(2004) 09 KAR CK 0053

In the Karnataka High Court

Case No : Writ Petition No''s. 32567 and 32676 of 2003

Tam Tam Pedda Guruva Reddy APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 16-09-2004

Acts Referred:

Karnataka Minor Mineral Concession Rules, 1994 — Rule 31A, 31N

Citation : (2005) ILR (Kar) 223 : (2005) 2 KarLJ 226 : (2005) 1 KCCR 419

Hon'ble Judges : Ram Mohan Reddy, J

Bench : Single Bench

Advocate : M. Veerabhadraiah and A/s. and Parashuram R. Hattarakihal, for the Appellant; M. Keshava Reddy, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Ram Mohan Reddy, J.—The petitioner, successful bidder in the tender-cum-auction, held by the Director of Mines and Geology was

granted a lease of 29 acres in Sy.No. 248 of Melmala Village, Chamarajanagar Taluk, to extract black granite. On acceptance of the tender,

respondents 1 and 2, having received Rs,60. 10 lakhs, executed a lease deed for a period of five years w.e.f. 20.8.1996 to 20.8.2001 under Rule

31-A of the Karnataka Minor Minerals Concession Rules, 1994 (for short the Rules).

2. The petitioner in the course of extraction of the mineral noticed that the black granite rock deposit was available only in an area comprising of 5

acres out of 29 acres. The petitioner having brought to the notice of the respondents 1 and 2, the aforesaid fact, evoked no response, was

compelled to approach this Court in W.P. Nos. 17179/96, 27462 and 29463 of 1996. This Court by order dt. 25.6.1998 found fault with the

State and its authorities of having practiced ""suppress vari and Suggesto falsi"", by not holding out the correct information enabling the bidders to

make a correct inference. Having severely condemned the action of the State and its authorities, this Court directed refund of Rs. 59.50 lakhs with

Bank interest prevalent on Fixed Deposit as on the date of deposit of the amount with the respondents, in the alternative to grant a lease of 17

acres of granite quarry, in another survey number 248 of Melamale village or Sy.No. 218 of Gumballi village and Sy. No. 170 of Yeragamballi

village of Chamarajnagar. The State carried the order in writ appeal which was dismissed and thereafter to the Apex Court, by a SLP which was

allowed and remitted to this Court. The State however withdrew the writ appeal. Thus the order of the learned Single Judge in W.P. 17179/96,

and connected petitions is final and binding on the parties. It is alleged that 1st and 2nd respondents have not complied with the directions till date.

3. The lease though for 29 acres reduced to 12 acres by G.O. dated 25.10.2000, was for five years, due to expire on 19.8.2001. The petitioner

made an application dt. 2.5.2001 in the prescribed form R under Rule 31-N of the Rules for renewal of the lease of 12 acres being a part of the

entire area of 29 acres earlier granted and reduced in extent.

The application was not accompanied by a treasury challan for having paid the difference of amount of security deposit and consideration for the

renewal of lease for 12 acres. However, the petitioner was issued with a notice dt. 14.8.2001, Annexure-C, by the 2nd respondent, the competent

authority, quantifying Rs. 31,08,621 as being the amount to be deposited, within a period of 10 days of the said notice, in order to consider the

renewal application. The petitioner claims to have deposit the said sum, duly acknowledged by the 2nd respondent in the following manner:

8/8/2001 Rs. 10,00,000/-

17/8/2001 Rs. 10,00,000/-

24/8/2001 Rs. 5,25,000/-

24/8/2001 Rs. 5,83,700/-

Rs. 31,08,700/-

4. The 2nd respondent after receipt of the aforesaid amounts recommended the renewal of the lease, but the State Govt., it is alleged, rejected the

application by Order dt 10.10.2002 at Annexure-P on the sole ground that it was not accompanied by the Security Deposit and the consideration,

for renewal, which order was communicated to the petitioner by the 2nd respondent through a letter dated 28.6.2003 at Annexure-N. Calling in

question the order of rejection of the renewal application by the State and the letter communicating the rejection at Annexures P and N,

respectively the petitioner has filed these Writ Petitions.

5. The petitions are opposed by the respondents by filing their statement of objections 28.8.2003 interalia contending that the earlier lease under

the tender-cum-auction in an extent of 29 acres was reduced to 12 acres pursuant to a Govt. Order No. CT 171 MMN 98 dt 25.10.2000 and

sought to justify the order impugned as well merited, not calling for interference. However at para 3 of the said statement of objections, it is stated

thus:

3. It is submitted that the petitioner had filed renewal application before the 2nd respondent on 2.5.2001 by remitting application fee of Rs.

2,000-00 seeking further renewal of the said lease to an extent of 12 acres only. In pursuant to the said renewal application a letter was issued to

him on 14.8.2001, informing him to furnish the sketch and an amount of Rs. 31,08,621-00 being bid amount calculated for 12-00 acres on the bid

amount of Rs. 60.10 lakhs for 29 acres paid by the petitioner i.e. Rs. 24,86,896-20 plus 25% of the bid amount i.e. Rs. 6,21,724-20 amounting

to Rs. 31,08,621-00 as required under Rule 31 N(2) of chapter IV A of KMMCR 1994, within 10 days since this is first renewal.

6. Sri D.L.N. Rao, learned Counsel for the petitioner would contend that Rule 31-N does not set out consequences for its non-compliance, and

the use of the word ""shall"" in Rule 31-N is directory and not mandatory. Amplifying the said contention, Sri Rao would point out to Sub-rule 8 of

Rule 31-A which sets outs the consequences of non- compliance of the Sub-rule 7 for grant of quarrying lease and as Rule 31-N does not

prescribe similar such consequences, the rejection of the renewal application is said to be illegal and arbitrary. In addition, Sri Rao would contend

that the 2nd respondent, competent authority, by notice dated 14.8.2001 at Annexure-C, having called upon the petitioner to deposit Rs.

31,08,621/- for considering the renewal application and the petitioner having paid the said sum within the stipulated time, the finding of the State

that there was non-compliance of Rule 31-N is characterised as perverse. Lastly, Sri. Rao would contend that the State, admittedly, retained Rs.

59,50,000/- paid by the petitioner at the time of grant of lease under the lease-cum-auction which this Court by Order dated 26.5.1998 in

W.P.Nos. 27179, 27462 and 27463 of 1996 directed the State to refund or in the alternate grant a lease of 17 acres of land in Sy.No. 248 of

Gumbahalli and since 17 acres was not leased, the said sum should be treated as if the application was accompanied with the security deposit and

consideration for renewal, being due compliance of Rule 31N.

7. Sri Keshava Reddy, learned HCGP for the respondent State and its authorities would contend that the word ""shall'' as incorporated under Rule

31-N is to be treated as mandatory since it is prima facie imperative in character, keeping in mind the object and purpose of the statutory

provisions for grant of lease by tender-cum-auction, coupled with the provisions for renewal in Chapter IV-A of the Rules. Learned HCGP would

seek to sustain the order impugned as being well merited and not calling for interference.

8. Having heard the learned Counsel for the parties, the question for determination in these Writ Petitions are:

1. Whether the word ""shall"" occurring in Rule 31-N requiring an application for renewal of lease be accompanied by the deposit of amounts, for

consideration of renewal, is mandatory or directory?

2. Whether in the facts and circumstances of this case, the orders impugned are sustainable?

9. Before proceeding further, it is useful to make a reference to the judicial pronouncements of the Apex Court having regard to interpretation of

statutes relevant to subsidiary rules in which the word ""shall"" is used to mean mandatory or directory.

10. The Supreme Court in the case of Seth Bikhraj Jaipuria Vs. Union of India (UOI), held that hardship will not change the mandatory nature of a

statute. While interpreting Section 175(3) of Govt. of India Act 1935, their Lordships extracted the observations of Lord Campbell in Maxwell on

Interpretation of Statutes 10th Edition Page 376, which reads:

No universal rule can be laid down as to whether mandatory enactments shall be considered directory only or obligatory with an implied an

nullification for disobedience. It is the duty of the Courts of Justice to try to get at the real intention of the legislature by carefully attending to the

whole scope of the statute to be construed.

Where a statute requires that a thing shall be done in the prescribed manner or form but does not set out the consequences of non- compliance,

the question whether the provision was mandatory or directory has to be adjudged in the light of the intention of the legislature as disclosed by the

object, purpose and scope of the statute. If the statute is mandatory, the thing done not in the manner or form prescribed can have no effect or

validity: if it is directory, penalty may be incurred for non-compliance, but the act or thing done is regarded as good.

The Supreme Court in the case of Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta, held thus:

Ordinarily the use of the word ''shall'' prima facie indicates that the provision is imperative in character. However, the court while considering

whether the mere use of the word ''shall'' would made the provision imperative, it would ascertain the intendment of the legislature and the

consequences flowing from its own construction of the word ''shall''. If the use of the word ''shall'' makes the provision imperative, the inevitable

consequence that flows from it is that the court would be powerless to grant any relief even where the justice of the case so demands. If the word

''shall'' is treated as mandatory, the net effect would be that even where the default in complying with the direction given by the court is technical,

fortuitous, unintended or on account of circumstances beyond the control of the defaulter, yet the court would not be able to grant any relief or

assistance to such a person. Once a default is found to be of a very technical nature in complying with the earlier order, the court must have power

to relieve against a drastic consequence all the more so if it is satisfied that there was a formal or technical default in complying with its order.

The Supreme Court in the case of State of Haryana and Another Vs. Raghubir Dayal, held thus:

The use of the word ''shall'' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow

from such construction would not so demand. Normally, the word ''shall'' prima facie ought to be considered mandatory but it is the function of the

Court to ascertain the real intention of the legislature by a careful examination of the whole scope of the statute, the purpose it seeks to serve and

the consequences that would flow from the construction to be placed hereon. The word ''shall'', therefore, ought to be construed not according to

the language with which it is clothed but in the context in which it is used and the purpose it seeks to serve. The meaning has to be ascribed to the

word ''shall'' as mandatory or as directory, accordingly. Equally, it is settled law that when a statute is passed for the purpose of enabling the doing

of something and prescribes the formalities which are to be attended for the purpose, those prescribed formalities which are essential to the validity

of such thing, would be mandatory. However, if by holding them to be mandatory, serious general inconvenience is caused to innocent persons or

general public without very much furthering the object of the Act, the same would be construed as directory. (Para 5).

The Supreme Court in the case of Karnal Improvement Trust, Karnal Vs. Parkash Wanti (Smt) (Dead) and Another, held that ""no particular rule

can be laid down in determining whether command is to be considered as a mere direction or mandatory involving invalidating consequences in its

disregard. It is further held that fundamentally it depends upon the scope and objective of the enactment ""it was said that an nullification is a natural

and usual consequence of disobedience, if the intention is of an imperative character"".

11. In Mohan Singh and Others Vs. International Airport Authority of India and Others, their Lordships held thus:

If an object of the enactment is defeated by holding the same directory, it should be construed as mandatory whereas if by holding mandatory

serious general inconvenience will be created to innocent persons of general public without much furthering the object of enactment, the same

should be construed as directory but all the same, it would not mean that the language used would be ignored altogether. Effect must be given to all

the provisions harmoniously to suppress to be mischief and promote public justice.

12. In order to appreciate the contentions advanced by the learned Counsel for the parties, it is necessary to examine Rule 31-N which reads thus:

31-N Renewal of leases: (1) An application for renewal of quarrying lease under this Chapter shall be made in Form-R to the Director atleast

ninety days before the expiry of the lease. The application shall be accompanied by a Treasury Challan for having paid the difference of the amount

of Security Deposit, if any, to be paid by the lessee at the prevailing rates and a Treasury Challan for an amount equal to the amount specified in

Sub-rule (2) as consideration for the renewal of the lease.

(2) An amount equal to the amount of the tender or bid, as the case may be, paid as consideration for the grant of the quarry lease, plus twenty five

per cent or fifty per cent of such amount shall be paid for the first and second renewal respectively.

(3) A quarrying lease granted under this Chapter may be renewed for two periods, each period not exceeding the period of the original lease.

(4) The application for renewal of the lease shall be disposed of by the competent authority before the date of expiry of the lease, failing which the

lease shall be deemed to have been extended by a further period till the competent authority passes order thereon.

(5) The competent authority may after giving a reasonable opportunity of being heard and for reasons to be recorded in writing and communicated

to the applicant, refuse to renew a quarrying lease for the whole or part of the applied area.

Provided that where the sanction for renewal is only for a portion of the applied area, the amount payable as consideration for the grant of renewal

of the lease under Sub-rule (2) shall be in proportion to the area for which the renewal is sanctioned.

Rule 31(A) to (Q) are found under Chapter IV-A relating to grant of quarrying lease by tender-cum-auction, inserted by Notification dt. 6.5.1995.

Rule 31-A deals with manner of submission of tender. Sub-rule (8) of Rule 31-A undoubtedly provides for consequences of non-compliance of

Sub-rule (7). In other words, the tender form is liable to be rejected if incomplete or not accompanied by the documents.

13. The plain language of Sub-rule (1) of Rule 31N incorporating the word ''shall'' admits of only one interpretation that the application for renewal

of lease must be accompanied by the amounts stated therein. Sub-rule (2) provides for the amount that is to be paid as consideration for the first or second renewal. Sub-rule (3) specifies that the renewal may be granted for two period each not exceeding the original period of lease. Sub-rule

(4) stipulates disposal of renewal application within the set date and on failure, the lease is deemed to have continued until orders are passed on the

application. Sub-rule (5) extends an opportunity of hearing and recording reasons in writing in case of refusal to renew the quarrying lease for the

whole or part of the applied area. Proviso to Sub-rule (5) leaves no doubt that in case of sanction for renewal is only for a portion of the applied

area, the amount payable as consideration for the grant of renewal of lease under Sub-rule (2) shall be in proportion to the area for which the

renewal is sanctioned. The application for renewal in Form - R does not contain a column of recording amount paid as consideration for renewal,

although column (4) provides for details of area in regard to which renewal is applied for.

14. The word ''shall'' occurring in Rule 31-N is prima facie indicative of the imperative character of the said provision. Rule 31-N perse makes it

mandatory/ obligatory for an application for renewal of lease to be accompanied by the amounts stated therein as consideration for renewal. By

merely not providing for consequences of non-compliance, could the rule be construed as directory, is the question.

15. Section 15 of the Mines and Minerals (Development and Regulation) Act, 1957, (for short the Act) provides for the power of the State

Government to make rules in respect of minor minerals. Sub-section (1A) sets out the matters for which rules may be framed. In particular Clauses

(a) and (g) reads:

(a) The person by whom and the manner in which, applications for quarry leases, mining leases or other mineral concessions may be made and the

fees to be paid therefore;

(g) The fixing and collection of rent, royalty, fees, dead rent, fines or other charges and the time within which and the manner in which these shall be

payable.

16. The State of Karnataka, in exercise of its powers u/s 15 of the Act, framed the rules. Chapter III regulates the grant of quarrying lease for

specified minor minerals. Section 9(2) requires that an application for renewal of the lease shall be accompanied by a difference of amount of security deposit in the form of treasury challan for a sum calculated at the rate specified together with an application fee, in form - R. Section 10

provides for exemption or reduction in the amount of security deposit. Chapter IV, regulates the grant of quarry leases for non- specified minor

minerals. u/s 21(2), the application for renewal, shall be in form R and shall be accompanied by a security deposit calculated at the rate specified

therein. The proviso to the aid section stipulates payment of security deposit at a reduced rate in case of economically weaker section. Chapter IV

A regulates the grant of quarrying lease by tender-cum-auction. Sub-clause (6) of Rule 31-B stipulates and mandates the payment of E.M.D. along

with the tender forms, failing which the tender would not be considered. Rule 31-F(4)(b) stipulates that the non payment of the EMD would entail

in not including the name of the tenderer in the list of consideration by tender-cum-auction.

17. On a careful examination of the scope of the Rules, the purpose being regulation of the grant or renewal of quarrying lease of specified and non

specified minor minerals. Chapter III and IV of the Rules prescribe the manner in which the application for renewal, in form-R is required to be

made, the fee payable and the security deposit to accompany the application. In so far as it relates to renewal of a lease granted under a Tender-

cum-Auction it prescribes the payment of an amount equal to the tender or bid for consideration of the application. The grant of lease under

chapter IV A, by way of a tender-cum-auction, is to secure the highest bidder to quarry the mineral. If that be so, the imposition of the condition

that the application for renewal shall accompany the necessary amount for considering the grant of renewal, is only to eliminate applicants for

renewal who are unable to pay the said sum so as to extend an opportunity to others to secure the grant of lease. So it is reasonable to assume that

the State has imposed the condition with a purpose, failure to abide would result in rejection of the renewal. Keeping in mind the purpose of the

rules and the prescribed consideration to accompany the application for renewal, essential for its validity, the word ''shall'' is to be treated as

mandatory.

18. In keeping with the principles of interpretation of the word ''shall'', in a statute, applying the rule of subject and object i.e. ascertainment of the

subject of the enactment where the word or expression occurs and having regard to the object which the rules are framed, by treating the word

''shall'' as mandatory, net effect would be the Court would not be in a position to grant any relief to the person who is a defaulter. In answering the

first question, I hold that the word ''shall'' occurring in Rule 31-N is mandatory.

19. In the facts and circumstances of this case, the petitioner, a successful bidder in the tender-cum-auction for grant of quarrying lease under Rule

31-A was granted a lease of 29 acres in Sy.No. 248 of Melamala village, on receipt of a sum of Rs. 60 lakhs by the State. In view of the dispute

that an extent of 12 acres out of 29 acres in Sy.No. 248 contained black granite though notified that the entire extent of 29 acres contained black

granite, which in fact, was not, having induced the petitioner to submit his bid for the entire extent of 29 acres, the petitioner, approached this Court

in W.P.No. 27179/96 and 27462-63/96. This Court by Order dt. 26.5.1998 Tam Tam Pedda Guruva Reddy Vs. State of Karnataka and

Another, , came down heavily on the action of the State and its authorities in making a false claim that the entire 29 acres was covered by black

granite. This Court further held that the notification calling for bids did not disclose the true information about the actual area covered by black

granite and having found that it was only 12 acres, directed the State and its authorities to refund the sum of Rs. 59,50,000/- in deposit, belonging

to the petitioner or in the alternative to grant a lease of 17 acres of land identified by the petitioner. It is not in dispute that the State and its

authorities have not complied with the said Order even as on the date. The State and its authorities have maintained, in deposit, Rs. 59,50,000/ - in

respect of Sy. No. 248 of Melmala village, being excess of the monies which they are not entitled to in terms of Rule 31-A of the Rules.

20. This Court cannot turn a blind eye to a very relevant fact that the 2nd respondent after having received the application for renewal, issued a

notice Annexure-C calling upon the petitioner to make payment of Rs. 31,08,621/- being the amount calculated for the area sought to be renewed

in accordance with Sub-rule (1) of Rule 31-N. The petitioner, on receipt of the notice and within the time frame, made the payments which were

duly acknowledged and as evident from Annexure-D. The competent authority, on being satisfied with the due compliance of Sub-rule (1) of Rule

31-N made its recommendation to the State Government, for grant of renewal.

21. Facts are not in dispute. The application for renewal of lease for quarrying in an area of 12 acres filed by the petitioner is rejected by the Sate

Government on the ground of non-compliance of Sub-rule (1) of Rule 31-N, in that, it is said, that the application was not accompanied by the

requisite Security Deposit and the amount specified in Sub-rule (2).

22. Sri D.L.N. Rao, learned Sr.Counsel would place reliance on the following authorities:

(i) R.K. SAXENA v. DELHI DEVELOPMENT AUTHORITY 2001 (4) SCC 137 - the facts of the said case relate to deemed extension of

time to pay the balance of amount in respect of an auction sale of a plot. It was held that the minimum payment with interest on delayed payment

was accepted, there was deemed extension of time.

(ii) Administrator, Municipal Committee, Charkhi Dadri and another Vs. Ramji Lal Bagla and others, is the case relating to prescription of time u/s

44-A of the Land Acquisition Act (as applicable in Haryana) amendment for execution of improvement scheme, it is held not mandatory but

directory.

(iii) Krishna Kumar Mediratta Vs. Phulchand Agarwala and Others, The Apex Court while interpreting Section 9(2) of the Mineral Concessions

Rules, 1960, held that though the word ''shall'' is used under the Rules, but the use of the word in imposing a duty is not conclusive on the question

whether the duty imposed is mandatory or directory. It was further held that a bonafide application accompanied by a deposit if calculated

incorrectly or by oversight, cannot be void and on acceptance of the deficiency in the fee, it is to be assumed that the application was valid. In

addition, it was held thus:

The filing of the application is one thing and completion of some annexed duty, which is legally separable, is another unless a statute or a rule

provides otherwise.

23. Having carefully read and understood the principles laid down in the decision, I am of the considered view that the same do not come to the

aid of the petitioner and has no application to the statutory provision sought to be interpreted in this writ Petition. It is no doubt true that the State and its authorities have in deposit a sum of Rs. 59,50,000/- paid by the petitioner as against the lease of portion of the land in Sy.No. 248 of

Melmala village which was ordered to be refunded to the petitioner by this Court in W.P.27 179/1996 and connected Writ Petitions by Order dt.

26.5.1998. The renewal sought for by the petitioner is in respect of the very same land in Sy.No. 248 of Melmala village, however restricted to the

extent of 12 acres on which extent black granite is said to be existing. Rs. 59,50,000/- in deposit with the State, it cannot be said that the

petitioner''s application for renewal of lease not being accompanied by the required amount of Rs. 31,08,621/- as consideration, could be treated

defective. The 2nd respondent- competent authority having accepted the payments by the petitioner, after notice, it cannot be said that the

application was incomplete. It was only after the competent authority was satisfied about the due compliance of Sub-rule (1) of Rule 31-N that the

recommendation was made to the State. The 2nd respondent accepted the bonafides of the petitioner in filing the application for renewal without

being accompanied by the requisite amount for its consideration. The State having not refunded Rs. 59,50,000/ - in deposit with it from the year

1996 onwards despite a direction by this Court, is a circumstance that goes against the State and its authorities. The respondent State could not

have rejected the application or renewal on the sole ground that it was not accompanied with the deposit of monies. The order impugned is illegal,

arbitrary and without any justification.

In the result, these Writ Petitions are allowed, the order impugned dated 10.10.2002 at Annexure-P and the communication dated 28.6.2003 of

the 2nd respondent at Annexure-N are quashed. Consequently, the rejection of the application for renewal of lease being grounded only on non-

compliance of Rule 31-N, it is declared that the petitioner is entitled to renewal of lease. The respondents- State and its authorities are directed to

execute the documents of renewal of lease, in any event, within a period of three months from the date of receipt of a certified copy of this Order.

