

(1997) 09 MAD CK 0003

In the Madras High Court

Case No : W.A. No. 480 of 1996, W.P. No's. 3114 and 3115 of 1996

Tvl. Sundaram Granites

APPELLANT

Vs

Imperial Granites Ltd. and Others

RESPONDENT

Date of Decision : 09-09-1997

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11

Tamil Nadu Minor Mineral Concession Rules, 1959 — Rule 39, 6

Citation : (1997) 2 CTC 678

Hon'ble Judges : M.S. Liberhan, C.J;D. Raju, J

Bench : Division Bench

Advocate : A.L. Somayaji, for V. Perumal, for the Appellant; K.P.H. Thulasiraman, G.P. for R2, R3 and R5 and Nalini Chidambaram for Silambanan, for R1, for the Respondent

Final Decision : Dismissed

Judgement

M.S. Liberhan, C.J.—This appeal has arisen out of the interim order passed by a Hon"ble single judge of this Court made in W.M.P.No.

4890 of 1996 in W.P.No. 3114 of 1996 dated 25.4.1996.

2. Skeletal facts, necessary to dispose of the appeal, as emerged from the reading of the writ petitions, counters writ appeal and admitted facts

during the course of the arguments are as follows:-

3. The petitioner deals in granite quarries. The petitioner applied for lease to quarry in Survey No. 443, measuring 4.05.0 hectares in Karandapalli

village, Denkanikottai Taluk, Dharmapuri District through the District Collector. Respondent No. 5 had also applied for lease through the District

Collector for 10.00 acres of and which included the above referred Survey No. 443. The relevant itinerary of dates referred to are that the

Respondent No. 5 had also applied for lease through the District Collector on 13.9.1995, while the petitioner applied for lease through the District

Collector only on 27.10.1995. The petitioner's application was recommended to the State by the Tahsildar on 25.11.1985. A Committee was

constituted by the State on 11.10.1995, which inspected the area and recommended that lease can be granted to the prospective lessees subject

to the conditions to be imposed. Similarly some other applications for lease addressed to the Collector were also sent to the State though they

were not mentioned in the course of arguments. Under the directions of the High Court, a High Level Committee was constituted to consider the

case of prospective lessees in terms of Rule 39 of Tamil Nadu Minor Mineral Concession Rules (hereinafter referred to as "the Rules"). It is

alleged that on the basis of the recommendations made by the High Level Committee, lease was granted to Respondent No. 5 on 9.1.1996 with

respect to 10 acres of land including the land in dispute i.e., S.No. 443, while the application to the petitioner was rejected on 21.9.1996 inter-alia

on the ground that the plot in dispute is not available. It is averred that the state had considered the application of the petitioner on 13.12.1995.

4. The petitioner impugned the order of granting lease to the 5th respondent inter alia on the ground that the state had acted unfairly. All the

applications of the applicants were not considered together. State did not follow the decision of the High Court. Without judging or assessing the

comparative right of the applications, 5th respondent was preferred for lease. Law laid down in Premium Granites and Another Vs. State of Tamil

Nadu and Others, which laid down the principles to be observed before invoking the provisions of Rule 39, while granting the lease was not

followed. No speaking order was passed which is the only protection against the arbitrariness of the State. Petitioner was not treated with even

hand though similarly situated.

5. The application of the petitioner was returned with the objection, Solvency Certificate attached to the application had already elapsed, no mining

due certificate was issued though the petitioner has a mining lease in other district too. Petitioner was expected and required to remove the defects

pointed out and submit his application after ratification. Before the petitioner could send the application after ratification the state granted the lease

in favour of the 5th respondent with respect to 10 acres including the plot with respect to which the petitioner claimed the lease though his

application too suffered with the similar defects and deficiencies, i.e., non-production of No Due Certificate of Mining etc., but he was allowed to

ratify the deficiencies in his application at the time of execution of lease. Petitioners impugned the act of the State in granting lease to Respondent

No. 5 as being arbitrary and violative of Article 14 of the Constitution of India. The petitioner claimed to have been deprived of the right to have

the judicial scrutiny with respect to the arbitrary distribution of the State's largess because of non speaking order. The whole process is impugned

on the principle of unfairness to a citizen in awarding state largess.

6. The learned counsel for the respondents relied on Dharambir Singh Vs. Union of India (UOI) and Others, and M/s. Hindustan Aluminium

Corporation Ltd. Vs. State of Bihar and others, and it is averred that since the respondent applied for the lease of minor minerals prior to the

petitioner, consequently lease in his favour was granted on the principle of 1st come 1st served, rather he was preferred because he applied earlier

in time. Cancelling of it would not be justified. The respondent's defending state's action, averred that since the lease was granted to the 5th

respondent in January 8, 1997 which was executed later, the 5th respondent invested in the machinery, construction of road, deployed 250

workmen and thus the writ petition, seeking the relief of cancellation of lease would be inequitable; the writ petition suffers from laches and is liable

to be dismissed. Petitioner's locus standi to challenge the lease is also challenged. Further it is contended that right to grant quarrying of minor

minerals is neither a fundamental right nor a legal right, especially when the petitioner made a defective application which is no application in the eye

of law. Thus the petitioner does not have any locus standi to claim the lease in its favour or impugn the lease granted to respondent No. 5. It is

averred that conditions imposed for grant of lease to Respondent No. 5 are different from the one for , which the application of the petitioner was

rejected.

7. The learned counsel for the petitioner in order to support his contention relied on in Prem Nath Sharma Vs. State of U.P. and another, and

1997 (2) ILR Mad. 766 and Premium Granites and Another Vs. State of Tamil

Nadu and Others, .

8. We have gone through the records, including the report alleged to have been submitted by the High Level Committee, and gone through the writ

petition and the arguments addressed at the Bar during the course of the arguments.

9. The Hon''ble Supreme Court while dealing with the scope of Article 14 of the Constitution of India held that, it is well settled and is axiomatic,

the State's actions, irrespective of distribution of its largess or otherwise is to be tested on the principle of fairness in distribution, or its action as

well as the grant of equal opportunity to all prospective lessees or other claimants and equal treatment to all. The rule of law is the very basis of

governance in a civilized society. Article 14 of the Constitution of India provides that the state should treat all persons with an equal eye and even

hand and should grant equal opportunity to all while distributing its largess, only exception the state can avail of is of making reasonable

classification of the persons or things to meet the socio- economic needs or to provide or serve for a particular needs of the society in the facts and

circumstances of each case. Discrimination is antithesis of rule of law. All acts of the state, whether administrative or quasi-judicial or exercising of

police power or dealing with the state property or grant of its largess etc. have to be decided on the principle of fairness and absence of

discrimination of any nature. The cardinal tenets is the objective test in fairness.

10. On a reading of Prem Nath Sharma Vs. State of U.P. and another, ; Prem Nath Sharma Vs. State of U.P. and another, , the conspectus of

principle emerges are:-

(i) that the state should consider all the applications pending on the date when the selection for granting the lease is to be made or lease to be

granted.

(ii) Lease cannot be granted according to whims and fancies, bereft of objective satisfaction, keeping in view the public interest, fairness, the

interest of minerals, the interest of other applicants or citizens granting of equal opportunity to all of the state largess;

(iii) the state is expected to apply its mind objectively and would take into consideration all the relevant matters for grant of lease or the object of

the act to be ensured. The act of the state has to be rational and not arbitrary

and discriminatory, especially when the state is distributing its largess to the citizens.

(iv) Lease could be granted for objective considerations by passing a speaking order.

11. The State has to keep in view the public interest as well as the interest of mineral department while granting the lease. Application for lease has to be available on the record. On the principle of fairness we are not able to persuade ourselves, nor any reason has been pointed out, much less reasonable, not to deal with all the applications simultaneously for grant of lease by comparing the inter-se merits of the claimants. Grant of lease without comparing the inter-se merits of the applicants, in itself can be termed as arbitrary and violative of Article 14. Public interest demands by way of legal obligation to consider all the applications simultaneously.

12. We have gone through the report of the High Level Committee too, which is the anchor-sheet of the State to defend its action for granting lease. We are of the considered view that the High Level Committee neither rejected the application of the petitioner nor recommended for the lease to the petitioner. The High Level Committee only directed the rectification of the defects as pointed out in the earlier part of this Judgment, and proposed the imposition of condition while granting lease. The High Level Committee did not consider either the public interest or minor minerals interest. It did compare the merits inter-se of applicants. It would be paradoxical to say that lease was first granted in favour of the 5th respondent without considering the application of the petitioner and then say that the plot claimed by the petitioner is not available for lease. The State cannot be permitted to deprive the petitioner from his right to be considered for grant of the State largess by competing with Ors.. The act of the State is purely articulative in the present case.

13. It is also submitted that the petitioner's application was rejected on the ground that he did not produce No Mining Due Certificate from the District Collector and Commissioner of Geology. The State, which is expected to deal every one with one eye and equal hand, cannot be permitted to say that while similarly situated person were to comply with the condition first and then their applications would be considered, the 5th respondent is permitted while for the similar objections with respect to

respondent No. 5 were allowed to be rectified at the time of execution of lease. Thus the act of state suffers from the vice of treating the petitioner and the 5th respondent with unequal hands.

14. The respondents have miserably failed to show that the state was ever conscious of the quint essence of Rule 39 of Rules i.e., grant of lease

under which the lessee alleged to have been granted lease to the effect the lease is being granted in public interest and in the interest of

development of minerals. We neither find anything on record nor has it been pointed out during the course of arguments that how and in what

manner the State felt that grant of lease to respondent No. 5, in preference to the petitioner, is either in public interest or in the interest of

development of minerals. Thus the grant of lease in violation of Rule 39 of Rules cannot be sustained, though if we hasten to add even if the said

Rule is deleted, the State's act had to be tested on the cardinal tenets of granting lease of minerals in the public interest and in the interest of

development of minor minerals, in order to satisfy the object of the Minor Mineral Concession Rules. The lease granted to respondent No. 5 is

unsustainable in the public interest and in the interest of mineral development of the state.

15. Rule 6 of Rules provide that while granting lease in respect of quarrying minor minerals, the lease has to be advertised and notified inviting the

applications to offer an opportunity to all. It is only on receipt of the application the State would be able to apply its mind objectively in public

interest and in the interest of the development of minor minerals. The state cannot be permitted to act behind secretly, which act would bring the

loss of people's faith in the Government.

16. We find no force in the objection raised by the learned counsel for the respondents that since the petitioner himself is an applicant for grant of

lease of disputed plot. Consequently cannot challenge the lease in favour of the 5th respondent. Any citizen can challenge the distribution of the

State largess in violation of the principle of fairness or violation of Article 14 of the Constitution of India.

17. In view of the above facts and circumstances referred to above, we are of the considered view that the petitioner's right to lease has to be

considered and thus the appellant has locus standi to challenge the lease granted

in favour of the 5th respondent.

18. We find no force in the arguments of the learned counsel for the respondents that the petition suffers from laches of a delay of 52 days in

challenging the lease. In our considered view the delay of 52 days cannot be termed as an unreasonable delay. It cannot be assumed that

consideration of the application could be denied to the petitioner solely on the ground of laches and even otherwise. But it is contrary to the

principle of right to equal treatment for all which is the very fundamental of the constitution. We find no ground to dismiss the petition on the ground

of laches.

19. There is no dispute with respect to law laid down in M/s. Hindustan Aluminium Corporation Ltd. Vs. State of Bihar and others, to the effect

that the State is at liberty either to grant lease of the whole area or a part of it, the state is not bound to lease whole area applied for. Facts show

that the 5th respondent company was not interested in the lease. Otherwise too the Hon"ble Supreme Court considered the cancellation of the

lease granted in favour of a person in terms of Section 11 of the Act which is not the case of hand. Here in granting of lease was not considered u/s

11 but under Rule 39 of the Rules which can be invoked entirely under different context, facts and circumstance. At this stage, we may later note

of the fact that vide Section 14 of the Act. Provision of Section 11 to 13 does not apply to minor minerals.

20. So far as Dharambir Singh Vs. Union of India (UOI) and Others, is concerned, we find no law laid down by the judgment after observing that

the state while granting prospective licenses or mining lease, person applied first may be preferred but while exercising such a discretion by the act

and rules, public interest and development of minerals has to be taken care of. No applicant has got right, much less vested right, to the grant of

mining lease for mining operations in any place within the state. But if we hasten to add the right to be considered for mining lease or license of

mining it cannot be denied solely on the ground that the person has no vested right. It is laid down in Common Cause, A Registered Society Vs.

Union of India (UOI) and Others, that in the matter of granting lease, the state is guided by cardinal tenets of fairness keeping in view the public

interest and in the interest of development of minerals.

21. In view of the totality of the facts and circumstances stated above, we are of the considered view that the state has acted unfairly, secretly and

denied the equal opportunity to all by passing a non-speaking order and illegally granted lease to the 5th respondent.

22. Thus the writ petition is allowed. The impugned order granting lease to the 5th respondent is set aside and lease deed, if any, executed is also

set aside. The respondents are directed to consider the application of all the applicants pending before them and would invite applications for

granting lease of the mines by public notice and would consider the case of all applicants together. Respondents are at liberty to grant lease to any

of them on merit by comparing their inter-se suitability merits, public interest and interest of the development of minerals or on the basis of any

other relevant considerations. The respondents are directed to complete the exercise of inviting the applications, considering and passing

appropriate order of granting lease in favour of an appropriate person within a period of two months from today and till such time no mining

operations should be permitted. The respondent would not take into consideration any observations made in the judgment with respect to merit of

the applicant while considering the case of the applicants for grant of lease. The writ petition is allowed. No order as to costs.

23. The writ appeal is dismissed. No costs.