

(1996) 11 MP CK 0032

In the Madhya Pradesh High Court

Case No : Writ Petition No. 2485 of 1996

Ram Lubhaya Sehgal

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 05-11-1996

Acts Referred:

Madhya Pradesh Minor Minerals Rules, 1996 — Rule 18(1), 18(3)

Citation : (1997) 2 MPLJ 312

Hon'ble Judges : C. Kumar Prasad, J

Bench : Single Bench

Advocate : P.K. Jaiswal, for the Appellant; V.K. Shukla, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.K. Prasad, J.

By this writ petition filed under Article 226 of the Constitution of India, the petitioner seeks issuance of an appropriate writ directing respondent No. 2 to renew the lease in pursuance of the order dated 28-11-1995, passed by the Commissioner in Appeal No. 263/94-95 (Annexure A).

Short facts giving rise to the present petition are that the petitioner was granted a quarry lease for extraction of limestone as minor mineral over an area of 5 acres in village Gouraiya, tahsil Maihar, district Satna for a period from 17-6-1975 to 16-6-1985. The aforesaid quarry lease was renewed for a further period of ten years from 17-6-1985 to 16-6-1995. The petitioner applied for renewal of the said quarry lease and the Collector by order dated 6-6-1995 rejected the application filed by him. Aggrieved by the rejection of the application for renewal the petitioner filed an appeal before the Commissioner who by his order dated 28-11-1995 set aside the order of the Collector and allowed the appeal. It is the grievance of the petitioner that in spite of the order of the Commissioner lease deed renewing the quarry lease has not been executed.

It appears that after the order of the Commissioner directing for renewal of the lease the petitioner was communicated by letter dated 21-3-1996 to complete certain formalities. The petitioner vide letter dated 4-4-1996 complied with all the formalities and submitted all the documents required and deposited the amount demanded. It is the grievance of the petitioner that even after complying all the requirements, respondent No. 2 Collector did not execute the lease deed and informed that in view of Rule 18 of the M.P. Minor Mineral Rules, 1996 which came into force with effect from 1-4-1996, it was not possible to execute the lease deed.

Return has been filed on behalf of the respondents. Their stand in the return is that as the agreement in pursuance of the order of the Commissioner has not been executed, it shall be deemed that application filed by the petitioner for renewal of the lease has been refused. Accordingly the stand of the respondents is that the petitioner is required to apply afresh for renewal of the lease and on such an application being filed, the same shall be considered in accordance with law.

It is relevant here to state that the Commissioner by the order dated 28-11-1995 directed for renewal of the lease and at that particular point of time the provision of the M.P. Minor Mineral Rules, 1961 was in operation. Rule 22 of the aforesaid Rules provided for execution of the lease within three months of the order sanctioning the lease. The aforesaid Rule further provided that where the State Government is satisfied that the application for the lease is not responsible for the delay in execution of the lease deed, the State Government may permit the execution of the lease deed after the expiry of the aforesaid period of three months. Here in the present case, the order was passed by the Commissioner directing for renewal of the lease on 28-11-1995 and the petitioner was asked to comply with certain formalities by letter dated 21-3-1996 (Annexure C) which was complied by the petitioner on 4-4-1996. In fact, the communication dated 21-3-1996 directed the petitioner to get the deed executed within three months and he has complied with the requirement on 4-4-1996 which is definitely within three months period granted to him. This fact has not been disputed by the respondents in the return. As stated earlier, the respondents seek to deny the execution of the lease deed on the ground that after enforcement of the provisions of the M.P. Minor Mineral Rules, 19% w.e.f. 1-4-1996 his application shall be deemed to have been refused. Rule 18 of the M. P Minor Mineral Rules, 1996 reads as follows :-

"18. Disposal of applications for the grant or renewal of quarry lease. -

(1) On receipt of an application for the grant or renewal of a quarry lease, its details shall be first circulated for display on the notice board of the Zila Panchayat, Janpad Panchayat and Gram Panchayat concerned of the district and Collectorate of the district concerned.

(2) The sanctioning authority, after making such inquiries as he may deem fit

and after obtaining opinion of the respective Gram Panchayat, may sanction the grant or renewal of a quarry lease to the applicant or refuse to sanction it.

(3) Notwithstanding anything contained in Sub-rule (2), all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these rules shall be deemed to have been refused by the Sanctioning Authority. Fresh applications in this behalf may be made according to the procedure laid down under these rules."

It is contended by Mr. Jaiswal that the petitioner cannot be permitted to suffer on account of the failure on part of the respondents to take appropriate steps for execution of the lease deed within three months of the order as contemplated under Rule 22 of the M.P. Minor Mineral Rules, 1961. It is further contended that for the first time the petitioner was asked to fulfil certain requirements by order dated 21-3-1996 and in fact the petitioner was given 3 months time to comply with the requirement, which he did on 4-4-1996, the petitioner cannot be permitted to suffer on account of delayed action of the respondents. It is further contended that the right of the petitioner has to be adjudicated on the basis of the M.P. Minor Mineral Rules, 1961 which was operative at the time when the Commissioner passed the order on 28-11-1995. Mr. Jaiswal further submits that had the respondents complied with the requirement of Rule 22 of the 1961 Rules within the time prescribed, all action could have been done before 1-4-1996 i.e. the date on which the M.P. Minor Mineral Rules, 1996 came into force.

Mr. Shukla however appearing on behalf of the respondents submits that notwithstanding the fact that the respondents did not execute the lease deed within the time stipulated under Rule 22 of the 1961 Rules, but in view of the clear language of Rule 18(3) of the 1996 Rules the application filed by the petitioner shall be deemed to have been refused.

Having considered the rival submissions made on behalf of the parties, I am of the view that the respondents cannot take advantage of Rule 18 of the Rules. Rule 18(3) of the Rules quoted above contemplates deemed refusal of all pending applications for grant inclusive of such applications on which agreements have not been executed. It is relevant here to state that Rule 18(1) of 1996 Rules contemplates disposal of applications for the grant or renewal of quarry lease whereas in Rule 18(3) of the 1996 Rules the expression used is all pending applications for the grant inclusive of such applications on which agreements have not been executed on the date of commencement of these Rules shall be deemed to have been refused. Thus, the legislature has omitted the expression "renewal of a quarry lease" in Rule 18(3) of the Rules. The omission in my opinion in Rule 18(3) of the rules excludes the operation of the said rule in relation to application for renewal or quarry lease. In my considered opinion the only applications for grant inclusive of such applications on which agreements have not been executed shall be deemed to have been refused, but Rule 18(3) of the Rules shall not operate in relation to application for renewal of a quarry lease. In my opinion, the exclusion of the word "renewal" has a purpose and in

that view of the matter I am of the considered view that the application of the petitioner cannot be rejected on the ground that it shall be deemed to have been refused.

In view of my answer to the aforesaid submission it is not necessary to go into the question as to whether grant of quarry lease confers to the petitioner the substantive right. The only ground seeking refusal to execute the lease having been negatived, the petitioner is entitled to the relief sought for.

Accordingly this writ petition is allowed and respondent No. 2 is directed to renew the quarry lease of the petitioner, as ordered by the Commissioner. However, in the facts and circumstances of the case, there shall be no order as to cost.