

(2016) 06 GUJ CK 0084

In the Gujarat High Court

Case No : Special Civil Application Nos. 7124, 7125 of 2016

Sureshkumar Chotubhai Salar

APPELLANT

Vs

State of Gujarat

RESPONDENT

Date of Decision : 30-06-2016

Acts Referred:

Gujarat Minor Mineral Concession Rules, 2010 — Rule 69, Rule 70
Mines And Minerals (Development And Regulation) Act, 1957 — Section 15

Citation : (2017) AIR(Gujarat) 17 : (2017) 1 GLR 503

Hon'ble Judges : Mr. N.V. Anjaria, J.

Bench : Single Bench

Advocate : Mr. M.M. Saiyed, Advocate, for the Petitioner No. 1; Mr. Tirthraj Pandya, AGP, for the Respondents No. 1

Final Decision : Dismissed

Judgement

Mr. N.V. Anjaria, J. - Both the above petitions involve similar facts and identical issue. They were heard together and are being disposed of by this common order.

2. In Special Civil Application No.7124 of 2016, the challenge is directed against order dated 15th January, 2016 whereby the third respondent-the Revisional Authority dismissed the Revision Application R-256. The said was revision under Rule 65 of the Gujarat Minor Mineral Rules, 2010 which arose out of and was directed against order dated 13th March, 2011 by the Collector, Bharuch. The second petition being Special Civil Application No.7125 of 2016 was also in Revision Application No.R-235 dismissing the same and upholding the order of the Collector, Bharuch.

3. The facts in both the case go parallel. The respective petitioners in two petitions had applied for grant of quarry lease for excavation of mineral sand. The petitioner of the first petition applied for lease in respect of land survey No.176 admeasuring 10 Acres in the riverbed of Narmada at Village Pora, Taluka Jhagadia, Bharuch. The second petitioner of the other petition applied for the same purpose in respect of land bearing survey No.159 at same village. The

applications dated 07th July, 2011 in both the cases came to be rejected by the Collector. They were rejected on similar grounds and considerations.

3.1. The Collector recorded that the lands under demand were included in the block for the purpose of auction. It was recorded that opinion of the Mamlatdar was against granting the said land for excavation and Resolution was passed in the meeting of Gramsabha; the fees paid by the petitioner concerned was refunded and the case was closed. It is from the said orders passed in two cases, the Revision Applications as above were preferred and came to be dismissed by the Revisional Authority-the third respondent herein.

3.2. The Revisional Authority while rejecting the Revision Applications endorsed to the grounds mentioned by the Collector in his order, and additionally observed that the application of the petitioner for quarry lease was made after 31st March, 2010; as it was made after the said date, found the Revisional Authority, Resolution dated 13th December, 2013 of the Mines & Minerals Department of the Government of Gujarat would apply, which provides for disposal of applications for grant of quarry leases by holding public auction. It contemplates that all the applications which are post-31st March, 2010 would be dealt with by mode of holding auction.

4. Learned advocate assailed the impugned order that the ground stated by the Revisional Authority with reference to the said Resolution may not sustain. It was submitted that the Revisional Authority could not have supplied such reason so as to travel beyond the order of the Collector. For this purpose, reliance was placed in decision in *Rashmi Metaliks Limited v. Kolkata Metropolitan Development Authority* [(2013) 10 SCC 95] about Resolution dated 13th December, 2013 it was submitted that the language of Rule 69 of the Rules did not permit issuance of such Resolution and adoption of such method for disposal of quarry leases. It was submitted that no opportunity was given to the petitioners in respect of raising a defence in relation to the said Resolution dated 13th December, 2013. It was next contended that the area demanded by the petitioner fell under the tribale zone, therefore different provisions would apply and the respondent authorities could not resort to or could not be allowed to advert to the process of auction for disposal. Learned advocate for the petitioner made reference of Article 243-N of the Constitution to garner support for his submission. It was submitted that blocks have not been declared to include the land in question for subjecting it auction process. On the basis of all these submissions, learned advocate for the petitioners, submitted that the order of the Revisional Authority is required to be quashed and petitions deserve to be allowed.

4.1. On the other hand, learned Assistant Government Pleader Mr.Tirthraj Pandya countering the submission that natural justice was breached, emphatically submitted that the hearing was given to the petitioners and the petitioners had fullest opportunity to put-forth their case before the Revisional Authority, and that there was no breach of natural justice. It was submitted that the order of

the Revisional Authority is well reasoned, that negative opinion was given by the Mamlatdar and that in view of Rule 4 of the Rules, permission from the local authority was necessary. It was submitted that the contention with reference to Article 243-N of the Constitution raised by the petitioner was misconceived and misapplied in the facts of the case.

5. The submission about breach of natural justice has to be noted only to be rejected, for, it could hardly be said that there was any breach when the petitioners availed full opportunity of being heard and raise contentions in respect of the order before the Revisional Authority. No complain about non-compliance of natural justice could sustain or has any substance. In any case, a weighty reason outweighs the case of the petitioners on all counts.

5.1. The principal and clinching ground on which the rejection of the petitioners' request for grant of quarry lease is based is that under the Resolution dated 13th December, 2013, the State Government has adopted a policy to allot the quarry leases by means of auction, more particularly in respect of the applications which are received after 31st March, 2010.

5.2. The contention to call in question the policy reflected Resolution dated 13th December, 2013 providing for disposal of applications for quarry lease made after 31st March, 2010 is indeed not well-conceived in law. The said policy formulation firstly has a clear statutory backing. Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957 confers power on the State Government to make Rules in respect of mines and minerals. Gujarat Minor Mineral Concessions Rules, 2010 are framed in exercise of statutory powers which inter alia contained definition of the term "quarry leases" in Section 2(vii). Rule 4 deals with grant of quarry lease to provide that any such lease has to be granted as per general instructions and directions as may be issued by the competent authority from time-to-time regarding conservation and scientific development of such mineral. Rule 8 deals with priority whereas Rules 69 and 70 deal with disposal of minor minerals by public auction. The said Rules reads as under.

"69 Disposal of minor minerals by public auction in certain cases.- Notwithstanding anything contained in the foregoing provisions, it shall be lawful for the Competent Authority 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 Government may be a general or special order direct."

"70 Power of the Government to give Direction.- The grant or renewal of quarry lease, quarry permit and quarry parwana under these rules shall be subject to such general instructions and directions as may be issued by the government from time to time regarding conservation and scientific and economic development of minerals and industrial use of the Mineral in the State."

5.3. This Court in Patel Vishnubhai Maganbhai v. State of Gujarat [2014 (3) GLH 425] group of petitions being Special Civil Application No.14354 of 2011 and

others, considered challenge as to the legality of guidelines issued by the Commissioner of Geology and Mines Department, State of Gujarat. It was prayed therein that the applications of the petitioners for obtaining quarry lease in the riverbed of Panam were liable to be disposed of in accordance with the provisions of Mines and Minerals (Development and Regulation) Act, 1957 read with Gujarat Minor Mineral Concession Rules, 2010. The petitioners were aggrieved because of impugned guideline clause (d). It was the contention that by virtue of the impugned instructions and guidelines, the pending applications were made redundant. This Court held the Rules conferred powers on the Government to issue direction from time-to-time keeping in mind the object of conservation of minerals. It was held that the procedure prescribed for adoption of method of public auction and placing the leases in public domain was in fulfilment of the said object, and that such method provide transparency and fairness. The Court had also occasion to look into the operational purport of the said Rules and the policy of granting leases by auction which was with reference to the classifying date of 31st March, 2010 as per the guidelines, subsequently translated into Resolution dated 13th December, 2013 in question. Yet another decision of Division Bench of this Court in Vijaykumar Ramdhan Bairwa v. State of Gujarat being Special Civil Application No.10675 of 2014 and cognate petitions decided on 19th June, 2015 endorsed the object of Rules and approved the method of resorting to public auction for disposal of quarry lease.

5.4. In Rameshbhai Ukkad Vasava v. State of Gujarat decided as per judgment dated 29th April, 2016 in Special Civil Application No.20552 of 2015 and allied matters, contention was that the applications for grant of quarry lease was prior in point of time to 31st March, 2010 and therefore rule of auction would not apply, however this Court observed that the auction is the ideal method for grant of quarry lease and that it was further held that such power stems from Rules 69 and 70 of the Rules referred to above. The principle underlined that auction of quarry leases is a method which stands informed by the tenets of Article 14 and serves the interest of public revenue.

5.5. In Sulekhan Singh v. State of U.P. [AIR 2016 SC 228] relied on in Rameshbhai Ukkadbhai Vasava (supra), the Apex Court emphasised for bringing transparency in the procedure for granting the quarry leases. The question considered by the Apex Court was whether the High Court of Uttar Pradesh was justified in quashing mining lease granted in favour of the appellants by orders dated 24th May, 2014 and 26th May, 2014 on the ground that the said lease were granted in violation of the Government Order dated 31st May, 2012, under which mining leases could only be granted under Chapter IV of the U.P. Minor Minerals (Concession) Rules, 1963 by way of e-tendering in the interest of transparency and to safeguard the public revenue. It was observed that the policy of auction was consistent with the position of law that the State largesse is required to be distributed by non-arbitrary method consistent with Article 14 and that such non-arbitrary method is the process of auction.

5.5.1. In paragraph 5 in Sulekhan Singh (supra), it was observed by the Apex Court,

"The above change of policy appears to be consistent with the position of law that State largesse ought to be distributed by non arbitrary method consistent with Article 14 of the Constitution (see (2012) 3 SCC 1 Centre for Public Interest Litigation v. Union of India; (2012) 10 SCC 1 Natural Resources Allocation, in Re, Special Reference No.1 of 2012; (2014) 9 SCC 516 Manohar Lal Sharma v. Principal Secretary and (2014) 6 SCC 590 Goa Foundation v. Union of India)." (Para 5)

5.6. A vain attempt was made by placing reliance on decision in Rashmi Metaliks Limited (supra) that the aforesaid ground of treating the applications of the petitioners for quarry lease by means of auction was a new ground in respect of the order under challenge before the Revisional Authority and therefore the Revisional Authority could not have rested its decision on the said aspect. In Rashmi Metaliks Limited (supra), the Apex Court observed that the order of the High Court was cryptic and in that context it was held that the respondent cannot be permitted to go beyond the stand taken in its order and raise contention relating to another ground to justify the order. Such is indeed not the case in the present scenario of facts. The ground that in view of Resolution dated 13th December, 2013 the application for grant of quarry lease would be required to be subjected to auction method is something inextricably interwoven with the controversy. In resting on the said ground, the Revisional Authority has essentially professed and pinpointed the position of law that the policy of auction for quarry lease is the method to be followed in respect of the applications of the petitioners. This reasoning is essentially and for all purposes an aspect of law relied on by the Revisional Authority though this aspect and principle is delineated in the Resolution dated 13th December, 2013. It cannot be said that the Revisional Authority cannot rest its decision on proposition of law. In relying upon the said ground and the aspect, the Revisional Authority is quite justified in following the policy-cum-legal proposition in the Resolution and by giving effect thereto, negating the case of the petitioners to uphold the order of the Collector.

6. In view of the above position of law, when the Revisional Authority has in the impugned orders rejected the request and prayer of the petitioners on the ground that applications of the petitioners for grant of quarry lease were after 31st March, 2010 and therefore they are governed by the policy stipulation as per Resolution dated 13th December, 2013 providing for disposal by auction, the orders impugned are eminently just, legal and proper. Not only the Resolution dated 13th December, 2013, but policy of opting for method of auction in general has been accepted as ideal in eye of law for the purpose of disposal of quarry leases in the decisions referred to herein above. Admittedly, the applications of the petitioners for quarry leases are after 31st March, 2010 so as to necessarily and invariably to be dealt with by employing the method of auction. This overriding aspect of auction as method enjoying legal endorsement for disposal

of quarry leases applications, all other considerations and grounds sought to be raised by the petitioners stands displaced as unable to hold any merit.

7. The impugned orders in both the petitions do not book any error from any standpoint. The challenge fails. The two petitions are summarily dismissed.