
(1980) 01 RAJ CK 0029

In the Rajasthan High Court

Case No : Civil Special Appeal No's. 53 and 56 of 1969

Vijay Prakash Mittal etc.

APPELLANT

Vs

Abdul Haq Ansari and Others

RESPONDENT

Date of Decision : 29-01-1980

Acts Referred:

Mineral Concession Rules, 1960 — Rule 22, 23, 23(4)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(2)

Citation : AIR 1981 Raj 123

Hon'ble Judges : N.M. Kasliwal, J;M.B. Sharma, J

Bench : Division Bench

Advocate : C.K. Garg, for Vijay Prakash Mittal, B.P. Agrawal, for Abdul Haq Ansari, V.S. Dave, for Union of India and M.I. Khan, for the Appellant;

Judgement

Kasliwal, J.—These two special appeals are directed against the order of learned Single Judge of this Court dated 23rd April 1969, in S. B. Civil Writ Petition No. 729/1967.

2. Brief facts of the case are that Shri Abdul Haq Ansari (hereinafter called "the petitioner") was holding a prospecting licence for mining of Gar-nett in village Khatwar Tehsil Phagi District Aimer from 27th February 1963 to 26th February 1964. On 26th November 1963, he applied for renewal of the licence but the same was relected by the State Government on 25th Feb. 1064 but the petitioner was informed about it on 27th February 1964, after the period Against Judgment of Single Judge of this Court in C.W.P. No. 729 of 1967, D/- 23-4-1969. of prospecting licence had expired. On 29th February 1964. he applied for the grant of fresh mining lease but this was rejected by the Director of Mines and Geology as time barred. On a representation made by the petitioner the Government of Raiasthan forwarded the application for consideration to the Union Government, but it was also rejected by the Union Government on 25th November 1964. Thereafter, this area was notified and declared to be free for the grant of mining lease on 7th April 1966 in the Rajasthan Gazette and the

petitioner applied along with a plan on 7th May, 1966 and a receipt Annexure 1 was issued by the Assistant Mining Engineer to the petitioner.

Shri Vijay Prakash Mittal (hereinafter called the respondent) also submitted his application for the grant of mining lease of this very area to the Assistant Mining Engineer on 10th May, 1966. According to the respondent 8th May, 1966 was Sunday and 9th May, 1966 was declared a gazetted holiday and therefore he could not have filed his application before 10th May, 1966, as no special arrangements were made for the receipt of such applications on gazetted holidays. The Government of Rajasthan according to the petitioner did not dispose of these two applications within a period of 9 months, and as such the petitioner under the deeming provision of Rule 24 of the Mineral Concession Rules, 1960 (hereinafter called "the Rules") took it that his application was rejected by the State Government. The petitioner then filed a revision application under Rule 54 to the Secretary, Ministry of Mines & Metals, Government of India, New Delhi. The Government of India invited comments from the Government of Rajasthan on the revision application made by the petitioner.

The Government of Rajasthan sent its comments and the petitioner was asked to send counter comments. The petitioner then sent his counter comments to the Government of India. After consideration of the whole matter Under Secretary to the Government of India informed the petitioner vide Annexure 5 dated 6th December 1967, that the Union Government did not find any reason to reject the recommendations of the State Government for giving priority to the respondent after considering the claims of the parties u/s 11(2) and (3) of Mines and Minerals (Regulation and Development) Act, 1957, (hereinafter called "the Act") and keeping in view the instructions contained in the Government of India's letter dated 25th July, 1961 which stated that applications received on a holiday without having made any special arrangements and without having notified such arrangements will not have priorities over the one received on the first working day after holiday. It was also mentioned in Annexure 5 that the financial resources and technical staff at the disposal of Shri Mittal are also a shade above that of the petitioner. The application for revision filed by the petitioner had, therefore, no force and was rejected.

3. The petitioner in the above circumstances filed a writ petition challenging the order of the Government of India dated 6th December, 1967, on various grounds. The learned Single Judge held that the circular letter dated 25th July, 1961 issued by the Government of India was in the nature of administrative direction which could not over-ride the provisions of Rule 23 which provided that the receiving authority shall issue the receipt of the application forthwith if they were received Personally or on the same day if received through the post office, and if in pursuance of the said rule the Receiving Authority had received an application on a particular day and issued a receipt thereof on that very day then it cannot be said that the application was received in the eye of law on the day when the office was opened after holidays that the doctrine of "first come first

served" emanated from Section 11(2) of the Act and as the petitioner, whose application was received earlier shall have the preferential right for the grant of lease over the respondent whose application was received later.

Learned Single Judge felt inclined to allow the writ petition on this ground alone and as such did not propose to go into the merits of other grounds advanced before him and in the result set aside the order of the Government of India dated 6th December 1967 and sent the case back to the Government of Rajasthan to dispose of the application of the petitioner in the light of the law laid down by him. Feeling aggrieved against the aforesaid decision of the learned Single Judge both Shri Vijay Prakash Mittal as well as the State of Rajasthan have come in special appeal u/s 18 of the Rajasthan High Court Ordinance. 1949.

4. In order to correctly appreciate the arguments advanced by the learned counsel for the parties it would be proper to reproduce certain relevant provisions of the Act and the Rules. Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, and Rules 22 and 23 of the Mineral Concession Rules, 1960 are reproduced as under:

"Section 11-- Preferential right of certain persons-(1) Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person:

Provided that the State Government is satisfied that the licensee has not committed any breach of the terms and conditions of the prospecting licence and is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of Subsection (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be over an applicant whose application was received later:

Provided that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in Sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in Sub-section (2) are the following :--

(a) any special knowledge of or experience in, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) such other matters as may be prescribed.

(4) Notwithstanding anything contained in Sub-section (2) but subject to the provisions of Sub-section (1), the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

NOTE-- A prospecting licensee has a preferential right to secure a mining lease over the first applicant in point of time."

"Rule 22 -- Applications for grant of mining leases -- (1) - An application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf.

(2) -- Every application for the renewal of a mining lease shall be made to the State Government in Form J at least six months before the date on which the lease is due to expire through such officer or authority as the State Government may specify in this behalf.

(3) -- Every application for the grant or renewal of a mining lease shall be accompanied by-

(a) fee of two hundred rupees;

(b) an Income Tax clearance certificate in Form C from the Income Tax Officer concerned; and

(c) a Certificate of Approval in Form A or if the Certificate of Approval has expired, a copy of application made to the State Government for its renewal.

(ii) Every application for the grant of a mining lease shall, in addition to those specified in Clause (i) be accompanied by a deposit of five hundred rupees for meeting the preliminary expenses in connection with the grant of the mining lease."

"Rule 23. -- Acknowledgment of application -- (1) Where an application for the grant or renewal of a mining lease is delivered personally, its receipt shall be acknowledged forthwith.

(2) Where such application is received by registered post its receipt shall be acknowledged on the same day.

(3) -- In any other case, the receipt of such application shall be acknowledged within three days of the receipt.

(4) The receipt of every such application shall be acknowledged in Form D".

5. The main controversy to be determined in the case is whether the application sent by the petitioner on 7th May, 1966 and acknowledged by the Assistant Mining Engineer on 8th May, 1966, which was admittedly Sunday, should be

given priority or not to the application submitted by the respondent on 10th May, 1966 when 8th May, 66 was Sunday and 9th May, 1966 was also a gazetted holiday. The contention of Mr. Agrawal, who has appeared on behalf of the petitioner is that the order of Central Government dated 25th July, 1961, being in the nature of administrative instructions have no force of law and cannot override the provisions of Rule 23 of the Rules and Section 11 of the Act. According to the learned counsel sending of an application by post was contemplated under the rules and if the same was received and acknowledged in form "D" as mentioned in Sub-rule (4) of Rule 23, in that case in accordance with Sub-section (21) of Section 11 of the Act the petitioner whose application was received earlier shall have a preferential right for the grant of a licence or lease as the case may be, over an applicant whose application was received later.

In the present case according to the learned counsel the receipt was issued by the Assistant Mining Engineer in Form "D" on 8th May, 1966, while the application of the respondent was acknowledged on 10th May, 1966 and in this view of the matter the petitioner was bound to get a preferential right over that of the respondent. On the other hand, the contention of Mr. Garg appearing on behalf of Shri Vijay Prakash Mittal is that the provisions of the Act and the Rules should be interpreted in a reasonable manner so as not to make them unworkable or which might lead to nepotism or undue favour to a person over another. It is submitted that there is a provision under Sub-rule (1) of Rule 23 to submit an application and to deliver it personally and in that case its receipt has to be acknowledged forthwith. The respondent had tried to deliver it personally on 8th May, 1966, but the State Government had made no arrangements for acknowledging the application on that day in pursuance of the letter of 25th July, 1961, issued by the Government of India in this regard, as such he was unable to submit his application and the earliest day on which he could have submitted the application was 10th May, 1966.

The respondent was not all at fault as it was nowhere made known or notified that, at what place and which officer would accept the application, if any, submitted on Sunday or a Gazetted holiday. It is submitted that if the view as propounded by the learned counsel for the petitioner is to be accepted in that case any clerk of the department as done in the present case may in collusion with a party would accept the application on a gazetted holiday and would refuse another person on the ground of the same being a gazetted holiday or would not be available to receive the application. This is bound to lead to corruption and favouritism as it would entirely rest with an official of Mining Department to give preference to any of the parties. It is also argued that the respondent was not bound to send his application by registered post or by express delivery, and could have submitted his application personally as contemplated under the Rules and unless proper arrangements were made in this regard it would be highly inequitable and unjust to accept and acknowledge the application sent by post and not to receive it if submitted personally specially when both kinds of modes were permissible under the Rules. It is also submitted that the State Government

in its reply has admitted that no arrangements in fact were made for acknowledging applications on a gazetted holiday and in the present case according to the respondent the application of the petitioner was never received in fact on 8th May, 1966, but it was received on 10th May, 1966 and has been antedated to 8th May, 1966. It is also pointed out that the office was not open on 8th May, 1966 and 9th May, 1966 and as such the receipt Ex. 1 in Form "D" could not have been issued on 8th May, 1966. Reliance is also sought on the principle contained in Section 4 of the Limitation Act and Section 10 of the General Clauses Act which gives expression to the general principle of law enunciated by the maxim "*lex non cogit ad-impossibilia*" which means the law does not compel a man to do that which we cannot possibly perform.

6. We have given our earnest consideration to the arguments advanced by learned counsel for both the parties.

7. Before dealing with the question of law involved in the case we would like to mention the facts and circumstances relating to the alleged application sent by the petitioner on 7th May, 1966, and acknowledged on 8th May, 1966-In the writ petition in para No. 2, the petitioner only alleged that he applied along with the plan on 7th May, 1966 which was received by the Assistant Mining Engineer on 8th May, 1966, and a copy of the receipt was marked Annexure 1, and the application dated 7th May, 1966 in original was attached and marked Annexure 2. His application was registered at No. AJML/11 and another application filed on 10th May, 1966 by respondent Shri Vijay Prakash Mittal was registered at ML/12 dated 10th May, 1966 in the office of Assistant Mining Engineer. Aimer. At this stage it was not disclosed as to whether the application dated 7th May, 1966, was sent by the petitioner by post or was submitted personally to any official of mining department. However, Annexure 1 filed along with the writ petition was a receipt dated 8th May, 1966 in Form "D" showing the signatures and designation of receiving officer as Assistant Mining Engineer, Aimer.

The respondent No. 4 Shri Mittal in reply to para No. 2 of the writ petition denied the petitioner's allegation that he applied with plan etc. on 7th May, 1966 for a mining lease of the said area and that the said application was received by the Assistant Mining Engineer on 8th May, 1966. It was further alleged that the receipt Annexure 1 was an incomplete document and appeared to have been obtained fraudulently in collusion with some clerk in the office on 8th May, 1966 or the date of receipt mentioned therein was wrongly entered by the clerk. The officer concerned, who was entitled to receive the application had signed the date of receipt as 10th May, 1966, in his office copy. It was further alleged that according to the petitioner's own averment 8th May, 1966, was Sunday, and 9th May, 1966 was gazetted holiday and as such no application could be received on 8th and 9th May, 1966 and more so when there was no arrangement for the purpose.

It was also alleged that the answering respondent had also completed his mining lease application on 7th May, 1966, as is evident from the bank draft No. 5/46

dated 7th May. 1966 obtained by him from the Bank of Bikaner and Jaipur in favour of Assistant Mining Engineer Ajmer, and went to the office of the Assistant Mining Engineer at Aimer on 8th May, 1966 and 9th May. 1966, but found the office closed. There was no one to receive the application and to give necessary receipt. Further even if it was found that there were some arrangement for receiving application on holidays the said arrangements were not notified and as such the petitioner cannot claim priority on that ground. The petitioner then submitted a rejoinder to the reply of the writ petition filed by the respondent in which the petitioner in para 2 alleged that the application of the petitioner dated 7th May. 1966 was received by the Assistant Mining Engineer. Ajmer, on 8th May, 1966 and this fact had been admitted by the respondents Nos. 1 to 3 namely the Union of India, the State of Rajasthan, and the Director of Mines and Geology Rajasthan Udaipur.

It was wrong to say that it had been obtained fraudulently and in collusion with some clerk in the office and the date of receipt had been wrongly entered by the clerk. It was wrong to say that officer concerned signed the receipt on 10th May, 1966. It was further alleged that according to Rule 23 (2), (3) and (4) the Assistant Mining Engineer, Aimer acknowledged the receipt of the application on 8th May. 1966 in form "D". The petitioner had been duly notified for this purpose and arrangements were made by the State Government under the letter of the Government of India dated 25th July, 1961 for the receipt of the petitioner's application and for other applications, to be received by the Assistant Mining Engineer. Aimer. It was further averred that the respondent No. 4 had made a wrong and false statement that he went to the office of the Assistant Mining Engineer on 6th May, 1966 and 9th May, 1966 and found the office closed. He should have gone to the house of the Assistant Mining Engineer or should have sent the application by post on 7th May, 1966.

8. From the perusal of the above averments, it would be evident that except the fact that the petitioner had obtained a receipt Ex. 1 in form "D" dated 8th May, 1966, containing the signatures of the Assistant Mining Engineer as the receiving officer, no other details or particulars have been mentioned by the petitioner to show as to whether the application was sent by him by registered post or by express delivery or was handed over personally and who was the person, who actually received it and whether it was received by such person at his residence or in the office premises.

The petitioner though has averred that arrangements had been made by the State Government in pursuance to the letter of the Government of India dated 25th July, 1961, but he has neither produced any written document in support of it, nor has given any details as to what were those special arrangements or in what manner the arrangements were made to receive the application on a gazetted holiday.

The respondents Nos. 1 to 3 have categorically denied to have made any arrangements for receiving the applications on gazetted holidays in accordance

with the directions given by the Central Government in its letter dated 25th July, 1961. From the perusal of the stand taken by the petitioner in para No. 2 to the rejoinder of the reply of the respondent No. 4, it would be clear that on the one hand he has stated that the petitioner had been duly notified for this purpose and arrangements were made -for the receipt of the petitioner's application and such other applications to be received by the Assistant Mining Engineer, has also taken the stand that the respondent should have gone to the house of the Assistant Mining Engineer and should have sent the application by post on 7th May, 1966. Thus the petitioner himself could not say with certainty as to what were the arrangements made for receiving the applications on a gazetted holiday. How the petitioner alone was duly notified for this purpose, and why the respondent should have gone to the house of the Assistant Mining Engineer on a gazetted holiday, speak volumes against the stand taken by the petitioner.

It is not the case of the petitioner that he had handed over the application by hand to the Assistant Mining Engineer on 8th May, 1966. The case of the petitioner is that he had sent the application under certificate of posting and Express Delivery on 7th May, 1966 which was received by the Assistant Mining Engineer on 8th May, 1966. Assuming this for a moment to be correct, it is not understandable as to how the petitioner got its acknowledgement on 8th May, 1966, unless he had accompanied the postman and had gone with him to the residence of Assistant Mining Engineer on 8th May, 1966, which case has nowhere been set up by the petitioner. The respondents Nos. 1 to 3 have categorically stated that no arrangements were made for the receipt of the application on gazetted holidays. There is also no reason to disbelieve the stand taken by the respondent that he had also prepared his application on 7th May, 1966 but when he went to the office of the Assistant Mining Engineer for delivering the same on 8th May, 1966 and 9th May, 1966 he found the office closed. Taking these facts and circumstances in view, we shall now examine the relevance and effect of Rule 23 and Section 11 of the Act.

9. Section 10 of the Act lays down that application for a prospecting licence or a mining lease shall be made to the concerned State Government in the prescribed form accompanied by the prescribed fee. Sub-section (2) of Section 10 lays down for sending an acknowledgement of its receipt within the prescribed time and in the prescribed form. Under Sub-section (3) of Section 10 on receipt of such application the State Government may, having regard to the provisions of the Act and Rules made thereunder, grant or refuse to grant a licence or lease. Section 11 lays down the provisions for preferential right to certain persons. Sub-section (2) of Section 11 with which we are concerned lays down that where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, an applicant, whose application was received earlier shall have a preferential right for the grant of a licence or lease, as the case may be, over every applicant, whose application was received later.

Under the proviso to this sub-section it is laid down that where any such

applications are received on the same day, then the State Government after taking into consideration the matters specified under Sub-section (3), may grant the prospecting licence or mining lease to one of the applicant as it may deem fit. According to the respondent proviso to Sub-section (2) of Section 11 was applicable in the case in as much as the applications were received on the same day namely 10th May, 1966 and then the State Government had rightly preferred the respondent keeping into consideration the matters specified in Sub-section (3) of Section 11. The petitioner on the other hand has placed strong reliance on Rule 23 which lays down about the acknowledgement of applications and according to him once the receipt of his application was acknowledged in form "D" by the Assistant Mining Engineer on 8th May, 1966 and the application of the respondent having been acknowledged on 10th May, 1966 he was bound to get a preferential right as contemplated under Subsection (2) of Section 11 of the Act and the proviso of Sub-section (2) of Section 11 had no applicability. Now we shall examine Rule 23 which lays down a procedure for acknowledgement of applications.

10. Sub-rule (1) of Rule 23 lays down that when such application shall be delivered personally its receipt shall be acknowledged forthwith. Under Sub-rule (2) if the application is received by registered post its receipt shall be acknowledged on the same day. Under sub-rule (3) in any other case, that is, other than those mentioned in Sub-rules (1) and (2), the receipt of such application shall be acknowledged within three days of the receipt and Sub-rule (4) lays down that such receipt shall be acknowledged in form "D". Thus the above rule contemplates the delivery of the applications personally, by registered post and Sub-rule (3) lays down a residuary mode. The above rule admittedly does not make a mention about the delivery of the application on a gazetted holiday or the Issuing of the acknowledgement receipt received by post or otherwise on gazetted holiday.

According to the learned counsel for the petitioner if there is no such prohibition contained in the above rule of acknowledging the applications on a gazetted holiday, it should be interpreted that such application could be received on a gazetted holiday also, and according to the learned Deputy Government Advocate appearing on behalf of the State of Rajasthan, when there was no specific mention in Rule 23 for receiving the applications on a gazetted holiday it should be interpreted in a manner, which may make the Rule workable and avoid a chance of favouritism to be done by the Receiving Officer.

11. There is well-known legal maxim "Lex non-cogit ad impossibilia" which means that the law does not compel a man to do that which he cannot possibly perform. In our view, the principle contained in this maxim is applicable in the facts of this case. Sub-rule (1) of Rule 23 clearly prescribes that when the application shall be delivered personally it shall be acknowledged forthwith. It is a matter of common knowledge that a public office remains closed on a gazetted holiday and an applicant who wants to submit an application u/s 10 of the Act

cannot be compelled to deliver an application on a gazetted holiday as he cannot possibly perform such an act on that day. We have already held that there was no reason to disbelieve the averment of the respondent in this connection that he went to the office on 8th May and 9th May, 66 but could not deliver the application as the office was closed.

We cannot expect in such circumstances for the respondent to have gone at the residence of the Assistant Mining Engineer to deliver the application personally, as the petitioner wants to suggest. It is no doubt true that the State Government in pursuance to the letter of the Government of India dated 25th July, 1961, was competent to make arrangement for receiving the applications on a gazetted holiday after notifying such arrangement to all concerned and in that case such act could be performed, but till such arrangements were made and notified it was not possible to perform an act of delivering the application personally on a gazetted holiday. It is also important to note that under Sub-rule (4) of Rule 23 the acknowledgement has to be made on form "D" and naturally such forms are not expected to remain at the residence of the receiving officer.

Learned Single Judge has taken the view that the instructions contained in the letter of 25th July, 1961, cannot operate against the provisions of Rule 23. We do not agree with this view inasmuch as there is nothing in the letter dated 25th July, 1961, which can be said to be contrary to Rule 23. There is no provision in Rule 23 which lays down for receiving the application on a gazetted holiday and the letter dated 25th July, 1961 only require the State Government to notify the date from which the area shall become available to re-grant and in case the date notified happens to be a Sunday or closed holiday it will be for the State Government to make arrangements for receiving application on that date. Thus, it rather supplements and makes the provision of Rule 23 to be even workable on Sundays or closed holidays if the State Government makes such arrangements for receiving applications on such days.

12. The contention of the learned counsel for the petitioner is that even if the application could not be delivered personally, there was a provision for sending the same by post also under Rule 23 and if a person was vigilant enough to send it by post and which was acknowledged by the Receiving Officer even on a gazetted holiday as there was no specific bar under Rule 23 to have done so, such person is bound to get a preference over another who did not resort to the mode of sending the application by post but tried to deliver it personally. We find no substance in the above contention firstly, because if different modes of sending the applications are prescribed under a rule, every person has a right to resort to any one of these modes and if one is impossible to be performed, then on that account he cannot be put to a disadvantage in comparison to other persons who can resort to the other mode.

The respondent in this case had a right to deliver the application personally and - to obtain the receipt forthwith and if that could not be performed without any fault on his part, the petitioner cannot get a preference by sending his

application by express delivery. That apart, if we accept the contention of the petitioner, that is, when there was no specific prohibition in Rule 23 to receive the applications on a gazetted holiday it can be done on that day then it might lead to favouritism and illegal discrimination at the whim and caprice of the receiving officer. An applicant could manage to deliver it at the residence of the official on a holiday and for others the official may refuse. Thus, keeping in view the working of Rule 23 in a reasonable manner we are bound to hold that the acknowledgement contemplated under Rule 23 cannot be made on a gazetted holiday unless special arrangements are made and notified by the State Government in this regard.

13. In the result both the special appeals filed by the State as well as by Vijay Prakash Mittal are allowed. The judgment of the learned single Judge dated 23rd April, 1969, is set aside. As the learned single Judge disposed of the writ petition by deciding ground No. 1 in favour of the petitioner and did not propose to go into the merits of other grounds advanced before him by the petitioner, and as we have reversed the judgment of the learned single Judge on that ground, the case is remanded back to the learned single Judge for deciding the case on merits on other grounds left to be decided by him. In the facts and circumstances of the case the parties are left to bear their own costs.