
(2015) 01 UK CK 0045

In the Uttarakhand High Court

Case No : Special Appeal Nos. 485 and 486 of 2014

State of Uttarakhand and Others

APPELLANT

Vs

Kilkileshwar Mining Co. and Others

RESPONDENT

Date of Decision : 20-01-2015

Acts Referred:

Citation : (2015) 5 FLT 411 : (2015) 127 RD 41

Hon'ble Judges : V.K. Bist, A.C.J; Umesh Chandra Dhyani, J

Bench : Division Bench

Advocate : P.C. Bisht, for the Appellant; B.P. Nautiyal and Matloob, Advocates for the Respondent

Final Decision : Dismissed

Judgement

V.K. Bist, Actg. C.J. and Umesh Chandra Dhyani, J.—Delay in filing the Special Appeals on behalf of the State is condoned. Delay Condonation Applications are allowed. Since there is a common question of law involved in both the special appeals, therefore, both are being decided by this common judgment and order for the sake of brevity and convenience.

2. By means of present Special Appeals, the appellants (State) have assailed the common judgment and order dated 1.5.2014 rendered by learned Single Judge in Writ Petitions No. 2303 of 2013 (M/S) and 1894 of 2013 (M/S) titled as M/s. Kilkileshwar Mining Company and another v. State of Uttarakhand and others. By the impugned judgment and order, learned Single Judge held that the order to blacklist the petitioners (respondents herein) for carrying out mining activities was bad in the eye of law and, accordingly, both the petitions were allowed. The petitioners were allowed to undertake mining activities for full period of ten years, excluding the period they have already undertaken the mining activities prior to 25.1.2001.

3. The petitioners (respondents herein) filed the writ petitions challenging the order dated 23.7.2013 passed by the Collector, District Tehri Garhwal, whereby

the renewal of the lease deeds in favour of the petitioner was cancelled and, vide order dated 11.10.2013, the petitioners were blacklisted for having done illegal mining activities.

4. Learned Single Judge relied upon a decision of Hon"ble Supreme Court in Beg Raj Singh Vs. State of U.P. and Others, AIR 2003 SC 833 : (2002) 10 JT 417 : (2003) 1 SCC 726 : (2002) 5 SCR 530 Supp : (2003) AIRSCW 280 : (2003) 1 Supreme 91 wherein it was held as below:

"6. Having heard the learned Counsel for the petitioner, as also the learned Counsel for the State and the private respondent, we are satisfied that the petition deserves to be allowed. The ordinary rule of litigation is that the rights of the parties stand crystallized on the date of commencement of litigation and right to relief should be decided by reference to the date on which the petitioner entered the portals 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 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 weighing 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 try to place the successful party in the same position in which he would have been if the wrong complained 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 un-operated 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 the 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.

7. For the foregoing reasons, the petition is allowed with costs. The impugned order of the High Court, dismissing the petition filed by the petitioner, is set aside. Instead, it is directed that the petitioner shall be allowed to operate mine for a full period of three years subject to adjustment for the period for which he has already operated. The petitioner shall remain liable to pay royalty and make

other payments to the State Government in accordance with the terms of the lease. The petition stands disposed of in the abovesaid terms."

5. As per the dictum of the Apex Court in Beg Raj Singh's case (supra), if mining lease is granted for a period of three years and meanwhile lessee is not allowed to work for any unjustified or illegal reasons, then at the time of setting aside the order of stopping the mining activities, the Court must permit the lessee to carry out the mining activities for the full period of the lease subject to the adjustment for the period which he has already operated. Learned Single Judge came to the conclusion that instead of renewing the lease till 9.6.2020, the Collector ought to have said that lease stood renewed w.e.f. 10.6.2010 for further period of 9 years and 136 days. The lease in favour of the petitioners was renewed for a period of 10 years, however, they were not allowed to undertake mining activities w.e.f. 25.1.2001. Learned Single Judge came to the conclusion that the order to blacklist the respondents was outcome of non-application of mind, totally arbitrary and unjustified. It was further held that no show-cause notice was ever issued to the petitioners (lessee) before issuing the order to blacklist them.

6. Learned Standing Counsel for the State-appellants submitted that the authority for granting mining lease or mining activities is with the State Government and, in fact, the petitioners were permitted to do mining activities till only 2012 and, thereafter, no extension was granted in favour of the petitioners. It is further submitted by learned Standing Counsel that it is the State Government, which can only grant extension of lease and, therefore, the order passed by learned Single Judge is bad in law. In support of his submission, learned Standing Counsel relied upon Rule 8 of the Mines and Mineral Concession Rules, 1963, which says that the power to renew the lease vests with the State Government or on the authority authorized in this behalf by the State Government, but the Collector is not empowered, therefore, the renewal/extension of leases by the Collector on the representation of petitioners is against the law. It is further contended by learned Standing Counsel that learned Single Judge in earlier Writ Petition No. 76/2008 (M/S) quashed the order of cancelling the leases and restored the leases for the remaining period of renewed mining lease, i.e., till 2012 only. The Division Bench in earlier Special Appeal No. 39/2009 upheld the said order of learned Single Judge, vide order dated 2.4.2010. It is also contended by learned Standing Counsel that the petitioners could have raised this issue in the earlier round of litigation, but they did not raise such issue before the Division Bench and the judgment passed by learned Single Judge became final, therefore, in any case, the petitioners cannot be permitted to carry out mining activities after 2012, unless the State Government grants such permission and the environmental clearance is taken from the Ministry of Environment and Forests, Government of India. Learned Standing Counsel further contended that the order passed by learned Single Judge is in contravention of the order passed by the Division Bench in earlier Special Appeal No. 39 of 2009.

7. We have fully considered the rival submissions of learned Counsel for the parties. It is true that the State Government is the final authority to grant permission for carrying out mining activities or for extension of lease and no one can grant such lease, but the facts of the present case are peculiar. It is an admitted fact that the lease in favour of the petitioners was renewed for a period of 10 years, vide order dated 21.7.2000. The lease granted in favour of the petitioners was renewed for further period of 10 years. But the petitioners were not allowed to carry out mining activities w.e.f. 25.1.2001, when lease was cancelled. When the lease was cancelled, earlier a writ petition was filed, which was allowed, vide judgment dated 23.10.2008. The said judgment was challenged in Special Appeal No. 39/2009, which was also dismissed. Therefore, the grant of lease and extension of lease in favour of the petitioners was found to be justified.

8. Once the extension of lease for a period of 10 years is granted, then the intention of the State Government was clear that the petitioners were permitted to carry out mining lease for a period of 10 years. It is not the fault of petitioners, but it is due to the inaction of the State Government that the petitioners could not carry out mining activities. We are of the opinion that it was not the intention of learned Single Judge that the petitioners will be granted extension for a period of one year only. Once it has been held by the Court that due to inaction of the authority, the petitioners should be entitled for carrying out mining activities for a period of 10 years.

9. Hon''ble Supreme Court in Beg Raj Singh's case (supra) held that the petitioner having been found entitled to a right to relief, the Court would, as an ordinary rule, try to place the successful party in the same position in which he would have been, if the wrong complained against would not have been done to him.

10. We also find that learned Single Judge was correct in observing that before passing the order to blacklist the petitioners (respondents herein), they were not issued show-cause notices, therefore, we are also of the opinion that order of blacklisting the petitioners was outcome of non-application of mind and unjustified. In view of above, both Special Appeals fail and are dismissed.