(1998) 05 AHC CK 0019

In the Allahabad High Court

Case No : C.M.W.P. No. 704 of 1998

Rajendra Singh Gandhi and others — APPELLANT

Vs

State of U.P. and another — RESPONDENT

Date of Decision : 15-05-1998

Acts Referred:

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 14, 14(2), 14(3), 14(4), 21

Citation : (1998) 3 AWC 1864

Hon'ble Judges : P.K. Jain, J;Binod Kumar Roy, J

Bench : Division Bench

Advocate : H.S. Nigam and S.S. Nigam, for the Appellant;

Judgement

B.K. Roy and P.K. Jain, JJ.—Two-fold prayers have been made by the petitioners in this writ petition : (i) to quash the order dated 14.10.97 as contained in Annexure-10 by grant of writ of certiorari, (ii) to command respondent No. 2 to refund to them the amount of Rs. 10,62,250 as security and the excess amount of Rs. 3,45,083 deposited by them.

2. Their case is that on 21st April. 1995 respondent No. 2 held an auction of mining-area in which they participated ; that their offer of Rs. 1,27,47,000 was the highest in relation to group Aa of revenue area, which was accepted by respondent No. 2 ; that they also accepted the terms and conditions and deposited Rs. 62,250 as security and Rs. 10.62.250 as first installment on 21st April, 1995 itself ; that a lease-deed was executed on 5.6.95, which was registered on 1.7.95 and was handed over to them on 11.7.95 ; that in order to carry out the mining operations and transportation of the minerals respondent No. 2 on 24.9.95 issued MM-11 in terms of Rule 70 of the U. P. Minor Minerals (Concession) Rules, 1963 ; that under the aforementioned circumstances they could start their mining operations after 24.9.95 : that this Court however, in Writ Petition No. 12730 of 1996. Raj Kumar Karanwal v. State of U. P., quashed the auction in question held on 21.4.95 and 22.5.96 and consequently, they were

stopped from doing any mining operation by respondent No. 2 on 27.6.96 ; that the persons affected due to the orders passed by this Court filed applications before respondent No. 2 for refund of their amount on which respondent No. 2 vide his orders dated 22.1.97 [as contained in Annexure-1) and 14.10.97 (as contained in Annexure-2) allowed the applications of Kamlesh and Aashish Wadia and others ; that the petitioners filed successive applications dated 23.2.96, 24.9.96, 23.12.96 and 14.3.97 (as contained in Annexures-4 to 7 respectively) for refund of their amounts : that on 23.12.95 they also submitted their accounts (copy of which appended as Annexure-8) before respondent No. 2 showing quantity of minerals excavated by them from 24.9.95 ; that however, vide the impugned order respondent No. 2 rejected not only their claim but also directed them to pay amount of Rs. 7,08.167 failing which that amount has to be realised as arrears of land revenue which is wholly arbitrary and illegal and hence, this writ petition.

3. In the counter-affidavit filed on behalf of respondent No. 2, sworn by the Deputy Collector, Haridwar. It has been stated, inter alia, that the petitioners were granted permission for mining operations by respondent No. 2 vide acceptance letter dated 22.4.95 which they received on that very day and started mining operation formally from that very day, i.e., 22.4.95 itself ; that it is a fact that after 27.6.96 they had not done mining operation ; that the applications filed by Kamlesh and Aashish Wadia related to group ''Da'' and ''Sa'' respectively and the amounts deposited by them were refunded on the recommendation of the Forest Department which did not allow their mining operations being situated in the forest area : that minus amount of Rs. 74,500 so far as Kamlesh Kumar was concerned ; that the order in question was passed wholly in accordance with law and the Rules ; that under Rule 29 (2) of the U. P. Minor Minerals (Concession] Rules, 1963 the period of the mining lease shall be calculated from the date on which the bidder has received the acceptance letter ; and that the writ petition is liable to be dismissed being not maintainable under Article 226 of the Constitution of India besides having no force nor basis.

4. The petitioners filed a rejoinder sworn by their Pairokar bringing on record copy of letter dated 22.4.1995 as contained in Annexure-RAC 1 of Additional Collector, Haridwar directing him to complete the formalities in regard to the execution of the ''patta'' within 20 days and denying the stand taken in the counter and reiterating the stand taken in the writ petition.

5. Sri H.S. Nigam, learned counsel appearing in support of this writ petition, contended as follows :

The findings recorded by respondent No. 2 in his impugned order that the petitioners had started mining operations from 24.9.95 is not based on any legal material, rather it is based on surmises and conjecture ; they started mining operations from 24.9.95 when the printed MM-11 Form was supplied to them by the respondents under sub-rule (1) of Rule 70 of the U. P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred as the Rules) and under Rule 21 of the Rules the petitioners were required to pay royalty in respect of the minerals removed by miner then from the leased area at the rates as may be fixed by the Government from time to time and they had submitted their account books which showed that the mining operations were commenced from 24.9.95 and further disclosed the quantity of minerals removed by them during the mining operations but without considering their account books the impugned order has been passed arbitrarily ; even lease deed executed by the petitioners also provided that the royalty shall be paid on the quantity of the minerals removed by the petitioners ; that the reliance placed by respondent No. 2 on Rule 29 (2) of the Rules was wholly misconceived, rather respondent No. 2 has incorrectly refused to place reliance on MM-11 ; with reference to the orders as contained in Annexures-1 and 2 he contended that in the cases of Kamlesh Kumar and Aashish Wadia respondent No. 2 had allowed refund of the amounts, though they were also granted acceptance letter the day on which their highest bid was accepted and that the petitioners had not admitted the factum of commencement of their mining operations from 22.9.95.

6. Mr. Hasnain, learned Additional Chief Standing Counsel, on the other hand, contended as follows :

No error of law or of fact having been committed by respondent No. 2, the writ petition is liable to be dismissed ; the finding is not based on surmises and conjectures as alleged by Mr. H. S. Nigam ; Rule 29 (2) of the Rules relied upon by respondent No. 2 in his order clearly postulates that the period of lease has to be calculated with effect from the date of receipt of the acceptance letter and in the instant case it having been accepted on 22.4.1995 the respondent No. 2 has correctly passed the order fastening the liability on the head of the petitioners on account of the mining operations right from that very day ; Form MM-11 is not relevant with reference to the orders passed as contained in Annexures-1 and 2 since passed in Form MM-11 are issued by the leaseholders for the purposes of transportation of the excavated minerals and the petitioners themselves applied for issue of MM-11 Form book as late as on 24.9.95 and hence, reliance on MM-11 Form is somewhat completely misconceived ; as far as Kamlesh Kumar and Aashish Wadia were concerned they were granted lease under Chapter II whereas the petitioners were granted lease under Chapter IV, hence provisions of Rule 29 (2) of the Rules shall be applicable in the case of the petitioners. He further contended that the deposits of Kamlesh Kumar and Aashish Wadia were refunded as they had not done mining operations even for a single day. He also contended with reference to the statement made in para 14 of the counter that the petitioners themselves had admitted the period of commencement of the lease From 22.4.95 as mentioned in their lease deed which was subsequently executed in May, 1995 and thus, this admission of theirs is binding on them, and that in their rejoinder the petitioners have not explained away the aforementioned admission and for this reason also the writ petition is liable to be dismissed.

7. Before we proceed to deal with the rival contentions, it is necessary to have a look at the relevant Rules as contained in the U. P. Minor Minerals (Concession) Rules, 1963.

7.1 Chapter II of the Rules provides for granting of mining lease by way of inviting applications and considering the same in accordance with Rules as contained in Chapter II of the Rules.

7.2 Sub-rules (2), (3) and (4) of Rule 14 read as follows :

"(2) The date of the commencement of a mining lease shall be the date on which the deed is executed under sub-rule (1).

(3) Where an order has been made for the grant of a mining lease for sand. A lease deed in Form MM-3 or in a form as near thereto as the circumstances of each case may require, shall be executed within one month of the said order or within such further period as the State Government may allow in this behalf. If no such deed is executed within the aforesaid period due to any default on the part of the applicant the State Government may revoke the order granting the lease and in that event the application fee shall be forfeited to the State Government.

(4) In case of lease of sand the date of commencement of mining lease shall be the date on which the deed is executed under sub-rule (3) or the date of actual commencement of mining operation whichever is earlier."

7.3 Chapter IV of the Rules provides for granting of lease by auction or by calling tenders or by auction-cum-tender.

7.4 Rule 21 of the Rules reads as follows :

"21. Royalty.--(1) The holder of a mining lease granted on or after the commencement of these rules shall pay royalty in respect of any mineral removed by him from the lease area at the rates for the time being specified in the First Schedule to these rules.

(2) The State Government may, by notification in the Gazette, amend the First Schedule so as to include therein or exclude there from or enhance or reduce the rate of royalty in respect of any mineral with effect from such date as may be specified in the notification, provided that the State Government shall not enhance the rate of royalty in respect of any mineral more than once during any period of two years and shall not fix the rate of royalty at more than 20 per cent of the pit''s mouth value.

(3) Where the royalty is to be charged on the pit''s mouth value of the mineral the State Government may assess such value at the time of the grant of the lease and the rate of royalty will be mentioned in the lease deed. It shall be open to the State Government, re-assess not more than once in a year the pit''s mouth value, if it considers that an enhancement is necessary."

7.5 Rules 23 and 29 which are relevant for our purposes read as follows :

"23. Declaration of area for auction /tender/ auction- cum- tender lease.--(1) The State Government may by general or special order declare the area or areas which may be leased out by auction or by tender or by auction-cum-tender.

(2) Subject to directions issued by the State Government from time to time in this behalf no area or areas shall be leased out by auction or by tender or by auction-cum-tender for more than five years at a time :

Provided that the period in respect of in suit rock type mineral deposit shall be five years and in respect of river bed mineral deposit shall be one year at a time.

(3) On the declaration of the area or areas under sub-rule (1) the provisions of Chapters II, III and VI of these rules shall not apply to the area or areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter.

(4) The District Officer shall get the area or areas declared under sub-rule (1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director, Geology and Mining. Uttar Pradesh or by an officer authorised by him before the dale fixed for auction or lender or auction-cum-tender, as the case may be."

"29, Execution of lease deed.-- (1) When a bid or offer is finally accepted a lease deed in respect of auction lease in Form MM-6 and in respect of tender or auction-cum-tender lease in a form as near thereto as the circumstances of each case may require shall be executed within one month of the receipt, by the bidder or the tenderer of the letter of acceptance or within such further period as the District Officer or the Committee, as the case may be, allow in this behalf. If no such deed is executed within the aforesaid period, due to any default on the part of the bidder or the tenderer the order accepting the bid or tender shall stand revoked and in that event the security deposited by the bidder or the tenderer shall be forfeited to the State Government.

(2) The period of the lease shall be calculated with effect from the date of receipt of the letter of acceptance of the bid or the tender by bidder or the tenderer.

(3) A copy of the lease deed together with the map of the area shall be sent by the District Officer or the Committee, as the case may be, to the Director. Geology and Mining, Uttar Pradesh within fifteen days from the date of execution thereof."

7.6 Rules 34 and 36 of the Rules read as follows :

"34. Mining operations to commence within six months.--Except where the State Government for sufficient reasons, permits otherwise, the lessee shall commence mining operations within six months from the date of execution of the lease deed and shall thereafter conduct such operations without deliberate intermission in a proper, skilful and workman like manner.

Explanation.--For the purposes of this rule, mining operations shall include the erection pf machinery, laying of a tramway or construction of a road in connection with the working of the mine.

36. Maintenance of correct accounts of minerals.--The lessee shall keep correct accounts showing the quantity and particulars of all minerals obtained and despatched from the mine, giving mode of transport, registration number of vehicle, person in charge of vehicle of animal and a nature and quantity of minerals carried, the price and all other particulars of all sales of mineral, the number and nationality of persons employed therein, and complete plans of the mine, and shall allow any officer authorised by the State Government or Central Government in this behalf to examine at any time any accounts, plans and records maintained by him and shall furnish to the Central or the State Government all such information and returns as the Central or the State Government or any officer authorised by either in this behalf, may require."

7.7 Rule 70 of the Rules reads as follows :

"70. Restrictions on transports of the minerals.--(1) The holder of a mining lease or mining permit or a person authorised by him in this behalf issue a pass in Form MM-11 to every person carrying a consignment of minor mineral by a vehicle, animal or any other mode of transport.

(2) No person shall carry within Uttar Pradesh a minor mineral by a vehicle, animal or any other mode of transport, excepting railway, without carrying a pass in Form MM-11 issued under sub-rule (1).

(3) Every person carrying any minor mineral shall on demand by any officer of the State Government authorised in this behalf show the said pass to such officer and allow him to verify the correctness of the particulars of the pass with reference to the quantity of the minor mineral.

(4) The State Government may establish a check-post for any area included in any mining lease or permit, and when a check-post is so established, public notice shall be given of this fact by publication in the Gazette and in such other manner as may be considered suitable by the State Government.

(5) No person shall transport a minor mineral to which these rules apply from such area without first presenting the mineral at the check-post fixed for that area for purposes of verification of the weigh-ment or measurement of the quantity of the mineral."

8. The petitioners have filed their own lease-deed as contained in Annexure-SA-1 and the lease-deed executed in favour of Aashish Wadia as contained in Annexure-2. From perusal of both these lease-deeds, it would appear that both lease-deeds were executed in Form MM-6 under Rule 29. The contention of Mr. Hasnain, learned Additional Chief Standing Counsel that since the lease deed in favour of Kamlesh Kumar and Aashish Wadia related to forest area, Rule 29 did not apply to their case and that the lease was granted to, them under Chapter II

of the Rules, is thus, without substance. Another ground on which the lease rent deposited by Aashish Wadia was refunded to the leaseholder on cancellation of the lease was that the lease-holders did not carry on mining operations even for a single day. The submission of Mr. Nigam, learned counsel appearing on behalf of the petitioners is that since in the case of Sri Wadia the amount of lease rent was refunded on ground that Sri Wadia did not carry mining operations even for a single day, the petitioners could be asked to pay rent only from the day on which they started mining operations.

9. On thorough examination of the Rules, we find that this submission of Mr. Nigam does not hold good and even though the respondents have wrongly allowed refund to Aashish Wadia and others, on that ground the petitioners cannot claim refund of the amount for the period for which they themselves did not carry out mining operations.

10. The submission of Sri Nigam that under Rule 21 reproduced as above, the petitioners were liable to pay royalty only on the minerals removed by them from the leased area is also without substance. In the instant case, lease was granted to the petitioners under Chapter IV and Rule 23 that is, by auction or by tender or by auction-cum-tender. Rule 21 reproduced above is contained in Chapter III of the Rules and sub-rule (3) of Rule 23 specifically provides that after an area is declared by the State Government under sub-rule (1) of Rule 23 to be leased out by auction or by tender or by auction-cum-tender, the provisions of Chapters II, III and VI of these Rules shall not apply to the area in respect of which the declaration has been issued and such area could be leased out only in accordance with the procedure prescribed in Chapter IV. Therefore, the provisions relating to mining lease as contained in Rule 14 which falls under Chapter II of the Rules and Rule 21 which falls under Chapter III of the Rules are not attracted to the lease granted under Chapter IV of the Rules. No doubt. Rule 34 of the Rules provides that the lessee shall commence mining operations within six months from the date of execution of the lease deed unless the State Government for sufficient reasons permits otherwise and Rule 36 of the Rules provides for maintaining of the correct accounts of minerals showing the quantity and particulars of all minerals obtained and despatched from the mine and to maintain complete records in this regard, the commencement of the period of lease shall be in accordance with the provisions contained in Rule 29. There is nothing in Chapter IV or V entitling the lease holders to pay royalty only in respect of the minerals removed by him or them from the leased area. Sub-rule (1) of Rule 29 specifically provides that a lease deed in respect of the auction lease shall be executed in Form MM-6 and in respect of tender or auction-cum-tender lease in a form as near thereto as the circumstances of each case may require. On the other hand, a perusal of the lease deed as contained in Annexure-SA-1 to the supplementary affidavit shows that it contains a schedule of the installments as well as the dates on which such installments shall be payable by the leaseholders. According to Part II of sub-clause (1) of the lease deed, the leaseholders during the period of lease are required to pay lease money to the

State Government in respect of the minerals removed by him or them as the case may be from the leased area according to the schedule given therein. Thus, according to the lease deed, the periodical amounts are to be paid by the leaseholders irrespective of the fact as to what quantity of minerals have been removed by him or them/the leaseholders. This is very much clear from the sub-clause (2) of Part II of the lease-deed which reads as follows :

"(2) Ish Bhag Me Ullikhit Swamitwa Ki kishto ka bhugtan bina kisi katautiyo ke rajya sarkar ko Haridwar/zila Haridwar par sarkari koshagar me jama karne diyajayega tatha challan ki ek prati zila adhikari ko bheji jayegi."

It is quite evident from the aforementioned condition or term contained in the lease-deed that the installments shall be paid by the lease-holders without any deductions which fall due in accordance with the Schedule contained in clause (1) of Part II of the lease deed.

11. Undisputed facts are that auction was held on 21st April, 1995 under Chapter IV of the Rules and the bid of the petitioners being highest relating to group ''A'' of the Revenue Area for Rs. 1,27,47,000 was accepted by the respondent No. 2 on 22.4.95 and the petitioners deposited security amount of Rs. 10.62.250 and Rs. 10,62,250 as the first installment on 21st April. 1995 itself. The lease deed was executed on 5.6.95 and was registered in the Sub-Registrar Office on 1.7.95 and a lease deed was handed over on 11.7.95. In view of the provisions contained in Rule 29 as also in view of the terms of the lease as contained in lease deed (AnnexurerSA-1), the lease commenced from 22nd April, 1995. Sub-rule (2) of Rule 29 of the Rules specifically provides that the period of lease shall be calculated with effect from the date of acceptance of letter of the bid or the tender by the bidder or the tenderer. There is specific mention in the lease deed Annexure-SA-1 itself that the lease was granted for a period of 3 years commencing from 22.4.95. Therefore, so far as the question of commencement of the lease is concerned, there cannot be any dispute that the lease commenced from 22.4.1995. The petitioner''s claim is that they made efforts to obtain book containing Form MM-11 for which they made several representations but they were supplied book containing Form MM-11 only on 24th September, 1997 and it was only thereafter that they could start mining operations and in this view of the matter, they cannot be forced to make payment of lease rent for the period for which they were deprived of mining operations due to the fault of the respondents in non-supply of the book containing pass in Form MM-11.

12. The question that arises for consideration, therefore, is whether in view of the facts stated above, the petitioners were entitled to deductions in the amounts of the lease rent? The petitioners have filed with the affidavit copy of the representations dated 21.9.95, 23.2.96, 24.9.96 and 23.12.96 as also 14.9.97 as contained in Annexures-3 to 7 and another representation as contained in Annexure-8 to the writ petition. Perusal of Annexure-3 shows that a specific grievance made by the petitioners was that despite their best efforts, the concerned official did not issue book containing pass in Form MM-11 and further

that till the date of the representations, no demarcation of the mining area was made nor possession was given to the petitioners on account of which they were suffering loss and they had made several representations in this regard, in Annexure-4 similar allegations were made and it was specifically stated that despite best efforts made by the petitioners, book containing pass in Form MM-11 was not issued till 24.9.95 on account of which excavation and removal of the minerals could not be started. The similar allegation was also repeated in Annexures-5 and 6. While making representation (Annexure-8), the petitioners had specifically stated that the excavation and mining operations could be started only on 24.9.95 and it was stopped on 15.12.1995 on account of non-issue of book containing pass in Form MM-11. Although in his representation, account till 23.12.1995 only is given and no account is submitted for the remaining period, yet we find that while disposing of the representations of the petitioners, respondent No. 2 did not consider the specific allegation of the petitioners that they were deprived of the excavation and mining operations on account of non-issue of book containing pass in Form MM-11 and non-demarcation of the mining area and non-handing over possession of the mining area till 21.9.95. There is, of course, no doubt that the lease commenced from 22.4.95 entitling the petitioners to commence mining operations from 22.4.95 itself but if due to inaction of the respondents in demarcating the mining area leased out to the petitioners and non-handing over its possession to them or non-issue of book containing pass in Form MM-11, the petitioners were deprived of starting or carrying on mining operations. they cannot be saddled with the liability of payment of lease rent for the period for which they were deprived from carrying mining, while passing the impugned orders as contained in Annexures-9 and 10 respondent No. 2 has not considered this aspect of the matter. Sri Hasnain, learned Additional Chief Standing Counsel has vehemently argued that pass in Form MM-11 is issued by the lease-holders authorising transporters to lift and transport the excavated minerals from the leased mining area and issue of such pass is not precondition to begin mining operations. Therefore, on this ground the petitioners cannot claim that they were entitled to deductions in lease rent from the period 22.4.95 to 24.9.95. It is also pointed out that the petitioners applied for issue of the book containing passes in Form MM-11 on 21.9.95 and thus, there were laches on their part for which they cannot take advantage. The petitioners have categorically stated in the affidavit that they could start mining operations only after book containing pass in Form MM-11 was issued to them on 24th September, 1995 and before that, they could not either do excavation of the minerals or transport the same. They have also referred to all the representations made by them as contained in Annexures-3 to 8. The respondents in their counter-affidavit did not specifically deny of the factum of representations as contained in Annexures-3 to 8 having been filed by the petitioners. They have also not disputed the correctness of the allegations made in the representations as contained in Annexures-3 to 8. On the other hand, the averment in para 4 of the counter-affidavit is to the effect that the petitioners applied for book containing in Form MM-11 on 21.9.95 which was supplied to them for the first time on 24.9.95. With regard to paras 11, 12, 13, 14, 15 and 16 in which there is specific averment of malting of representations as contained in Annexures-3 to 8, the respondents simply stated that there is no need of giving reply of the statements in the manner as made in the aforesaid paras. It is thus, evident that while passing the impugned orders as contained in Annexures-9 and 10, the respondent No. 2 did not consider the various representations made by the petitioners as contained in Annexures-3 to 8. In the rejoinder-affidavit filed on behalf of the petitioners, it has been categorically stated that they had filed documentary evidence to show that they could start mining operations only from 24.9.1995 but such evidence was not taken into consideration while passing the order dated 14th October, 1997 as contained in Annexure-9.

13. In view of the fact that the making of the various representations as contained in Annexures-3 to 8 by the petitioners has not been denied by the respondents and further that the allegations or averments made in the representations were not looked into or considered by the respondent No. 2 while passing the orders dated 14.10.1997 as contained in Annexure-9 and dated 30.9.1997 as contained in Annexure-10, we are of the view that the said orders suffer from malice of arbitrariness and have to be quashed and the respondent No. 2 has to be directed to dispose of the matter afresh after considering the averments made in the representations as contained in Annexures-3 to 8 of the writ petition.

14. In view of the foregoing discussions, this writ petition deserves to be allowed and is hereby allowed. Orders of the respondents as contained in Annexures-9 and 10 to the writ petition are quashed and respondent No. 2 is directed to dispose of the representations afresh considering the allegations/ matter made in the light of representations as contained in Annexures-3 to 8 to the writ petition by a speaking order. In the peculiar facts and circumstances of the case we make no order as to cost.

15. The office is directed to hand over a copy of this order to learned Additional Chief Standing Counsel by Tuesday dated 19.5.1998 for its communication to and follow up action by respondent No. 2.