
(1993) 09 AHC CK 0019

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 31712 of 1993

Ram Naresh Pandey

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 13-09-1993

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 23(2), 29, 29(2)

Citation : (1994) 1 AWC 170

Hon'ble Judges : D.P.S. Chauhan, J;A.P. Misra, J

Bench : Division Bench

Advocate : Sandeep Mookherjee, for the Appellant;

Final Decision : Dismissed

Judgement

A.P. Misra, J.—Heard learned counsel for Petitioner.

2. The Petitioner seeks quashing of the impugned auction notice dated 17-8-93, annexure-1 to the petition by virtue of which a fresh auction of Khand No. 11, Kamiyari Lohra Ora, district Banda has to take place for the, period starting from 1-10-93 to 30-9-94. Earlier the Respondents for the same area issued notice dated 30-12-92 for auction and the same was challenged by means of the writ petition ((sic) pise. Writ Petition No. 3305 of 1993) filed by a private party and on 29-1 3 this Court passed interim order that if "any bid is made on 31-1-93 in pursuance of the said auction, the same shall not be finalised. However, later, the said writ petition was dismissed on 23-3-93. It is thereafter this auction which was held on 31-1-93 in which the Petitioner participated and his bid was found to be the highest and was also accepted by Respondent No. 3. Thereafter the Petitioner deposited the requisite amount according to teems and conditions laid down in the said auction notice. After dismissal of the aforesaid writ petition as aforesaid, on 23-3-93, Respondent No. 3 issued notice on 25-3-93 to the Petitioner indicating therein that the District Magistrate had accepted Petitioner bid and asked him to submit agreement papers within seven days. However,

some delay is alleged but it is said that the said lease deed was executed on 10-5-93. It is on these facts the Petitioner contends that the total period of one year which was to be completed has the original tender notice for the year in question and what is also provided in the rules has been curtailed by the Respondents illegally, hence he seeks quashing of the aforesaid auction notice. The contention of the Petitioner is that under the U.P. Minor Minerals (Concession) Rules, 1963 by virtue of proviso to Rule 23 (2) read with Rule 29 it is mandatory for the Respondents to execute the lease in favour of the Petitioner for a period of one year. The curtailment of any period less than one year would be hit by the aforesaid provisions and thus would be illegal.

3. Before dealing with the aforesaid question we find that in this case the impugned auction notice, is for a period subsequent to" the period for which the lease was executed with the Petitioner, hence there is no conflict between the proposed auction and the period for which the lease was executed with the Petitioner. The only question remains whether the lease which was executed should have been for a period of one year as contended by the Petitioner or the lease deed executed was valid. The Petitioner relied on Rule 29 (2) and proviso to Rule 23 (2) to contend that the period of lease has to be one year which is mandatory in view of the provisions. The aforesaid two Rules are quoted below:

23(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 situ rock type mineral deposit shall be five years and in respect of river bed mineral deposit shall be one year at a time.

29(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.

Rule 29 (2) only specifies the starting date from which the lease is to be - calculated which is from the date of the receipt of the letter of acceptance of _bid or tender by bidder or the. tenderer. Coming to Rule 23 (2) We find it provides that the period of lease should not be for more than five years] at a time. Use of words" more than five years" does not mean that the period cannot be less than five years. Strong reliance was placed on behalf of the Petitioner to the proviso of sub-rule (2) of Rule 23. This splits up two classes of minerals; one in respect of in situ rock type mineral, another in respect of river bed mineral deposits. The former is for a period of five years and the latter for a period of one year at a time. Here the use of word "shall" is followed by words "be one year at a time". The contention ?s that this being mandatory, any curtailment of period by Respondents in executing the lease for less than one . year is hit by the provisions of the said Rule hence it is bad. This contention is misconceived. Reliance has also been placed on proviso of sub-rule (2) of Rule 23. The said proviso cannot be read in isolation. This proviso only qualifies to the words

mentioned in sub-rule (2) of Rule 23. Sub-rule (2) provides that the State Government shall not lease out by auction or by tender or by auction-cum-tender for more than five years at a time. The proviso only splits up namely "in situ rock" type mineral deposit the period shall be five years and for river bed mineral deposit it shall be one year at a time. This" period of five years and one year has to be read in context of the language of sub-rule (2) of Rule 23 which only put an outer limit of five years but cannot be read as restricting the State Government in granting the permission for a period less than as provided therein. Reading in this context the proviso the period of in situ rock cannot be more than five years and for river bed mineral deposit it cannot be more than one year at a time. Thus on the facts and circumstances of a case it could be restricted for a period less than that. The use of word "shall" in this proviso, in this context could not be read as mandatory but is only directory. What is mandatory is to grant of lease has to be not more than one year at a time. Hence the contention raised on behalf of the Petitioner that the execution of the lease by the Respondents for a period of less than one year could be hit by the aforesaid two Rules is unsustainable- and thus we hold the contention is devoid of any merit.

4. Apart from this, it has not been disputed on behalf of the Petitioner that the mining period is from 1 October to 30th September, in the succeeding year. In case the argument raised by the Petitioner is accepted there would be varying periods for granting lease to have various lease holders, where a party obtains stay of auction which is proposed by the Respondents within the normal period as is also in the present case. On account of the stay order passed in another writ petition the period is bound to be curtailed and even if the writ petition is dismissed and the stay order is vacated, the curtailment of the period on that account has to be extended beyond 30th September of the succeeding year to complete the full period of one year. As we have observed above it would create chaos and dislocation and even the working of mine would suffer. Finally, so far as this case is concerned we find that the Petitioner admittedly participated in the auction held on 31-1-93 in which the condition stipulated is that if it for a period ending on 30th September, 1993. Since even that auction was stayed and was only vacated on 23-3-93 by this Court, the consequential action and execution of the lease by the Petitioner on 10th May, 1993 both by participation in the auction on 31-1-93 and also while executing the lease on 10-5-93 the Petitioner was fully aware, of his participation in an auction and execution of lease for a period ending on 30th September, 1993 and he having worked the mines now filing of this writ petition and the claim of extension of this period beyond 30th September, 1993 is not sustainable and thus Petitioner is not entitled for such relief. One has to keep in mind that in an auction or lease for excavating mines even if the amount is paid by an individual even if the period is curtailed, there is no restriction for such person to take out large quantity of mines in the remaining period. Even if it can be said by curtailment of period may result in loss, that may be compensated by working out for greater excavation to equate the loss of the period. However, this is without prejudice to

the rights of the Petitioner, if entitled, to seek his remedy for compensation and damages before the proper authority or Court but the same cannot be determined in the present proceedings under Article 226 of the Constitution.

5. Accordingly the present writ petition fails and is dismissed.