

(2011) 01 AHC CK 0077

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 61306 of 2010

Surat Nishad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 04-01-2011

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 23(C)
Uttar Pradesh General Clauses Act, 1904 — Section 19A
Uttar Pradesh Minerals (Prevention of Illegal Mining, Transportation and Storage) Rules, 2002 — Rule 2, 4, 4(2), 5, 5(1)
Uttar Pradesh Minor Minerals Concession Rules, 1963 — Rule 66, 70

Citation : (2011) 2 ADJ 158 : (2011) 3 AWC 2313 : (2011) 114 RD 67

Hon'ble Judges : Shyam Shankar Tiwari, J; Ashok Bhushan, J

Bench : Division Bench

Judgement

1. Heard learned Counsel for the Petitioner and Shri Alok Kumar Singh learned Standing Counsel.

2. By this petition, Petitioner has prayed for quashing the order dated 21/6/2010, issued by the Mining Officer, Fatehpur issuing certain directions with regard to Form MM-11, with regard to weight i.e. cubic meter and the amount of royalty with regard to issuance of booklet of Form MM-11. Petitioner who is a lessee under the U.P. Mines and Mineral Concession Rules, 1963 (hereinafter called the "Rules 1963") has challenged the aforesaid order.

3. Shri Sabhajeet Nishad, learned Counsel for the Petitioner challenging the order dated 21/6/2010, contended that the Mining Officer has no jurisdiction to issue such order. He submits that there is no approval obtained by the District Officer i.e. The Collector nor any survey was made. He submits that earlier the quantity and the amount of royalty was different which has now been changed by the impugned order dated 21/6/2010.

4. Counter-affidavit has been filed on behalf of the State Government.

5. Learned Standing Counsel submits that the Mining Officer was fully authorised

to issue directions with regard to Form MM-11. He has relied on the notification dated 01/3/2006, issued by the State Government in exercise of power under Rule 4 Sub-rule 2 of The Uttar Pradesh Minerals (Prevention of Illegal Mining Transportation and Storage) Rules, 2002 (hereinafter called the "Rules, 2002").

6. We have heard learned Counsel for the parties and have perused the record.

7. The principle submission which has been pressed by the learned Counsel for the Petitioner is that the Mining Officer has no power or jurisdiction to change the quantity and the amount of royalty without there being any approval by the District Officer i.e. Collector. The Form MM-11 is issued for transportation of minerals under Rule 70 of the Rules, 1963.

8. Rule 70 of the Rules, 1963 is relevant which is quoted below:

70. Restrictions on transport of the minerals.-(1) The holder of a mining lease or permit or a person authorised by him in this behalf may issue a pass in Form MM-11 to every person carrying, a consignment of minor mineral by a vehicle, animal or any other mode of transport. The State Government may, through the District Officer, make arrangements for the supply of printed MM-11 Form books on payment basis.

(2) No person shall carry, within the State a minor mineral by a vehicle, animal or any other mode of transport excepting railway, without carrying a pass in Form MM-II issued under Sub-rule (I).

(3) Every person carrying any minor mineral shall, on demand by any officer authorised under Rule 66 or such officer as may be authorised by the State Government in this behalf, show the said pass to such officer and allow him to verify the correctness of the particulars of the pass with reference to the quantity of the minor mineral.

(4) The State Government may establish a check post for any area included in any mining lease or permit, and when a check post is so established public notice shall be given of this fact by publication in the Gazette and in such other manner as may be considered suitable by the State Government.

(5) No person shall transport a minor mineral for which these rules apply from such area without first presenting the mineral at the check post established for that area for verification of the weight or measurement of the mineral.

(6) Any person found to have contravened any provision of this rule shall, on conviction, be punishable with imprisonment of either description for a term, which may extend to six months or with fine which may extend to one thousand rupees or with both.

9. Another set of Rules has been framed in exercise of power u/s 23(C) of The Mines and Minerals Regulation and Development) Act, 1957 namely; Uttar Pradesh Minerals (Prevention of illegal, mining transportation and storage) Rules, 2002 (hereinafter called the "Rules 2002").

10. Rule 2-b of the Rules 2002 defines the "Authorised Officer".

11. Rule 4 and 5 of the Rules, 2002 which are relevant are quoted below:

4. Supply of transit passes and fee therefore.-(1) The holder of mining lease or mining permit or prospecting licence or licence for storage of minerals, as the case may be, shall make an application to the district officer or the officer authorised by the State Government in this behalf alongwith fee and in the manner, as determined by the State Government from time to time for obtaining book of transit pass for transportation of any mineral.

(2) The book of transit pass will be supplied by the District Officer of the respective district or any other officer authorised by the State Government in this behalf by notification under these rules or the Act or any other rules made thereunder.

5. Issue of Transit Pass.-(1) The transit pass shall be issued by the holder of mining lease or mining permit or prospecting licence for major minerals in "Form G" appended to these rules and for minor minerals in "Form MM-11" appended to Rules 1963.

(2) The holder of licence for storage of minerals shall issue the transit pass in "Form C for lawful transportation of minerals from the store.

12. The notification, which has been filed as Annexure-2 to the counter-affidavit dated 01/3/2006, refers to Sub-rule 2 of Rule 4 of Rules, 2002.

13. According to Rule 4 Sub-rule 2, of Rules, 2002, book of transit pass will be supplied by the District Officer of the respective district or any other officer authorised by the State Government in this behalf.

14. The notification dated 01/3/2006, authorises the Mining Officer, as one of the officer for issuing transit pass.

15. Rule 5, Sub-rule 1 of the Rules 2002, specifically mentions for issuing of transit pass for minor minerals in Form MM-11 appended to Rules 1963. Thus, the booklet of Form MM-11 can be issued by virtue of Rule 5 read with Rule 4 of Rules, 2002, by an officer authorised by the State Government. The Mining Officer, having been authorised by the State Government vide notification dated 01/3/ 2006, is entitled to issue booklet of Form MM-11 for minor minerals. The Mining Officer, who is authorised to issue booklet of Form MM-11 is fully entitled to lay down the manner and procedure for issuance of Form MM-11. The quantity of mineral as well as the royalty to be paid for transportation can very well be provided for while issuing the Form MM-11 which is connected with transportation of mineral. It is not denied that earlier the quantity and royalty for transportation of mineral through Form MM-11 was prescribed which has been changed by the impugned order dated 21/6/2010. The Mining Officer, who is authorised to issue Form MM-11, is thus clearly entitled to prescribe the quantity and amount of royalty to be paid.

16. According to Section 19-A, of the of The Uttar Pradesh General Clauses Act, 1904, when an authority is empowered to do an act under a statute or rules he has all ancillary powers to do for the purposes of discharge of statutory function. Section 19-A of The Uttar Pradesh General Clauses Act, 1904 is quoted below:

19-A. Ancillary powers.-Where, by any Uttar Pradesh Act, a power is given to a person, officer or functionary to do or enforce the doing of any act or things, all such powers shall be deemed also to be given as are necessary to enable that person, officer or functionary to do or enforce the doing of the act or thing.

17. The second submission of the learned Counsel for the Petitioner is that no survey was made by the Mining Officer before issuing the impugned order dated 21/6/2010. The order impugned dated 21/6/2010, mentions that the order is being issued after checking the minerals in several vehicles.

18. In para 2 of the counter-affidavit, detailed reasons have been given for issuing the impugned order. Sufficient reasons have been brought on the record for justifying the order issued by the Mining Officer. Thus, the second submission of the Petitioner also does not help the Petitioner.

19. In view of the aforesaid, we do not find any illegality in the impugned order dated 21/6/2010, issued by the Mining Officer, Fatehpur.

20. The writ petition lacks merit and is dismissed.