
(2010) 04 RAJ CK 0020
In the Rajasthan High Court

Shri Balaji Marbles Mines

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 16-04-2010

Acts Referred:

Citation : (2010) 04 RAJ CK 0020

Hon'ble Judges : Gopal Krishan Vyas, J;A.M. Kapadia, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the parties and perused the impugned judgment dated 8.1.2010 passed by learned Single Judge whereby the learned Single Judge dismissed the writ petition filed by the petitioner Firm against the order dated 14.6.2007 passed by Superintending Mining Engineer, Mines & Geology Department, Udaipur while observing that the Superintending Mining Engineer, Udaipur has rightly declared the order dated 19.7.2006 as null and void because Mining Engineer has passed the order dated 19.7.2006 without obtaining prior approval from Directorate.

2. In the writ petition filed by the appellant petitioner, it was contended that by order dated 19.7.2006, the Mining Engineer sanctioned the area of 4 hectares in favor of the petitioner firm by allowing extension of 15038.66 sq. yards to be included in the existing quarry No. 241. The appellant firm deposited entire amount for the purpose of allotment of said mining and final demarcation was also conducted by the Department on 24.8.2006. The Rajasthan State Pollution Control Board also issued N.O.C. in favor of the appellant firm on 11.09.2006 but Directorate, Mines & Geology, issued a communication to the Mining Engineer on 14.6.2007 to declare the sanction order dated 19.7.2006 as null and void under Rule 72 of the Rajasthan Mines and Minerals Concession Rules, 1986 and further requested for sending compliance report.

3. The contention of learned Counsel for the appellant is that the order dated 19.7.2006 passed by the Mining Engineer whereby sanction was accorded in favor of the appellant firm was in consonance with law and the appellant firm

completed all the requirements for the said purpose but without providing opportunity of hearing straight away while exercising power under Rule 72 of the Rajasthan Mines and Minerals Concession Rules, 1986, the Superintending Mining Engineer sent a communication to the Mining Engineer, Udaipur on 14.6.2007 to declare the sanction order dated 19.7.2006 as null and void. The said communication is totally against the principles of natural justice because the competent authority after following the procedure laid down under the Rules accorded sanction and if no approval was taken prior to issuing the sanction order then for that reason it cannot be said that the order dated 19.7.2006 was null and void. It is also argued by learned Counsel for the appellant that though a ground was taken by the appellant firm in the writ petition that the order dated 14.6.2007 is not only cryptic but nonspeaking order, that too, was passed without giving any opportunity of hearing to the appellant firm to make his submissions. Therefore, on this ground alone, his writ petition was to be allowed. But learned Single Judge without considering this aspect of the matter has straight away dismissed the writ petition filed by the appellant firm on the ground that as per reply of the respondents, no approval was taken from the Directorate prior to issuing sanction order dated 19.7.2006, therefore, the judgment dated 08.01.2010 passed by learned Single Judge deserves to be quashed and writ petition deserves to be allowed in terms of the prayer made by the appellant in the writ petition.

4. Per contra, learned Counsel appearing for the State submits that the allotment was made in contravention of the Rajasthan Mines and Minerals Concession Rules, 1986, therefore, the Superintending Mining Engineer sent a communication dated 14.6.2007 under Rule 72 of the Rules of 1986 to declare the order dated 19.7.2006 as null and void, therefore, it cannot be said that the Superintending Mining Engineer has committed an error while directing the Mining Engineer to declare the sanction order dated 19.7.2006 as null and void vide communication dated 14.6.2007. Therefore, no interference is required in the judgment dated 08.01.2010 rendered by learned Single Judge.

5. We have considered the rival submissions made by both the parties and perused the judgment dated 08.01.2010 passed by learned Single Judge and perused the communication dated 14.6.2007, which was challenged by the appellant in the writ petition.

6. Upon perusal of the communication Annexure-15 dated 14.6.2007, it is revealed that by this communication the Superintending Mining Engineer, Hqrs. directed the Mining Engineer, Mines & Geology Department, Makarana that the order dated 19.7.2006 issued in favor of the appellant may be declared null and void and compliance report shall be made to the Directorate. In our opinion, it appears that although there is power left with the respondent Department to cancel or declare any order null and void under Rule 72 of the Rajasthan Mines and Minerals Concession Rules, 1986, if order is not in consonance with the Rules but no reasons have been assigned in the order dated 14.6.2007. So also, it

appears that no opportunity of hearing whatsoever has been given to the appellant prior to issuing directions to declare the order dated 19.7.2006 as null and void by the Mining Engineer. In this view of the matter, while upholding the finding of learned Single Judge that there is power left with the Department under Rule 72 of the Rajasthan Mines and Minerals Concession Rules, 1986 to cancel and declare null and void any allotment, which is in contravention of the Rules, but at the same time, we are of the opinion that if any adverse order is required to be passed for cancellation or declaring null and void, then as per settled principle of law that it must be passed after providing opportunity of hearing. Admittedly, in this matter before issuing communication dated 14.6.2007 by the respondent No. 3, no notice or opportunity of hearing was granted to the appellant, therefore, in our opinion, the said communication dated 14.06.2007 for declaring order dated 19.07.2006 as null and void by the respondent No. 3 has been passed in violation of the principles of natural justice.

7. In this view of the matter, this special appeal is disposed of with the directions to the respondents that before declaring the order dated 19.7.2006 as null and void, the appellant firm shall be given an opportunity of hearing and no order shall be passed for declaring the order dated 19.7.2006 as null and void without providing an opportunity of hearing to the appellant firm. Further, it is made clear that the respondents shall decide the matter afresh within two months from today by a speaking order. Till then, status quo as it exists today shall be maintained.