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**(2014) 07 MP CK 0182**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Appeal No. 477 of 2014**

Sukhdev Prasad Goenka

APPELLANT

Vs

Olpherts Pvt. Ltd.

RESPONDENT

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**Date of Decision :** 21-07-2014

**Acts Referred:**

**Citation :** AIR 2014 MP 148

**Hon'ble Judges :** A.M. Khanwilkar, C.J.; Alok Aradhe, J

**Bench :** Division Bench

**Advocate :** B.P. Singh and Archana Nagaria, Advocate for the Appellant; Kishore Shrivastava, Sr. Adv., Kapil Jain and Samdarshi Tiwari, Govt. Advt, Advocate for the Respondent

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## Judgement

A.M. Khanwilkar, C.J.

1. This appeal takes exception to the judgment of the learned single Judge dated 14.03.2014 passed in Writ Petition No. 4001/2010. The appellant was respondent No. 3 in the said writ petition filed by M/s. Olpherts Pvt. Ltd. As regards the appellant, the learned single Judge found as of fact that the appellant had failed to furnish No Dues Certificate in spite of being given opportunity to do so before 21.06.2004 vide notice dated 11.06.2004. In fact, the appellant failed to produce No Dues Certificate even at the time of hearing of the proceedings before the Authority on 03.09.2004. On this indisputable facts, the learned single Judge rejected the claim of the appellant for grant of fresh mining lease.

2. The argument of the appellant is that the learned single Judge has misinterpreted the provisions of sub-rule (2) of Rule 26 of the Mineral Concession Rules, 1960 (hereinafter referred to as "the Rules"). The argument proceeds that as per the said sub-rule, non-compliance of Clause (d) of sub-rule (3) of Rule 22 cannot be made basis for rejection of the application. Further, the learned single Judge has overlooked the legal position expounded by the Apex Court in the recent decision- Kalpnath Singh Vs. Udai Nath and Others, , in particular paragraph 20 thereof.

3. Having considered the rival submissions, we have no hesitation in rejecting this appeal. We say so because the argument canvassed by the appellant clearly overlooks the requirement to be fulfilled in terms of Rule 22. No doubt, sub-rule (2) of Rule 26 of the Rules provides that non-compliance of Clause (d) of sub-rule (3) of Rule 22 cannot be made basis for rejection of the application as such. However, at the same time, Rule 22, sub-rule (3)(d) was amended on 23.05.1970 and further amended on 17.01.2000. The amended sub-rule (3) of Rule 22 reads, thus:--

"22. Applications for grant of mining leases.--(1) An application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf.

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"(3)(i) Every application for grant of renewal of a mining lease shall be accompanied by-

(a) [a non-refundable fee of two thousand and five hundred rupees;]

[\*\*\*] [(d) a valid clearance certificate, in the form prescribed by the State Government of payment of mining dues, such as royalty or dead rent and surface rent payable under the Act or the rules made thereunder, from that Government or any officer or authority authorised by that Government in this behalf:]

Provided that in case the applicant is a partnership firm or a private limited company, such certificate shall be furnished by all partners of the partnership firm or, as the case may be, all members of the private limited company:

Provided that where any injunction has been issued by court of law or any other competent authority staying the recovery of any such mining dues or income-tax, non-payment thereof shall not be treated as a disqualification for the purpose of granting or renewing the said mining lease:

Provided that where a person has furnished an affidavit to the satisfaction of the State Government stating that he does not hold and has not held a mining lease, it shall not be necessary for him to produce the said valid clearance certificate :

Provided that a properly sworn affidavit stating that no dues are outstanding shall suffice subject to the condition that the certificate required as above shall be furnished within ninety days of the date of application and the application shall become invalid if the party fails to file the certificate within the said ninety days:

Provided further that the grant of a clearance certificate under sub-clause (d) shall not discharge the holder of such certificate from the liability to pay the mining dues which may subsequently be found to be payable by him under the Act or rules made thereunder.

[\*\*\*] (g) an affidavit showing particulars of area mineral-wise in [the] State, which the applicant or any person jointly with him -

(i) already holds under a mining lease;

(ii) has already applied for but not granted;

(iii) being applied for simultaneously;

(Emphasis supplied)

On conjoint reading of sub-rule (3) of Rule 22 of the Rules makes it amply clear that the applicant is obliged to file properly sworn affidavit stating that no dues are outstanding. There is nothing to indicate that such affidavit was filed by the appellant along with the original application. In any case, in the fact situation of the present case, filing of that affidavit along with the original application filed in the year 1984 would be of no avail to the appellant keeping in mind the observation of the Apex Court in the case of Olpherts Pvt. Ltd., Calcutta Vs. Triloki Nath Agrawal and Others, . In paragraph 7 of the said decision the Apex Court gave directions to the concerned parties inter alia as follows:--

"(1) The application dated 30th September, 1980 read with the application dated 1st August, 1981 filed by the appellant seeking renewal of lease shall be treated as an application for fresh grant. That application shall be available for consideration as an application for fresh grant (and not as an application seeking renewal) to be taken up for consideration along with such other applications for fresh grant which were validly filed and though rejected by the State Government were remanded by the Central Government for consideration afresh by the State Government.

(2) All such applications shall be treated as applications for fresh grant and shall be considered on merits. If there be any deficiency in any of the applications that shall be got cured by affording an opportunity to the party concerned.

(3) So much area of the mining lease dated 31st July, 1951 along with such other area as has been added to it (i.e. such area as was available for grant pursuant to the Notification dated 27th July, 1984) shall be considered for grant by way of fresh mining lease or leases excluding such area as may be forest attracting applicability of Forest Conservation Act, 1980".

(Emphasis supplied)

By virtue of these directions, the parties to the proceedings and including the appellant was obliged to comply with the deficiency in respect of application for grant of mining lease, if any.

4. The deficiency regarding failure to file No Dues Certificate was brought to the notice of the appellant by issuance of notice dated 11.06.2004 and calling upon the appellant to produce No Dues Certificate before 21.06.2004. No doubt, the appellant had made application for grant of such certificate on 05.06.2004 to the

appropriate Authority. The fact remains that until 03.09.2004 the appellant did not produce the No Dues Certificate even at the time of final hearing.

5. The question is: whether that approach is in conflict with any of the provisions of the Rules. As aforesaid, Rule 26, sub-rule (2) provides for excepted category in which the application for grant of mining lease cannot be rejected at the threshold, which includes sub-clause (d) of Rule 22(3) of the Rules pertaining to production of valid clearance certificate. However, on conjoint reading of proviso under sub-clause (d) of sub-rule (3) of Rule 22, it is amply clear that the exception so provided obtains only for a period of 90 days "from the date of application". On expiry of 90 days" period, by legal fiction the application becomes invalid and ought to be treated as disposed of on that basis.

6. From the indisputable facts concerning the appellant it is noticed that No Dues Certificate in relation to all the 11 mining leases operating in favour of the appellant referred to in the document accompanying the application made by the appellant for grant of No Dues Certificate addressed to the Deputy Director (Mines) dated 05.06.2004 at page No. 445 was never produced until the final hearing of the proceedings on 03.09.2004. If at all the application for grant of mining lease of the appellant could be processed in spite of the mandate of third and fourth proviso of Rule 22(3) of the Rules because of the liberty granted in terms of the directions issued by the Apex Court in the case of M/s. Olpherts Pvt. Ltd. (supra), the appellant having failed to produce the No Dues Certificate, in any case before 03.09.2004 until the date of final hearing of the proceedings, had disentitled himself for grant of subject mining lease.

7. Considered thus, the conclusion reached by the learned single Judge in rejecting the claim of the appellant/respondent No. 3 in the writ petition does not warrant any interference in this intra-court appeal.

8. For the reasons already recorded, it is unnecessary for us to dilate on the exposition of the Apex Court in the case of Kalpnath Singh Vs. Udai Nath and Others, and the dictum of the Apex Court in the case of State of Tamil Nadu Vs. Hind Stone and Others, , in particular para-13 thereof which considered similar argument that it is not open to the Government to keep the applications for grant of lease and application for renewal pending for long time and then to reject the same on the basis of Rule 8-C notwithstanding the fact that the application had been made long prior to the date on which Rule 8-C came into force. In the said decision, the Apex Court has applied the legal principle that the applicant in respect of application for grant of mining lease does not have a right as such and therefore, the application even though filed long back, must be disposed of on the basis of the Rules in force at the time of consideration of the application by applying the provisions which prevail at the relevant time.

9. Although four appeals arise out of common judgment, this appeal can be conveniently disposed of on the basis of separate order, which we decide to pass. The other three appeals are considered in the separate order passed today. In

view of the above, this appeal fails and the same is dismissed.