State Government that the respondents were already holding leases in excess of 10 square Kilometres a ceiling fixed u/s 6 of the Mines and Minerals (Regulation & Development) Act, 1962, as amended on 13-9-72, and therefore, the decision of the revision should not be awaited as even a decision favourable to the respondents will not affect their applications. The State Government thereupon lifted the self imposed embargo on 21-2-74 and decided to proceed to grant lease to other applicant including the petitioner. It appears that the State Government then sanctioned a lease in favour of the petitioner on 30-7-74 for fire clay etc. in an area of 256.27 hectares. The petitioner executed the lease deed on 12-8-1974 and the same was registered on 9-9-1974. In this lease deed, a condition was however, inserted that the lease shall be subject to the

condition that in case the Bikaner Clays won their revision, the petitioner will surrender the area to the State Government immediately without claiming any compensation.

6. The petitioner made an application on 30-12-75 to the Central Government that in view of the aforesaid condition, she should be added as a party to the revision proceedings. The Central Government by its order 15-11-76 rejected the request of the petitioner but agreed to hear her. The petitioner submitted her reply on 13-1-1977.

7. It appears that 4 more revisions were pending before the Central Government. One was by Shri Jaichandlal Daga who had applied on 5-9-72 for grant of 206.47 hectares, but he was granted only 147.81 hectares on 7-4-73. Out of the area applied for by him, an area of 30.70 hectares was instead granted to Premlata the present petitioner. Two were by M/s Raw Products, Plasters and Fertilizers who appear to have made two applications on 8-1-73 each for an area of 226.62 hectares and were granted on 1-6-74 only an area of 72.16 hectares. The fourth revision was by M/s Shushil Kumar Bhanwar Singh who applied on 25-6-73 for an area of 640 hectares. They were refused a grant but their case was that an area of 80.026 hectares did not conflict with the area already granted and the State Government could grant them that much area at least. The respondent No. 3 in their counter comments dated 12-1-71, prayed that sanction in favour of the petitioner should be set aside.

8. The Central Government by its common order dated April 27, 1977, disposed of all the five revisions including that of the respondent No. 3. The Central Government rejected the revision of Daga and one of the two revisions of the Raw Products and accepted the revision of the respondents and Sushil Kumar and one revision of the Raw Products. It cancelled the grant dated 30th July, 1974 in favour of the petitioner and also the grant dated 15th February, 1972 in favour of the respondent No. 3 and gave inter alia the following directions:

(a) The State Government shall duly observe the rule of priority i.e. "first come, first serve" in deciding the applications. It may however, be kept in view that the priority of applications within the meaning of Section 11 of the Mines and Minerals (Regulation & Development) Act, 1957, relates to inter se priority between the applicant for major mineral and any prior application for a minor mineral does not preclude or affect consideration of subsequent applications for a major mineral.

(b) The area which had been initially granted in favour of Bengani should be treated as a free and available while deciding the aforesaid applications afresh.

(c) In case Bikaner Clays & Chemicals are on a point of fact found to be in possession of an area of 10 square Kilometres and more on the date the fresh orders are made by the State Government, it should be open to the State Government to deny grant of mining lease to this revision petitioner or to the extent to which by virtue of the order to be made, they may exceed the ceiling

fixed by Section 6 of the Act.

9. The petitioner aggrieved by the cancellation of her grant, has filed this writ petition and has prayed that the order of the Central Government dated 27-4-1977 should be quashed in so far as it has set aside the grant of lease in her favour made on 30-7-74. She also prayed that it be declared that the orders of the State Government dated 15-1-1972 and 30-7-74 are valid. The respondent No. 3, and even the State Government are now opposing this petition.

10. Mr. Dhebar appearing on behalf of the respondent No. 3 raised three preliminary objections. The first one is that under the Constitution, Article 226, as it stands amended, no petition can be entertained, if any other remedy for redress of any injury is provided for by or under any other law for the time being in force. He maintained that this petition can not be entertained as the petitioner has an alternate remedy by way of special appeal under Article 136 of the Constitution. This argument is wholly misconceived. Whenever any statute mentions "any other law", what it means is a reference to a law other than the one in which those words occur. The obvious meaning therefore, of "any other law" occurring in Clause (3) of Article 226 of the Constitution will be "any law other than the Constitution." That the words "any other law" do not refer to a remedy under any other article of the Constitution can also be supported by the decision in *Bachan Singh and Others Vs. Gauri Shankar Agarwal and Others*, that law excludes the Constitutional law. More over, if the party were right now to approach the Supreme Court by way of special appeal, then, it shall later on be precluded from invoking the jurisdiction of the High Court under Article 226. Still more, the present rate is covered by Sub-clause (a) of the Clause (1) of Articles 226 also because what in effect the petitioner seeks is enforcement of her fundamental right to hold property i.e. the lease, thus attracting Articles 19 and 31. I, therefore, reject this contention.

11. The second contention of Mr. Dhebar is that the order of the Central Government is amenable to writ jurisdiction only if it suffers from an error of law apparent on the face of the record. The error should be self-evident, that is, what is called a spiking error and that too if law and not of fact. There is no error of law in the impugned order.

12. Now, there is no error of jurisdiction committed by the Central Government. It has also not violated the principles of natural justice as it had given a hearing to the revisioner and also to the petitioner even without making her a party to the revisional proceedings. But it has certainly committed errors of law which are quite apparent and require no effort or argument for their being discovered. The grant in favour of Premlata was set aside by the Tribunal by its impugned order, firstly, on the ground that the Tribunal felt it somewhat difficult to appreciate the propriety of granting a lease in her favour by the State government, when the whole matter was sub-judice in a superior Tribunal. Another ground advanced was that though the Tribunal was required to take into consideration the charge in the law, it had not been established beyond doubt that the revisioner

petitioner was in possession of an area in excess of 10 sq Kilometres. It has all along leered "the contortion of the State Government and the petitioner that the respondent No. 3 was in excess of ceiling area both on 5-6-73 when the land fell vacant and 30-7-74 when a sanction was issued in her favour. But the Tribunal did not deem it appropriate to go into the disputed question of fact although the respondent No. 3, as stated by it, had produced material to show that they were not hit by the ceiling laid down by Section 6 of the Act. The third ground given is that Premiata was not entitled to a grant in the area which fell vacant on account of Bengani's default when other prior applicants were also in the field.

13. In all these grounds the Tribunal had obviously committed an error of law. As regards the matter of priorities available to Jaichand Lai Daga and M/s Raw Products. I shall deal with it in detail a little later but there is nothing in the Act or the Rules that the State Government, unless stayed, was precluded from making a grant while revisions in respect of the overlapped areas were pending. The State Government had come to a conclusion that on 30-7-74 and on 5-6-73 when the area fell vacant, the respondents were in excess of 10 sq. Kilometers. It was the duty of the Tribunal to have settled this question when all the facts were before it. Section 30 of the Act confers wide powers on the Tribunal to revise any order made by the State Government and it could and should have decided the disputed question of fact also. It is difficult to understand why the Tribunal felt hamstrung that while dealing with a revision, it was not appropriate for it to go into a disputed question of fact. The Tribunal was not exercising a writ jurisdiction and it was its clear duty to decide the disputed question of fact as well. If it will not decide such questions, who else will? The Tribunal was therefore obviously entertaining wrong notions of the law and was therefore in error of law. In this view of the matter, the second objection of Shri Dhebar also deserves to be thrown out.

14. Shri Dhebar then made an attempt, of course a feeble one, that the Central Government had simply remanded the matter and as a matter of fact has decided nothing so as to call for interference by this Court in writ jurisdiction. This attempt is equally devoid of merit. Even remand order is a decision and can suffer from an error of law, if there is one, calling for correction.

15. The third preliminary objection of Mr. Dhebar is that M/s Raw Products and other revision petitioners were necessary parties to this writ petition. An application was also made before me on behalf of M/s Raw Products on 27-7-77 seeking their addition as a party to this petition. It was however stated on behalf of the petitioner that she is not aggrieved by any order made in favour of the other parties because as shown by the plan attached to the petition which is not disputed by the respondents in their reply, there is no conflict of area between the petitioners and other two prior applicants, namely; Jaichand Lal Daga and M/s Raw Products. The revision of Daga had been rejected. Sushilkumar was apparently an applicant subsequent to her. The contest is only between the respondent No. 3 and the petitioner. I, therefore, do not find any force in this

argument which is hereby rejected along with the application of the Raw Products dated 27-7-77. None of the aforesaid parties are therefore necessary parties.

16. Lastly, it was urged that there are disputed questions of fact and this Court cannot go into such questions and therefore, should not interfere with the order of remand with the directions to the State Government which alone is capable of taking a decision on disputed facts. I do not think that there is much force in this contention either. The facts are very clear in this case and they cannot become disputed because the respondents choose to call them so.

17. Having disposed of the preliminary objections, let us now turn to the main controversy whether the respondent No. 3 had any preferential right for grant of lease over the area for which a grant of had been made in favour of the petitioner. The learned Counsel for the respondents agreed that Section 11 of the Act which gives a right to an earlier applicant applies only to major mineral, as per Section 14 of the Act. But at the same time he maintained that Rule 22 of the Mineral Concession Rules, 1960, entitled an applicant to a grant of mining lease for a major mineral and that light can not be defeated by a prior applicant applying for a minor mineral in the same area. Indeed, condition No. 17 of the conditions of a lease for a minor mineral is provided in Rule 17 covenant No. 3 under the heading " 5. Further covenants of the lessee" contained in the Form of the mining lease given in schedule 1 of the Rajasthan Minor Mineral Concession Rules, 1959, envisaged that leases in the same area can be given to some other person for the same or different mineral and in that case the existing lessee is required to give all help to other existing and future lessees. Therefore, even if Bengani had applied for a minor mineral in the year 1968, the respondents even if they applied later were entitled to a lease at least of the major mineral in the same land. The whole scheme of the Act and the Rules relating to the major and minor mineral's is that there shall be priority according to the date of the application inter se the applicants for minor or major minerals as the case may be and there is no provision of any priority between the applicants for the same land one applying for a major, and the other for a minor mineral, Yet the major mineral should have been given preference and though Bengani had applied earlier, the respondent had a claim superior to him. This contention is self-defeating. If there is no priority-available to an applicant for a major mineral, then, it is up to the State Government to grant lease to any person who hid applied first. Indeed, the Central Government has, as a matter of fact, only said that the prior application made by Bengani for a minor mineral will not preclude or affect consideration of a subsequent application for a major mineral. The true position in this case is that as long as there was an application pending of Bengani, the State Government was veil within its right to refuse to allot any area to the respondent No.3 out of the area applied for by Bengani. It is only when Bengani failed to execute the lease that the area fell vacant on 5-6-73. Before that date. Bikaner Clays had applied on 8-1-1970, Jaichand Lal Daga had applied on 5-9-72 Raw Products applied on 8-1-73 and the petitioner applied or

19-4 1973 Sushil Kumar had of course applied on 25-6-73 These application could not be considered before the area became free. Therefore, according to me, the date on which eligibility shall be determined is the date when the area became free. On that date, the State Government in the absence of any stay order from the revisional Tribunal was entitled to make its own decision upon the various applications. u/s 89 of the Rajasthan Land Revenue Act, 1956, the mines and minerals vest in the State but as per entry No. 53 in list I of the Seventh Schedule to the Constitution, their regulation and development has been reserved under the control of the Union to the extent to which such regulation & development is declared both Parliament by law to be expedient in the public interest. And that is how Section 4 of the Act provides that no prospecting licence or mining lease can be granted otherwise than in accordance with the provisions of the Act and the rules made thereunder. Section 10 of the Act in fact provides that minerals (sic) in the State. It is the State Government which can receive applications for grant of a prospecting licence or a mining lease even for a major mineral and it is given to that Government to grant or refuse to grant it. Rule 26 of the Mineral Concession Rules, 1960, does further provide that it can refuse to grant a lease, over the whole or part of the area applied for but then in such cases it must record in writing and communicate to the applicants its reasons for doing so. Even this rule has been held only a directory one; vide *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, and *Mineral Mining Co. Private Ltd. Vs. State of Madhya Pradesh, Natural Resources Dept. and Another*, . Since Sushil Kumar was a later entrant, he had no preferential right. Indeed, the Tribunal had felt that he was entitled to only an area of 8.026 sq. Kilometres in respect of which the petitioners has no grievance or any conflict with him. The State Government refused to grant to the respondent No 3 more land simply because it could not, as they had already been granted leases in excess of 10 sq. Kilometres in the following manner:

No. & Year of lease	Mineral	Area
(1) 5/68	Fire Clay	126.62 hectares
(2) 10/68	Fire Clay	64.00 "
(3) 6/70	Fire Clay	176.02 "
(4) 11/70	Fire Clay	546.06 "
(5) 4/71	Fire Clay	10.33 "
		 923.03 hectares =
		923.03 sq Kilometres
(6) 1/70	(disputed) Fire Clay	102.26
		hects.
		Total: 1025.29 hectares 1025.29 sq. Kilometres

..... It will be seen that in any case on 5-6-73 the respondents were not entitled to any area more than what has been granted to them as they were already in excess by 25 sq. kilometres. The learned Counsel for the respondents made two submissions in this respect. The first 1 is that what Section 6 as amended on 13-9-72 provides is that no person shall acquire in any one State in respect of any one mineral or of any other mineral the group of associated minerals, one or more than 10 sq. kilometres. According to this provision, the ban will apply only when a lease had not been executed and until then, the respondents can not be said to have acquired the area in dispute so as to exceed the prescribed limit. This submission appears very attractive ex facie but upon a closer scrutiny it yields no substance. There is

no doubt that a lease will be complete only when executed according to law. It is further also indisputable that the total area of the lease of any one mineral or associated mineral cannot exceed 10 sq Kilometres But no Government or authority can give sanction for lease of an area which when the lease deed has been executed/shall exceed 10 sq. kilometres. Therefore, in order that provisions of Section 6 are not infringed, the State Government was bound to take into consideration the total land already leased or granted and the area which it could grant under the law on 5-6-73.

18. The second submission is that on a point of fact, the respondents were not in possession of an area more than 10 sq. Kilometres. How it is so, is explained like this. In respect of the mining lease No. 5/68, the respondent made an application for substitution of Bail clay for Fire Clay and the State Government agreed to do so by their order dated 7-5-75. In respect of M.L. 10/68, the respondent made an application on 4.6.76 to surrender 48 hectares but then applied for surrender of the entire area on 14-9-76. The State Govt., appears to have taken no step thereupon. In respect of ML 6/70. the party applied for surrender of Fire Clay and in pursuance of the permission of the State Government, surrendered 99.65 hectares on 4.6.76. In respect of mining lease M.L. 11/70, the respondents surrendered 279.33 hectares. In view of all these surrenders, the area which is in possession of the respondent No. 3 will be far below 10 sq Kilometres even on 5.6.73 as these surrenders shall operate retrospectively. It will be noticed that all these surrenders came to be made in 1975 several years after the mining leases were executed. Until the mining leases are modified in accordance with the law that is Article 299 of the Constitution, no notice can be taken of all these surrenders even by the State Government much less this Court. These surrenders had not taken place when the area in dispute was available for grant on 5.6.73, nor on 30.7.74 when the area was sanctioned to the petitioner. It is crystal clear that in order to defeat the attack of the petitioner based upon the provisions of Section 6 of the Act, respondents launched upon a scheme to shed off areas and their previous grants so that even after the grant of the disputed area in their favour, they could not exceed the permissible ceiling. No court can countenance such a scheme. It appears that the Tribunal also was conscious of this attempt at casting off of the areas that it refused to decide the ceiling area of the respondents and directed that the ceiling limit shall be determined on the date the fresh order is made by the State Government. This only permits the respondents to have an overriding claim in 1977 which they did not have in 1973 or 1974. If the State Government was correct as it certainly was when it made an order in April, 1974, that no more than 102, 26 hectares could be granted to the respondents, then, there is no question of any overlapping. The order of the Central Government canceling the lease in favour of the petitioner, therefore cannot be justified.

19. Lastly, an effort was made to justify cancellation of the lease of the petitioner on the ground that if the respondents were not found eligible, at least the Raw Products were and they being prior applicants preferential claim over that of the

petitioner. But upon examination it transpires that the revision application of the Raw Products was accepted on the ground that since the order granting a lease for minor mineral in favour of Bengani had been revoked, the State Government could not have declined to entertain the petitioner's request in respect such portion of the area as had been initially granted in favour of Shri Bengani. Now, Annexure R 3(5) is a map produced by the respondents and shows the position as it stood on 30-7-74. The area for which the Raw Products applied is shown by A B G D & the area left by Bengani is shown by A B C D. Thus, the area which was common or overlapping is P S D M N D. Out of this common area the petitioner is allotted P S K M N D which could and should have been allotted to the Raw Products. The map annexure 1 produced by the petitioner shows that this entire common area has been excluded from the grant made to her. On 30-7-74 she was granted 282 hectares but at the time of demarcation it was found that some area was conflicting with M/s Raw Products and therefore, her area was reduced to 256.27 hectares which is shown by XYZICJD for which alone the lease deed has been executed. This map annexure I which shows the position after the lease deed was executed has not been a disputed. This situation was explained to the Tribunal by the petitioner in her letter dated 17-7-1976 (Annexure 5). What the petitioner got was what was left over after allotment to the prior applicant namely; the Raw Products. The Tribunal's Order therefore was based upon non-existent facts or misunderstanding thereof, so far as the Raw Products was concerned & the State Government's lease in favour of the petitioner could not be cancelled on the point of priority in favour M/S Raw Products which has been fully respected.

20. Thus, the result of the aforesaid discussion is that the order of the Tribunal quashing the order dated 30th July, 1974, deserves to be quashed.

21. Now, the question remains in regard to the order dated January 15, 1972 It was cancelled because it was in violation of the Rule 26 of the Minor Concession Rules, 1960, as no reasons were recorded for refusal and the order was not a speaking one. It was urged that according to Bharat Raja Vs. The Union of India (UOI) and Others, it was enjoined upon the State Government to make a speaking order. This reasoning is incorrect both on fact and law. On fact, because the order dated 15-1-72 was not an order of refusal. It was a sanction. The reason; for reducing the area were given in the letters dated 30-1-70 and 19-11-70. As to law, S. Lal & Co. v. Union of India (sic), para 12 shows that reasons may be recorded at any stage in any form (which was not done in that case) According to Mineral Mining Co. Private Ltd. Vs. State of Madhya Pradesh, Natural Resources Dept. and Another, , reasons for refusal may be disclosed even at the stage of comments-sent by the State at the time of hearing of the revision when the aggrieved party had an opportunity to controvert them. Thus, no violation of any procedure or the said Rule 26 had taken place. The order dated 15-1-72 was a sanction in favour of the respondents. It has been cancelled by the Central Government and the respondents are not aggrieved by this cancellation. The petitioner prayed inter alia for restoration of the order of

15-1-72 but the prayer has been emphatically denied in para 40 of the affidavit of Mst. Padmavati dated 9-7-77, and unless the respondents so desired, its restoration can not be directed. The petitioner has no concern whether the order of 15-1-72 stands or fails.

22. I therefore, partly accept this writ petition and quash the order of the Central Government dated 27-4-77 in so far as it set aside the order of the State Government dated 30-7-74 which is hereby resorted. In the circumstances of the case, I make no order as to costs.