

(2002) 01 PAT CK 0052

In the Patna High Court

Case No : C.W.J.C. No's. 1210 and 1216 of 2002

Suresh Chandra Sinha and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 24-01-2002

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 15

Citation : (2002) 1 BLJR 594 : (2002) 1 PLJR 602

Hon'ble Judges : R.S. Garg, J

Bench : Single Bench

Judgement

R.S. Garg, J.—Heard Mr. Ram Balak Mahto, in C.W.J.C. No. 1210 of 2002 and Mr. Vinod Kumar Kanth in C.W.J.C. No. 1216 of 2002 and Mr. Ashok Kumar Singh, Special P.P. for the State Government.

2. This order shall decide the above referred two petitions as the writ petitions raise common question of law.

3. Counsel for the petitioners submit that the State Government had published notification dated 23rd March, 2001 in exercise of the powers conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 amending Bihar Minor Mineral Concession Rules, 1972. According to them Rule 9-A required the Government to lease out of settle any mineral by public auction/tender as prescribed under Rule 52 after issuing a notification in the official gazette. According to them Annexure-2 is the notification prescribing for the stone quarries. It is further contended that Rule 52(1)(ii) clearly provide that the date of auction shall be notified before one month from the date of auction, therefore, any notice/notification providing for a period shorter than 30 days/one month would be contrary to the provisions contained in amended Rule 52 and as such the same has to go. it is further submitted that from a very perusal of Annexure-4, a notice dated 20-1-2002 published in the daily news paper "Jagran", the date of the submission of the offers has been fixed as 25-1-2002 and as the said period of five days runs contrary to the provisions contained in

Section 52, the notice is bad on the facts so also on the foundation of law.

4. Contending contrary to the above referred submission, learned Counsel for the State submits that the, petitioners or some people earlier challenged the said notification dated 23rd March, 2001 as ultra vires the Constitution, this Court in the earlier litigations stayed the operation of the said notification. It is further contended that the State Government took up the matter to the Supreme Court, the Supreme Court intervened in the matter and stayed the operation of the order passed by the High Court, thereby re-enforcing the notification dated 23rd March, 2001. It is further submitted that as the petitioners do not say that they were aspiring to take part in the auction/tender and as the petitioners have not come to this Court with clean hands, they are not entitled to any indulgence from this Court, it is lastly contended that notice Annexure-3 and Annexure-4 are to be read in juxtaposition and a juxtapose reading of these two notices would clearly show that more than three months time has been provided by the State Government.

5. I have heard the parties at length. At this stage, it necessary to mention that the learned Counsel for the State raised a preliminary objection before this Court that the case was not in the regular list, but as the same has been taken up today at the request of the Counsel for the petitioners, he be given some time to seek instruction and file counter. This Court proposed that as the notice Annexure-4 prima facie appears to be illegal, this Court is ready to adjourn the case giving sufficient opportunity to the State to submit return/counter, but would stay the operation of Annexure-4. To this, learned Counsel for the State submitted that the matter relates to the interpretation of the legal wrangle, the Court may proceed to decide the matter finally. In view of those submissions made by the parties present in the Court, this Court is deciding the matter.

6. Notification No. SO 29 dated 24th March, 2001 (bearing 23rd March, 2001 as the date) provides that in exercise of the powers conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, the Governor of Bihar was pleased to make Bihar Minor Mineral Concession (Amendment) Rules, 2001 to amend the Bihar Minor Mineral Concession Rules, 1972. It is not in dispute before me that in exercise of the powers conferred by Section 15 of the Act, the State has powers to make Rules and amend the same time to time. Whether a Rule is valid or ultra vires the Act or Constitution is to be seen by a Court. If an authority or the State in exercise of the powers conferred upon it by the law proposes to frame statutory rules then any person being aggrieved by the promulgation or enforcement of such Rules challenges the same before the High Court, then the High Court has to examine the correctness validity and the vires of the said rules.

7. In the earlier litigation as contended by the learned Counsel for the State the very validity of the amendment Rules 2001 was challenged. As submitted, this Court stayed the operation of the amendment rules, but the Supreme Court stayed the operation of the order passed by this Court. The law on the question

of "stay" is very clear. When an authority or a Court stays the operation of a particular thing then the same cannot be executed but when the higher authority or the higher Court in the system grants stay over the first order staying the operation of thing or rules, the second order would cover the field and the order granted by the first Court/authority shall lose its efficacy for all practical purposes. The effect of the order passed by the Supreme Court would be to revive the applicability of rules dated 23rd March, 2001 and so long as the stay granted by the Supreme Court is in force, none can say that the rules dated 23rd March, 2001 shall not be observed or the rules would remain in abeyance.

8. In view of the above legal position it has to be held that as on today the rules dated 23rd March, 2001 (Amendment Rules 2001) are in force and the same do not only bind the private party but the State Government is also obliged to observe the said rules.

9. Rule 9-A as provided by Amendment Rules 2001 reads as follows:

(9)-A Notwithstanding anything contained in these rules the Government may by notification in Official Gazette direct that any mineral may be leased out or settled by public auction/tender in the manner prescribed in Rule 52.

10. The Rule 9 A shall be subject to Rule 52 if a notification is issued by the State Government in relation to a particular mineral. On 17-1-2001 the State Government issued yet another notification providing that the stone shall be auctioned in accordance with the Rule 52 of the Amendment Rules 2001.

11. For the purpose of this petition, it is not necessary to refer to entire Rule 52 because the short question is in relation to Rule 52(i)(ii). The said clause of Rule 52(1) provides that date of auction shall be notified before period of one month from the date of auction.

12. A bare and fair perusal of this clause would make it clear that the State Government is obliged to notify the auction at least 30 days before the date of auction.

13. The argument raised by the Counsel for the petitioners prima facie appears to be sound and logical. However the objections raised by the Counsel for the State that the petitioners do not say that they were aspiring to take part in the auction/tender process and as the petition is based on vague and ambiguous ground, the Court should not interfere is yet to be considered. When this Court required the attention of the learned Counsel for the state to the pleading raised in paragraphs 17 and 19 of C.W.J.C. No. 1210 of 2002 wherein the petitioner of this petition had clearly stated that he was interested and willing to participate in the auction and approached the office of the respondents and, that the petitioner and other willing persons were not provided sufficient time to get the essential and required documents ready, learned Counsel for the State contended that these pleadings are still vague because the petitioners do not say that they were aspiring to take part in auction of one or the other mine. According to him the

petitioners should have clearly stated that they were proposing to take part in the auction of a particular quarry.

14. In the opinion of this Court the argument raised by the learned Counsel for the State should not detain this Court unnecessarily. When the petitioners say that they were aspiring for and proposing to take part in the auction process, then such statement should provide a sufficient foundation in favour of the petitioners. It cannot be said that the petitioners are unscrupulous people and are trying to create unnecessary hindrances in the auction process.

15. When the law provides that a particular thing has to be done in a particular manner then it has to be done in the said manner or not at all. Simply because the State Government feels that it can act contrary to its own notification, the Court would not allow them to commit breach of law by which the State is also bound.

16. Learned Counsel for the State Government as an argument of frustration further submitted that Annexure-4 is to be read in continuation of or in furtherance of Annexure-3. Annexure-3 is a Notice dated 16-10-2001, it provided that auction would be held on 24-10-2001. If on 16-10-2001 the provisions of the notification dated 23rd March, 2001 were in force then this very public notice would run contrary to the Amendment Rule-52. If it is found as a fact that the operation of notification dated 23-3-2001 was stayed by the High Court then alone the notice dated 16-10-2001 can be said to be valid. In any case the notice dated 16-10-2001 provided for a particular date for auction and if on that date final auction did not take place then the said notice would lose its efficacy and would become nonest in the eyes of law. In the notice dated 16-10-2001 the State Government provided that the auction would be held on 29-10-2001 then nothing further could be done in accordance with the said notice on any date subsequent to 29-10-2001.

17. Learned Counsel for the State placing strong reliance on paragraph 2 of the notice dated 20-1-2002 submitted that the Annexure-4 clearly provides that the details and the conditions as provided in the earlier notice dated 15-10-2001 (published on 16-10-2001) would be operative, therefore, this Court must hold that almost about three months or more time was given in favour of the aspiring or intending person, I am unable to concede to this argument.

18. Paragraph 2 of notice dated 20-1-2002 simply provides that the full details of the stone quarries and the conditions as published in the earlier notice shall remain the same, beyond that notice dated 20-1-2002 does not say anything. The details are in relation to the stone mines and the conditions are contained in a separate part of the notice dated 16-10-2001. The auction date provided in the earlier notice was neither saved nor could be saved under the law because the earlier date of auction had already passed on the date of the second notice. Assuming for a minute that these two notices can be read juxtapose, then too it would not advance the said argument of the State Counsel. If the entire notice

dated 16-10-2001 is to be read in the notice dated 20-1-2002, then the date for the auction has already passed.

19. In fact the present notice in stead of entering into the details of the mines and the conditions simply places reliance upon the details and conditions as quoted in the earlier notice. By no stretch of imagination it can be argued before the Court that the period of more than 30 days have been provided by the State Government even if these two notices are read together. If each of the notice is invalid being violative of Rule 52(Amended) then it would be fallacious to say that jux-pose reading of these notices would make them valid. In the law two illegafities do not make a thing legal.

20. In accordance with the legal provisions and the discussion aforesaid I have no option but to hold that the State Government is bound by the rules and any authority exercising its power under the authority of the State Government is also bound by the rules framed by the State Government.

21. The notice dated 20-1 -2002 runs contrary to Rule 52 of the Amendment Rule 2001, as it does not provide for minimum 30 days period before the date of the auction.

22. In view of the discussion aforesaid the notice dated 20-1-2002 deserves to and is accordingly quashed.

23. The State Government is free to issue fresh notice in accordance with law.

24. Let a copy of this order be supplied to the State Counsel.