
(2017) 03 MP CK 0053
In the Madhya Pradesh High Court
Case No : 3563 of 2016

Yogesh Shah

APPELLANT

Vs

State of Madhya Pradesh and others

RESPONDENT

Date of Decision : 03-03-2017

Acts Referred:

[Madhya Pradesh Minor Mineral Rules, 1996](#), Rule 66, Rule 26, Rule 36(2)

Citation : (2017) 03 MP CK 0053

Hon'ble Judges : S.K. Gangele, Anurag Shrivastava

Bench : Division Bench

Advocate : Naman Nagrath, Shreyas Dharmadhikari, Awesh Shrivastava, Ankit Agrawal, A.A. Barnard, Jitendra Shrivastava, Manoj Kumar Agrawal

Judgement

1. Petitioner has filed this petition against the order dated 26.12.2015 (Annexure P/11), by which the Under Secretary of Mining Department, State of Madhya Pradesh ordered that the mining lease be granted in favour of the respondents No. 5 and 6 of two mines.

2. The Collector, (Mining Branch), District Burhanpur issued an auction notice in a prescribed proforma as per Rule 36(2) of M.P. Minor Mineral Rules, 1996 (hereinafter referred as "the Rules of 1996"). By the aforesaid notice, persons were invited to participate in an auction, which had been held on 06.12.2014 at the office of the Collector, Burhanpur for grant of mining lease rights in regard to certain quarries mentioned in the schedule. In the schedule, two quarries i.e. Nachankheda and Rehta, area of 7 hectares and 5 hectares respectively, were also included. The petitioner and other persons participated in the auction. The bids of respondents No. 5 and 6 were found highest. Hence, their bids were accepted. The bid of mining lease situate at village Rehta was finalized in favour of respondent No.5 and the bid of village Nachankheda was finalized in favour of the respondent No. 6. Letters of allotment were issued in favour of the respondents No. 5 and 6 vide order dated 24.12.2014.

3. The respondents were granted 6 months" time to submit necessary environmental clearance from the prescribed authority i.e. State Environment Impact Assessment Authority and the mining plan duly approved and sanctioned by D.G.M.

4. The respondents did not fulfill the aforesaid condition. As per the condition of bid document, the successful bidder had to execute the agreement within 30 days.

5. Because the respondents No.5 and 6 did not submit the required documents within stipulated time i.e. within 6 months. Show cause notices were issued to them by the Assistant Mining Officer, Burhanpur on 26.08.2015. It is mentioned in the show cause notices that as per the letter of acceptance of bid, the respondents No. 5 and 6 had to submit approved mining plan and environment clearance within 6 months, however, the respondents did not submit the aforesaid documents with the department. Hence, the respondents are directed to show cause that why the bid be not canceled and the security be not forfeited. It is an admitted fact that the respondents No. 5 and 6 did not submit the required mining plan and environment clearance.

6. The respondent No.5 submitted environment clearance on 02.09.2015 and mining plan on 07.12.2015. He further pleaded that there was a delay due to family reasons. Hence, the delay be condoned. The Collector (Mining Branch), Burhanpur on 09.12.2015 wrote a letter to the Director, Mining and sought instructions from the authority in this regard. The Director (Mining) vide letter dated 11.12.2015 directed the Collector (Mining Branch) to take action in accordance with the provisions of the Rules of 1996. On 22.12.2015, the Collector (Mining Branch), Burhanpur wrote a letter to the Director mentioning the facts that three sand quarries of the District were canceled due to non execution of agreement which were put to auction on 08.10.2015. There is scarcity of sand in the district. Hence, the permission to execute agreement in regard to sand quarries of village Rehta may be granted.

7. The Under Secretary, State of Madhya Pradesh vide letter dated 26.12.2015 granted permission to the Collector (Mining Branch) to execute agreement and grant mining lease in favour of respondents No.5 and 6 in regard to sand quarries of village Rehta and Nachankheda. It is mentioned in the order that the Collector (Mining Branch) observed in the letter that there was a need of sand in the district. Hence, the State Government in exercise of powers conferred under Rule 66 of the Rules of 1996 relaxed the time limit of 6 months as envisaged under Section 33 (3) of the Rules of 1996 and granted permission to execute agreement for grant of mining lease in favour of the respondent No. 5 and 6. Thereafter, the agreements were executed in favour of respondents No. 5 and 6.

8. Learned Senior Counsel appearing on behalf of the petitioner has contended that the authority has committed an error in exercising powers under Rule 66 of the Rules of 1996 in favour of respondents No. 5 and 6. The provisions of W.P.

No. 3563/2016/5 Rule do not confer any such power with the State Government to grant lease of sand quarries in favour of the persons who had not followed the terms and conditions of the Statutory Rule 26.

9. Learned counsel appearing on behalf of respondents No. 5 and 6 has contended that the provisions of Rule 26 of the Rules of 1996 are not applicable in the case of sand quarries. He further submitted that the petitioner himself was granted relaxation by the competent authority and the Government has rightly exercised power under Rule 66 of the Rules of 1996.

10. Learned counsel appearing on behalf of the State has submitted that the matter is pending before the State Government for reconsideration and the Collector has also forwarded a letter to the Government and action will be taken in accordance with the letter of the Collector.

11. Rule 26 of the Rules of 1996 provides that where a quarry lease is granted, the lease deed should be executed within three months from the date of order of sanction of the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked. Proviso of the aforesaid Rule gives power to the sanctioning authority to permit execution of lease agreement after expiry of the aforesaid period of three months. Rule 26 of the Rules of 1996 reads as under : "26. Lease to be executed within three months. - Where a quarry lease is granted or renewed, the lease deed in Form VII shall be executed and registered under the Indian Registration Act, 1908 (No.16 of 1908) within three months of the order of sanction of the lease and if no such lease is executed within the aforesaid period, the order sanctioning the lease shall be deemed to have been revoked : Provided that where the Sanctioning Authority is satisfied that the applicant is not responsible for the delay in the execution of the lease deed, the Sanctioning Authority may permit the execution of the lease deed after the expiry of the aforesaid period of three months."

12. Rule 66 of the Rules of 1996 further gives power to the State Government to grant quarry lease i.e. trade quarry on the terms and conditions other than those prescribed in these rules. The relevant Rule reads as under: "66. Relaxation of rules in special cases. - In any case or class of cases in which the State Government is of the opinion that the public interest so requires it may grant a quarry lease/[trade quarry] on the terms and conditions other than those prescribed in these rules."

13. Admittedly, in the present case, the Collector (Mining) who is the sanctioning authority of lease in favour of the respondents No.5 and 6 did not exercise power under the proviso of Rule 26 of the Rules of 1996. He sought instructions from the Director Mining. Thereafter, he had written a letter to the Director that there was scarcity of sand W.P. No. 3563/2016/7 in the district, hence, the lease of Village-Rehta may be granted under Rule 66 of the Rules of 1996. Thereafter, the Under Secretary of the Department passed the impugned order dated

26.12.2015 (Annexure P/11). By the aforesaid order, the Under Secretary exercised the powers under Rule 66 of the Rules of 1996 and granted permission to execute mining lease in favour of the respondents No.5 and 6. The Authority observed in the order that the respondents did not submit mining plan and environment clearance within time, hence, the agreement was not executed. The Collector (Mining) did not cancel the bids and he had made recommendation that the operation of mines is necessary so that development works could not suffer. There was scarcity of sand in the district. Hence, permission is granted to execute the lease deed in favour of the respondents.

14. In our opinion, this is not the object of Rule 66 of the Rules of 1996. Rule 66 gives power of relaxation of Rules in special cases to the State Government. State Government means Competent Authority. There is no decision appended by the respondents/State alongwith the return of the State Government to the effect that the quarry lease of two villages in favour of the respondents No. 5 and 6 be granted. There is a letter of Under Secretary. However, there is endorsement of the concerned Minister. But, no record has been produced that what proceedings were transpired in the Government where the decision had been taken to exercise powers under Rule 66 of the Rules of 1996.

15. Rule 66 is an exception to other Rules envisaged in the Rules of 1996. The exception has been construed strictly. The power under the aforesaid Rule is extraordinary power because Rule 66 gives relaxation and the power could be exercised in special cases. Respondents No.5 and 6 are being given benefit in comparison to other persons. This Rule does not permit the authority to give benefit in favour of the persons who have not complied the terms and conditions of Rule 26 of the Rules of 1996. This is a special power and it can be exercised by the Government in extraordinary circumstances. As per the facts of the case, the auction was held on 06.12.2014. The respondents did not submit the required mining plan and environment clearance upto 09.12.2015 i.e. for a period of one year. In that circumstances, the Collector (Mining) could have easily canceled the bids and issued fresh auction notice. Why it was not done? There is no answer. Prima facie, in our opinion, the action of the Government of exercise of power under Rule 66 of the Rules of 1996 is arbitrary and illegal.

16. We are not inclined to accept the argument of the counsel for the respondents No.5 and 6 that the provisions of Rule 26 would not be applicable in the case of trade quarry and quarry lease. The lease was of minor mineral and the Collector (Mining) is the competent authority to grant lease in accordance with the rules. Rule 26 clearly provides that where a quarry lease is granted or renewed, the provisions of Rule 26 would be applicable. The lease in question is a quarry lease of sand because Schedule II of the Rule of 1996 includes other minerals i.e. sand/bajri. Hence, Rule 26 is applicable.

17. The petition is allowed. The impugned order Annexure P/11 dated 26.12.2015 is hereby quashed. The agreements executed in favour of the respondents No.5 and 6 and the lease granted to them in pursuance to order

dated 26.12.2015 are also hereby quashed. The competent authority is directed to hold a fresh auction of the quarries as early as possible in accordance with law. The respondents would be eligible to get refund of the amount in accordance with the provisions of Rules of 1996.

18. No order as to costs.