**(2010) 08 UK CK 0097**

**In the Uttarakhand High Court**

Sanjay Kumar and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

**Date of Decision :** 06-08-2010

**Acts Referred:**

Constitution of India, 1950 — Article 19(1), 32
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 27, 72, 77, 9A

**Citation :** AIR 2011 Utt 6

**Hon'ble Judges :** Nirmal Yadav, J;B.C. Kandpal, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Nirmal Yadav, J.—This special appeal has been filed by appellants challenging the judgment dated 01.07.2009 passed by learned Single Judge dismissing the writ petition filed by the petitioners. The appellants have sought a writ in the nature of Certiorari quashing the order dated 29.08.2008 passed by State of Uttarakhand and consequential order dated 24.09.2008; order dated 17.12.2008 passed by Chief Conservator of Forest, orders dated 23.12.2008 passed by Deputy Conservator of Forest and order dated 19.01.2009 and further sought a direction in the nature of Mandamus commanding the respondents not to execute the mining lease in favour of respondent No. 3.

2. Brief facts as narrated in the writ petition filed by the appellants Sanjay Kumar and another are that respondent No. 3 Doiwala Sehkari Shram Samvida Samiti Limited, Markhand Grand, P.O Doiwala, District Dehradun (hereinafter referred to as "respondent No. 3") had filed the civil appeal No. 800 of 2005 by concealing material facts and committing fraud and misleading the court in obtaining the order dated 12.12.2006 from the Apex Court.

3. Since aggrieved appellant Sanjay Kumar filed petition under Article 32 of the Constitution of India in the Apex Court. However, the said writ petition was allowed to be withdrawn by the Hon?ble Apex Court vide order dated 20.02.2009 with liberty to file the petition before High Court. Thus, the appellants filed writ

 

petition before this High Court being aggrieved by the impugned notification issued by State of Uttarakhand granting lease for a period of 10 years in favour of the respondent No. 3 stating that rights of the appellants under Article 19(1) are affected and thus, sought quashing of the said notification and consequential orders.

4. Respondent No. 3 applied for grant of lease for mining minerals under Rule 9-A of the Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as "The Rules") for a period of ten years in respect of Lot No. 2 measuring 25 acres on ?Tons? river in Kalsi block and Lot No. 3 measuring about 28.42 acres in block No. 1 village ?Rampur Mandi?, District Dehradun on the ground that respondent No. 3 is the discoverers of the aforesaid two areas and is entitled for preferential treatment under the Rules. The District Magistrate directed the Sub Divisional Magistrate, Divisional Forest Officer, Deputy Director, Geology and Mining to submit their reports. All the above authorities recommended for the grant of lease in favour of respondent No. 3 for a period of 10 years. The Divisional Forest Officer wrote letter dated 04.12.1998 to District Magistrate to constitute a committee in pursuance to the notification No. 2380 dated 05.06.1997 for taking decision on the application as delay was causing monetary loss to the Forest Department. However, no committee was constituted by the District Magistrate thus, respondent No. 3 preferred an appeal under Rule 77 of the Rules before the Commissioner, Garhwal Division. The appeal was allowed vide order dated 09.08.2001 directing the District Magistrate to decide the application of respondent No. 3 for grant of lease. During the pendency of the appeal, State of U.P. passed an order dated 04.09.1999 granting lease to the U.P. Forest Corporation for 10 years. Respondent No. 3 challenged the said order by way of filing writ petition before the Allahabad High Court. The High Court vide order 25.09.2002 directed the District Magistrate to consider the application of respondent No. 3. Meanwhile, State of U.P. was bifurcated and a new State was carved out from the erstwhile State of U.P. by an Act of Central Government known as U.P. Reorganization Act, 2000 and the State of Uttarakhand came into existence on 09.11.2000. State of Uttarakhand framed its own policy dated 17.10.2002 regarding mining in the State of Uttarakhand. As per the said policy, mining in the forest area was to be conducted by Forest Development Corporation and mining in land which was situated outside the forest area, was to be conducted by Government functionaries i.e. Garhwal Mandal Vikas Nigam and Kumaon Mandal Vikas Nigam. In pursuance to the said policy framed by the State Government, District Magistrate rejected the application dated 03.08.1998 of respondent No. 3.

5. Being aggrieved respondent No. 3 filed writ petition No. 48 (MB) of 2003 challenging the policy dated 17.10.2002 and praying that lease of mining may be given to it from the date of submission of the application. The said writ petition was dismissed by this Court vide judgment dated 03.12.2003. Thereafter, respondent No. 3 preferred SLP before Apex Court, which was allowed vide judgment and order dated 12.12.2006. Paragraphs 23 to 26 of the judgment are

 

reproduced below:

23. The judgment in Union of India v. International Trading Co. (supra) was relied on by the learned Senior Counsel appearing for the appellant for the applicability of the doctrine "legitimate expectation". According to Mr L.N. Rao, by grant of lease to the appellant their right was fructified much before the policy came into being and, therefore, their rights of mining cannot be taken away before the expiry of the period in view of the policy decision. This Court held in the above case that change in policy decision must not be arbitrary, unreasonable, irrational, perverse and in public interest and change in policy, if founded on Wednesbury reasonableness, can defeat a substantive legitimate expectation and the reasonableness of restriction must be determined from the standpoint of general public interest. This Court further held on facts of that case that doctrine of legitimate expectation or promissory estoppel is not attracted on non-renewal of permits to private parties.

24. The judgment in Beg Raj Singh v. State of U.P. was cited by Mr L.N. Rao. The mining lease was granted for one year in accordance with the policy decision and when the renewal was sought for another two years, the lease was granted only for one year when it should have been for a minimum period of three years. Meanwhile, the State Government decided to hold an auction of the mining rights setting aside the order of Collector. This Court held that the Government having incurred obligation to grant lease for three years in accordance with its own policy decision, it cannot decline to enforce the same merely because a little more revenue could be earned by resort to auction. This Court further held that the relief cannot be denied solely because of the loss of time in prosecuting proceedings in judicial or quasi-judicial forum. If a litigant was found entitled to right to relief, he should ordinarily be resorted (sic restored) to the position in which he would have been (sic if the wrong complained against would not have been) done to him. This Court further observed that where the petitioner was wrongfully disallowed to operate the mining lease for the full lease period but the lease remained inoperative and no third-party right created, held, the petitioner must be allowed to operate the mine for the full period of lease subject to adjustment for the period for which he has already operated. This Court further observed that a litigant though entitled to relief in law, may yet be denied relief in equity having regard to subsequent or intervening events between commencement of litigation and date of decision and that the rights of parties get crystallized on the date of commencement of litigation and, therefore, right to relief should be decided accordingly.

25. In the instant case, the appellant in Civil Appeal No. 800 of 2005 applied for grant of lease for a period of ten years on 14-7-1998 and the appellant?s appeal before the Commissioner for constitution of committee which was allowed by order dated 9-8-2001 by reviving the application of the appellant and the District Magistrate was directed to decide the application of the appellant for grant of lease. While the appeals of the appellant were pending, the State of U.P. passed

 

an order on 4-9-1999 granting lease to the U.P. Forest Corporation for 10 years. The appellant challenged the order for grant of lease before the High Court. The High Court dismissed the writ petition.

26. As pointed out by Mr L.N. Rao, in our opinion, he is right in his submission. The policy decision would not have come in the way of grant of lease and fructified much before the policy came into being. As pointed out by this Court in the judgment of this Court in Beg Raj Singh v. State of U.P. the appellant would be entitled to have the lease till the expiry of ten years from the date of the grant of lease in their favour. The rights of the appellants get (sic got) crystallized on the date of commencement of the litigation and, therefore, the appellant is entitled to the relief of continuing the lease till the expiry of the lease for ten years. The appellant, in our opinion, must be allowed to operate the mine for the full period of lease subject to the payment of lease amount and other dues, etc. We, therefore, allow CA No. 800 of 2005 only to the above extent and not otherwise. The appellant shall not be entitled to continue the lease or renewal thereof after the expiry of the period of ten years.

6. The Apex Court allowed the SLP partly by relying upon the judgment of Apex Court reported in Beg Raj Singh Vs. State of U.P. and Others, . It was argued before the Apex Court that right of the respondent No. 3 was fructified much before the policy came into being and therefore, their rights cannot be taken away before the expiry of the period, in view of the policy which came into being later on. It was argued that change in policy must not be arbitrary, unreasonable, irrational, perverse and in public interest and change in policy, if founded on Wednesbury reasonableness, can defeat a substantive legitimate expectation and the reasonableness of restriction must be determined from the standpoint of general public interest. Thereafter, respondent No. 3 moved a modification application and on the modification application the Apex Court directed that respondent No. 3 (appellant in the said appeal) must be allowed to operate the mining for the full period of lease subject to payment of lease amount and other dues. In pursuance to the order of the Apex Court, the State Government vide notification dated 29.08.2008 approved the grant of lease in favour of respondent No. 3 as per the application submitted by respondent No. 3.

7. We have heard Mr. Jitendra Mohan Sharma, Mr. Yogesh Pandey and Mr. Sanpreet Singh, learned Counsel for the appellants and Mr. Sharad Sharma, Sr. Advocate, assisted by Mr. J.S. Bisht, learned Counsel for the respondent No. 3.

8. Learned Counsel for the appellants argued that appellants filed writ petition before this Court and the Single Judge of this Court has dismissed the writ petition. Appellants have challenged the impugned judgment by means of present appeal mainly on two counts that learned Single Judge has not considered the contention raised by the appellants (the then petitioners) as the appellants have categorically stated in the ground that respondent No. 3 had misled the court by concealing the true facts in his writ petition before High Court as well as in the SLP filed before the Apex Court. The respondent No. 3 did

 

not mention that area for which the respondent No. 3 had applied for grant of lease, could only be leased out by auction and the Government had no authority to grant lease on application moved by private individuals.

9. Learned Counsel for the appellants referred to the notification dated 04.05.1971, notification dated 05.05.1976, notification for the auction for the year 1985 - 86 and vide letter dated 15.02.1995 it was directed that mineral i.e. sand, bajri and boulders should be leased out only by auctioning the area. Learned Counsel for the appellants further argued that above mentioned material facts were concealed by respondent No. 3.

10. It is further submitted that Rule 9-A of the Rules, which were adopted by State of Uttarakhand was declared as ultra vires by the full bench of Allahabad High Court vide judgment and order dated 27.05.2001. In SLP, State of U.P. had made a statement that lease would be granted by way of public auction and no preferences will be given while granting the lease. The only criteria would be the highest satisfactory bid being made and accepted. Thus, the order of the court was modified to that extent and the appeal was disposed of being infructuous.

11. Learned Counsel further argued that since Rule 9-A was not on the Statute and this fact was not brought to the notice of the court and thus, respondent No. 3 could not be entitled to any relief by having any preferential rights for grant of mining lease under the Rules. It is argued that application of respondent No. 3 should have been decided in accordance with law as applicable on the date of its decision and not on the date of submission of application. As mere submission of an application did not create or confer any vested right in the applicant. Learned Counsel for the appellants further argued that respondent No. 3 has withheld the above mentioned facts from the court and did not disclose the facts, which ought to have been disclosed and therefore, being guilty of concealment of facts is not entitled to any relief.

12. On the other hand, learned Counsel for the respondent No. 3 submitted that the decision of the State Government vide impugned order dated 29.08.2008 granting the lease in favour of respondent No. 3 had been taken after due consideration of various reports, government?s notifications and in compliance of judgment of Apex Court.

13. He further pointed out that against the judgment of the Hon?ble Apex Court, a review petition was filed by State Government which was dismissed vide order dated 22.01.2008. Even the curative petition was also dismissed vide order dated 30.07.2008. Learned Counsel further argued that submission of the learned Counsel for the appellants that facts have been concealed from the court is not substantiated from the record. He pointed out that all these facts have been mentioned in the writ petition filed by the respondent No. 3. As regards Rule 9-A having been declared as ultra vires, learned Counsel for the respondent No. 3 has submitted that the Apex Court has held that rights of respondent No. 3 had crystallized on the date of commencement of litigation and legal status of

 

respondent No. 3 was to be considered as applicable at the time of submission of application. The learned Counsel for the respondent No. 3 has submitted that the application for granting lease had been submitted by respondent No. 3 in the year 1998, which remained pending due to inaction of the authorities. Respondent No. 3 then filed appeal before the Commissioner for seeking a direction to constitute a committee for consideration of his application and only thereafter, District Magistrate took decision and rejected the application for grant of lease. He, therefore, argued at the time when rights accrued to respondent No. 3, Rule 9-A was very much on the Statute.

14. Learned Counsel for respondent No. 3 further argued that there is no concealment of fact. He submitted that since impugned order dated 29.08.2008 has been passed strictly keeping in view the direction issued by Hon?ble Apex Court therefore, it cannot be re-opened at this stage at the behest of appellants, who are a business rival of respondent No. 3.

15. On careful consideration of the rival submissions raised by learned Counsel for the parties and after scrutinizing the material available on record, we do not find any ground to interfere or set aside the impugned judgment passed by learned Single Judge.

16. It is not disputed that Apex Court while allowing the respondent No. 3 to operate the mine for the full period of lease subject to the payment of lease amount and other dues had taken into consideration the fact that respondent No. 3 had moved an application for the grant of lease in the year 1998 which remained pending before District Magistrate and his appeal to constitute a Committee for deciding his application before Commissioner, Garhwal Division was allowed on 09.08.2001. Thereafter, the District Magistrate rejected the application of respondent No. 3 on the ground that the lease for excavation has to be granted to Garhwal Mandal Vikas Nigam as per the policy dated 17.10.2002 framed by State of Uttarakhand.

17. The Hon?ble Apex Court has further observed that the policy decision would not come in the way to grant of lease as right of the respondent No. 3 had fructified much before the policy came into being. The Apex Court while relying upon the case of Beg Raj Singh (supra) has held that appellant (respondent No. 3) would be entitled to have the lease as its rights got crystallized on the date of commencement of the litigation. However, the Apex Court did not agree to the contention of the appellant (respondent No. 3) that the policy was ultra vires or unconstitutional and held that the State Government had executive power to change the policy and there action does not appear to be arbitrary and that it satisfies the test of reasonableness.

18. The argument of the learned Counsel for the appellants that the area for which respondent No. 3 has been granted lease has to be auctioned as per notification issued by the State Government from time to time, does not survive. As impugned order has been passed consequent to the decision of Hon?ble Apex

 

Court. The Hon?ble Apex Court has already considered the plea taken by the appellants in detail by referring to Rule 9-A, 27 and 72 of the Rules, in the paragraphs referred above in earlier part of the judgment. Against the decision of the Hon?ble Apex Court the State Government had filed review petition as well as curative petition, which were dismissed by the Hon?ble Apex Court.

19. Keeping in view the above discussion, we are of the opinion that the ordinary rule of litigation is that the rights of parties stand crystallized on the date of commencement of litigation and the right to relief should also be decided with effect from the date on which litigation commenced. The application of respondent No. 3 was considered in view of the rule prevailing at the relevant time. In the instant case the delay in filing the application cannot be attributed to respondent No. 3 in any manner and there is nothing on record to show that auction of the area in question had taken place or any third party interest had been created. After grant of lease, operation in the mining area had to be stopped, on account of interim order passed by this Court. The government had correctly considered the application for granting of mining lease on the basis of rules prevailing at that relevant time and not on the basis of policy changed subsequently and as per decision of the Apex Court.

20. For the foregoing reasons, we do not find any merit in the appeal and the same is dismissed. Impugned judgment passed by the learned Single Judge is maintained.

 