(1995) 05 MP CK 0020

In the Madhya Pradesh High Court

Case No : M.P. No. 686 of 1993

Ram Das Agrawal and Others APPELLANT

Vs

State of Madhya Pradesh and Others RESPONDENT

Date of Decision : 04-05-1995

Acts Referred:

Constitution of India, 1950 — Article 226
Madhya Pradesh Minor Minerals Rules, 1961 — Rule 25, 25(1)
Mineral Concession Rules, 1960 — Rule 27, 27(3)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 13, 14, 15, 24

Citation : AIR 1996 MP 96 : (1996) 41 MPLJ 177 : (1996) MPLJ 177

Hon'ble Judges : R.S. Garg, J;A.K. Mathur, J

Bench : Division Bench

Advocate : P.K. Jaiswal, for the Appellant; S.K. Seth, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

R.S. Garg, J.

This order shall also dispose of M. P. No. 3727/93 Satya Narayan Mishrilal v. State of Madhya Pradesh, M.P. 3807/93, Laxmi Narayan Mining Company v. State of M. P., M. P. No. 4246/93, Nirmal Chand Jain v. State of Madhya Pradesh and M. P. No. 5113/93 M. P. Lime Manufacturers Association v. State of Madhya Pradesh and others. By these petitions the petitioners in various petition above prayed for issuance of the writ that Rule 25(viii-b) of M. P. Minor Minerals Rule, 1961 be declared ultra vires, to quash the action of the agents of the respondents by which they are issuing pit-passes and also to declare that the respondents had no power or authority to insist for a transit pass issued by their officers for transportation of major minerals and/or to restrain them for seizing the vehicles in absence of the transit passes and have also prayed for a writ of prohibition against the respondents for restraining them from prohibiting the petitioners from transporting the major minerals without transit passes from pit-head.

2-3. The petitioners in all petitions have submitted that they are holding mining leases for extraction/excavation in various parts of Madhya Pradesh in relation to the major minerals. It is submitted by them that the State Govt. granted mining leases to the petitioners and the petitioners have entered into mining lease agreement with the respondent State-in form ''K'' of Mineral Concession Rules, 1960. The grievance of the petitioners states that without there being a provision of law or a condition in the tease deed the State through its officers especially the mining officers is compelling them to issue transit passes under Rule 25(viii-b) of M. P. Minor Mineral Rules, 1961. It is also the grievance of the petitioners that if the transit passes are not issued by the mine holders then the State through its officers are seizing the vehicles and goods which is causing regular interference in their day-to-day work. It is submitted by the petitioners that the State Govt. has no powers to ask for maintenance of the transit pass book or issuance of such transit passes because the M. P. Minor Mineral Rules, 1961 governed the mining and regulation of the minor minerals while in fact the leases in favour of the petitioners are in relation to the major minerals. They have also submitted that they are being compelled to issue the transit passes under Rule 25(viii-b) of 1961 Rules while in fact there is no such rule in existence. Oh the above premises they have prayed for issuance of the writs as stated above.

The State Govt. in its return has submitted that the petitioner''s leases are governed by the provisions of Mineral Concession Rules, 1960 and in pursuance to the Rules, 1961 and in Rules, 1960 the procedure has been adopted. According to them, rules give power and authority to the authorised persons and, therefore, the authorised persons would have power to examine any documents, books, registers or record which are in possession or power of any person having the control of or connected with any mines. It is also submitted by the State Govt. that in pursuance to Rule 27 which deals with the condition for grant of a mining lease a lessee has to keep the correct accounts showing the quantity and other particulars of minerals obtained, and despatched from the mine. According to them above referred rules would show that a lessee has to maintain the correct and accurate account pertaining to the obtaining and despatch of minerals from the mines. According to the State Govt. the utility of the transit pass is only to put a effective check on the mineral and its despatch. If the lessee is maintaining the proper account then he should not feel sorry in issuing the transit passes. The State wants to cross check the production, despatch and delivery of the minerals so that there is no pilferage and the royalty is properly paid. The State wants to avoid the illegal extraction and the illegal despatch of the minerals from the mines. The State further submits that under the provisions of the lease and the provisions of 1960 Rules and 1961 Rules the State can put the condition of issuance of the transit passes.

The Mines and Minerals (Regulation and Development) Act, 1957 (Act No. 67 of 1957) hereinafter referred to as MMRD Act, has been enacted to provide for the regulation of mines and the development of minerals under the control of the Central Govt. Section 3 defines minor minerals as building stones, gravel, ordinary clay, ordinary and other than sand used for prescribed purposes, and any other mineral which the Central Govt. may, by notification in the official gazette, declare to be a minor mineral. Section 4 of the Act relates to prospecting for mining operation to be under licence or lease. Section 4A relates to termination of mining leases. Section 5 relates to restriction on the grant of prospecting licences or mining leases. Section 6 to Section 12 relate to the area for which prospecting licence, mining lease be granted, the period for which it can be granted, the period in which it may be renewed, recovery of the royalties in prospecting of the mining lease and the mining in which an application for prospecting licence or mining lease is to be given and the preferential persons to whom the lease could be granted. Section 12 relates to maintenance of a register of prospecting licence and mining leases. It is thus clear that a person who wants to have a prospecting licence or mining lease has to fulfil the conditions prescribed under these sections.

Section 13 of the M.M.R.D. Act gives the power to the Central Govt. to make rules in respect of minerals. Those rules can be framed by the Central Govt. for regulating the grant of prospecting licence and mining leases. According to Section 14, Sections 4 to 13 of the M.M.R.D. Act (both inclusive) shall not apply to quarry leases, mining leases or other mineral concession in respect of minor minerals.

Section 15 of the M.M.R.D. Act gives the power to the State Govt. to make rules in respect of minor minerals.

A cursory perusal of Sections 14 and 15 makes clear the scheme of the Act which appears to provide that as regards the major minerals the prospecting licences and mining leases would be governed by the provisions of the Act and the rules framed by the Central Govt. therein. As regards minor minerals, Section 15 empowers the State Govt. to make rules for regulating the grant of mining lease in respect of minor minerals or in purposes connected thereof.

Exercising the powers u/s 13 the Central Govt. has framed the rules in the year 1960 which are known as Mineral Concession Rules, 1960. On the other hand exercising the powers u/s 15 the State Govt. has framed the rules in the year 1961 which are known as the M.P. Minor Mineral Rules, 1961. From the title of the rules it is apparent that the rules framed in the year 1961 by the State Govt. are not for regulating the grant of mining leases in respect of major minerals.

From the scheme of the Act, 1960 rules and 1961 rules it is clear that a person has to apply for a prospecting licence of a mining lease which shall be dealt with in accordance -with the rules governing the regulation of the grant of mining lease.

The contention of the learned Counsel for the petitioners is that as they are holding the leases for major minerals the State. Govt. under the 1961 rules cannot impose any terms and conditions because they would be governed under the provisions of Mineral Concession Rules of 1960. Rule 22 of 1960 rules is in relation to the applications for grant of mining leases. The application is to be acknowledged under Rule 23 and to be disposed of under Rule 24. If the application is ultimately granted then the applicant is called upon to execute the lease in form ''K'' which is provided under Rule 31.

Rule 25 of M. P. Minor Mineral Rules, 1961 provides for different condition of quarry lease. Condition No. 25(1)(d) (viii-a) provides that the lessee shall issue a transit pass in form accompanying every truck carrying minerals or products therefrom (from) leased area. The transit pass shall be prepared in duplicate in book form. Original shall be given to the driver of the carrier after making the necessary entries. The lessee shall obtain from the Collect or/Additional Collector the transit pass book duly stamped and signed by the officer authorised by the Collector/Additional Collector. The Collector will keep proper account of receipt and issue of transit pass book.

The petitioners'' grievance is that the petitioners are being forced to observe Rule 25(1)(d) (viii-a) by almost all the mining officers or Collectors of the District and in absence of the transit passes issued by them the vehicle and/or goods are being seized or confiscated. The petitioner submits that 1961 rules are applicable to the minor minerals while in fact they are having mining leases for extractions.

It was also contended by the learned counsel for the petitioners that if the State Govt. is of the opinion that in the interest of mineral development it is necessary so to do, when in any case with the previous approval of the Central Govt. it can impose such conditions as it thinks deemed fit. According to the counsel for the petitioners no previous approval has ever been obtained by the State Govt. for applying Rule 25(1) (d)(viii-a) of 1961 rules. It is also a submission that unless under Rule 27(3) of 1960 rules the previous approval of the Central Govt. is obtained, the 1961 rules of the State cannot be applied. Relying upon Ramlal and Sons Vs. The State of Rajasthan, , it was contended that Rule 41 of the Mineral Concession Rules, 1949 provided for conditions of the lease but the rules nowhere provided for the realisation of premium for the lease. On gram of mining lease u/s 25 of the Act of 1949 the State Govt. was under legal obligation to follow the definite statutory rules and cannot exercise powers unknown to the rules. In the said case the application of lesse was allowed by the State Govt. on realisation of premium without prior approval of the Central Govt. The Supreme Court held that the State Govt. was under legal obligation under definite statutory rules and cannot exercise the powers unknown to the rules. It was contended by the learned counsel for the petitioners that if anything is unknown to the rules then contrary to the statutory rules the powers cannot be exercised.

Regarding pilferage and the thefts, relying upon M.P. Contractors Sangh, Indore and Others Vs. State of M.P. and Others, , it was contended that it was the duty of Government to engage adequate staff to avoid thefts of minor minerals from quarries. The counsel for the petitioners, therefore, stated that the action of the State Government, through its officers directing the mine holders/lessee to issue the transit pass is not only contrary to law but is an exercise which is unknown to law.

The learned counsel for the State submitted that Section 24 of the M.M.R.D. Act gives the power to the authorised persons for entry and inspection. The person authorised can enter and inspect any mine, survey and take measurements, weigh or take stocks of minerals, examine the documents, order production of such documents and examine any person having the control or connected with any mine. According to the learned Govt. Advocate when the power of entry and examination is given to the person authorised, it is for effective check and control for regulation of the mines. The condition for maintenance of the transit pass is neither illegal nor tantamounts to exercise of the powers which are not in jurisdiction of the State Government. It was also submitted that under Rule 27 of 1960 Rules the conditions for the mining lease have been given and, therefore; if a condition for maintenance of the transit passes, for issuance of the transit passes and maintenance of the transit pass book is ordered, it is neither bad nor illegal. In fact the directions have been issued to put the cross check so that the accounts and the books maintained by the lease holders are properly checked with the transit pass book.

It cannot be doubted that 1960 rules have been framed by the Central Government exercising the powers u/s 13 of the M.M.R.D. Act. Rule 27 provides for the conditions on which a mining lease has to be executed. According to Sub-rule (3) of Rule-27 if the State Govt. is of the opinion that in the interest of mining development it is necessary to do then with the previous approval of the Central Govt., may impose such conditions as it think fit. Rule 27 though gives a power to the State Govt. to impose such further conditions as it think fit but the said power can be exercised by the State Govt. with previous approval of the Central Govt. Admittedly for applying Rule 25(1) (D) (viii-a), for maintenance of the transit pass book or issuance of the transit passes the State Govt. has not obtained the previous approval of the Central Govt. Section 24 of the M.M.R.D. Act merely provides for the powers of entry and inspection, the person authorised may exercise such powers as are provided in Section 24 but Section 24 does not permit such authorised person or the State Govt. to issue such directions that the holder of the mining lease would issue transit pass or maintain the transit pass book. Rule 24 in our opinion merely gives a power to a authorised person to keep effective check by making entry in and inspection of the mine or to do such acts which are analogus to the entry and inspection by survey or taking measurements etc. Section 24 also provides that such authorised persons may examine the accounts etc. or a person who is in control or is connected with any mine. Section 24 does not provide that the mine holder would maintain the transit pass book.

The M.P. Minor Mineral Rules, 1961 have been made by the State Govt. in exercise of the powers conferred by Section 15 of the M.M.R.D. Act, 1957. Certainly u/s 15 the powers could be exercised in relation to the minor mineral only. Once it is held that 1961 rules apply to the minor minerals only. Once it is held that 1961 rules apply to the minor minerals only, them Rule 25 as a whole would also apply to minor minerals. It cannot be said that Rule 25 of 1961 rules is in addition to Rule 27 of 1960 rules and the State Govt. can apply the provisions of Rule 25 of 1961 rules in the interest of mineral development. It would be illegal to read Rule 25 of 1961 rules in addition to the Rule 27 of 1960 rules. These rules have been framed to meet different exigencies. One relates to the major minerals while other relates to the minor mineral, one has been framed by the Central Govt. for its application to the major mineral while the other has been enacted for its application to minor minerals. If the State Govt. was of the opinion that Rule 25(1)(d)(viii-a) is to be bodily lifted and is to be read in conjunction with Rule 27 of 1960 rules then the previous approval of the Central Govt. is a must and in absence of such previous approval, action of the State Govt. cannot be held to be valid.

While considering the provisions of M.M.R.D..Act of 1949 and the Mineral Concession Rules, 1949 specially Rule 41 in the matter of Ramlal and Sons Vs. The State of Rajasthan, , the Supreme Court in unequivocal terms has said that if the rules do not authorise realisation of premium then recovery of the premium by the State Govt. is absolutely illegal and contrary to the rules. The Supreme Court held that on granting mining lease u/s 5 of the Act the State Govt. is under legal obligation to act in accordance with definite statutory rules and cannot exercise powers unknown to the rules. The Supreme Court further held that grant of a lease on realisation of a premium without the prior approval of the Central Govt. was illegal and the lessee was entitled to refund of the amounts. It is thus clear that the State Govt. is duty bound to act in accordance with the definite statutory rules and cannot exercise the powers unknown to the rules. The mandate issued by the State or its officers to. the holders of a lease to issue transit passes or maintain transit pass book is contrary to 1960 rules and, therefore, the power is sought to be exercised in a manner which is unknown to the, rules. The State or its officers cannot be permitted to exercise an authority which does not vest in it.

In the matter of M.P. Contractors Sangh, Indore and Others Vs. State of M.P. and Others, the grievance of the petitioners was that unless there was a contract between the State Govt. and the Contractors to produce the royalty clearance certificate and/or royalty receipt, the State Govt. and/or the Collector had no powers to issue the directions for deduction of royalty because they could not go beyond the terms and conditions of the agreement. In that case also the State Govt. took the plea that the respondents (State) are duty bound to have a check of leakage of revenue royalty and to control royalty movements of minor minerals. The State Govt. issued such circulars to stop leakage of royalty. The State in that case further submitted that if the State has asked , for production of receipts or bills so that counter-check and the royalty evasion could be avoided then the action of the State was not bad. This Court in paragraph 13 of the judgment held that it was the duty of the State Govt. to engage more staff and to see no such thefts were committed and even if the State Govt. was not in a position to check such thefts, doubts cannot be cast on the building contractors nor they could be blamed for that. Holding that such circulars were illegal the High Court further observed that if the Government wants to adopt such a measure then the State Govt. ought to make such a provision in the contract entered into with such building contractors or they should make rules to that effect under the provisions of the said Act so that effective checks are kept.

It is clear from the above authorities and consideration of the rules that the State Govt. has no powers to direct these lease holders for maintenance of the transit passbook or issuance of the transit passes in relation to movement or despatch of the major minerals.

The petitioners have prayed for issuance of a writ for quashing Rule 25 (viii a) of M.P. Minor Mineral Rules 1961. It is undisputed that there is no such rule in the 1961 rules, therefore, such a writ cannot be issued in favour of the petitioners what is not in existence cannot be quashed.

If is, however, clear that the State Govt. is applying Rule 25 (viii-a) of 1961 rules in relation to the despatch and movement of the major minerals, which are otherwise governed by the Mineral Concession Rules of I960. Under these circumstances this Court can only direct that State Govt. has no authority to apply Rule 25 (viii-a) of M.P. Minor Mineral Rules, 1961 to the despatch and movement of the major minerals. It is also declared that the Stale Govt. through its officers and agents have no authority to direct the lease holders for major minerals to maintain the transit pass books or issue the transit passes. It is also declared that the respondents have no power or authority to seize the vehicles or minerals if the lease holders of major minerals do not issue the transit passes for movement, despatch or transportation of the major minerals. Any action taken by the State Govt. from the date of this judgment shall be deemed to be illegal.

The petitions are allowed to the extent indicated above but, however, there shall be no orders as to cost. Let the writs be issued in accordance with the directions given above.

