
(2006) 03 AHC CK 0226

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No's. 5522, 5523, 9872 and 9874 of 2006

Sri Rajan Nishad and Babboo Nishad

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 72, 9A, 9A(1)

Citation : (2006) 2 AWC 1950 : (2006) 1 RD 672

Hon'ble Judges : Saroj Bala, J;R.K. Agrawal, J

Bench : Division Bench

Advocate : D.B. Mukherjee and V.S. Pandey, for the Appellant; Vishnu Pratap and S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—In all these four writ petitions the petitioners have challenged the notice dated 17.1.2006 issued by the District Magistrate/Collector, Allahabad, respondent No. 2, by which applications have been invited for grant of mining lease in respect of sand for a period of three years for the vacant areas mentioned therein and separate orders dated 23.11.2005 passed by the District Magistrate/Collector, Allahabad, cancelling the sanction/approval dated 31.3.2001 regarding grant of lease in favour of the petitioners.

2. As the counter affidavit and the rejoinder affidavit have been exchanged between the parties in all the writ petitions, with the consent of the learned Counsel for the parties, all the writ petitions are being heard and finally disposed of at the admission stage itself in accordance with the Rules of Court.

3. Briefly stated, the facts giving rise to the present petitions are as follows:-

4. According to the petitioners, the Government of Uttar Pradesh issued an order on 30.12.2000 declaring the entire area in the State of U.P. for grant of mining lease and directing the District Magistrates of various districts in the State of U.P. to declare the availability of the mining area under Rule 72 of the U.P. Minor

Minerals (Concession) Rules, 1963 (hereinafter referred to as "the Rules") and settle it under Chapter II of the Rules. Pursuant to the aforesaid Government Order, the District Magistrate, Allahabad issued a public notice on 20.2.2001 inviting applications from the public at large for settling the vacant mining area in the district of Allahabad for sand, All the petitioners applied for grant of mining lease in respect of various plots as follows:-

No.	petitioner	application	5522 of 2006	Rajan Nishad Khand	No. 3/21, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad	Babboo Nishad Khand	No. 3/22, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad	5523 of 2006	Rajendra Kumar Khand	No. 3/13, Zone	22.2.2001	Nishad No. 3, Tehsil Karchhana, Allahabad	Kanhaiya Lal Khand	No. 3/12, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad	9872 of 2006	Anand Kumar Khand	No. 3/23, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad	Rajendra Kumar Khand	No. 3/27, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad	9874 of 2006	Dinesh Chandra Khand	No. 3/20, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad	Monu Nishad Khand	No. 3/32, Zone	22.2.2001	No. 3, Tehsil Karchhana, Allahabad
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5. Along with the applications the petitioners, in each of the writ petitions, have also filed the caste certificate issued by the Tehsildar concerned. In the applications, the petitioners have mentioned that they are Mallah (boatmen) by caste and they are engaged in the traditional profession of taking out sand from the river bed and carrying on their livelihood by the earnings therefrom.

6. The District Magistrate, Allahabad sanctioned the grant of mining lease to each of the petitioners vide separate order dated 31.3.2001. Each of the petitioners had deposited 50% of the lease money and other requisite amount. However, the lease deed had not been executed nor the petitioners had started any mining operation. According to the petitioners, they were making consistent efforts to get the lease deed executed and permission to carry out the mining operation of the respective plots but without any result. According to the petitioners, in the case of Ram Chandra v. State of U.P. and Ors. 2001 (1) S.A.C. 475 a Full Bench of this Court had declared the provisions of Rule 9-A of the Rules as ultra vires. The State of U.P. preferred a SLP in which the Apex Court had directed status quo as on the date of the order (10.9.2001) to be maintained. The petitioners claim that in view of the interim order passed by the Apex Court on 11.9.2001 directing for maintaining status quo, they are entitled to do the mining work in pursuance of the sanction/approval for the grant of mining lease. They have been communicated with the order dated 23.11.2005 passed by the District Magistrate, Allahabad wherein the sanction/approval granted on 31.3.2001 has been cancelled and the respective plots have been directed to be included in the proposed advertisement to be made under Rule 72 of the Rules and to invite application afresh.

7. We have heard Sri Dev Brat Mukherjee, learned Counsel for the petitioners, and Sri Vishnu Pratap, learned Standing Counsel appearing on behalf of the respondents.

8. Learned Counsel for the petitioners submitted that each of the petitioners were the sole applicant in respect of the plots applied for by them and, therefore, the question of claiming any preference under Rule 9-A of the Rules did not arise. According to him, the question of preference is applicable only when there are more than one application for the same plot and as the petitioners were the sole applicant, the District Magistrate, Allahabad had erred in law in treating the sanction of the lease granted on 31.3.2001 to be under Rule 9-A of the Rules. According to the learned Counsel for the petitioners, the lease is to be settled afresh in accordance with the provisions of Chapter II of the Rules, which was the case at the time of settlement made in favour of the petitioners. Thus, the petitioners are entitled for execution of the formal lease deed and the permission to carry out the excavation work in terms of the said lease for a period of three years from the date of execution of the lease deed. Sri Mukherjee further submitted that the direction given by the District Magistrate, Allahabad to include the plots in question for publication under Rule 72 of the Rules is wholly illegal, null and void inasmuch as the said plots are neither vacant nor available for being settled afresh. According to him, the petitioners cannot be made to suffer for no fault of theirs. In support of his various pleas, he has relied upon the following decisions:-

(i) Beg Raj Singh Vs. State of U.P. and Others, ; and

(ii) Vijay Kumar Nishad v. State of U.P. and Ors. Civil Misc. Writ Petition No. 12578 of 2005, decided on 10.3.2005.

9. The learned Standing Counsel submitted that pursuant to the Government Order dated 30.1.2.2000, the District Magistrate, Allahabad had issued a public notice on 20.2.2001 inviting applications from the public at large for settling the vacant mining area relating to sand in the district of Allahabad under Chapter II of the Rules. Rule 9-A of the Rules provided for grant of preferential right to certain person in respect of sand. The validity of Rule 9-A was challenged by various aggrieved persons and the challenge was upheld by the Full Bench of this Court in the case of Ram Chandra (supra). Rule 9-A was declared ultra vires and void by the Full Bench of this Court on 27.3.2001. All the petitioners had mentioned the caste to which they belong, namely Mallah (boatman) in their application forms and had also attached the caste certificate in the prescribed form issued by the authority concerned. Clause (b) of Sub-rule (1) of Rule 9-A specifically provides for obtaining a certificate in form MM 14 from the district officer concerned or such other officer authorised in this regard by the State Government certifying that such person/persons is/are traditionally encased in excavation of sand/morrum for their livelihood and who are the residents of the district for which the application for mining lease has been given. According to him, all the petitioners enclosed the caste certificate in the prescribed pro forma

and have also mentioned this fact in their application form. Thus, they had, in fact, claimed preferential right as available to them under Rule 9-A of the Rules. The sanction for grant of lease made by the District Magistrate on 31.3.2001 was with respect to the preference given/claimed in Rule 9-A and it is not correct to say that the petitioners have not claimed any preferential right. According to him, in view of the preference given in Rule 9-A, the general public did not make any application and as Rule 9-A has been declared ultra vires by the Full Bench of this Court in the case of Ram Chandra (supra), the authorities were fully justified in not executing the formal lease deed. He further submitted that in the SLP filed by the State of U.P. before the Apex Court, the Apex Court had granted an order on 10.9.2001 to maintain status quo. As the lease deed had not been executed in favour of the petitioners, there was no question of executing the lease deed after Rule 9-A had been declared ultra vires. He further submitted that the State Government withdrew the SLP and decided to settle the mining right under Chapter IV of the Rules which provided for settling of mining lease by auction/tender/auction-cum-tender basis. This was done by the Government Order dated 2.11.2002 issued by the Government of Uttar Pradesh. The petitioners kept silent and did not challenge the switching over of the manner of settling the mining rights from Chapter II to IV as they were not at all aggrieved by the said change over. The State Government again reverted to settling of mining right under Chapter II vide Government Order dated 16.10.2004. It is not clear from the record of the writ petitions as to when the petitioners woke up from their slumber. However, when they came to know that the plots for which the mining rights had been sanctioned, are again going to be placed in the list of vacant plots for settling of mining rights afresh, they woke up and insisted upon the authorities for execution of the formal mining lease deed and for grant of permission to excavate sand in their respective plots. The request has been turned down by the District Magistrate, Allahabad vide order dated 23.11.2005 on the ground that Rule 9-A under which the sanction of the lease had been given, had been declared ultra vires by this Court in the case of Ram Chandra (supra). If the lease deed would have been executed on that date, the period of three years would have come to an end on 30.3.2004 for which no effort was made by the petitioners causing loss to the State Government. After the sanction of the lease on 31.3.2001, the State Government, vide Government Order dated 2.11.2002 had switched over to auction system and, thereafter, vide Government Order dated 16.10.2004 it had been again reverted to Chapter II for which steps are being taken. On these grounds, the District Magistrate came to the conclusion that the auction on the basis of preference granted under Rule 9-A cannot be taken. He accordingly cancelled the sanction granted on 31.3.2001.

10. Sri Vishnu Pratap has further submitted that as the petitioners were the sole applicants in respect of the plots in question, the plea that the question of preference does not arise, is not correct. According to him, the applications were invited under Chapter II which included at that time Rule 9-A in the Rules which dealt with the preferential right of certain class of persons and the petitioners fell

under Clause (b) of Sub-rule (1) of Rule 9-A of the Rules. Their form was accompanied by the caste certificate as provided therein and it is not correct to say that the petitioners were not claiming any preferential right. Relying upon a Division Bench decision of this Court in the case of Gopal Prasad Gupta v. State of U.P. and Ors. Civil Misc. Writ Petition No. 3501 of 2004, decided on 15.2.2006, he submitted that similar plea has been repelled by this Court. He further submitted that the plots in question have been notified afresh under Chapter II of the Rules and it will be open to the petitioners to make a fresh application which will be considered in accordance with law,

11. Having given our anxious consideration to the various pleas raised by the learned Counsel for the parties, we find that each of the petitioners in their application have mentioned their caste and have also specifically stated that they are traditionally engaged in excavation of sand for their livelihood and are residents of the district. The caste certificate in the prescribed form issued by the authority concerned has also been enclosed alongwith the application form. Thus, their application forms have to be treated as one having been filed claiming benefit of preferential right envisaged under Rule 9-A of the Rules. The plea that they were the sole applicant and, therefore, the question of giving preference does not arise, is not correct.

12. This Court in the case of Gopal Prasad Gupta (supra) had the occasion to consider a similar plea in the following words :-

The petitioner's case is that though there was a provision for preferential right of certain class of persons in respect of grant of mining lease as provided in Rule 9-A of the Rules, yet he did not get allotment of the lease on the basis of this Rule because none from the general category had applied for grant of lease, and so his application for grant of lease was allowed, So the order for grant of lease in his favour cannot be deemed to have been passed under Rule 9-A. As such the lease granted in his favour was not liable to be cancelled.

After careful consideration of the record and the relevant provisions, we do not find any force in the above contention. When the category, in which the petitioner applied for grant of mining lease was reserved for a particular class of persons, there was no opportunity for a person of the general category to apply for grant of mining lease in this category because their applications were liable to be rejected under Rule 9-A. Hence no body from the general category applied for grant of mining lease in that category which was reserved for a certain class of persons and so the petitioner's application, who was a candidate of the preferential category, was allowed. Subsequently when the above Rule being unconstitutional and ultra vires, has been struck down by a Full Bench of this Court in the case of Ram Chandra (supra), the petitioner cannot take this plea that since there was no candidate of the general category his lease shall not be affected. The ratio of the above judgment as well as of the subsequent orders passed by the Government in respect of the leases, which were granted in accordance with the above Rule 9-A, shall apply to the case of the petitioner

also. In this way there is no force in the contention of the petitioner that the lease in his favour was not granted under Rule 9-A, and so the Full Bench judgment of this Court striking down the above Rule has got no effect upon the lease granted in his favour.

13. We are in respectful agreement with the aforesaid view. We, therefore, hold that the lease sanctioned by the District Magistrate, vide order dated 31.3.2001, in favour of each of the petitioners was under Rule 9-A of the Rules. The said Rule having been struck down by this Court in the case of Ram Chandra (supra), no benefit can be derived by the petitioners from the mere sanction of the mining lease. We further find that in SLP filed by the State of U.P. against the judgment of this Court in the case of Ram Chandra (supra), the Apex Court, vide order dated 11.9.2001, had directed to maintain status quo. A Division Bench of this Court interpreted the aforesaid interim order regarding status quo in the case of Katwaru v. Special Secretary, Industrial Development Anubhag, U.P. Government and Ors. (2002) 1 AWC 675, holding that the lease already granted before the Full Bench judgment of this Court were not to be affected but fresh mining lease on preferential basis under Rule 9-A could not be granted nor renewal of any such lease was to be granted after decision of the Full Bench. Therefore, the petitioners cannot claim that they are entitled to the execution of the lease basing their claim on the sanction/approval order dated 31.3.2001. It may be mentioned here that subsequently when the State Government switched over from Chapter 11 to Chapter IV for settling of the mining right, i.e., the auction system, vide Government Order dated 2.11.2002, the petitioners kept silent, meaning thereby that the petitioners were either willing to take the mining lease by way of auction or were not interested in pursuing the earlier sanction as they did not challenge the same or took any step to enforce their claim. Only when the State Government had reverted to Chapter II on 16.10.2004 and when they came to know that their plots are also to be included in the fresh notice to be published inviting application under Chapter 11 of the Rules, they have woken up. Their claim based on the previous sanction dated 31.3.2001 is not tenable. Reliance placed by the learned Counsel for the petitioner on the decision in the case of Beg Raj Singh (supra) is misplaced, In the aforesaid case, the Apex Court has held as follows :-

The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and the right to relief should be decided by reference to the date on which the petitioner entered the portal of the court. A petitioner, though entitled to relief in law, may yet be denied relief in equity because of subsequent or intervening events, i.e. the events between the commencement of the litigation and the date of decision. The relief to which the petitioner is held entitled may have been rendered redundant by lapse of time or may have been rendered incapable of being granted by change in law. There may be other circumstances which render it inequitable to grant the petitioner any relief over the respondents because of the balance tilting against the petitioner on weighting inequities pitted against equities on the date of judgment. Third

party interests may have been created or allowing relief to the claimant may result in unjust enrichment on account of events happening in between. Else the relief may not be denied solely on account of time lost in prosecuting proceedings in judicial or quasi judicial forum and for no fault of the petitioner. A plaintiff or petitioner having been found entitled to a right to relief the court would as an ordinary rule tried to place the successful party in the same position in which he would have been if the wrong complaint against would not have been done to him. The present one is such a case. The delay in final decision, cannot, in any manner, be attributed to the petitioner. No auction has taken place. No third party interest has been created. The sand mine has remained unoperated for the period for which the period of operation falls short of three years. The operation had to be stopped because of the order of the State Government intervening which order has been found unsustainable in accordance with stipulations contained in the mining lease consistently with G.O. issued by the State of Uttar Pradesh. Merely because a little higher revenue can be earned by the State Government that cannot be a ground for not enforcing the obligation of the State Government which it has incurred in accordance with its own policy decision.

14. The circumstances pointed out by the Apex Court do not exist in the present case. As already pointed out, the petitioners' sanction was referable to Rule 9-A of the Rules which have been declared to be ultra vires by this Court which order has become final. Thus, the petitioners cannot take any benefit or advantage by the sanction order dated 31.3.2001.

15. So far as the decision of this Court in the case of Vijay Kumar Nishad (supra) is concerned, this Court has not laid down any principle. In the aforesaid case, Sri Vishnu Pratap had conceded that even though the application was moved under Rule 9-A of the Rules, but the same was not granted under the aforesaid provision inasmuch as there is only one application of the petitioner. The aforesaid decision proceeded on the basis of concession made by the learned Standing Counsel. No such concession has been made by the learned Standing Counsel in the present case.

16. In view of the foregoing discussions, we do not find any merit in these petitions. They are dismissed. However, there shall be no order as to costs.