

(1979) 08 GUJ CK 0006

In the Gujarat High Court

Case No : Letters Patent Appeal No. 234 of 1978, C. Application No's. 1936 of 1979 and 2182 of 1978

State of Gujarat and Others

APPELLANT

Vs

Pethalji Nathabhai Chawda

RESPONDENT

Date of Decision : 02-08-1979

Acts Referred:

Gujarat Minor Minerals Rules, 1966 — Rule 44

Citation : AIR 1980 Guj 139 : (1979) 2 GLR 1

Hon'ble Judges : B.J. Divan, C.J.; R.C. Mankad, J

Bench : Division Bench

Advocate : J.R. Nanavati, Asstt. Govt Pleader, P.S. Patel, for Ambubhai and Divanji, for the Appellant; K.S. Nanavati, for the Respondent

Judgement

Divan, C.J.—This appeal has been filed by the State of Gujarat and officers connected with Geology & Mining Department of the Government of Gujarat against the decision of A. D. Desai, J: in Special Civil Application No. 1386 of 1974. The controversy between the parties is within a very narrow compass and the whole question turns upon the interpretation of Rule 44 of the Gujarat Minor Mineral Rules 1966. The petitioner is carrying on the business of quarrying limestones and in this writ petition he has challenged the order dated April 25, 1974 passed by the Deputy Secretary to the Government of Gujarat, Industries, Mines and Power Department, rejecting the revision application filed by the petitioner. There is land bearing survey No. 4 admeasuring 2 acres 29 gunthas of Dungarpur village in Junagadh District. This land has lime stones. On April 1, 1972 the petitioner applied for grant of quarry lease in respect of survey No. 4 of Dungarpur village and by his order dated April 4, 1972 the Collector of Junagadh, who is the competent officer, rejected this application of the petitioner on the ground that limestone contained therein was of a high chemical grade and therefore the said land had been reserved for industrial purposes. Against this order the petitioner filed a revision application to the Director of Geology and Mining and this application was dismissed on June 27, 1973 on the ground that

this land was reserved for grant of Parvanas to Khanias. The Director of Geology and Mining did not agree with the reasoning of the Collector that the land was reserved for industrial purposes. On July 30, 1973 against the decision of the Director, Geology and Mining, the petitioner preferred a revision application to the Government of Gujarat and hearing of the revision petition was fixed before the Deputy Secretary, Industries, Mines and Power Department on february 4, 1974, February 18, 1974 and March 18, 1974. On these respective dates, the petitioner had sent applications for adjournment on the ground of sickness and the case was adjourned accordingly. The case had been adjourned to April 25, 1974 on which date also the petitioner applied for adjournment on the ground of sickness. As no certificate of a doctor was annexed to the application to prove the sickness, the revision application was heard by the officer concerned, namely, the Deputy Secretary, Industries, Mines and Power Department and the Deputy Secretary confirmed the order passed by the Director, Geology and Mining and that order has been challenged in the present proceedings.

2. The main contention before A, D. Desai, J. and before us at the hearing of the appeal was in connection with a notification issued by the Government of Gujarat in purported exercise of powers under Rule 44 of the Gujarat Minor Minerals; Rules, 1966. The notification was issued on July 11, 1968 and was issued by the Government of Gujarat in Industries, Mines and Power Department. it bears No. GU/65/MMR/17-4/68/ 2872 and is reproduced in extensor here in below:

"In exercise of the powers conferred by Rule 44 of the Gujarat Minor Mineral Rules, 1966. the Government of Gujarat hereby directs that the right to remove limestone building stone in the area of survey Nos. 4, 93, 95, 106, 96 and 100 of village Dungarpur of Junagadh District (hereinafter referred to as the "said area") may be granted under the said Rule 44 by the competent officer, subject to the following terms and conditions, namely:-

1. The said area shall be divided into plots not ordinarily exceeding 2000 sq, meters as may be considered convenient by the competent officer.

2. A parwana for each of the plots shall be granted by the competent officer to persons belonging to the following categories in the order of priority al specified below, namely:-

(a) Individual families of Khanias who do physical work at present in excavating building stone in the said area. Preference shall be given to such Khanias who hold parwanas or sanads under the Saurashtra Quarry Rules in the said area or who held parwanas of long standing as Kharxias under the Saurashtra Quarry Rules:

(b) Small merchants who held sanads or parwanas under the Saurashtra Quarry Rules:

(c) Genuine co-operative societies of Khanias:

(d) New Khaniss and new small Merchants.

3. No parwana shall be granted to any persons whose quarry lease or sanads granted under the Saurashtra Quarry Rules are in existence at the time of the grant of parwanas in the said area.

4. No one shall be granted a parwana hi respect of more than one plot and no plot shall be granted in joint names of two or more persons.

5. The parwana shall be in the form appended hereto and shall be granted for a period of one year ending on 31st December on payment of a fee of Rupees 10/- which shall be paid in the manner prescribed under Rule 7 of the Gujarat Minor Mineral Rules, 1966. The parwana shall be renewable every year on payment of a fee of Rs. 10/- payable in the like manner. A parwana granted in the last quarter of a year shall be valid till 31st day of December of the year next following.

6. Application for grant of quarry leases or permits relating to limestone (building stone) in the said area, pending on the date of issue of this order shall not be considered."

Rule 44 of the Minor Mineral Ruler, 1966, is in these terms:

"Notwithstanding anything contained in the foregoing provisions, it shall be lawful for a competent officer to sell by public auction or otherwise dispose of the right to remove any minor Mineral or of collection of royalty thereon in such cases or class of cases and on such terms and conditions as the State Government may by a general or special order direct."

A.D. Desai, J. felt that under the scheme of the Gujarat Minor Mineral Rules, it was not competent to the Government of Gujarat to reserve the area and then give directions as to how the right to remove minor minerals from the reserved area should be disposed of Under the scheme of the rules, according to A. D. Desai, J. and particularly in the light of Rules 33-A and 33-B and other ruler? in that behalf, it is open to the Government to reserve areas for the purpose of grant of quarrying, parwanas and quarrying permits as the Director may think fit after notifying the same and when any area is so reserved, no quarrying lease shall be granted for such reserved area. According to A. D. Desai, J. the effect of the notification which is impugned in this case is to reserve the area for granting of quarrying leases or parwanas and permits.

3. With great respect to A. D. Desai, J., we are unable to agree with this conclusion. In view of the non obstants clause, it is obvious that Rule 44 has to be interpreted on its own disregarding the rest of the provisions of the rules in question. It is true that the power to prescribe cases or class of cases and terms and conditions on which the right to remove any minor mineral or the right to collect royalty thereon shall be granted either by public auction or otherwise to dispose of that right, is not a right to reserve, but one important thing to be borne in mind is that the Government "has been given the power to lay down the terms and conditions as to how the competent officer shall sell by public auction

or otherwise dispose of the right to remove a minor mineral in any particular area, in this case, limestone from a particular survey number of a village in Junagadh District. Now the power to prescribe the terms and conditions will carry with it the power to prescribe the conditions of eligibility as well, that is, to prescribe as to who would be eligible for getting the right to remove minor minerals, by public auction or otherwise being disposed of by the competent officer and then the conditions of eligibility for such disposal or selling by public auction can be prescribed. It cannot be said that some reservation is being applied by the Government. Of course, when conditions of eligibility are prescribed, exclusion of those who are not eligible automatically takes place, but in such a case it cannot be said that the Government has exercised the power of reservation or the authority concerned exercised the power because prescribing conditions of eligibility is to see that certain goals which the authority has in mind are achieved by the prescription of conditions of eligibility. All that the Government has done in the instant case is that in order to become eligible to get the right to remove limestone from these survey numbers, a person shall be one of the four categories a, b, c and d, laid down in the notification. It is well known that in the light of the directive principles of the Constitution and in the light of the philosophy of social justice underlying the constitution, it is one of the obligations of the Government to see to the economic advancement of those who work with their hands and those who belong to the category of small entrepreneurs. With that object in view and with that philosophy of social justice in view, Government has prescribed that individual families of khans and small merchants who hold sanads or parwanas under the Saurashtra Quarry Rules genuine co-operative societies of khans and new khans and new small merchants will be eligible for getting the right to remove limestone from the survey numbers of Duagarpur village mentioned in the notification. Since the Government has laid down this condition of eligibility in the light of this philosophy, it is obvious that those who do not satisfy the condition of eligibility will necessarily be excluded from getting the right to remove limestone from these survey numbers mentioned in the notification. We may point out that whenever under any appropriate legislation, conditions of eligibility are laid down, for example, for practice of legal profession that only qualified advocates can practise, the condition of eligibility excludes those who are not qualified advocates. Similarly, the condition of eligibility for practising medical profession would exclude those who are not qualified doctors or qualified medical practitioners. But therefore it cannot be said that prescribing these conditions of eligibility in an exercise of the right of restriction or reservation are with great respect to A. D. Desai, J., he was in error in overlooking this distinction between conditions of eligibility and reservation of areas or reservation of the right to extract minor minerals from certain areas.

4. Under then circumstances, since that the Government has done is to prescribe conditions of eligibility for getting the right to remove limestone from these different survey numbers of Duagarpur village, the notification cannot be struck

down, on the ground that it reserves areas for the purpose of granting quarry permits or parwanas. The words of Rule 44 which is under consideration before us are wide enough to enable the Government to prescribe terms and conditions and since the condition of eligibility would be one of the terms and conditions which the Government can prescribe or can lay down, the notification cannot be said to be bad.

5. We regret that we cannot agree with the reasoning of our learned brother and have to arrive at a different conclusion. We therefore allow this Letters Patent Appeal and set aside the judgment and order passed by our learned brother A. D. Desai J. The special civil application fails and is dismissed. The original petitioner will pay the costs throughout

6. No orders on the civil applications. Rule discharged in both the civil applications. No order as to costs of both the civil applications.

7. Appeal allowed.

8. Special civil application dismissed.