
(2009) 07 AHC CK 0063
In the Allahabad High Court

Shiv Pujan Sahani

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-07-2009

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 25

Citation : (2009) 4 AWC 4041

Hon'ble Judges : Rajes Kumar, J; Amitava Lala, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This writ petition has been filed by the petitioner to get a writ or direction issued in the nature of certiorari to quash the impugned notice dated 16th January, 2009 as well as order dated 22 November, 2008 issued/passed by Additional District Magistrate (Finance and Revenue), Kushinagar.

2. It appears that vide an order dated 9th March, 2005 a mining lease was granted to the petitioner for excavating sand over an area of 5 acres for a period of 3 years, which was operated by the petitioner satisfactorily and thereafter the lease was renewed vide order dated 28th April, 2008 for a further period of 3 years. Pursuant to the order dated 28th April, 2008, the area was demarcated by a committee of three persons and demarcation report was submitted on 8 May, 2008. Ultimately, upon completion of formalities, the mining lease was executed on 14th May, 2008 and the petitioner started mining operation over the area demarcated. According to the petitioner, in the meantime some antisocial elements started illegal mining in the adjoining area, so he made an application to the District Magistrate, Kushinagar on 13th June, 2008 intimating about the same whereupon the Additional District Magistrate directed concerned Inspector in-charge of police to enquire into the matter and in case it is found that illegal mining is going on, penal action be taken against the guilty person. Thereafter, vide impugned notice dated 22nd November, 2008, petitioner was asked to show cause within a fortnight as to why the lease deed granted in his favour be not

cancelled for excavation of sand illegally beyond the area allotted to him and to stop mining operation till disposal of the matter. The petitioner submitted reply to the said notice on 25th November, 2008 denying the allegations made against him and ultimately vide impugned order dated 16th January, 2009 it has been held that the explanation furnished by the petitioner was not found satisfactory and the allegations levelled against him in the notice have been proved, therefore, for illegal mining of 1,700 cubic meter sand, he has been directed to deposit Rs. 34,000 as royalty and Rs. 1,70,000 as cost of mineral (total Rs. 2,04,000). Hence, the writ petition.

3. Mr. Raj Kumar, learned Counsel appearing for the petitioner contended before this Court that the impugned order was passed by the Additional District Magistrate who has no authority or jurisdiction to pass such order. In accordance with Uttar Pradesh Minor Minerals (Concession) Rules, 1963, the District Magistrate is empowered to discharge such duties. He has no power of delegation. In support of his contention, he has relied upon a judgment in A.K. Roy and Another Vs. State of Punjab and Others, and contended before this Court that where a power has been given to do a certain thing in a certain way, the thing must be done in that way or not at all. Other modes of performance are necessarily forbidden. When the power of delegation is given by the Central Government or the State Government by general or special order, must be for a specific purpose, to authorise a designated person, which cannot be sub-delegated, On the other hand Mr. Vishnu Pratap, learned standing counsel has relied upon two Judgments of this High Court to establish his contention. Firstly, he relied upon a Division Bench judgment of this Court in Ghanshyam and Ors. v. Sub-Divisional Officer Salon and Anr. 1991 ALJ 901 : 1990 (2) AWC 1613 (LB), to establish that the word "Collector" means an officer appointed as Collector under the provisions of Uttar Pradesh Land Revenue Act, 1901 (for short "the Act") and includes an Assistant Collector of 1st Class empowered by the State Government by a Notification in the Gazette to discharge all or any of the functions of the Collector under the Act. The Collector is appointed u/s 14 of the Act, which provides that the State Government shall appoint in each district an officer who shall throughout his district, exercise all the powers and discharge all the duties conferred and imposed on a Collector by the Act, or any other law for the time being in force. The Assistant Collector, whether of the first class or second class, is appointed u/s 15 of the Act, and it is provided u/s 18 (1) of the Act, that the State Government may place any Assistant Collector of the first class In-charge of one or more sub-divisions of a district, and may remove him therefrom. Section 18 (2) provides that such Assistant Collector shall be called Assistant Collector in-charge of sub-division of a district or a Sub-Divisional Officer and shall exercise all the powers and discharge all the duties conferred and imposed upon him by the Act, or by any other law for the time being in force, subject to the control of the Collector. It may be mentioned that various revenue courts have been constituted under the Act, and by virtue of Section 4 (8) thereof, Collector and Sub-Divisional Officer, both are revenue courts. He has further

relied upon a judgment in Naveen Chandra Seth and others Vs. Commissioner, Allahabad and others, though a single Bench judgment but to persuade this Court on the strength of such judgment that the petitioner has not come with clean hands, therefore, he is not entitled to any discretionary relief. We are aware of well-settled principles of law and there is no necessity to discuss any thing more in this regard.

4. The Act, as amended up to date is made to consolidate and amend the law relating to Land Revenue and the jurisdiction of Revenue Officers in Uttar Pradesh. Certain sums for such mines and minerals and fees for grant of such licences etc. on account of mines and minerals are to be recovered as arrears of land revenue by virtue of Section 25 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as the "Act of 1957") which is quoted hereunder:

25. Recovery of certain sums as arrears of land revenue.-(1) Any rent, royalty, tax, fee or other sum due to the Government under this Act or the Rules made thereunder or under the terms and conditions of any reconnaissance permit, prospecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as an arrear of land revenue.

(2) Any rent, royalty, tax, fee or other sum due to the Government either under this Act or any Rule made thereunder or under the terms and conditions of any reconnaissance permit, prospecting licence or mining lease may, on a certificate of such officer as may be specified by the State Government in this behalf by general or special order, be recovered in the same manner as if it were an arrear of land revenue and every such sum which becomes due to the Government after the commencement of the Mines and Minerals (Regulation and Development) Amendment Act, 1972, together with the interest due thereon shall be a first charge on the assets of the holder of the reconnaissance permit, prospecting licence or mining lease, as the case may be.

As per Section 25 of the Act of 1957, power of delegation to an officer is also there. Section 26 of the Act of 1957 is also quoted hereunder:

26. Delegation of powers.- (1) The Central Government may, by notification in the official Gazette, direct that any power exercisable by it under this Act. may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification be exercisable also by:

- (a) such officer or authority subordinate to the Central Government; or
- (b) such State Government or such officer or authority subordinate to a State Government,

as may be specified in the notification.

(2) The State Government may, by notification in the official Gazette, direct that

any power exercisable by it under this Act, may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government as may be specified in the notification.

(3) Any rules made by the Central Government under this Act, may confer powers and impose duties or authorise the conferring of powers and imposition of duties upon any State Government or any officer or authority subordinate thereto.

Since the recovery of any sum as aforesaid is to be made as land revenue, the Act, will be applicable for the purpose. Sections 14, 14A and 15 of the Act, give clear answer in this respect that an Additional Collector includes the Collector. Sections 14, 14A and 15 of the Act being respective sections are quoted below:

14. Collector of the district- The State Government shall appoint in each district an officer who shall be the Collector of the district, and who shall throughout his district, exercise all the powers and discharge all the duties conferred and imposed on a Collector by this Act, or any other law for the time being in force.

14A. Appointment powers and duties of Additional Collectors.- (1) The State Government may appoint an Additional Collector in a district or in two or more districts combined.

(2) An Additional Collector shall hold his office during the pleasure of the State Government.

(3) An additional Collector shall exercise such powers and discharge such duties of a Collector in such cases or classes of cases as the Collector concerned may direct.

(4) This Act and every other law for the time being applicable to a Collector shall apply to every Additional Collector, when exercising any powers or discharging any duties under Sub-section (3), as if he were the Collector of the district.

15. Assistant Collectors.- (1) The State Government may appoint to each district as many other persons as it thinks fit to be Assistant Collector of the first or second class.

(2) All such Assistant Collectors and all other revenue officers in the district, shall be subordinate to the Collector.

An argument as put forth by Mr. Raj Kumar, learned Counsel appearing for the petitioner possibly in view of Section 26 of the Act of 1957 that unless and until notification is there Additional District Magistrate cannot act as District Magistrate in this regard. We are of the view that by virtue of the power specifically provided in this respect u/s 14A (3) and (4) of the Act, the law itself authorises Additional Collector to act on behalf of the Collector. A notification means introduction of Governmental circular, if any, to be known to every one. Unless it is known to every one by such notification, one cannot be said to have such

power but when law itself says that an Additional Collector shall exercise such powers and discharge such duties of a Collector in such case or class of cases as the Collector may direct, the power of delegation by the Collector to the Additional Collector is inbuilt in the statute itself. Moreover, the Act, as aforesaid and every other law for the time being applicable to a Collector shall also apply to Additional Collector when exercising any powers and discharging any duties under Sub-section (3) of Section 14A of the Act of 1957 as if he were the Collector of the district, therefore, the respective orders passed by the Additional District Magistrate cannot be said to be non est in the eye of law and as such the argument put forth by the petitioner before this Court is unsustainable in nature, hence, the writ petition fails and is dismissed, however, without any order as to cost.

Rajes Kumar, J.

5. I agree.