
(1990) 12 CAL CK 0031
In the Calcutta High Court
Case No : Civil Rule No. 11030 (w) of 1987

Sahadev Sarkar

APPELLANT

Vs

State of West Bengal and others

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Constitution of India, 1950 — Article 14
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(2), 15
West Bengal Minor Minerals Rules, 1973 — Rule 43, 5, 7, 7(1), 7(2(2))

Citation : AIR 1992 Cal 203 : (1991) 1 CALLT 426 : (1991) 2 CHN 202 : 96 CWN 1004

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : Amalbaran Chatterjee, for the Appellant; Mrs. Ila Chatterjee, R.N. Das, M.Banerjee, Sukumar Guha, for the Respondent

Judgement

1.The present writ petition has been filed by the petitioner Sahadev Sarkar praying inter alia for a writ of Mandamus commanding the State respondent to grant the mining lease of the land in question in his name and/ or in the name of the pro forma Respondent on the basis of their respective applications and/or also commanding the respondents to cancel, set aside and/or withdraw all the orders, memos and/ or decisions regarding the grant of mining lease of the said lands to persons who have applied later on and for other consequential reliefs on the ground that the respondent authorities should have considered the applications of the petitioner and the pro forma respondent in terms of the judgment delivered by the Hon"ble" Mr. Justice Shyamsuddin Ahmed and the inaction of the authorities is illegal, mala fide and motivated. It is alleged that the respondent authorities have acted against the relevant provisions of the Statute and in particular, the petitioner and the pro forma respondent and others applying in 1975 and 1976 have got a better right, title and/or interest over the grant of lease of the said lands than the applicants who applied later on .

2. It is stated in details that the plot Nos. 691, 1323 and 1324 of mouza

Daulatpur, P. S. Arambagh, Hooghly are situated on the Bed of the river of Tarakeswar and there are sands on the plots of the aforesaid lands. It is also stated that under West Bengal Minor Mineral Rules 1973 it has been provided that for a long term mining lease any person can apply in the prescribed manner after depositing the fees of Rs. 200/- before the prescribed authority. The petitioner accordingly, in order to have long term mining lease in respect of the plots of lands deposited the fees of Rs. 200/- on 26-8-75 and submitted the application for the said lease and by Memo No.552-MLXI/939 dated 15-9-75 the then Chief Mining Officer, Government of West Bengal acknowledged the said application of the petitioner for the mining lease of the said plots of land. The application was already recommended by the then Chief Mining Officer on 24-7-76 and the local J.L.R.O. after spot enquiry, sent the report to S.L.R.O. in favour of the petitioner by the Memo No. 174/A.C.O. Dated 29-1-77 and the S.L.R.O. also by Memo No. 912 dated 10-3-77 sent his recommendation to the A.D.M. (L.R.) in favour of the petitioner and thereafter the A.D.M. (L.R.) also sent the recommendation in favour of the petitioner. It is further placed on record that the pro forma respondent Kanai Koley also applied on 22-1-76 in the prescribed manner by depositing the requisite fees for the grant of mining lease in the said plots of lands. The authorities concerned also allegedly sent the recommendation in his favour on 29-1-77 and 10-3-77 respectively and the petitioner has the information that apart from the petitioner and the pro forma respondent, one Messrs. Dev Pyne and company and M. K. Kundu have also applied in 1975 in the prescribed manner, for the mining lease of the said lands. It is placed on record that under the relevant Rules it is provided that the authorities would grant mining lease to the applicant on priority basis and therefore the above applicants for legitimate claims for obtaining the mining lease in respect of the said lands according to the priority basis as per the dates of the respective applications for grant of lease. The petitioner made several representations but the respondent authorities did not respond positively. Against such silence and/or inaction, a writ petition filed by the pro forma respondent being C.O. No. 3195(w) of 1985 and after hearing the parties the Hon'ble Mr. Justice Shyamsuddin Ahmed was pleased to direct the authorities on 12-5-87 to consider the application of the concerned parties in accordance with law for the grant of lease in respect of the said lands within 3 (three) months from the date of the judgment. The respondents have allegedly done nothing and the pro forma respondents made repeated representations requesting the authorities to consider the grant of mining lease pursuant to his application dated 22-1-76. It is further alleged that the respondent No. 2 the Assistant Secretary, Department of Commerce and Industries (Mines Branch Government of West Bengal by his letter dated 17-9-87 informed inter alia that applicants who made application only in 1984 will be favoured with the mining lease of the said lands subject to certain terms and conditions. Accordingly, the petitioner pro forma respondent and other applicants who applied in 1975-76 have been ignored and being aggrieved, the petitioner has come to this writ Court seeking reliefs as indicated above.

3. An application for addition of party has been filed by one Kurban Ali Mallick and for effective adjudication he has been impleaded. He has alleged that according to Mines and Mineral Rules, 1973. Secretary, Department of Commerce and Industries, Government of West Bengal is the competent authority to grant mining lease/permit after proper formalities. It was ascertained by him that due to the pendency of the writ application moved by Sahadev Sarkar the operation of the interim order granted by the Hon''ble Court in favour of the writ petitioner, the respondent authorities could not take steps in executing the final mining lease in favour of the added party.

4. The pro forma respondent has filed an independent affidavit placing on record that he filed an application in Form No. A under Rule 5 of the West Bengal Minor and Mineral Rules, 1973 along with the challan showing deposit of Rs. 200/- and the said application was duly recommended. He moved a writ application being civil order No. 3196(W) of 1985 and on March 26, 1985 obtained an interim order in terms of prayer (d) to the writ petition whereby the respondents in the said writ petition were restrained from creating disturbance of the extraction of the sand by him and the said plot No. 691 in question. He is allegedly quarrying sand from the said plot. By order dated May 12, 1987 made by the Hon''ble Mr. Justice Shyamsuddin Ahmed the said writ application was disposed with a direction upon the State respondents to dispose of his application for long term lease within 3 (three) months from the date of receipt of the judgment and order after giving him an opportunity of being heard. It is also brought to the notice of the Court that long before passing of the interim order the Hon''ble Mr. Justice N. K. Mitra was pleased to pass an order in Civil Order No. 3196(W) of 1985 in connection with the writ petition filed by the applicant. He has since alleged that the added respondent suppressed this fact while moving the writ petition before the Hon''ble Mr. Justice N. K. Mitra on 28-9-86 and the added respondent did not disclose before the Hon''ble Court on 28-10-86 that in view the interim order passed on March 26, 1985 the proforma respondent is still quarrying sand from the said plot No. 691 as aforesaid.

5. The present writ petition has been heard along with C.O. No, 525(W) of 1986 and C.O. No. 1761(W) of 1988.

6. Having heard the learned lawyers of the respective parties and upon perusal of the materials on record, it appears that there is a serious challenge as to the validity of the Rule 7 of the West Bengal Minor Mineral Rules 1973 and the writ petitions were filed contending that the said Rule 7 is ultra vires the Constitution of India for the following grounds:--

(a) The Mines and Minerals (Regulation and Development) Act, 1957 is the Central Act and u/s 11(2) of the said Act, priority is the yardstick for the grant of lease amongst the applicants. This priority has been ignored by Rule 7 due to the deeming provision.

(b) Section 15 of the said Act provides power to State Government to make

Rules for regulating the grant of lease regarding Minor Minerals but that section does not empower States to regulate by the unreasonable and arbitrary Rules.

(c) The authority of delegation is inconsistent inasmuch as the sub-rules (1) and (2) of Rule 7 are contradictory and Rule 8 envisages reasons whereas Rule 7 provides rejection under the deeming provision.

(d) There is a challenge as to the procedural fairness.

7. It is argued that (the Mines and Minerals (Regulation and Development) Act, 1957 governs the regulations regarding the grant of any mining lease. u/s 11(2) of the Central Act, priority is the yardstick for the grant of lease amongst the applicants. This priority has been ignored by Rule 7 of West Bengal Minor Minerals Rules, 1973 due to the deeming provision. It is emphasized that Section 15 of the Central Act gives power to State Governments to make Rules for regulating the grant of leases regarding minor minerals, but that section does not empower State to regulate the same by any unreasonable and arbitrary Rule. The sub-rules (1) and 2(2) of Rule 7 as well 3 Rules 7 and 8 appear to be contradictory. While Rule 8 speaks of reasons, the earlier Rule 7 provides rejection under the deeming provision. Reference has been made to a case reported in (1986) 1 CHN 340 (Samijan Bewa v. Revenue Officer, Lalgola) as to the unreasonableness and the arbitrary attitude to make the impugned Rule and as per the ratio of the said decision the same should be found to be ultra vires. It is further submitted that Rule 43, a provision for appeal is not adequate and exhaustive. There is reference of Union of India and Another Vs. Tulsiram Patel and Others, as to the principles of natural justice regarding the application of the impugned statute violating the principle.

8. The attention of the Court has been drawn to various other decisions viz., Sadhu Singh Harnam Singh Vs. The State of Pepsu, , N.T. Veluswami Thevar Vs. G. Raja Nainar and Others, and Lakshmimoni Das and Others Vs. State of West Bengal and Others, (Lakshmimoni Das v. State of West Bengal) to indicate inter alia that interpretation of each word, phrase of sentence to be construed in the light of the purpose of the Act. In the present case, the purpose and mode of disposal of application according to Central Act is priority and the scope of Rule 7 of West Bengal Minor Mineral Rules cannot stand against the ratio of the aforesaid decision. The theory of public purpose has been argued by referring to the case of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, and also the case of M/s. Kasturilal Lakshmi Reddy v. State of Jammu and Kashmir, reported in AIR 1980 SC 992 .

9. It is strenuously argued that Rule 7 is bad in law inasmuch as this Rule may give rise to favouritism. The authority concerned by remaining silence for the time stipulated, may invoke Rule 7"for some other oblique reasons and the subsequent applicants may be favoured. By drawing the ratio of the decision reported in Haji T.M. Hassan Rawther Vs. Kerala Financial Corporation, it is high lighted that the Government should not do anything which gives rise to

nepotism, corruption and favouritism. It is also submitted that the Minor Minerals Rules, 1959 which was the principal Rules for the State was enacted pursuant to the Principal Act of 1957. The Rules of 1959 clearly envisage that priority is the yardstick for the grant of permit but the Amending Rules of 1973 caused a change of the earlier Rules of 1959 and introduced the Rule 7. It is placed on record that the amending Act cannot challenge and/or alter the principal statute. The Rules of 1973 cannot be permitted to destroy the priority yardstick of the earlier Rules and reference has been made to the case reported in State of West Bengal Vs. Rash Behari Sarkar, .

10. With great anxieties, this court has gone through the facts of the case and the principle of law as discussed above.

11. The only point of consideration is as to whether Rule 7 of West Bengal Minor Minerals Rules, 1973 as it stands is ultra vires to the Constitution. It is provided in the said Rule that an application for mining lease shall be disposed of within one year from the date of its receipt. It is further provided that if an application is not disposed of within the period specified in sub-rule (1), it shall be deemed to have been refused provided that the period of dismissal specified in sub-rule (1) may be extended by a further period of one year if the State Government either on its own motion or on an application from the parties applied for this considered such extension to be fit and deserving. The objection of the respondents is that the application for mining lease dated 26-8-75 had automatically been cancelled. The added respondents alleged that the writ petitioner made all the representations before the authority after about 12 (twelve) years of filing the original application and regard being had to the facts and circumstances the writ petitioner cannot be permitted to challenge the grant made in favour of the added party.

12. By looking to the ratio of the aforesaid decision, this Court, is of the view that the theory of sub-silentio has been propounded by the Hon'ble Supreme Court and by extending the said principle to the decisions cited from the Bar this Court concludes that the amending Rule 7 of the West Bengal Minor Minerals Rules, 1973 cannot authorise the authorities concerned to dismiss an application for the grant of Mining Lease after the cessation of the period of one year. There are other views that due to inaction and non-action on the part of the authorities concerned, the benefits are given to the applicants by way of deeming provisions whereas a bona fide person who has made an application by favouring all the conditions of the Statute cannot be deprived of the considerations of his application merely after the expiry of one year due to inaction on the part of the authority to consider the same according to law. This Court is aware of the decision reported in State of Assam and Others Vs. Om Prakash Mehta and Others, which indicates inter alia that the right flows from the Statute and by proper enactment, legislation can take away the right of a citizen and that law need not be fair and reasonable and the power of the State Legislature stood sacrosanct. The same view has undergone a revolutionary change after the case

of Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, . The concept of reasonableness has been considered by the Hon''ble Supreme Court as it is the real test for validation of any enactment. This decision has been followed in Basantibai Fakirchand Khetan and Others Vs. State of Maharashtra and Another, and also Lakshmimoni Das and Others Vs. State of West Bengal and Others, ; (Dipak Kumar Roy v. Anjali Kumar Roy) (Sic), It is all the more found that deeming provision is a mere legal fiction and the same cannot be extended beyond its limits. Applying all these tests, this Court finds that Rule 7 of West Bengal Minor Minerals Rules, 1973 cannot be sustained. It flows from inherent drawbacks and the same is found to be ultra vires the Constitution. Consequently, Rule 7 of West Bengal Minor Minerals Rules of 1973 is struck down. Since Rule 7 as aforesaid is struck down by an appropriate writ, the consequences follow, notwithstanding any order made in favour of the added party or any other person, the application for grant of the mining lease by the writ petitioner upon fulfilling the conditions as provided in the Statute and the prevailing Rules has got to be considered within a reasonable period by giving an opportunity of hearing and/by passing a speaking and reasoned order.

13. For the foregoing reasons, the writ petition succeeds. There will be an appropriate writ of mandamus commanding the concerned respondent authorities to dispose of the petitioner's application and that of others in similar position for grant of mining lease as referred in the writ application within a period of 3 (three) months by giving an opportunity of hearing to the petitioner and all others concerned including the respondents and added respondents and by passing a speaking and reasoned order. The judgment disposes the connected Civil Orders. There will be no separate order as to costs.

14. Petition allowed.