

(1992) 10 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 1527 of 1991

Ram Singh Makrand Singh Tomar and Another	APPELLANT
Vs	
Sarvodaya Kamgar and Karigaron Ki Sahakari Sanstha Ltd. and Others	RESPONDENT

Date of Decision : 16-10-1992

Acts Referred:

Madhya Pradesh Minor Minerals Rules, 1961 — Rule 32B, 5

Citation : (1992) 37 MPLJ 938 : (1992) MPLJ 938

Hon'ble Judges : K.M. Pandey, J;K.K. Verma, J

Bench : Division Bench

Advocate : M.M. Kaushik, S.S. Bansal, for the Appellant; R.K. Dixit and K.K. Lahoti, for the Respondent

Final Decision : Dismissed

Judgement

K.M. Pandey, J.

This Writ Petition under Articles 226/227 of the Constitution of India has been filed requesting that a Writ of Certiorari or any other suitable writ or direction be issued for quashing the impugned order dated 13-8-1991 passed by respondent No. 4 i.e. Additional Secretary to the Government of Madhya Pradesh, in the revision (Annexure P-I).

The brief facts of the case are that the Collector, Bhind passed an order that four mines of sand situated in villages Ron and Khera Shyampur be auctioned for a period of three years and in compliance of this order notice of auction was published and displayed on the notice-board and the proceedings for auctioning mines were started by the Collector, Bhind. The petitioners submitted application for the grant of lease of the said mines and in the auction proceedings the petitioners had also taken part. The auction was held on 29-1-1990 by the Collector, Bhind. The petitioners were the highest bidder in respect of two mines. This highest bid of the petitioners was accepted and the petitioner No. 1

deposited 30% security amount. The other two mines were also auctioned and the highest bid of the petitioners was accepted. The petitioner No. 2 deposited 30% of the security amount.

The respondent No. 1 preferred an appeal before the Commissioner, Chambal Division, Gwalior under Rule 32-A of the M. P. Minor Mineral Rules, 1961 against the notice displayed on notice-board informing the general public in respect of the auction. This appeal was rejected. In this appeal, the respondent No. 1 failed to implead the petitioners as parties and, therefore, on 20-2-1991 the petitioners moved an application for being impleaded as parties in the appeal. The application was allowed and the petitioners were impleaded as respondents. The Commissioner, after hearing arguments, dismissed the appeal holding that the appeal had not been filed against the order for auctioning the mines passed by the Collector.

An appeal was preferred against the notice and no appeal was maintainable against the notice. The respondent No. 1 preferred a revision petition before the State Government which has been allowed and the respondent No. 4 had passed the impugned order that the lease of the disputed mines is granted on payment of 10% more amount than highest bid of the petitioners and had set aside the order of the respondent No. 3 and the Collector, Bhind granting lease in favour of the petitioners. The petitioners alleged that the order of respondent No. 4 in setting aside the order of the respondent No. 3 is illegal and the respondent No. 3 had not given any finding that the appeal filed before the respondent was competent. It has further been alleged that there is no provision in the Mining Act or the Rules framed thereunder that the lease of the mines should be granted in favour of the society without auctioning the same.

In order to appreciate the problem before us we have to go through the Madhya Pradesh Minor Mineral Rules, 1961. Rule 5 says : -

"A quarry lease shall be granted by the State Government."

Rule 6 provides that an application for grant of a quarry lease shall be made to the State Government in Form I and it gives out the particulars which have to be disclosed in the application. The application of the respondent/society for the grant of minor lease was moved subsequently after the lease was granted in favour of the applicants. In the Rules, there is no provision for giving preferential treatment to society. The respondents have relied further preferential treatment on the notification (Annexure R-I) dated 28-4-1967. It discloses the policy regarding giving quarries to co-operative societies through auction. Relying on the policy of the State Government detailed therein the respondents claimed that they were better suited for the grant of the minor lease. I have already said earlier that the application for the society for the grant of mining lease was not presented before the Collector, before the order regarding the grant of lease was passed.

An appeal was preferred before the Commissioner and he dismissed the appeal.

Being aggrieved by the said order the respondents approached the State Government under Rule 32-B and invoked its revisional jurisdiction and the State Government, in its wisdom, thought it fit to pass the impugned order regarding the grant of lease in favour of the respondent/society. The order passed by the State Government, in exercise of the powers under Rule 32-B, has been challenged on the ground that the State Government was not competent to pass such an order. Rule 32-B of the Madhya Pradesh Minor Mineral Rules, 1961 says :

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"The State Government may at any time, on its own motion for the purpose of satisfying itself to the legality or propriety of any order passed by or as to the regularity of the proceedings of any officer subordinate to it call for and examine the record of any case pending before or disposed of by such officer and may pass such order in reference thereto as it thinks fit."

The only proviso to this Rule is that: -

"Provided that no order under this rule shall be passed against any person interested unless he has been given an opportunity to represent his case."

In the present case, both the parties have been heard and it is the State Government under Rule 5 which has power to grant quarry-leases. Simply because the power was delegated to the Collector does not mean that the State Government has ceased to hold that power particularly, in view of Rule 32-B which gives power to the State Government to modify any order or irregularity committed by any officer subordinate to it. The last order has been passed by the State Government. The question is whether the order can be termed as illegal. The answer is in a simple "No", because in view of the policy of the State Government that mining leases should be given to societies and the State Government has granted the lease to the society which satisfies the public policy. If the State Government did not think it fit to grant lease in favour of individual bidders then they should not be aggrieved by it. The ultimate power vested in the State Government and simply because the State Government did not agree with the decision of the Collector regarding the grant of lease to individual persons, it cannot be said that an illegality in the order has crept in. The impugned order does not need any interference. The Writ Petition is consequently dismissed.