
(2019) 01 RAJ CK 0010
In the Rajasthan High Court
Case No : Civil Writ No. 11521 Of 2018

Ramesh Gurjar

APPELLANT

Vs

State Of Rajasthan

RESPONDENT

Date of Decision : 02-01-2019

Acts Referred:

Rajasthan Minor Mineral Concession Rules, 2017 — Rule 75
Rajasthan Minor Mineral Concession Rules, 1986 — Rule 7

Citation : (2019) 01 RAJ CK 0010

Hon'ble Judges : Sangeet Lodha, J

Bench : Single Bench

Advocate : Arvind shrimali, Amit Vyas, R.R. Kanwar

Final Decision : Allowed

Judgement

1. This petition is directed against order dated 12.6.18 passed by the State Government, whereby the mining lease granted in favour of the petitioner for excavation of the mineral Quartz and Feldspar in the area ad measuring 4.0225 hectare situated in Village Thoriya, Tehsil Kumbhalgarh, District Rajsamand, has been declared null and void, under Rule 75 of Rajasthan Minor Mineral Concession Rules, 2017 (for short "the Rules of 2017").

2. The facts relevant are that the petitioner applied for grant of mining lease of the mining area in question for major mineral Quartz and Feldspar under the Mineral Concession Rules, 1960 (for short "the Rules of 1960") on 30.9.11, after obtaining the consent of the khatedar of the land while paying compensation a sum of Rs.6,00,000/-. After demarcation of the area, the Letter of Intent was issued by the Director of Mines in favour of the petitioner on 11.7.12. After approval of the mining plan and the progressive mining closure plan and on completion of the other formalities, mining lease was executed in favour of the petitioner on 25.10.13 for a period of 30 years, which was duly registered on 30.10.13. Later, vide notification dated 10.12.15, the mineral Quartz and Feldspar has been declared minor mineral by the Government of India.

3. During the audit conducted by the Accountant General, it was revealed that at the time of grant of mining lease in favour of the petitioner, yet another application preferred for grant of mining lease of the mining area in question was pending consideration and therefore, the mining area was not available for allotment to the petitioner herein. Accordingly, on the proposal of the Director, Mines dated 14.5.18, the mining lease executed in favour of the petitioner has been declared null and void, by the order impugned issued by the Joint Secretary, Department of Mines, Government of Rajasthan, under Rule 75 of the Rules of 2017. Hence, this petition.

4. A reply to the writ petition is filed on behalf of the respondents taking the stand that the Draftsman (Mines) wrongly scrutinised the mining area in question as vacant ignoring that in respect thereof, yet another application being 38 of 2011 already filed was pending consideration. According to the respondents since the person who had applied for grant of mining lease in respect of the mining area in question earlier, had preferential right therefore, the petitioner could not have been granted the mining lease and thus, on account of the mistake crept in, the mining lease granted in favour of the petitioner ignoring the preferential claim in violation of the Rules of 1960 has rightly been declared null and void invoking the provisions of Rule 75 of the Rules of 2017 inasmuch as, the mineral Quartz and Feldspar have now been declared minor mineral. It is submitted that mistake, error or defect which has been committed inadvertently due to oversight is permissible to be rectified.

5. Learned counsel appearing for the petitioner contended that the order impugned passed by the State Government declaring the mining lease granted in favour of the petitioner as null and void without giving an opportunity of hearing to the petitioner is ex facie violative of principles of natural justice and therefore, deserves to be quashed on this count alone. Learned counsel submitted that pursuant to the mining lease executed in favour of the petitioner, he is operating the mine for last 5 years and thus, right vested in him to operate the mine on the strength of the mining lease granted in his favour could not have been set at naught in such a perfunctory manner, without issuing the notice to him against the proposed action.

6. On the other hand, learned Government counsel while reiterating the stand taken in the reply to the petition as aforesaid, submitted that the mining lease granted in favour of the petitioner ignoring the preferential claim in contravention of Rule 7 of Rajasthan Minor Mineral Concession Rules, 1986, has rightly been declared null and void invoking the provisions of Rule 75 of the Rules of 2017. It is submitted that the fact regarding pendency of the earlier application being not in dispute, no fruitful purpose will be served in setting aside the order, for alleged violation of the principles of natural justice. Learned counsel submitted that where the lease is granted dehor the Rules, the same being null and void by virtue of Rule 75 of the Rules of 2017, no opportunity of hearing is required to be given and therefore, the order impugned passed by the State Government is

absolutely justified.

7. Indisputably, the petitioner was granted the mining lease under the provisions of Mineral Concession Rules, 1960, as at the relevant time, the minerals Quartz and Feldspar were categorised as major mineral and thus, the provisions of Rule 7 of the Rules of 1986, had no application. In any case, it is not in dispute that while granting the mining lease the applications preferred by the applicants earlier were required to be given preference under the Rules of 1960 as well. But the fact remains that the petitioner was granted the mining lease way back in the year 2012 and he is operating the mines till this date. It is not the case of the respondents that the applicant who alleged to have made application earlier than the petitioner has raised any grievance regarding non consideration of his application, if any pending. Moreover, apparently on the basis of audit objection, the State Government invoking the provisions of Rule 75 of Rules of 2017, inasmuch as now the mineral Quartz and Feldspar have been categorised as minor mineral by the Government of India, straightaway declared the mining lease granted in favour of the petitioner as null and void without giving him an opportunity of hearing .

8. It stands firmly well established that the rules of natural justice are assurances of justice and fair play and therefore, any action which has evil and civil consequences, should be taken only after following the principle of natural justice. To say the least the observance of principles of natural justice is a rule and exclusion an exception and therefore, unless exceptional circumstances justifying exclusion thereof exist, departure therefrom is not permissible under the law.

9. Adverting to the facts of the present case, admittedly on the strength of the mining lease granted the petitioner is operating the mine for last more than 5 years. Obviously, the right vested in the petitioner to operate the mines for the lease period i.e. 30 years and thus, his vested right to operate the mine could not have been set at naught merely on the basis of audit objections, without putting him to notice against the proposed action, while drawing unilateral conclusion that preferential claim of another applicant has not been considered. The petitioner is well within his right to contest the reasons against the proposed action on all available grounds and thus, the order impugned passed by the State Government in perfunctory manner without giving an opportunity of hearing to the petitioner, being in gross violation of principle of natural justice, is not sustainable in the eyes of law.

10. In the result, the writ petition is allowed. The order impugned dated 12.6.18 passed by the State Government is quashed. The respondents shall be at liberty to take appropriate decision in respect of cancellation of mining lease granted in favour of the petitioner after giving him an opportunity of hearing in accordance with law. No order as to costs.