
(2014) 06 MP CK 0091
In the Madhya Pradesh High Court
Case No : Writ Petition No. 6872/2014

Sharad Kumar Bansal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 20-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 06 MP CK 0091

Hon'ble Judges : A.M. Khanwilkar, C.J.; Alok Aradhe, J

Bench : Division Bench

Advocate : Anil Khare, Senior Counsel and Ms. Namrata Kesharwani, Advocate for the Appellant; Samdarshi Tiwari, Government Advocate for Respondent No. 2 and Mr. Akshay Dharmadhikari for Respondent No. 3, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

1. Heard counsel for the parties.
2. As short question is involved, petition is taken up for final disposal forthwith, by consent of parties.
3. Counsel for the respective respondents waive notice.
4. By this petition under Article 226 of the Constitution of India, in substance, the petitioner is assailing the decision dated 24.1.2014 passed by the revisional authority by which the revision application presented by the petitioner against the order dated 16.8.2002 (Annexure-P-11) and 09.2.2004, 11.1.2007 (Annexure-P-12) has been rejected. The revisional authority accepted the objection raised by the respondent No. 3 that the revision filed by the petitioner was time barred. In paragraph 7 of the impugned decision the revisional authority has answered that issue in the following words:-
7. I have gone through the records in file and I am convinced that Revisionist has not given any specific reason for the long delay since December 1995 to

August 2011 as to why he was sleeping on the matter. The State Government has marked the copy of the order dated 03.1.2007 to him. Moreover, he should have pursued his interest; therefore, there does not seem to be any genuine reason for delay.

5. The argument of the petitioner, is that, the revisional authority has failed to examine the jurisdictional fact as to whether the orders impugned in the revision application were duly communicated to the petitioner and the date on which such communication was served. Without recording that finding of fact, the question of non suiting the petitioner on the ground that revision application is barred by limitation cannot be countenanced. To buttress this submission, reliance is placed on Rule 54 of the Mineral Concession Rules, 1960. The same mandates that the limitation for filing the revision application would commence from the date of communication of the order to the aggrieved party. Thus understood, the date on which the orders impugned in the revision application were duly communicated to the applicant is a jurisdictional fact. In paragraph 7 of the impugned decision the revisional authority has not answered the same at all. All that it has found, is that, the revisionist failed to give any explanation about the long delay since December, 1995 to August, 2011 as to why he did not respond between that period when he was called upon to clarify certain matters by the District/State Administration. Assuming that it is a case of inaction of the petitioner in that regard it would not be of any avail for computing the period of limitation for the purpose of Rule 54 of 1960 Rules. For, the revisional authority is obliged to find as of fact as to on what date the order under revision was duly communicated to the revisionist.

6. Counsel for the respondent No. 3, however, invited our attention to the application made by the petitioner under Right To Information Act on 19.7.2011 to contend that from bare reading of the said application, it is evident that petitioner had full knowledge about the passing of the orders impugned in the revision application dated 16.8.2002 and 11.1.2007. The fact that the petitioner made such application is testimony of petitioner not having received copies of these two orders.

7. As aforesaid, the crucial fact which needs to be ascertained for considering the question of limitation is about the factum of date on which the orders were communicated to the revisionist. It is a different matter if the revisional authority was to find on the basis of record produced before it that the orders impugned in the revision application were contemporaneously communicated and duly served on the petitioner. The limitation will have to be reckoned from the date of such communication. Depending upon that fact, the issue of limitation will have to be answered by the revisional authority.

8. Counsel for the respondent No. 3 would further contend that respondent No. 3 acting upon permission granted in the year 2002 has invested substantial amount and has also succeeded in getting the necessary permissions and environmental clearance from the concerned authorities. He submits that at this

distance of time no indulgence should be shown to the petitioner on the principles of laches and in particular equity in favour of respondent No. 3. That issue may become relevant and may be considered by the revisional authority only if the revision application is found to be well within time. Whether the relief claimed by the revisionist should be moulded or otherwise is a matter to be examined by the revisional authority on its own merits. We are not expressing any opinion on the correctness of that plea.

9. In view of the above, this writ petition succeeds. The order dated 24.1.2014 (Annexure-P-18) is quashed and set aside. Instead, the revision is restored to the file to be proceeded by the revisional authority on its own merits in accordance with law.

10. We have been informed across the Bar that the practice adopted by the revisional authority is that the issue of limitation is decided ex parte without giving notice to the opposite party. We are afraid, such practice cannot be countenanced. As the question of limitation is the core issue and only if that is answered in favour of the revisionist, the revisional authority would assume jurisdiction to decide matters on merits. Further, that issue directly affects the right enured to the opposite party and, therefore, it is but appropriate that opposite party is given opportunity before finally answering the issue of limitation in filing the revision application. All questions in that behalf and the questions which may arise in the revision application are left open.

11. The petition is disposed of on the above terms. No order as to costs.