

(1979) 07 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No"s. 3455 of 1977 with 11236 to 11238, 11254 and 11255 of 1976

R.N. Shivananje Gowda and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:

Constitution of India, 1950 — Article 226 (1) (b), 226 (1) (c)
Karnataka Minor Minerals Concession Rules, 1969 — Rule 61, 7, 7 (1), 7 (2)

Citation : AIR 1980 Kar 178 : (1979) 2 KarLJ 373

Hon'ble Judges : K.A. Swami, J

Bench : Single Bench

Advocate : N.S. Srinivasan, for the Appellant; B.B. Mandappa, Govt. Pleader, for the Respondent

Judgement

1. In these petitions under Art. 226(1)(b) and (c) of the Constitution, the petitioners have challenged the correctness of the order passed by the Director, Department of Mines and Geology,

Bangalore, in Case No. 167/241/245/LMS/RVN/76.2-5180, dated 28-10-1976 (Exhibit-N) rejecting the revision petitions filed by the petitioners under R. 61 of the Karnataka Minor Mineral Concession Rules, 1969 (hereinafter referred to as the Rules, and further confirming the grant of quarry lease made in favour of the Village Panchayat Committee, Chunkily respondent No. 4 herein.

2. Sri N, S. Srinivasan, the learned Counsel appearing for the petitioners, submitted that no grant of quarrying lease can be, made to the Village Panchayat Committee in view of the provisions contained in the Rules. It was also contended that the grant made in favour of the Village Panchayat Committee is vitiated because there was no prior approval obtained by the, competent authority before making the grant in favour of the Village Panchayat Committee. It was also further submitted that the petitioners being the prior applicants in respect of the areas granted to the Village Panchayat Committee, they were

entitled for priority under R. 7 of the Rules and as such, the grant made in favour of the Village Panchayat Committee (respondent-4 herein) ignoring the priority as provided under R.7 of the Rules, is illegal.

3. During the course of the following facts were not disputed before me by the learned Counsel appearing for both sides :

That Block No. 5 marked with red pencil in Annexured-1 produced by the respondents in S No" 127 of Hona Ganahalli village had not been granted to the Village Panchayat Committee and further it was applied for by any of the other petitioners except the petitioner in writ petition No. 11255 of 1976. That being so, there was no reason whatsoever, to reject this application of Sri H. K. Rame Gowda, the petitioner in W. P. 11155/76, and this position was also not disputed by the learned Counsel appearing on behalf of the respondents. Therefore, as far as the writ petition No. 11255/76 is concerned, it deserves to be allowed without much consideration in view of the fact that the area applied for by the petitioner in W.P. 11255/76 was neither applied for by the other petitioners nor by the Village Panchayat Committee. Further, it was also not disputed before me that area applied for by Sri H. K. Rame Gowda, the petitioner in W. P. 11255/76 was not open for grant under the Rules. Therefore, the impugned order in so far as it relates to the petitioner in writ petition No. 11255/76 is concerned, is hereby quashed and the competent authority is directed to consider the application of Sri H. K. Gowda, on merits and if he finds that the application is in accordance with the Rules, grant the area applied for by him.

4. With regard to the area applied for by the other petitioners, the submission made by the learned Counsel appearing for the respondents was that no doubt, the petitioners were the prior applicants and the Village Panchayat Committee made its application subsequent to the application made by the petitioners, but it was submitted that the Panchayat Committee being the statutory body the income derived from the quarry is used for public purposes; therefore, the grant made in favour of the Panchayat Committee should not be set aside as the same was in accordance with law. This contention of the learned Counsel appearing for the respondents ignores the provisions contained in the Rules. It was also not disputed before me that the prior approval was not obtained by the competent authority before the grant of quarrying lease in favour of the Village Panchayat Committee.

5. Rule 3 of the Rules provides that no quarrying lease shall be granted to any person other than an Indian Citizen except with the prior approval of the Government. The Panchayat Committee which is a statutory body, cannot claim to be a citizen of India. That being so, before granting the quarry lease in favour of the Panchayat Committee, the competent authority should have obtained prior approval from the Government.

6. Further, R. 7 of the Rules provides that no quarrying lease shall be granted to any person other than an Indian citizen except with the prior approval of the

Government. The Panchayat Committee which is a statutory body, cannot claim to be a citizen of India. that being so, before granting the quarry lease in favour of the Panchayat Committee, the competent authority should have obtained prior approval from the Government.

6A. Further, R. 7 of the Rules provides that if more than one application for a quarrying lease over the same area, are received preference should be given to the applications in the order of date of receipt unless the Government for any special reason decides to the contrary. Further, sub-rule (2) of R. 7 provides that notwithstanding anything contained in sub-rule (1), the competent officer may, for any special reasons to be recorded in writing, grant a quarrying lease to an applicant whose application was received later in preference to an earlier applicant. In the instant case, it was not disputed that the applications made by the petitioners were prior to the application made by the Panchayat Committee. Even, if it is construed that the competent authority exercised the power under sub-rule (2) of R. 7 of the Rules, the necessary and relevant reasons for preferring, the Panchayat Committee are not found in the order of grant. The only reason en by the revisional authority is that the lease in question in favour of the Panchayat Committee is necessary in order to augment its income. To say the least, such a consideration is not at all relevant under R. 7 (2) W the Rules. In order to ignore the preferential right given to the prior applicant under R. 7 (1) of the Rules. the later applicant preferred to the prior applicant, must be better qualified, better equipped and more experienced than the earlier applicant for the purpose of exploiting the quarry. Special reasons required under R. 7(2) of the Rules, must be the reasons relating to the qualification, capacity and experience et., of the applicant in connection with the proposed quarrying lease.

Thus, it is clear that the grant of quarrying lease made in favour of the 4th respondent ignoring the preferential claim of the petitioners, is contrary to R. 7 of the Rules and as such, it is unsustainable in law. The grant made in favour of another Village Panchayat Committee on grounds more or less similar to the one in question was quashed by this Court in the case of Sanjeevamma Vs. Doddavallabi Village Panchayat Narasapura Hobli and Others, .

7. It was submitted by the learned Counsels appearing for the petitioners and the respondents that Blocks Nos. I and 8 marked with the green pencil in Annexure-1 produced on behalf of the Village Panchayat Committee overlaps the area applied for by the petitioners in Writ Petition No. 11237/76 and similarly, the Blocks Nos, 4 and 5 marked in the same annexure, situated in Survey No. 80 of Chinakurli village, marked with Green pencil granted to the Panchayat Committee also overlaps the area applied for by Sri R. A." Lingappa petitioner in W. P. No. 112,36/76. Similarly, the area applied for by Sri R. N. Shivananje Gowda, petitioner in W. P. Nos. 3455/77 and IM8/76 also overlaps with the area granted to the Panchayat Committee in Block No. 6 in Survey No. 80 marked with green pencil. Similarly, the area granted to the Panchayat Committee in Block No. 1 marked with green pencil in Survey No. 127 of Honaganahalli also

overlaps the area applied for by Sri Pare Gowda, petitioner in W. P. 11254/76.

8. In view of the overlapping of the areas applied for by the petitioners with the one granted to the Village Panchayat Committee, the grant made in favour of the Village Panchayat Committee to the extent it overlaps, is hereby quashed and the applications filed by the petitioners are remitted to the competent authority to consider the same along with the application of the Village Panchayat Committee respondent No. 4, afresh on merits. If the said applications are in accordance with the Rules, and the petitioners satisfy all the requirements for grant of authority shall proceed to grant the lease in accordance with the applications, the competent authority shall proceed on the basis of the respondents, the correctness of which was not disputed by both the sides.

9. For the reasons stated above, the applications filed by the petitioners along with that of the Village Panchayat Committee (respondent-4), will have to be Appellants; M. Rangaswamy (for No. 1) considered afresh by the competent authority in the light of the observations made. (for No. 2) for Respondents.

in this order and in the light of the priority contained in R. 7(1) of the Rules. It is ordered accordingly. The applications should be disposed of by the competent authority within a month from the date of the receipt of this order.

10. Petitions allowed.