

(2013) 09 RAJ CK 0093
In the Rajasthan High Court
Case No : Civil Writ Petition No. 12030 of 2013

Sarvesh Kanwar

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 26-09-2013

Acts Referred:

Citation : (2013) 09 RAJ CK 0093

Hon'ble Judges : Vishnu Kumar Mathur, J;Dinesh Maheshwari, J

Bench : Division Bench

Advocate : B.M. Bohra, for the Appellant; G.R. Punia and AAG and Mr. Jamwant Gurjar, for the Respondent

Final Decision : Disposed Off

Judgement

1. With the consent and at the request of the learned counsel for the parties, the matter has been taken up for final disposal at this stage itself. In this writ petition, essentially the petitioner has put to question the Notification dated 03.04.2013 as issued by the State Government bringing out amendment in the Rajasthan Minor Mineral Concession Rules, 1986 ("the Rules of 1986") particularly to the extent it was sought to be applied on the pending applications for grant of mining lease/licence.

2. It is also noticed that the very same Notification dated 03.04.2013 was under challenge in a batch of petitions led by DB CWP No. 4241/2013: Federation of Sand Stone Mining Industries Association & Ors. Vs. State of Rajasthan & Ors. wherein, a coordinate Bench in its order dated 31.07.2013 has held the amendment made in sub-rule (10) of Rule 4 and sub-rule (3) of Rule 7 of the Rules of 1986 to be illegal to the extent it provided for rejection of pending applications. The co-ordinate Bench has, inter alia, held as under:-

Therefore, impugned amendment dated 03.04.2013 made in sub-rule (10) of Rule 4 and Rule 7(3) of the Rules of 1986 are hereby declared illegal to the extent of rejection of the pending applications and it is directed that all the

pending applications filed upto 27.01.2011 shall be decided in accordance with law prevailing prior to issuance of impugned notification dated 03.04.2013.....

3. The position aforesaid and the relevant observations as made in the aforesaid order dated 31.07.2013 directly apply to the present case too.

4. The matter being concluded so far this Court is concerned by the aforesaid order dated 31.07.2013, it appears appropriate and in the interest of justice that this matter be also disposed of in the same terms; and there does not appear any necessity to keep this matter pending any further.

5. It is noticed that in the present case, the application made by the petitioner for grant of mining lease was rejected by the Mining Engineer, Nagaur on 09.08.2011. Aggrieved, the petitioner had preferred an appeal (No. 39/2013) under Rule 43 of the Rules of 1986, which was pending before the Additional Director (Mines), Jodhpur. However, before the appeal could be heard and finally decided, the aforesaid notification dated 03.04.2013 came to be issued and consequent thereto, the learned Appellate Authority found that there was no justification remaining to consider the appeal on merits and for this reason alone, proceeded to dismiss the appeal on 22.04.2013 without dealing with the same on merits.

6. As noticed, the said notification dated 03.04.2013 on its material aspects related with the pending applications has been held invalid by this Court. We are clearly of the view that the observations made and the findings recorded in the aforesaid order dated 31.07.2013, for all practical purposes, apply to the present writ petition too; and the impugned order dated 22.04.2013, whereby the appeal filed by the petitioner was dismissed merely with reference to the notification dated 03.04.2013, cannot be sustained. The same is required to be, and is, hereby set aside. The appeal filed by the petitioner bearing No. 39/2013 shall stand restored for consideration afresh by the Additional Director (Mines), Jodhpur Zone, Jodhpur, of course, in accordance with law. It would be required of the Appellate Authority to notify a date of hearing of appeal to the parties concerned. Accordingly, this writ petition stands disposed of in terms of the aforesaid order dated 31.07.2013 as passed in DB CWP No. 4241/2013 and with the directions foregoing.