
(2009) 05 AHC CK 0079
In the Allahabad High Court

Taranjeet Singh	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 04-05-2009

Acts Referred:

General Clauses Act, 1897 — Section 14

Citation : (2009) 3 AWC 2630

Hon'ble Judges : R.A. Singh, J;Ashok Bhushan, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Ashok Bhushan and R.A. Singh, JJ.—Heard Shri S.P. Gupta, learned senior advocate assisted by Pushpila Bisht for the petitioner, Shri S. G. Hasnain, Additional Advocate General assisted by Shri Alok Kumar Singh, learned standing counsel for the State respondents and Shri Ravi Kant, learned senior advocate assisted by Shri Rohit Agarwal for respondent No. 5.

2. By this writ petition, petitioner has prayed for quashing the order dated 2.3.2009, passed by respondent No. 3 granting mining permit to the respondent No. 5 for a period of three months in continuation of earlier mining permit dated 1.12.2008. A mandamus has also been sought directing the respondent authorities to restrain the respondent No. 5 from undertaking mining operation or lifting of sand from the sand bearing area Gata No. 25 situate in Village Manglaura, Tehsil Kairana. District Muzaffarnagar. A mandamus has also been sought commanding the respondent authorities to settle the sand bearing area, i.e., Gata No. 25 situate in village Maglaura, Tehsil Kairana, district Muzaffarnagar in accordance with law.

3. Brief facts necessary for deciding the writ petition are : An advertisement was made by the District Magistrate, Muzaffarnagar on 7/10th November, 2008 inviting applications for grant of mining permit over plot No. 125 measuring area 7.286 acres situate in village, Manglaura Tehsil Kairana, district Muzaffarnagar.

4. In pursuance of the above advertisement, applications were submitted including that of respondent No. 5, Sanjeev Kumar. By an order dated 1.12.2008, a short term mining permit was granted to respondent No. 5 for a period of 3 months to lift the quantity of 4150 Cubic Metres of sand. On 27.2.2009, the respondent No. 5 made an application stating that he could not lift the quantity of sand as permitted under the permit and requested the respondent No. 3 to permit an extension of period of mining of 3 months and further he be permitted to lift the sand to the quantity of 1 lac cubic metre. The respondent No. 5 also deposited royalty of Rs. seventeen lacs for excavation of sand in advance. An order dated 2.3.2009 has been passed by the District Magistrate, Muzaffarnagar granting a short-term mining permit for a period of 3 months to respondent No. 5 in continuation of earlier permit granted on 1.12.2008 for lifting 1 lac cubic metre of sand. The order dated 2.3.2009, passed by the District Magistrate, has been challenged in the writ petition. The petitioner's case in the writ petition is that he is a prospective applicant and is engaged in business of mines and mineral and was interested in having mining permit of the sand bearing area situate in district Muzaffar Nagar. Petitioner further states that mining permit granted vide order dated 2.3.2009 to the respondent No. 5 is without any advertisement and in contravention of the provisions of the U.P. Minor Minerals (Concession) Rules, 1963 hereinafter called the "Rules 1963".

5. Counter-affidavit has been filed on behalf of the State respondents as well as on behalf of the respondent No. 5 to which rejoinder-affidavits have also been filed.

6. Shri S. P. Gupta, learned senior counsel appearing on behalf of the petitioner submitted that the order dated 2.3.2009 granting mining permit to respondent No. 5 is a fresh grant of mining permit. It is submitted that mining permit which was granted on 1.12.2008, could not have been extended by the District Magistrate because there is no provision under the 1963 Rules for extension of a mining permit. He submits that by mining permit granted vide order dated 1.12.2008 the respondent No. 5 was permitted to excavate 4150 of Cubic Metre of sand within three months, whereas by order dated 2.3.2009, he has now been permitted to excavate 1 lac cubic metre of sand which in no manner can be treated to be as extension of earlier mining permit. It is submitted that the order dated 2.3.2009, being a fresh grant it was required to be advertised. The applicant was very much interested in taking the mining permit but since there was no advertisement, he could not make an application and he came to know about the order dated 2.3.2009 after he made an inquiry as to whether the area which was given on permit to respondent No. 5 has been re-advertised or not.

7. Shri S. P. Gupta, learned Counsel appearing for the petitioner also pointed out that a Writ Petition No. 2484 (M/B) of 2009, Jitendra v. State of U.P. and Ors., was filed in the Lucknow Bench of this Court challenging the Government order dated 6.2.2009 as well as the order dated 2.3.2009 in which initially an interim order was passed on 6.3.2009, but the said writ petition was subsequently

dismissed on 19.3.2009 on the ground that the learned Counsel for the petitioner did not argue the matter before the Bench hearing the matter and committed gross misconduct. The copy of the order dismissing the writ petition has been brought on the record along with the counter-affidavit filed by the respondent No. 5. It is submitted that the writ petition has not been dismissed on merits nor any issues have been decided on merits. The said judgment is not a binding precedent nor it operates as res judicata.

8. Reliance has also been placed on a Division Bench judgment of this Court in Writ Petition No. 3695 (M/B) 2008, Avadh Narain Nishad v. State of U.P. and Ors., decided on 23.5.2008, laying down that even in absence of any specific provision an advertisement should be made in the newspaper for the purposes of grant of permit.

9. Reliance has also been placed on Full Bench judgment of this Court in Gopt Nishad v. District Magistrate. District Officer, Fatehpur 1996 AWC 1730. Reliance has also been placed on a Division Bench judgment of this Court passed in Writ Petition No. 12147 of 2009, Ram Kumar v. District Magistrate, Jhansi and Anr. decided on 3.3.2009.

10. Relying on the Government order dated 20.7.1995, it has been submitted that the Government order prescribes procedure for advertisement by giving notice of at least seven days for inviting applications for mining permit, hence it was necessary to advertise before granting any permit. It is further submitted that no reasons have been given for extension as claimed by the respondents.

11. Shri S.G. Hasnain, learned Additional Advocate General, appearing for the State respondents submitted that the petitioner having not applied in pursuance of the earlier advertisement dated 7/10th November, 2008, has no locus to challenge the subsequent order dated 2.3.2009, extending the mining permit of the petitioner. It is submitted by Shri Hasnain, learned Additional Advocate General that under Rule 51 of 1963 Rules mining permit can be granted for a maximum period of six months and since the earlier mining permit dated 1.12.2008 was granted only for a period of three months, District Magistrate was fully empowered to extend the mining permit up to the period of six months. He submits that the extension of mining permit is permissible up to the period of six months and there is no illegality in extending the period of respondent No. 5, since he could not excavate the quantity of sand which was allowed to be excavated vide mining permit dated 1.12.2008. It is submitted that the extension has been granted in the interest of revenue of the State.

12. Shri Hasnain, learned Additional Advocate General, has also placed reliance on the judgment of the Apex Court in Civil Appeal No. 6527 of 2004, Kushum Lata v. Union of India and Ors., decided on 12.7.2006 : 2006 (4) AWC 3356 (SC) to support his submission that the petitioner has no locus to challenge the subsequent order dated 2.3.2000, extending the mining permit of the petitioner.

13. Shri Ravi Kant, learned senior counsel appearing on behalf of the respondent

No. 5 submits that the order dated 2.3.2009, is in fact a fresh permit granted in favour of respondent No. 5. It is useful to refer to the specific pleadings in paragraph 6 of the counter-affidavit which is to the following effect:

6. That in reply to the contents of paragraph 1 of the writ petition, it is stated that the order dated 2nd March, 2009 is not an extension of the order dated 1.12.2008 and in fact a fresh permit granted in favour of the respondent No. 5.

14. Shri Ravi Kant, learned senior counsel further contends that advertisement before the grant of permit dated 2.3.2009 was not made due to enforcement of model code of conduct due to ensuing Parliamentary Elections. He has referred to question No. 38 and its answers as compiled in the heading "Frequently Asked Questions (F.A.Qs.)". Question No. 38 on which reliance has been placed and its reply is as under:

Q. 38. Whether tenders, auctions etc., relating to matters such as liquor vends, Tendu leaves and other such cases can be processed ?

Ans. No.

Processing of such cases should be deferred till the completion of election process in the concerned areas and the Government may make interim arrangements where unavoidably necessary.

15. Shri Ravi Kant, learned senior counsel further contended that when a power is given to an authority under a Statute, the said power can be exercised from time to time. He has referred to Section 14 of the General Clauses Act, 1897 (hereinafter called the "Act, 1897"). He further contends that Rules 51 and 55 of the Rules, 1963, there is an apparent conflict which has to be harmoniously construed. He has placed reliance on three judgments of the Apex Court explaining the rule of harmonious construction. He contends that the Government order dated 20.7.1995, cannot be applied in all cases.

16. We have considered the submissions of the learned Counsel for the parties and have perused the record.

From the pleadings of the parties and the submissions raised, following issues arise for consideration in this writ petition.

(1) Whether extension can be granted for a mining permit granted under Chapter VI of the 1963 Rules.

(2) Whether the order dated 2.3.2009, is an extension of an earlier mining permit dated 1.12.2008, or is a fresh grant or is a fresh mining permit granted to respondent No. 5.

(3) If the order dated 2.3.2009 is a fresh grant of mining permit, whether the grant of such mining permit without any advertisement is justified ?

17. For answering the issues raised in this writ petition, the scheme of U.P. Minor Minerals (Concession) Rules, 1963 has to be looked into. All the above 3 issues

being inter-related are being considered together.

18. U.P. Minor Minerals (Concession) Rules, 1963 defines the "Mining Permit" under Rule 2, sub-rule (6) which is quoted below:

2(6) "Mining permit" means a permit granted under these rules to extract a specified quantity of minor mineral within the period stipulated in the permit.

Rules, 1963 contemplates Grant of Mining Lease in Chapter II, Auction Lease in Chapter IV and Mining Permit in Chapter VI.

Chapter II, which relates to Grant of Mining Lease contains Rule 5, which provides application for grant or renewal of mining lease.

Rule 5, thus specifically contemplates renewal of mining lease which is quoted below:

5. Application for grant or renewal of mining lease.?(1) An application Form MM-1 for grant of mining lease or m Form MM-1 (a) for renewal there shall be addressed to the State Government.

(2) The application referred to in sub-rule (1) shall be submitted in quadruplicate to the District Officer or to the officer authorised in this behalf by the State Government. Such officer shall endorse the receipt of the application on all the four copies entering the place, time and date of receipt. One copy shall be returned immediately to the person presenting the application.

(3) The application referred to in sub-rule (1) shall be entered in a register of mining application in Form MM-2.

19. The word "Mining Permit" as defined above, contains two stipulations. Firstly, mining permit is a grant to extract a specified quantity of minor mineral and secondly, within the period stipulated in the permit thus, the permit is co-related to extraction of specified quantity and a period stipulated in the permit. Both the above are essential ingredients of mining permit. Chapter VI deals with the mining permit. Rule 51 provides that no mining permit shall be granted to a person who is not an Indian National or for a period of more than six months. Rule 51 thus stipulates a maximum period of six months for a grant of mining permits.

20. Rule 52 stipulates making an application for granting mining permit in Form MM-8.

21. Rule 53 provides an officer authorised to grant permit may, after making such enquiries as may be deemed necessary, refuse to grant the permit or by an order grant for whole or a part of the area applied for and subject to such terms and conditions as the said officer may consider necessary.

22. Rule 54 thereafter contemplates deposit of royalty and Rule 55 provides for issuing of mining permit.

23. Rules 55 and 56 which are relevant are quoted below:

55. Issue of mining permit.-A mining permit in Form MM-10 with such additional terms and conditions subject to which the order is made under Rule 53 shall be issued to the applicant within fifteen days of the deposit of the royalty in accordance with sub-rule (10) of Rule 54 and the permit so issued shall be valid until the date of expiry of the period specified in the permit or till such date when the permitted quantity of the mineral is removed whichever is earlier.

56. Register of mining permit. ?A register of all application for mining permits, which details of permits issued, shall be maintained in Form MM-9, in the office of the District Officer or the officer authorised to grant mining permits.

24. The Scheme of Chapter VI of the Rules, 1963, i.e., Rules 51 to 56 does not indicate any concept of renewal of mining permit or extension of mining permit. The mining permit is a permission granted to extract a specified quantity within a stipulated period.

25. There is no dispute that a mining permit can be granted from time to time. Section 14 of the Act, 1897 as relied on by the counsel for the respondents clearly provides for exercising power from time to time, but Section 14 of the Act, 1897 does not mean that power for grant of mining permit shall also include the power to extend the mining permit or renewing the mining permit. As noted above, in Chapter II which relates to grant of mining lease, there is Rule 5 which provides for application for grant or renewal of mining lease, whereas to the contrary in Chapter VI there is no renewal of mining permit or extension of mining permit.

26. Coming to the order dated 2.3.2009, it is clear that the said order cannot be read as extension of period for the mining permit granted on 1.12.2008 in favour of the respondent No. 5. The order dated 2.3.2009, itself mentions that the mining permit granted on 1.12.2008 was granted for excavation of sand to the quantity of 4150 cubic metres of sand, whereas by order dated 2.3.2009, permission has been granted to excavate the sand up to the quantity of 1 lac cubic metre. Thus, the mining permit which was granted on 1.12.2008 and the permission which has been granted by order dated 2.3.2009 are for entirely different quantity of sand.

27. From the definition of mining permit as contained in Rule 2(6), it is clear that the permission so granted on 2.3.2009, is a fresh mining permit and cannot be treated to be only extension of time. It is relevant to note that the respondent No. 5 in whose favour order dated 2.3.2009 has been passed specifically submits that the order dated 2.3.2009 is a fresh mining permit. Thus, it is held that the order dated 2.3.2009 is a fresh mining permit.-

28. A Division Bench of this Court in Rameshwar v. Zila Adhikari/ Prabhari Adhikari, Khanji, Fatehpur and Ors. 1996 AWC 681, has also laid down that before grant of mining permit, notice is to be invited. In the said judgment the

Division Bench had quashed an order by which renewal of mining permit was granted. In the said case, writ petition was filed challenging the order dated 22.1.1996, by which order the permit granted in favour of respondent No. 3 was renewed. In the said case, a permit was granted up to 7.2.1996 to excavate a quantity of 10,000 cubic metres of sand. Respondents case was that before expiry of period, requisite quantity was excavated and since the Government was to suffer a loss, permit was again given without inviting fresh application. Permit holder was allowed the same permit to excavate more quantity. Paragraph 4 of the said judgment is quoted below:

4. The respondent No. 3 filed counter-affidavit and stated that he had filed objections on 12.1.1996 against the report of the Mining Inspector and later on, he also filed an application dated 12.1.1996 before the District Magistrate, Fatehpur to grant him mining permit vide Annexure Nos. CA-1 and CA-2 of the counter-affidavit. It is also alleged that mining permit was issued to respondent No. 3 for 10,000 cubic metres "morrum" on payment of royalty of Rs. 1,40,000 vide Annexure-CA-3 to the counter-affidavit and the respondent No. 3 deposited the amount and he is entitled to excavate morrum upto 7.2.1996. The plea of respondent No. 1 is that fresh application could not be invited as the period of three months has not expired as envisaged under Rule 55 of the Rules as it was to come to an end on 7.2.1996. Since the Government was to suffer a loss, so permit was given again for a month considering that the State would suffer a loss of huge royalty. The permit-holder was allowed on the same permit upto 7.2.1996 to excavate more quantity of "morrum" on payment of royalty as per rules. There is interesting development in this case that Rameshwar has filed an application that he has not filed the petition nor engaged the counsel. Learned Counsel for the respondent No. 3 has argued that the application has been filed by imposter so it should be rejected outrightly. The only short question for determination is the interpretation of the Rule 55 of the Rules.

29. In paragraph 10 of the said judgment it was held that renewal of the permit was bad. The same is quoted below:

10. The rationale behind inviting tender is that a public property is not fettered or looted or grabbed or dissipated by following unfair procedure and there should be transparency in the transaction of tenders. The rationale behind inviting tenders is to raise the highest possible revenue for the State. Following the ratio of the rulings and statutory provisions of Rule 27 and Rule 27A of the Rules, the best and legal course was to invite fresh tenders and not to renew it which renewal is illegal and impugned document dated 22.1.1996 Annexure-2 is quashed.

30. It is relevant to note that the above Division Bench judgment came up for consideration before the Full Bench of this Court in Gopi Nishad (supra). The Division Bench decision of Rameshwar's case (supra), in so far as it has quashed the renewal of permit was approved by the Full Bench. The Full Bench also considered the question as to whether before granting a mining permit, a notice inviting seven days is necessary. Full Bench answered holding that before grant

of mining permit, seven days notice is necessary as required by the Government orders dated 19.2.1994, 25.5.1995 and 20.7.1995.

31. While referring to the aforesaid Government orders, Full Bench laid down following in paragraph 6:

6. In Rule 68 therein it is provided, inter alia, that the State Government may, if it is of opinion that in the interest of mineral development it is necessary so to do, by order in writing and for reasons to be recorded, authorise in any case the grant of any mining lease or the working of any mine for the purpose of winning any mineral on terms and conditions different from those laid down in the Rules. In exercise of the powers conferred under this Rule, the State Government has issued Government orders dated 19.2.1994 (Annexure-6), dated 25.5.1995 (Annexure-7) and dated 20.7.1995 (Annexure-8) laying down the procedure, principles and guidelines to be followed for grant of mining permit for short terms (not more than three months). The period of notice prescribed in the said orders is seven days. It is relevant to state here that in accordance with the procedure laid down in the Government orders, the District Magistrate/District Officer, Fatehpur gave seven days notice on 11.3.1996. From the provisions of the Rules, the position is manifest that there is a clear distinction between mining lease and mining permit. The criteria and the procedure for grant of mining lease and mining permit have been separately dealt with in the Rules. While Chapters II, IV and V deal with grant of mining lease. Chapter VI deals with grant of mining permit. For the purpose of the case in hand, it is very relevant to state that while Rule 27 in Chapter IV mandates that for grant of lease at least thirty days before the auction is to be held, the District Officer shall notify the date, time and terms and conditions of the lease, there is no such provision in Chapter VI for grant of short-term mining permit. In the absence of any provision in the Rule, the State Government with a view to get over certain difficulties and to avoid loss of revenue, issued the Government orders 19.2.1994 (Annexure-6), dated 25.5.1995 (Annexure-7) and dated 20.7.1995 (Annexure-8) in which provision was made, inter alia, for grant of short term mining permit giving seven days notice. It follows, therefore, that there is neither any basis nor any Justification to lay down as a proposition of law that for grant of short-term mining permit, the provision in Rule 27 prescribing at least thirty days notice is to be followed. Such a position does not emanate expressly or by necessary implication from the provisions of the Rules. On the other hand, the clear position that emerges from the provisions contained in Chapter VI read with the Government orders issued under Rule 68 is that seven days notice is necessary for grant of short-term mining permit. As noted earlier, the said provision had been complied with in the present case.

32. In view of the above, it is clear that granting of mining permit under Chapter VI, seven days notice is required, although such requirement is not in Chapter VI of the Rules, 1963, but the Government orders as mentioned above provides for such requirement and the Government orders are in no manner contrary to the

Rules, 1963. The requirement of seven days notice is a requirement of a reasonable procedure which advances public interest.

33. In event, it is held that mining permit can be granted by District Officer without inviting any application, the said grant will be arbitrary and without following a reasonable procedure.

34. The submission now to be considered as raised by the learned Counsel for the respondent No. 5 is that due to enforcement of model code of conduct of election no advertisement was required. There are two reasons for not accepting the submission of the learned Counsel appearing for the respondent No. 5, firstly, the counter-affidavit has been filed on behalf of the State respondents including the District Magistrate, Muzaffarnagar in which no such plea has been raised that advertisement was not be issued due to model code of conduct. The District Magistrate, while passing the order dated 2.3.2009 has not taken any such stand, the submission of the respondent No. 5 in this regard cannot be accepted. It is for the authority, who has passed the order to indicate the reasons for not publishing the advertisement and no such reasons forthcoming from the District Magistrate. The reasons given by the respondent No. 5 in his counter-affidavit cannot improve the order dated 2.3.2009.

35. Secondly, the question No. 38 and its answer as quoted above which has been relied on by the learned Counsel for the respondent No. 5, if read it means that no tender auction can be processed, i.e., no further mining permit was required to be given and an interim arrangement was to be made by the Government. Question No. 38 and its answer also does not help the respondent No. 5.

36. The submission of Shri Ravi Kant, learned senior counsel that there has to be a harmonious construction of Rules 51 and 55 also needs to be noted. There is no conflict in Rules 51 and 55 which may require any harmonious construction. Rule 51 provides that no mining permit shall be granted for a period of more than six months, Rule 55 provides that permit so issued shall be valid until the date of expiry of the period specified in the permit or till such date when the permitted quantity of the mineral is removed, whichever is earlier. Rule 55, thus explains about the expiry of a period which is contingent on the expiry of the period specified in the permit or when permitted quantity of the mineral is removed. The permit so granted is to remove specified quantity of mineral and when such quantity is removed, the permit automatically comes to an end. In the present case when the three months period expired on 1.12.2008, the permit of respondent No. 5 came to an end.

37. In view of the above, it is not necessary to refer to various decisions cited by Shri Ravi Kant on principles of harmonious constructions, since there is no conflict between the rules to take aid of statutory interpretations.

38. Now comes the submission on which Shri S. G. Hasnain, Additional Advocate General has much emphasised. The submission is that the petitioner had no

locus to file the writ petition since he had not applied in pursuance of the earlier advertisement dated 7/10th November, 2008. There is no dispute that the petitioner had not applied when applications were invited for permit and the permit was granted on 1.12.2008. Petitioner is not claiming any right qua the permit which was granted on 1.12.2008. Petitioner's case is that after expiry of the period, i.e., after 28.2.2009, fresh advertisement was required for grant of fresh mining permit as he was interested in filing application for mining permit he was prejudiced. When the case of the petitioner is that mining permit has been granted without inviting notice to the general public and he being also interested for mining permit, we fail to see that how the petitioner shall not have any locus to challenge an order by which permit has been granted without any notice. A notice is given to public in general to invite applications from all interested persons. When notice has not been given before granting of fresh permit dated 2.3.2009, public in general who claims that they would have applied had a notice been given has sufficient locus to challenge the grant. The judgment which has been relied on by Shri Hasnain, Additional Advocate General in *Kushum Lata* (supra) is a case where a Division Bench of the High Court had dismissed a public interest petition as not maintainable. In the said case the writ petitioner, filed an application for grant of mining lease and she participated in auction on 23.12.2002. The lease was granted to respondent No. 5. Writ petition was filed as public interest litigation for directing the authorities for investigating into the alleged irregularities. The High Court noted that successful bidder was not made a party and in any event the appellant cannot file Public Interest Litigation when she herself claimed to be an intending bidder, the writ petition was dismissed. The Apex Court in the above case held that the High Court rightly dismissed the petition which was filed as public interest litigation. The Supreme Court held that for entertaining the Public Interest Litigation, the Court must be careful that a person who approaches the Court is acting bona fide and not for personal gain or for private motive or for political motivation or for other consideration.

39. In the above case, the petitioner in fact had approached the Court not in public interest, but for her private interest, hence the public interest litigation was refused to be entertained. The said judgment was a case where locus of a person to file a public interest litigation was considered and it was found the ground that what was sought to be canvassed was a private interest.

40. In the present case, facts are otherwise. Petitioner has not come in public interest litigation, rather writ petition has been filed challenging the grant in favour of respondent No. 5 which was made without notice on the premises that had notice been given, petitioner also could have applied for mining permit. The Judgment of the Apex Court in *Kushum Lata* (supra), does not help the petitioner.

41. In view of the foregoing discussion the order dated 2.3.2009, passed by the District Magistrate, Muzaffarnagar cannot be sustained and is hereby set aside. It will be however open for the District Magistrate to proceed afresh in accordance with law for grant of mining permit.

Writ petition is allowed.

Parties shall bear their own costs.