

(2000) 07 P&H CK 0027
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1643 of 1999

Yag Dutt Sharma

APPELLANT

Vs

State of Haryana and others

RESPONDENT

Date of Decision : 11-07-2000

Acts Referred:

Citation : (2000) 4 RCR(Civil) 672

Hon'ble Judges : K.S. Garewal, J;Jawahar Lal Gupta, J

Bench : Division Bench

Advocate : C.B. Goel, for the Appellant; Ritu Bahri, D.A.G., Haryana, for the Respondent

Final Decision : Dismissed

Judgement

Jawahar Lal Gupta, J.—In the year 1992, the Petitioner was granted a mining lease for slate stone in an area measuring 43.93 hectares of land in District Gurgaon. This would be approximately 868 Kanals 7 Marlas of land. The lease was for a period of five years which was to expire on June 29, 1997. On June 2, 1997, the Petitioner applied for the renewal of the lease. Finding that no order had been passed, the Petitioner approached this Court through CWP No. 11038 of 1997. Notice of the petition was issued to the Respondents. A reply was filed. It was inter alia pleaded that the Petitioner's application for renewal was pending and that it shall be decided "on merits" The writ petition was disposed of vide order dated August 26, 1997 with the direction to the Respondents to decide the Petitioner's case within two months. Vide order dated September 11, 1997, the Director, Mines and Geology rejected the Petitioner's prayer for renewal of the lease. On January 7, 1999, the State of Haryana published a notice in the Government Gazette inviting applications for the grant of mining lease. On February 3, 1999, the Petitioner approached this Court through the present writ petition. He complains that his request for renewal of the lease has been wrongly rejected. He prays that the order dated September 11, 1997 be quashed and that the Respondents be directed to renew the lease.

2. A written statement has been filed on behalf of the Respondents. The claim made by the Petitioner has been controverted.

3. Counsel for the parties have been heard. Mr. C.B. Goel, counsel for the Petitioner has made a two-fold submission. Firstly, it has been contended that the order dated September 11, 1997 is vitiated as it is contrary to the undertaking that had been given to this Court while filing a reply in CWP No. 11038 of 1997. Secondly, the counsel has submitted that the provisions of Rule 56 of the Punjab Minor Mineral Concession Rules, 1964 which permit the Government to relax the rigour of the statutory rules is violative of Article 14 as it permits the grant of relaxation in case of Government companies and corporations and not in others. On this basis, he prays that the writ petition should be allowed. The claim made on behalf of the Petitioner has been controverted by Ms. Ritu Bahri, learned Counsel appearing for the Respondents.

4. The two questions that arise for consideration are:

(i) Is the order dated September 11, 1997 a copy of which has been produced as Annexure P.5 with the writ petition contrary to the plea taken in the written statement that had been filed on behalf of the Respondents in CWP No. 11038 of 1997?

(ii) Is Rule 56 ultra vires the Constitution?

5. The Petitioner has not produced a copy of CWP No. 11038 of 1997. Even a complete copy of the written statement has not been filed. However, a part of the written statement has been reproduced in para 11 of the writ petition. The reproduced portion reads as under:

That according to the provisions of Sub-rule (2) of Rule 18 of the Punjab Minor Mineral Concession Rules, 1964 (hereinafter stated as "State Rules"), the application for renewal of the mining lease shall be made in Form "C" before six months of the expiry of the lease and upon payment of a fee of Rs. 100/-. The provision is mandatory and any application not according to the provisions is liable to be rejected. In the instant case, the lease was granted to the Petitioner for a period of 5 years from 30.6.1992 to 29.6.1997. The period of lease expired on 29.6.1997. The Petitioner applied for renewal of mining lease in Form "C" only on 2.6.1997 i.e. just 27 days before the expiry of mining lease instead of six months. However, the application of the Petitioner is still being considered by the State Government on merit and a decision will be conveyed in due course of time. In view of the above position the writ petition is premature and is liable to be dismissed on this ground alone.

6. A perusal of the above clearly shows that the Respondents had pointed out that the Petitioner had failed to comply with the requirements of Rule 18(2). Thus, the application was liable to be rejected. Still further, it has been averred that he had submitted his application "on June 2, 1997 i.e. just 27 days before the expiry of mining lease instead of six months. However, the application of the

Petitioner is still being considered by the State Government on merit and a decision will be conveyed in due course of time". Even this part of the written statement shows that the Respondents had clearly taken the plea that the Petitioner's application was belated. Yet, it was being considered. The delay in the submission of the application was not being overlooked. It was specifically pointed out.

7. What is the factual position in the instant case ? The Petitioner's application was in fact considered. In the impugned order, it has been inter alia observed as under:

In accordance with Rule 18(2) of Punjab Minor Mineral Concession Rules, 1964. the lessee shall have to make an application for the renewal of mining lease in Form "C" before six months of the expiry of the lease. It has further been provided in this rule that the renewal will be subject to the condition Govt. being satisfied that the mines have been developed by the lessee.

You were granted the mining lease in village Pingwan for the period from 30.6.1992 to 29.6.1997. As per Rule 18(2) of the Rules *ibid* you were required to submit the application for renewal of mining lease on or before 29.12.1996 whereas you have submitted the same only on 2.6.1997. Thus, you have not complied with mandatory provisions of the said rule. Moreover, during the currency of the lease period of five years, you had been paying mainly the dead rent, which shows that you had not developed the mine properly. Reg.(i):

8. A perusal of the above order shows that the Respondents had taken the view that the Petitioner had not complied with the mandatory provisions of Rule 18. Still further, it was also found that "during the currency of the lease period of five years..."the Petitioner had been "paying mainly the dead rent, which shows that....(he) had not developed the mine properly". Accordingly to the Respondents, the Petitioner had failed to develop the mine properly as a result of which it was not possible to renew his lease.

9. Ms. Ritu Bahri, learned Counsel appearing for the Respondents has pointed out that the mine had been initially given to the Petitioner on lease @ Rs. 20/- per hectare per annum. Subsequently, the rate was raised upto Rs. 500/-. The Petitioner had also to pay royalty for the slate stone extracted by him. However, he was basically paying only the rent and not any significant amount of royalty. It is on this basis that the authority had come to the conclusion that he had been paying mainly the dead rent. Besides this, she has also pointed out that a show cause notice had been issued to the Petitioner on November 23, 1994. In this notice, it was pointed out that he had to pay royalty on the stone extracted. No royalty had been deposited for the period from March 1994 to October 1994.

10. The facts when considered cumulatively do indicate that the Petitioner's performance was not considered to be upto the mark. In any event, on a perusal of the order, we are satisfied that the Petitioner's prayer for renewal of lease was not summarily rejected on any technicality but the decision was on the merits of

the case. Resultantly, the first question, is answered against the Petitioner.

Reg. (ii).

11. So far as the second question is concerned, it really does not arise in the facts and circumstances of the present case. Consequently, it is not necessary to go into this question in detail. We may only observe that the Government does not normally work for profit. It works for the benefit of the public. Thus, a special provision has been made in favour of Government Companies or Corporations or other instrumentalities of the State. The Petitioner cannot complain of the violation of Article 14 of the Constitution. Per se, the classification is not arbitrary or unfair, In any event, nothing has been pointed out by the counsel for the Petitioner to show that equals have been treated unequally. Resultantly, even the second question cannot be answered in favour of the Petitioner.

12. No other point has been raised.

13. We find no merit in this writ petition. It is consequently, dismissed. However, in the circumstances of the case, the parties are left to bear their own costs. The interim order which had been passed by the Bench in February 1999 shall stand vacated.

Sd/- K.S. Garewal, J.