

(2015) 08 RAJ CK 0075

In the Rajasthan High Court

Case No : Special Appeal (Writ) No. 1859/2014, Stay Application No. 12016/2014 in Civil Writ Petition No. 6031/2012, Special Appeal (Writ) No. 1860/2014, Stay Application No. 12017/2014 in Civil Writ Petition No. 6029/2014, Special Appeal (Writ)

Rishi Kumar Morwal and Others

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 25-08-2015

Acts Referred:

Citation : (2015) 08 RAJ CK 0075

Hon'ble Judges : Mohammad Rafiq, J;Anupinder Singh Grewal, J

Bench : Division Bench

Advocate : Kamlakar Sharma, Senior Counsel, assisted by Madhusudan S. Rajpurohit and Rakesh Kumar Sharma, Counsel, for the Appellant; G.S. Gill, Additional Advocate General, assisted by Baldev Singh Sandu and Vandana Sharma, Deputy Government Counsel, Advocates for

Final Decision : Dismissed

Judgement

Mohammad Rafiq, J—All these six appeals are directed against common judgment dated 24.04.2014 passed by learned Single Judge, whereby fifteen writ petitions were disposed of with common direction.

2. Since identical questions of facts and law are involved, these appeals were heard together and are being decided by this common judgment, treating D.B. Special Appeal (Writ) No. 1859/2014 filed by Rishi Kumar Morwal, as the lead case.

3. The appellants approached this court challenging demand notice dated 11.03.2011 and 23.08.2011 issued by the Mining Engineer, Sikar, and order dated 26.03.2012 passed by the Deputy Secretary to the Government, Mines (Gr.2) Department, Government Secretariat, Jaipur, whereby recovery of penalty for unauthorized excavation of minerals, outside the mining area allotted to writ-petitioners/appellants, was sought to be made. According to appellants, the

State Government, on representation of mining lease holders, by order dated 16.05.2007, waived recovery and directed that on condition of deposit of penalty at the rate of Rs. 25/- per square meter on computing unauthorized mining area and directed that on such deposit the demand notice may be cancelled. According to the appellants, the said order was passed by the Government in exercise of its power under Rule 65 of the Rajasthan Minor Mineral Concession Rules, 1986 (for short, "the Rules of 1986"). The Directorate of Mines & Geology, Government of Rajasthan, Udaipur, vide order dated 09.05.2008, which was signed by the Superintending Engineer Mines (HQ-III), clarified that in view of order of the Government dated 16.05.2007, unauthorized mining on deposit of one time penalty, has been condoned and would on such deposit, have the effect of regularizing the unauthorized excavation of minerals. Since all mining lease holders, having possession of land in excess, which was leased out to them, were yet excavating minerals from the shifted position outside originally leased mining area, the order of the Government would have effect of regularizing such mining and no separate concession was required to be given by the State Government in this behalf.

4. The Mining Engineer, Sikar, on that basis issued an order dated 23.06.2008 regularizing the mining area outside originally leased area. Consequently, a rider agreement was executed between the writ-petitioners/appellants and the State in each of the cases. It was thereafter that on 11.03.2011 the Mining Engineer, Sikar, issued a notice to the writ-petitioners/appellants stating that an inspection team was constituted to inspect the mining area and it was found that 198436 MT of masonry stone had been unauthorizedly excavated. Accordingly, show cause notice was issued to writ-petitioner/appellant requiring them to deposit ten times royalty of the same. Writ-petitioners/appellant submitted reply to the said notice. The Mining Engineer had issued demand notice on 23.08.2011 requiring him to deposit Rs. 2,12,73,520/- within a period of fifteen days. Writ-petitioner/appellant Rishi Kumar Morwal filed Writ Petition No. 11892/2011 before this court, which was decided vide judgment dated 07.12.2011, wherein demand was kept in abeyance for a period of thirty days. Appellant was required to approach the revisional authority. Revision petition was filed in all the matters before the State Government. The State Government, vide order dated 26.03.2012, dismissed the revision petition. The Government then passed order dated 27.03.2012, whereby relaxation provided to the appellant and others under Rule 65 of the Rules of 1986 vide which order dated 15.03.2007, was withdrawn. This led to demand of penalty of ten times the amount of royalty on the basis of unauthorized excavation made for the period from 2001 to 2012. Fresh demand notice was then issued on 12.04.2012. It was thereafter that the State Government vide order dated 18.11.2011 formed another committee on instructions of the Lokayukta. The Committee, on direction of Lokayukta, then submitted its report on 18.02.2012. Learned Single Judge, upon hearing the arguments, vide impugned judgment, with consent of both the parties, constituted a committee of (1) Geological Survey of India, Jhalana Doongari,

Jaipur, (2) Indian Bureau of Mines, (3) College of Technology, Mining Department, Udaipur and (4) MBM Engineering College, Jodhpur, with a direction to make fresh inspection and submit the report.

5. While six of the writ-petitioners have challenge the judgment in present set of appeals, most of others have deposited the demand raised by the respondents on the basis of report of the third committee constituted by order of learned Single Judge. However, the appellants in these six appeals have chosen to challenge the judgment of learned Single Judge. One of the appellants is Om Prakash Soni (Special Appeal No. 559/2015) separately approached this court also against demand notice dated 11.03.2011 and 23.08.2011 by filing S.B. Civil Writ Petition No. 12446/2011. This court, vide order dated 15.09.2011, required him to avail alternative remedy of appeal before the Deputy Director (Mines). Other appellants herein however have chosen to merely challenge the judgment passed by learned Single Judge.

6. Shri Kamlakar Sharma, learned senior counsel appearing for appellants, argued that once the Government invoking its power under Rule 65 of the Rules of 1986 regularized their unauthorized mining by charging penalty at the rate of Rs. 25/- per mtr as one time deposit and directed cancellation of demand notice, no fresh demand could be justified by the respondents either for the period prior to passing of aforesaid order or the period subsequent thereto. The Government order dated 16.05.2007 in its condition No. 3 categorically stated that if mining lease holders make an application for allotment of the area outside the lease area, in which they have carried out mining, their application should be considered as per relevant rules and judgments of the Supreme Court. The Directorate of Mines and Geology, vide letter dated 09.05.2008 thus rightly regularized the said mining operations under the orders of the State Government by having fresh description report prepared by the Mining Engineer. It is on that basis that the Mining Engineer, by order dated 23.06.2008 regularized possession of the appellants on the additional area and rider agreement was executed with each one of the appellants on 24.06.2008. The respondents could not have therefore treated the mining of the appellants as unauthorized or illegal even if such mining was outside the originally leased out area, because the same was regularized by order of the Government and thereafter allotted to the appellants and rider agreement for that purpose was also executed between the appellants and the State Government.

7. Shri Kamlakar Sharma, learned senior counsel, further argued that learned Single Judge failed to appreciate that in the light of rider agreement executed between the parties for the shifted position, there was no requirement for fresh application for mining lease because such area was regularized by the State Government. Learned Single Judge has failed to consider that the clarificatory order dated 09.05.2008 issued by the Directorate of Mines & Geology, which made it absolutely clear that area for which penalty has been paid by the appellant automatically came under the purview of regularization. There is no

evidence with the respondents to show as to who is responsible for unauthorized excavation. The learned Single Judge has wrongly concluded that it were the appellants, who had carried out such unauthorized excavation. Inspection carried out by the first team constituted by the Government, from 28.10.2010 to 31.10.2010 and inspection carried out by second team from 12.11.2010 to 14.11.2010, cannot be relied, being violative of principles of natural justice because this exercise was undertaken behind the back of the appellant. The appellant also submitted reply to the demand notice, which has not been considered by the respondents objectively.

8. Learned senior counsel for appellants argued that the notice dated 21.11.2008 sent by the respondents to the appellant stating that the pillars were not of proper size. Thereafter, the Mining Engineer again issued a notice dated 21.07.2010 stating that the petitioner did not put pillars in place. Then, the mining area was inspected by a team constituted by the respondents on 08.12.2010, and the inspection team in the report found that four pillars have been erected at the correct place. Even then the Mining Engineer issued notice to the appellant on 07.01.2011 and cancelled the mining lease vide order dated 08.01.2011. The appellant filed appeal thereagainst before the Director (Mines) under Rule 43 of the Rules of 1986. The appeal was allowed by the Additional Director (Mines) vide order dated 28.06.2011. Submission of learned senior counsel for appellants is that at none of the above stages, did the respondents raise the argument which they are now seeking to raise, that the Directorate of Mines and Geology, has issued order dated 09.05.2008 in breach of and contrary to, the order of the Government dated 16.05.2007. Now at this stage, the respondents could not be permitted to raise this argument.

9. Shri Kamlakar Sharma, learned senior counsel for appellants, submitted that there is absolutely no justification for charging ten times penalty in the facts like these when the alleged excavation prior to 2007 has been regularized and subsequently vide order dated 09.05.2008 issued by the Directorate of Mines and Geology, the excavation of the appellant has been regularized on the shifted position pursuant to rider agreement. Learned senior counsel argued that while dismissing the revision petition filed against the demand notice vide order dated 26.03.2012, the Government on the very next date i.e. 27.03.2012 has cancelled the order of relaxation purportedly on the basis of audit objections raised by the Accountant General and that such relaxation was granted without consent of the Finance Department. It is argued that the said order could not be passed without notice or opportunity of hearing to the appellants. The order dated 27.02.2012 is therefore liable to be set aside as it has been passed in violation of the principles of natural justice.

10. Shri Rakesh Sharma, learned counsel for appellant Om Prakash Soni in Special Appeal (Writ) No. 559/2015, apart from adopting the arguments raised by learned senior counsel Shri Kamlakar Sharma, also additionally submitted that in his case, no rider agreement was executed. In fact, the mining operations

were itself closed down pursuant to order dated 05.03.2010 of the Supreme Court, there being no mining thereafter. Even then the respondents are raising demand not only for the period prior to 05.10.2010 but also thereafter. If mining had taken place at the instance of some other person, the appellant cannot be made responsible for the same and cannot be made to pay the penalty for that reason. Learned counsel submitted that the appellant filed fresh writ petition before this court wherein this court required the petitioner to approach the appellate authority.

11. On the contrary, Shri G.S. Gill, learned Additional Advocate General for respondents State, opposed the special appeals, and submitted that the order of the State Government has been misinterpreted and misapplied by the Directorate of Mines and Geology. The Superintending Engineer (Mining), who issued the order dated 09.05.2008, has acted contrary to the stipulation contained in the order dated 16.05.2007 when he observed that the excavation of minerals, outside the mining area in a shifted position, stood regularized by the aforesaid order. In passing this order, he ignored the categorical stipulation contained in clause 2 of the order dated 16.05.2007, wherein it was directed that mining lease holders shall carry out the mining only within the sanctioned area. Since the order dated 09.05.2008 of Directorate of Mines and Geology, was illegal, being contrary to order of the Government dated 16.05.2007. The order dated 09.05.2008 was thus issued in excess of authority and was incompetent. Consequently, the order passed by the Mining Engineer and the rider agreement executed on that basis, were all illegal, being void-ab-initio.

12. Shri G.S. Gill, learned Additional Advocate General for respondents State, submitted that learned Single Judge in the impugned order, with the consent of both the parties, constituted new team to carry out fresh inspection of the mining area so as to find out the extent of unauthorized excavation of minerals. Since the said team has already carried out the inspection and on that basis the demand notice has been issued, the judgment passed by learned Single Judge being based on consent given by the appellants and consequent action having been taken, the present appeals cannot be maintained. Therefore, present appeals, being not maintainable, are liable to be dismissed. In fact, one of the appellants, Shri Om Prakash Soni, challenged the fresh demand notice in writ petition before this court and this court has relegated him to alternative remedy of appeal before the Director (Mines).

13. Learned Additional Advocate General argued that learned Single Judge has taken note of last para of rider agreement wherein it was categorically stated that regularization order dated 16.05.2007 has been passed by the Government regularizing unauthorized excavation for the earlier period and said regularization does not confer any right on the lease holders, in respect of regularized area. The stipulation to this effect was made in almost 21 lease holders, barring two or three.

14. Learned Additional Advocate General has submitted that already disciplinary

action has been initiated against all guilty officials of the Mining Department for their illegal action in conferring undue benefit on the defaulting lease holders. In fact, the Anti Corruption Bureau is ceased with the investigation and is mostly likely to launch prosecution against the guilty officials.

15. We have bestowed our thoughtful consideration to rival submissions and carefully perused the impugned judgment and other material on record.

16. Learned Single Judge, in our considered opinion, has rightly dismissed the writ petitions because the entire action of the officials of the Mining Department right from Directorate down below upto the Mining Engineers, smacks of collusion between the said officials and the mining lease holders. The order of relaxation of the Government, even if it is considered for the purpose of examining the validity of subsequent action taken by the Department on that basis, it should be noted that in Clause 2 thereof, it is categorically stipulated that lease holders shall be entitled to carry on mining activities only within the leased out area. Clause 3 of the order merely observed that if they apply for allotment of area outside the sanctioned lease area, the same would be considered as per prevalent Rules and the judgment of the Supreme Court, and that such applications shall be accordingly disposed of. It is of-course true that Clause 4 regularize the unauthorized mining on payment of one time penalty at the rate of Rs. 25/- per mtr, but none of these three conditions intended to straightway regularize the possession of the appellants, and other writ-petitioners having effect of granting additional lease to shifted position. The order of the Directorate of Mines and Geology, which was signed by the Superintending Engineer (HQ-III) dated 09.05.2008, is based on misreading of the order of relaxation issued by the Government dated 16.05.2007. In fact, the letter of the Directorate of Mines and Geology, addressed to Mining Engineer, is contrary to the conditions stipulated in the Government order. There was absolutely no justification for the Superintending Engineering of the Directorate of Mines and Geology, to say that since one time penalty has been charged from the defaulting mining lease holders, on that basis the earlier demand notice has been cancelled, and even presently, the lease holders are in possession of the shifted position and doing the mining work, therefore, there was no need to seek any further relaxation from the Government and their possession could be regularized. Since this order of the Directorate was without authority, being contrary to stipulation contained in the order of the Government, the consequential order dated 23.06.2008 of the Mining Engineer was also illegal and for the same reason therefore, the rider agreement executed on that basis, were also illegal. Even if the last para of rider agreement, which has been quoted by learned Single Judge in its judgment at page No. 10 thereof, is missing in the rider agreement of two or three parties including in the case of appellant Rishi Kumar Morwal, that would not make any difference as the basic order dated 09.05.2008 of the Directorate of the Mines and Geology, was ultra vires the Government order dated 16.05.2007. We are therefore in agreement with learned Single Judge.

17. What is more, learned Single Judge also held that the mining area, in which the appellants were permitted to operate the mines, forms part of Aravali Hills and therefore no mining could be operated in that area as it would run contrary to the order of restraint dated 16.12.2002 passed by the Supreme Court in Writ Petition (Civil) No. 202/1995. But even if some part of the mining area was not hit by restraint order passed by the Supreme Court, then also no mining lease could be permitted outside the area wherefore lease was originally granted to appellants. The procedure for grant of lease outside the originally allotted mining area, has been given a complete go bye. Short circuit manner in which the mining area of the appellants were sought to be extended on the alleged basis of their being in possession of the shifted position and relaxation as granted by the Government, was absolutely illegal. In any case, the Government has now cancelled the order of relaxation, in view of audit objection raised by the Accountant General and also taking note of the fact that concurrence of the Finance Department was not obtained prior to issue of aforesaid relaxation order. We do not find any fault in the order of the Government even in the order dated 27.03.2012 by which it has withdrawn the relaxation.

18. The contention that the Government has revoked the order of relaxation dated 16.05.2007 without providing any opportunity of hearing, therefore, such order having been passed in breach of principles of natural justice, is liable to be set aside, is noted to be rejected for stated reasons. Applicability of principles of natural justice would depend on facts of given case. In the present case, conduct of appellants and other writ petitioners would be a significant factor in that they were guilty of excavating minerals from the area, which was not leased out to them. The mining in such area by them was wholly unauthorized and illegal. Moreover, the order was passed by the Deputy Secretary, Department of Mines, Government of Rajasthan, without approval of the Finance Department and the audit objection to this effect has rightly been raised by the Accountant General. Since, realizing this mistake, the Government has rightly withdrawn the order of relaxation as the same amounted to fraud on the State exchequer and sought to confer undue benefit on the guilty mining lease holders. We therefore reject this argument as well.

19. Learned Single Judge in our view was also justified in directing the respondents to file compliance report as to disciplinary action taken against erring officials by the Department and also by the Anti Corruption Bureau. While reiterating that direction, we further require the Department of Mines and Anti Corruption Bureau to file compliance report as to such action taken against erring officials, after every quarter (three months) and first such compliance report be filed before learned Single Judge within the period of one month from the date of receipt of the copy of this judgment.

20. We, therefore, do not find any infirmity in the judgment of learned Single Judge. The appeals, being devoid of merit, are hereby dismissed, with aforesaid direction.

21. Stay applications are also dismissed.

22. Since this disposes of six Special Appeals, office to place a copy of this judgment in each file.

23. A copy of this judgment be sent to the Secretary, Department of Mines, Government of Rajasthan, Jaipur, and the Director General of Police, Police Headquarters, Rajasthan, Jaipur, for compliance.