
(2012) 02 MP CK 0011

In the Madhya Pradesh High Court

Case No : Writ Petition No. 18490 of 2011

Vikas Chauhan

APPELLANT

Vs

State of M.P. and Others

RESPONDENT

Date of Decision : 16-02-2012

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2), 21, 4, 4A

Citation : (2012) 2 MPJR 342

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : P.R. Bhave, with Mr. B.P. Yadav, for the Appellant; Naman Nagrath, A.A.G. for respondents No. 1 and 2 and Mr. Brain D'Silva with Mr. H.K. Upadhyay, Advocate, for the Respondent

Final Decision : Allowed

Judgement

K.K. Trivedi, J.—The petitioner has filed the present writ petition under Article 226 of the Constitution of India challenging the validity of the order dated 19.10.2011 passed by the respondent No. 2 by which the respondent No. 4 has been granted the prospecting licence for iron ore in Khasa No. 66, area 26.110 hectares of village Andheri Gadai, Tahsil Gopad Banas, district Sidhi, on the ground that the prospecting licence application for mineral laterite was submitted by the petitioner much prior to the application made by respondent No. 4. The Minister concerned considered all the applications and specifically passed an order in favour of the petitioner sanctioning the prospecting licence to the petitioner on the aforesaid khasra number. However, the Secretary of the Department, the respondent No. 3, was ever since interested to favour respondent No. 4 and, therefore, on flimsy ground it was informed to the Minister concerned that prospecting licence was already sanctioned to the respondent No. 4 and it was not proper to grant prospecting licence to the petitioner. It is contended that on the basis of some correspondence done on a subsequent date,

respondent No. 4 made an application for grant of prospecting licence and the said application has now been considered and allowed by the impugned order, therefore, the order impugned is liable to be quashed. It is contended that the preference was available to the petitioner u/s 11 (2) of the Mines and Minerals (Development and Regulation) Act, 1957 (herein after referred to as "Act") and, therefore, such a benefit extended to the respondent No. 4 is bad in law. It is further contended that the respondent No. 4 was not to be given the benefit of prospecting licence because the respondent No. 4 had committed a breach of conditions and terms of the reconnaissance permit granted to it. Instead of taking any action, imposing any penalty as prescribed u/s 21 of the Act or terminating the prospecting licence of the respondent No. 4 as per the provisions of Section 4A of the Act, with malafide intention, respondent No. 4 has been favoured by the impugned order, therefore, the same is bad in law and is liable to be quashed. In response to the allegations made by the petitioner, a return has been filed by the respondents No. 1 and 2 and it has been contended that no wrong has been committed in considering the application of the respondent No. 4. It is contended that for the purposes of making application, the respondent No. 4 had obtained all the documents as also stamp was purchased for the purposes of executing an affidavit much before the date any correspondence has taken place. Not only this, as per the provision of the Mineral Concession Rules, 1960 (herein after referred to as "Rules"), the area was to be vacated for the purposes of permitting the prospecting of the minerals, which was though not shown under the reconnaissance permit, by the respondent No. 4 but was found during reconnaissance and, therefore, if this was the situation, the petitioner was not entitled to the benefit of preference u/s 11 (2) of the Act. This being so, it is contended that there was no malafide intention of the authorities nor any such malafides are proved against them and, therefore, challenge to the order passed by the respondents is not sustainable. It is further contended that the lease has already been granted in favour of respondent No. 4 but the fresh executed in favour of respondent No. 4 has not yet lease executed in favour of respondent No. 4 has not yet been challenged in the writ petition, therefore, the petition is liable to be dismissed.

2. Learned senior counsel appearing for the petitioner has referred certain provision of Act and Rules and has also taken this Court to the rejoinder filed by the petitioner to meet out the allegations made in the return of the respondents and has contended that specific conduct has been brought to the notice of the authorities, yet a defaulter has been favoured and this is a case of granting benefit to such a defaulter person, and in such circumstances what more malafide of authorities are required to be proved. It is contended that even after passing the order in the note sheet reducing the area of respondent No. 4 which was earlier granted under the reconnaissance permit, the amount was not properly deposited by respondent No. 4 and, therefore, the respondent No. 4 was to be treated as defaulter. It is contended by learned Senior Counsel for the petitioner that the note-sheet produced along with the writ petition as also with

the rejoinder obtained under Right to Information Act indicates that the actions taken by respondent No. 3 were nothing but pure malafide. Drawing the attention of this Court that respondent No. 3 was added as a party by name only because of these malafides, it is contended that reply to the allegations was required to be filed by the said respondent. Since there was no reply filed by the said respondent, it is to be treated as if he has accepted the allegations made and, therefore, all actions taken by the said authority or at the behest of said authority, are bad in law. It was necessary to take appropriate action against the respondent No. 4 for all such faults, which have been specifically pointed out. Instead of doing this, the benefit of granting of prospecting licence has been extended, therefore, such an order is bad in law and is liable to be quashed.

3. Heard Learned Counsel for the parties at length and perused the documents minutely.

4. For the purposes of examining the allegations of malafides, it is necessary to see whether the respondent No. 3 was ever served by the notice of this writ petition or not. The order-sheet dated 08.11.2011 indicates that the notice of the writ petition was delivered to the learned Govt. Advocate present in the Court. The said Govt. Advocate was directed to seek instruction and file reply as to under what circumstances the impugned order dated 19.10.2011 was passed. Since there was no direction given by this Court to issue the notice of the writ petition to respondent No. 3, it is to be held that in fact the allegations of malafides made against the respondent No. 3, were not accepted by this Court and as such notice of the writ petition was not issued to the respondent No. 3 though the said authority was made a party by name. Since such a notice was never issued or served on reply has been filed by the said respondent No. 3, the allegations made against him in the petition are to be treated as admitted. However, the interim direction issued by this Court was that in the meanwhile any action taken pursuant to impugned order will be subject to final outcome of the petition. In the light of this, further consideration is done.

5. For the purposes of reaching to a definite conclusion it is to be seen whether the respondent No. 4 was a defaulter or not and whether the respondent No. 4 could be extended any benefit under the Act or the Rules, ignoring the earlier default of the respondent No. 4. It is the categorical averment made by the petitioner that the respondent No. 4 was granted a reconnaissance permit. A map was prepared by the respondent No. 4 seeking reconnaissance permit for different minerals and not for laterite. The reports were received that the area as has been mentioned for which the approval has been granted by the Central Government as per the rules, was more than what was sanctioned to the respondent No. 4 under the aforesaid reconnaissance permit. The action was initiated in this respect and show cause was also given to the respondent No. 4. The note-sheet as has been put on record along with the rejoinder of the petitioner indicates that complete hearing in this respect was done. It is to be seen that reconnaissance permit holders are not to be given preference over and

above other candidates or applicants only because of holding a reconnaissance permit in a particular area. There are certain conditions which are prescribed u/s 11 of the Act, which are to be fulfilled by such reconnaissance permit holder. Sub-section (1) of Section 11 of the Act prescribes certain preferential right. Such a preferential right is available only to those, who have not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence, as has been categorically provided in sub-clause (b) of proviso to sub-section (1) of section 11 of the Act. It is not disputed that the respondent No. 4 was earlier granted reconnaissance permit for certain minerals in the very same area and the area of the survey number of land for which the petitioner made an application for grant of prospecting licence was also included in the said area of reconnaissance permit granted to the respondent No. 4. Thus, it was necessary to be examined whether the respondent No. 4 was performing any operation pursuant to the reconnaissance permit granted to it or not in appropriate manner in terms of the rules and the provisions of the Act or not.

6. The breach of terms and conditions are prescribed in sub-clause (1A) of sub-section (1) of Section 4 of the Act. Penalties for such a breach are prescribed u/s 21 of the Act, which prescribe that whoever contravenes the provisions of sub-section (1) or sub-section (1A) of Section 4 shall be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twenty five thousand rupees or with both. The note-sheet placed on record along with the rejoinder contains that there was a complaint received that some wrong was committed by the respondent No. 4. It was recorded in the note-sheet that the respondent No. 4 made an application on 05.01.2007 for grant of reconnaissance permit of an area of 2500 square kilometers of district Sidhi for the minerals iron ore, manganese ore, titanium, vanadium and nickel and other ancillary minerals. It was found that an area of 42 square kilometers applied for by the respondent No. 4 was already granted under the reconnaissance permit to one M/s Premier Nickel Mines Pvt. Ltd. Therefore, this area was excluded from the area applied by the respondent No. 4 and area of 2458 square kilometers was granted in reconnaissance permit to respondent No. 4. The execution of the agreement was done on 04.02.2009 and the period of reconnaissance permit was with effect from 04.02.2009 to 03.02.2012. The map as was placed along with the application by the respondent No. 4 indicated that an area of 3340 square kilometers was included in the said map whereas application was made only for an area of 2500 square kilometers. Thus, an area of 840 square kilometers more was included in the map placed by the respondent No. 4 along with the application and since the application was only for an area of 2500 square kilometers, excluding the area of reconnaissance permit of other company referred to above, sanction was granted by the Government of India, Ministry of Mines, for grant of reconnaissance permit on an area of 2458 square kilometers to the respondent No. 4. Calculating the required fees as per the application made, the respondent No. 4 has paid only Rs. 12500/- as application fees and the security for area of 2458 square kilometers amounting to Rs.

49,160/- and the fees Rs. 49,160/- for grant of such reconnaissance permit for one year. The note-sheet reveals that this mistake was committed only because the respondent No. 4 had placed on record along with the application of reconnaissance permit a wrong map. The show cause was thus issued and the proceedings were drawn. The note-sheet further stated that the reconnaissance permit granted to the respondent No. 4 was to be modified. Even the proposal was made that reconnaissance permit granted to respondent No. 4 should be declared as lapsed. The period for correction in the reconnaissance permit was extended and the respondent No. 4 was even offered to execute a supplementary agreement. For all these purposes, the proposal was made for cancellation of reconnaissance permit granted in favour of respondent No. 4 but this was much before even when the application of the petitioner was put under consideration. It was also found that some part of the land falls within the forest land and the Forest Conservation Act, 1980 was applicable, therefore, unless such a no objection or previous approval is obtained from the Forest Department, benefit was not to be granted to respondent No. 4. When the matter came to the notice of authorities of the State, it was necessary for the departmental authorities to look into this first and then only to reach to a conclusion, but no orders were passed. Ultimately final order was passed by the Ministry in the year 2009 only, without taking any action against the respondent No. 4.

7. If all these conducts and acts are taken into account, it will be clear that there was a mistake committed by respondent No. 4 in making the application for reconnaissance permit and when remedial action was initiated, instead of accepting the mistake, the respondent No. 4 pleaded that entire area be granted to it. Even when no application for grant of such area under the reconnaissance permit was made and when no fees was paid for the said purposes, the insistence made by the respondent No. 4 was enough proof of the fact that improper map was deliberately placed by it to take advantage, which otherwise was not available to respondent No. 4. Thus, it is to be held that respondent No. 4 was in fact a defaulter and was not to be given any benefit.

8. In view of this it is to be examined whether the respondent No. 4 was entitled to grant of preference over and above the petitioner when already the petitioner was found eligible to be granted the benefit of prospecting licence after detailed hearing? From the records it is clear that all the applications were considered by the Minister only after hearing of the applicants. There was no application made by the respondent No. 4 for grant of prospecting licence for the mineral laterite. Nothing is placed on record to indicate that the laterite mineral was found during the reconnaissance operation done by the respondent No. 4. In such circumstances, if reconnaissance permit of respondent No. 4 was not to be given preference, and an applicant who was seeking prospecting licence was found eligible and in his respect the final decision was taken, how the benefit could be extended to respondent No. 4, that too allegedly in reference to the provisions of Rule 7C of the Rules. Proviso added to the provisions of Rule 7C of the Rules becomes applicable only after the reconnaissance permit of the respondent No. 4.

was valid and free from all circumstances. Since recommendation was made in the note-sheet, indicating default of respondent No. 4, for cancellation of reconnaissance permit of respondent No. 4, necessary orders were required to be passed in this respect. As have been narrated herein, instead of cancelling the reconnaissance permit of respondent No. 4, the area is got vacated for the purposes of giving benefit of prospecting licence to respondent No. 4 by the impugned order. Again it is said that reconnaissance permit is granted only for the purposes of search of iron ore and not for the laterite. If the application of the petitioner was only for the mineral laterite, unless the mineral is found and an appropriate application is made by the respondent No. 4 for claiming preference of reconnaissance permit on the said mineral, the area was not to be vacated nor was to be granted to respondent No. 4 for prospecting licence.

9. The most important aspect is preference available u/s 11 of the Act. Sub-section (2) of Section 11 of the Act prescribes that if the area is not notified in the official Gazette for grant of reconnaissance permit or prospecting licence or mining lease and two or more persons have applied for a reconnaissance permit, prospecting licence or mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right for grant of reconnaissance permit, prospecting licence or mining lease as the case may be. The application was submitted by the petitioner as is evident from order (Annexure P-4) on 16.12.2008. On that day there was no application made by respondent No. 4 for grant of prospecting licence. All other applications submitted by other persons for the very same area were subsequent to the application made by the petitioner for the specific mineral laterite. Thus, the petitioner was entitled to grant of preference. It is also abundantly clear that the area is not notified in the official Gazette and, therefore, this preference was available to the petitioner. From the perusal of Annexure P-4 it is clear that whosoever have applied for mineral laterite on the very same survey number of the land, have applied only after making application by the petitioner. For example M/s Gurukripa Enterprises has applied on 16.01.2009 M/s Galaxy Mines & Minerals has applied on 21.01.2009 Smt. Kanti Shukla made an application on 16.02.2009, M/s Maa Bhadrakali Minerals & Enterprises made an application on 16.02.2009, M/s Vidyasagar Mines & Minerals applied on 21.05.2009, M/s Pashupati Export made application on 03.12.2009, M/s Balaji Minerals made applications on 08.12.2009 and 23.12.2009, M/s Jay Bharti, Jabalpur Minerals & Steel made an application on 22.01.2010, M/s Narmada Mines & Minerals made application on 07.04.2010, Shri Abhay Pathak made application on 27.04.2010, M/s Raipur Power & Steel Ltd. Applied on 28.04.2010, M/s Anik Industries made the application on 28.05.2010 and M/s Neva Steels & Fero Alliance Pvt. Ltd. Made an application on 28.05.2010. Thus, rightly the claim of the petitioner was considered and the order was passed. To say that no order was passed on the application of the petitioner is not proper or correct. Only the consequential actions were not taken, the matter was not referred for grant of approval and for executing an agreement with the petitioner.

10. As has been contended by the respondents, it is said that an application was submitted by the respondent No. 4 exercising its right under Rule 7C of the Rules and intimating that no prospecting licence or mining lease within the area granted under the reconnaissance permit to the said respondent, be granted to any other application, in respect of other minerals also inasmuch as there was likelihood that the respondent No. 4 may discover availability of minerals covered under the permit. It cannot be said that by this application the respondent No. 4 informed that for any other mineral if any application is made, the claim of the respondent No. 4 should also be considered. That apart, the respondent No. 4 was a defaulter on that day when the application was made, i.e. on 13.07.2009, supplementary agreement was not executed by the respondent No. 4. That apart, there was change in the partnership of the respondent No. 4 and this fact was to be taken note of but this too was ignored. The application was submitted subsequently after when the matter was finalized in favour of the petitioner and, therefore, such an application was not to be considered at all. That being so, the respondent No. 4 was not to be favoured by grant of prospecting licence also for the same area.

11. In view of these facts it cannot be said that order granting prospecting licence in favour of respondent No. 4 was just and proper. The circumstances as have been benefits of Rule 7C would have been granted to respondent No. 4. There were defaults on the part of respondent No. 4 Even if power to condone such default is available to the respondent State Government, though none is found, the same was not to be exercised so casually. After all the State Government is custodian of such minerals and natural wealth of State for the betterment of public at large and if it is required to take strict action for protection of such mineral wealth, it should not feel shy in doing so. If any lenient view is to be taken, there should be a reasonable cause and grounds and such cause and grounds should be specifically scribed down. The note-sheet reflected same thing else. For such reasons it cannot be said that such action of respondent State Government was free from the voice of arbitrariness. As such the order impugned cannot be sustained.

12. The objection could be that against such an action a revision was required to be filed or that since the order was not yet approved by the Central Government, therefore, petition was not to be filed before this Court. To this, if it is found by this Court that something dehors the Act or Rules is done by the State Government, this Court will not hesitate in exercising extraordinary jurisdiction u/s 226 of the Constitution of India to strike down the wrongs. For the reasons stated above, this Court will not shut and close its eyes and will not sit a spectator. It is true that in ordinary course if the alternative remedies are available, this Court would be hesitant in exercising its extraordinary power but the case in hand is one where apparently a defaulter has been favoured at the cost of the petitioner and, therefore, the objection regarding maintainability of the writ petition is to be ignored.

13. In view of the aforesaid, this writ petition succeeds and is hereby allowed. The order impugned dated 19.10.2011 contained in Annexure P-1 is hereby quashed. The respondents are directed to refer the matter for grant of approval of the Central Government pursuant to grant of prospecting licence for mineral laterite to the petitioner in land of Survey No. 66, area 26.110 hectares of village Andheri Gadai, District Sidhi, without any loss of time. The writ petition succeeds and is allowed to the extent indicated hereinabove. There shall be no order as to cost.