
(2012) 04 AHC CK 0165

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 56402 of 2009

Smt. Padma Pandey

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2012

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : (2012) 5 ADJ 1 : AIR 2012 All 117

Hon'ble Judges : Sunil Ambwani, J; Pankaj Naqvi, J

Bench : Division Bench

Advocate : Dev Brat Mukherjee, for the Appellant;

Final Decision : Dismissed

Judgement

1. This writ petition is directed against the order dated 16.9.2009 passed by the District Magistrate, Allahabad in pursuance to the directions issued by the High Court dated 10.8.2009 in Writ Petition No. 40769 of 2009, Smt. Padma Pandey v. State of U.P. and others, to dispose of the application for mining lease dated 17.2.2006 within six weeks of the receipt of the order. The District Magistrate has rejected the petitioner's application and has directed the area to be re-advertised. The petitioner has also prayed for a direction to the respondents to grant mining lease of mining plot No. 725 of Khand-3 of Village Janwan, Tehsil-Bara, District-Allahabad measuring 5 acres. The petitioner is engaged in the business of excavating minor mineral including grit, bolder and stone in respect of which mining leases are granted by the State Government through the District Magistrate under the U.P. Minor Mineral (Concession) Rules, 1963, made u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957.

2. The State Government by Government Order dated 16.10.2004 withdrew the auction lease system and directed the lease system to continue under Rule 24 of the Rules of 1963. Rule 72 of the Rules of 1963 provides for grant of mining lease after inviting application on Form MM-1. The District Magistrate, Allahabad advertised the availability of plots inviting applications for settlement of mining

lease including Plot No. 725 of Khand-3 in Village Janwan, Tehsil Bara, Distt. Allahabad vide notice dated 20.12.2004. Since there were less than 3 applications under Rule 72 (2), the District Magistrate extended the period for inviting applications for 7 days vide notice dated 20.12.2005. Since once again there were less than 3 applicants in pursuance to the notice of extension of period issued on 20.12.2005, the mining in plot No. 725 at Sl.No. 140 of the notification was not settled with anyone.

3. In para 13 of the writ petition it is stated that a fresh notice was issued by the District Magistrate on 17.2.2006 inviting applications for various mining plots including plot No. 725. The petitioner applied on 17.1.2006, on prescribed proforma on Form MM-1, after completing all the formalities. The office of the District Magistrate by a letter dated 18.7.2006 asked the petitioner to submit character certificate, which was issued by the competent authority on 19.7.2006 and was submitted on 20.7.2006. It is alleged that since thereafter the petitioner had visited the office of the District Magistrate several times and thereafter filed the Writ Petition No. 40769 of 2009, Smt. Padma Pandey v. State, in which by order dated 10.8.2009 the District Magistrate was required to decide her application.

4. In the order dated 16.9.2009 under challenge in the writ petition, the District Magistrate has recorded that Araj No. 725, Khand No. 03 area 2 acres in Gram Janwan, Tehsil Bara, District Allahabad was advertised on 17.1.2006, inviting applications within 7 days from 17.2.2006 to 24.2.2006, in pursuance to which two applications were received. Shri Satish Chandra Dwivedi and Smt. Padman Pandey-the petitioner applied for grant of mining lease. Under Rule 72 (2) it is provided that if the application for any notified area less than three, the period can be extended for 7 days, for inviting applications. According to the records produced before him the period for making applications, for the plot in question was not extended inviting applications. The District Magistrate has found on the perusal of the records that since only two applications were received, and there should have been atleast three applicants, the Government Order dated 8.8.2005 was not attracted and that no consideration was required to be made on the two applications. The District Magistrate rejected the petitioner's representation dated 25.8.2009 to consider her application dated 17.2.2006, and directed that the plot in question be re-advertised.

5. We have heard Shri D.B. Mukherjee, learned counsel for the petitioner. Shri Vishnu Pratap and Shri A.K. Singh, Standing Counsels appear for the State respondents.

6. Shri D.B. Mukherjee, learned counsel for the petitioner submits that by notification dated 20.12.2004 the identified areas were notified under Rule 72 inviting applications from 20.1.2005 to 28.1.2005 (7 working days) for settlement of mining leases. The applications were accepted from 20.1.2005 to 28.1.2005. Since there were less than three applicants, under Rule 72 (2); the period was to be extended for 7 days. The Addl. District Magistrate (Admn.),

Allahabad by his order dated 20.12.2005 consequently extended the period for one week from 28.12.2005 to 3.1.2006. The extension of time was made after about one year, without giving any explanation and since once again less than 3 applications were received, for the plot in question, the District Magistrate was required to consider the applications including the application of the petitioner dated 17.2.2006 for which the petitioner had completed all the formalities and had produced the residence certificate, after its requisition by the Mining Officer, Allahabad on 18.7.2006. The District Mines Officer has made recommendation in favour of the petitioner by his letter dated 7.8.2008. Since the recommendation was not considered, the petitioner filed the writ petition in which directions were issued to the District Magistrate to decide the application within six weeks, on which the District Magistrate passed the order on 16.9.2006 giving rise to this writ petition.

7. Shri Mukherjee submits that by Government Order dated 8.8.2005 the State Government had in exercise of powers u/s 68 of the Rules of 1963 relaxed the condition under Rule 72 (2), and had taken a decision that if even after extending the period of one week, less than three applications are received, the District Magistrate will decide the application for grant of lease after determining the priorities.

8. It is submitted by Shri Mukherjee that since even after extending the period by 7 days, only two applications were received including the application of the petitioner and that the petitioner had completed all the formalities in pursuance to the Government Order dated 8.8.2005, the petitioner was entitled to be considered for grant of mining lease. The District Magistrate erred in law in finding that the period in question was not extended for 7 days in respect of the area in question (Arazi No. 725, Khand No. 3 area 2 acres), and further in observing that since only two applications were received, it was not in accordance with the Rules to consider the applications. In the alternative Shri Mukherjee submits that since less than 3 applications were received even after extending the period, Rule 72 (2) is to be strictly applied, the area should have been re-advertised.

9. Shri Mukherjee also submits that the respondents have discriminated the petitioner, inasmuch as whereas the petitioner's application was not considered, a number of other applications in respect of areas for which less than 3 applications were received, were considered and mining, leases were granted. For this purpose he relies upon admissions in the counter-affidavit of Shri Rajeev Agrawal, District Magistrate, Allahabad filed in pursuance to the order of this Court dated 5.11.2009.

10. Shri Mukherjee has relied upon Mritunjoy Pani and Another Vs. Narmanda Bala Sasmal and Another, ; Union of India and others Vs. Major General Madan Lal Yadav (Retd.), and Kusheshwar Prasad Singh Vs. State of Bihar and Others, , in support of his submissions that the administrative authorities while exercising executive function must strictly follow the provisions of law. Where the statutory

provisions provide for grant of time, the same must be followed strictly. The authority cannot neglect to do, which the law mandates and requires doing. Where an obligation is caused on a party and he commits breach of such obligation, he may not be permitted to take advantage of such situation. No party can take undue advantage of his own wrong.

11. Shri Vishnu Pratap, learned Standing Counsel appearing for the State respondents submits that in the present case plot No. 725 Village Janwan area 2 acres was never advertised in the notice dated 20.12.2004. The plot was erroneously mentioned in the notice dated 20.12.2005, for extension of period by 7 days, after a gap of almost one year. The notice dated 17.1.2006 was issued afresh under Rule 72 including Plot No. 725. The error in the notice dated 20.12.2005, is of no consequence. He submits that in pursuance to the notice dated 17.1.2006 inviting applications from 17.2.2006 to 24.2.2006 only two persons namely Shri Satish Chandra Dwivedi and the petitioner applied. Thereafter in compliance of the provisions contained in Rule 72 (2) read with Government Order dated 8.8.2005, fresh notice inviting applications in further 7 days time was not issued for the plot in question. The benefit provided by Government Order dated 8.8.2005 relaxing Rule 72 (2), could not be given to the petitioner. The benefit in any case cannot be given after lapse of 3 years and 9 months. The application was consequently rejected.

12. In paras 19, 22 and 23 of the counter-affidavit of the District Magistrate, he has stated :

19. That the contents of para-graphs-27 and 28 of the writ petition as stated are not admitted. It is not disputed that in the notice dated 5.7.2006 plots over which less than three applications were received in response to the notice dated 17.1.2006 were re-advertised in terms of the Government Order dated 8.8.2005 and in continuation of the notice dated 17.1.2006. However, the plot No. 725 situated in Village Janwa, Tehsil-Bara, District-Allahabad was not advertised in the said notice. The reasons why the said plot was not included in the notice dated 5.7.2006, is not available in the record of the office of the deponent. The then District Officer under what circumstances and reasons had not included the plot in question in the notice dated 5.7.2006 cannot be explained by the deponent in absence of any record or reasons available with the deponent.

22. That in response to the aforesaid quarry of the Hon"ble Court the deponent submits on the basis of record and office report that after taking charge by the deponent as District Magistrate, Allahabad, only 2 notices under Rule 72 (2) of the rules has been issued. Notice under Rule-72 of dated 8.6.2009 was issued whereby the applications for grant of mining leases for Gitti, Boulder and Morrum and building stone were invited within 7 days from 10.7.2009. In response to the said notice, for several areas less than three application were received therefore, a second notice. No. 806 under Rule 72 (2) read with Government Order 8.8.2005 was issued by the deponent on 27th July, 2009. For kind perusal of this Hon"ble Court, the copy of the notice No. 722 dated 8.6.2009 and notice No. 806

dated 27th July, 2009 in continuation of the aforesaid notice are collectively enclosed herewith and marked as Annexure C.A.2 to this affidavit.

23. That, similarly another notice for grant of mining lease for river mineral was issued under Rule-72 on 8.7.2009 which is notice No. 776/09. In continuation of the said notice, another notice No. 855 dated 31st August, 2009 was issued under Rule-72 (2) read with Government Order dated 8.8.2005 for the areas for which inadequate number of applications were received. For kind perusal of this Hon'ble Court, a photo-stat copy of the notice dated 8.7.2009 and the notice in furtherance of the said notice dated 31.8.2009 are collectively enclosed herewith and marked as Annexure 3 to this affidavit.

13. Shri Vishnu Pratap Singh further submits that under Rule 68 the State Government has power to relax any Rule in the interest of the mining operations. The Government Order dated 8.8.2005 was issued to avoid advertising, the area all over again. It was observed that if after extending the time by 7 days, still less than 3 applications are received, the competent authority may not re-advertise the area and may proceed to award the lease determining the preferential right. The relaxation has been given in the interest of the mining activity as well as the interest of the utilisation of the mineral wealth of the State keeping in view the environmental concerns.

14. From the facts brought on record in the pleadings, we find that Khasra No. 725 in Village Janwan area 2 acres was not advertised in the notification dated 20.12.2004 and thus there was no question of receiving applications for this plot. The notification dated 20.12.2005 advertising the plot for the first time, was issued under Rule 72 (2) in respect of areas for which less than 3 applications were received in pursuance to the previous notification dated 20.12.2004. The reasons as to why this notification was issued after about one year have not been brought on record nor are relevant for the purposes of deciding this writ petition. Since plot No. 725 was not notified earlier, it was erroneously included in the notification dated 20.12.2005, which was confined only to those areas in respect of which there were less than three applications in pursuance to the notification dated 20.12.2004.

15. We further find from the documents annexed to the writ petition, that the notice dated 17.1.2006 issued under Rule 72 included plot No. 725 for the first time, and in pursuance of this notification only two applications were received. This notice was the first notice in respect of the area in question namely plot No. 725, and since less than 3 applications were received, the District Magistrate was required to extend the period by 7 days. Once again the reasons for which the period was not extended for 7 days have not been brought on record. The District Magistrate in his affidavit, has not explained these errors on record as he has stated that he was posted in Allahabad in 2009, and inspite of his best efforts, he could not trace out the reasons for such delay on record. In any case by this time 3 years and 9 months had expired and thus he did not commit any error nor has violated any rule or the policy of the State Government in rejecting

the application and in directing the area to be re-advertised.

16. We may observe here that in respect of mining leases, the office of the District Magistrate dealing with mining matter, very often acts in deviation of the Rules of 1963. The reasons for which such errors happen, and whether these errors are deliberate, should be found out by the District Magistrate, by making in house enquiries. These reasons, however, unless any rights have accrued in favour of any person, do not give any advantage to the applicants.

17. In the present case we find that the area in question was not advertised in the notification dated 20.12.2004. It was erroneously included in the notification dated 20.12.2005 under Rule 72 (2) amongst those areas in respect of which less than three applications were received. It is not the case of the petitioner that she had applied in pursuance to the notification dated 20.12.2004, as the area was not included in that notification.

18. The petitioner applied in pursuance to the notice dated 17.1.2006 issued afresh under Rule 72 including plot No. 725. Since less than three applications were received, the then District Magistrate did not take any action on the application and the matter was kept pending. It is only after an order was passed by the High Court, that the District Magistrate called for the record and found that more than 3 years had passed, since the petitioner had applied in pursuance to the notice dated 17.1.2006.

19. In the writ petition there is no averment to the effect that the petitioner had after making application in pursuance to the notice dated 17.1.2006, pursued the matter with the District Magistrate, Allahabad. Neither the District Magistrate extended the time by 7 days in pursuance to Rule 72 (2) nor the petitioner made a prayer to that effect. The petitioner appears to have pursued her application by providing residence certificate and character certificate, without realising that since less than three applications were received, her application was not liable to be considered.

20. In this case though Shri Mukherjee has claimed benefit of Government Order dated 8.8.2005 relaxing Rule 72 (2), we find that the relaxation does not give any benefit to him as the area advertised in accordance with law for the first time on 17.1.2006, resulted in receipt of less than three applications for which the time was not extended for 7 days.

21. Rule 68 of the Rules of 1963 is quoted as below :

68. Relaxation of rules in special cases.--The State Government may, it is of opinion that in the interest of mineral development it is necessary so to do, by order in writing and for reasons to be recorded, authorise in any case the grant of any mining lease or the working of any mine for the purpose of winning any mineral on terms and conditions different from those laid down in these rules.

22. Rule 68 as its title suggest is applicable to special cases. The reference of the words "in any case" confines the Rule to the special facts of any particular case.

The State Government, may, in such cases relax the condition of any Rule. Section 68 cannot be interpreted in a manner as suggested by learned Standing Counsel, to provide for general powers of relaxation of any Rule. Rule 72 (2) has salutary purpose to achieve namely if less than 3 applications are received, the period may be extended by 7 days and if even thereafter less than 3 applications are received, the District Magistrate or the Mines Officer is required to re-advertise the area. The object is to invite larger participation and competitive bidding. There may be variety of circumstances in which less than 3 applications may be made for the mining lease. These may include circumstances in which three persons may not be allowed to apply, or are stopped to apply, by the nature of the trade, in which monopolies are created, and muscle power is used by persons with patronage of politicians and criminals. In such circumstances, the benefit should not be given to such limited number of applicants. In such case it is always appropriate as is provided in Rule 72 (2), to re-advertise the area. In case even thereafter less than three applications are received, the District Magistrate can refer the matter to the State Government for relaxation in a special case under Rule 68. The State Government may justify in such case keeping in view the interest of the State, and the exploitation of natural resources and environmental concerns to allow the District Magistrate to take appropriate steps.

23. In *Shiv Charan Sharma v. Union of India and others*, 1981 All LJ 641 (para 8); *Achchey Lal v. District Officer/Collector, Mau*, 1997 (3) AWC 1831 (paras 9 & 10); *Inam Vs. State of U.P. and Others*, and in *Charan Singh Vs. State of U.P. and Smt. Bachchi Devi*, , this Court has taken the same view. The Court summed up the legal position in *Achchey Lal* (Supra) as follows :

A perusal of the aforesaid Rule 68 shows that the rule is meant for special and individual cases, not for exercise of blanket power in general. Furthermore, the provisions of Rule 68 are to be applied at the time of granting lease and not for making applications for mining lease. The said view has also been taken by two Division Benches of this Court, earlier in *Shiv Charan v. Union of India*, 1981 ALJ 641, and in *Shiv Charan Sharma v. State of U.P. and others*, Civil Misc. Writ Petition No. 1079 of 1977, decided on 23 January, 1978 (unreported decision). It is, relevant to produce the observations made by the two Division Benches of this Court.

24. In this case we find that the petitioner has been insisting on settlement of the area since the year 2006, when she first applied in pursuance to the notice dated 17.1.2006. She has kept the area engaged in litigation, for last 6 years. We do not find that she has any right whatsoever, to claim settlement of lease of a particular area in her favour. She is just an applicant, for settlement of mining lease. The prayer in advertising the area in the notification dated 20.12.2005 and thereafter failing to extend the time, when less than three applications were received beyond 24.2.2006, does not give any benefit to her. She does not have any right qua the area, as no area, identified for mining belongs to any person.

The reasons why she did not apply in pursuance to the notification dated 20.12.2004, for other areas, and also did not apply for many other areas, included in the notice dated 20.12.2005, have not been brought on record.

25. We may observe here that during the course of argument learned counsel for the petitioner has all along referred to the area, as "my area", and which gives an uneasy feeling to the Court that interested parties, create notional interest in the areas, and thereafter litigate endlessly for several years altogether, keeping the mineral wealth of the State to be exploited scientifically keeping in view the sustainable development of the area, locked up for long periods of time. The writ petition is consequently dismissed with Rs. 50,000/- as costs, for not allowing the area in question to be allotted to anyone, and resulting into losses to the State Government. The cost will be deposited with the District Magistrate, Allahabad, to be used for preventing illegal mining, within six weeks from the date of delivery of judgment, failing which he will realise it as arrears of land revenue.