

(2002) 08 JH CK 0059

Jharkhand High Court

Case No: Writ Petition (Civil) No. 3728 of 2001

Jitendra Nath
Banerjee and Others

APPELLANT

Vs

Union of India (UOI)
and Others

RESPONDENT

Date of Decision: Aug. 13, 2002

Acts Referred:

- Bihar Minor Mineral Concession Rules, 1972 - Rule 21
- Mineral Concession Rules, 1960 - Rule 24(4), 24(5), 59, 60
- Mines and Minerals (Development and Regulation) Act, 1957 - Section 10, 11, 12, 4(3), 5(1)

Hon'ble Judges: S.J. Mukhopadhaya, J

Bench: Single Bench

Advocate: B. Poddar, AAG and N. Thakur, J.C. to AAG, Ram Balak Mahto and A.K. Sahani, for the Appellant; P.D. Agarwal, Addl. CGSC and Tarak Nath Roy and K. Roy, for the Respondent

Final Decision: Dismissed

Judgement

S.J. Mukhopadhaya, J.

The three petitioners, namely, Jitendra Nath Banerjee, Bihari Lal Munka and S.B. Mandal being not satisfied with the common final order No. 56 of 2001 dated 23rd July, 2001 passed by the Director of Mines, Ministry of Mines, Government of India, New Delhi in File Nos. 6(1)/2000-RC-1; 6(2)/2000-RC-1 & 6 (3)/2000-RC-1, have challenged the same.

The revision applications as were preferred by petitioners and contesting Respondents in respect to mining lease connected with the files aforesaid were disposed of by common revisional order dated 23rd July, 2001 holding the subsequent lease granted in favour of petitioners without fulfilling the mandatory

requirements of the Rules 59 & 60 of the Mineral Concession Rules, 1960 (M.C.R. 1960 for short), would be violative of provisions and nullity. The State Government was directed to follow the provisions of Rules 59 and 60 aforesaid and to take steps, in accordance with law, before proceeding further. The consequential letter Nos. 826; 827 and 828, all dated 31st July, 2001 issued by Assistant Mining Officer, Jamshedpur restraining the petitioners from further mining operations, have also been challenged.

2. For proper appreciation and disposal of the case, I have taken the few relevant facts, which are given hereunder.

A mining lease of Minor Minerals (Stone) for excavating and despatch for an area of 13.10 acres of land having plot No. 1824, Mouza-Matku, P.S. Ghatsila, district --East Singhbhum was originally granted on 6th July, 1976 in favour of petitioner No. 1, Jitendra Nath Banerjee. It was renewed from time to time and remained valid till 6th July, 2001. Similar mining lease for excavating and despatching minor minerals (stone) was granted in favour of petitioner No. 2, Bihari Lal Munka on 2nd July, 1978 for an area 12.88 acres in the same Mouza-Matku having Plot No, 1824 (Part) and 1733 which was renewed from time to time. It was lastly renewed on 3rd July, 1992 for a smaller area of 8.75 acres for a period of ten years upto 2nd July, 2002. In the same manner, an area of 8.5 acres in the same Mouza-Matku with Plot No. 1895 (Part), a lease for excavation and despatch minor minerals (stone) was granted in favour of petitioner No. 3, S.B. Mandal on 9th February, 1988 which was renewed from time to time and expired on 9th February, 1998.

During the period the mining lease aforesaid were subsisting, on an application received, the Mining Officer, Jamshedpur, vide letter Nos. 824/M, 824/M, and 825/M, all dated 10th July, 1996 intimated the petitioners that the mineral of the lease area is a "major mineral". A report, in this regard, was obtained from the Deputy Director (Zeology), Singhbhum who affirmed that the minerals excavated by petitioners from the area is "Magnesium Silicate" commonly known as "Pyroxenite". The petitioners were prohibited from mining and asked to remain present in the lease hold area on a day for collection of extracted minerals for examination by zeology Department. The petitioners preferred Appeal Nos. 1, 2 & 3 of 1996 respectively before the Deputy Director, Mines, Ranchi who admitted the appeals and vide order dated 19th July, 1996 directed the Mining Officer, Jamshedpur not to stop mining. In pursuance of the said order, the District Mines Officer, vide letters all dated 25th July, 1996 allowed the petitioners to continue mining operations but prohibited them from despatching minerals on excavation. Again the petitioners preferred appeals before the Deputy Director, Mines against the aforesaid orders all dated 25th July, 1996, wherein the Deputy Director, Mines vide order dated 26th July, 1996 allowed the petitioners to extract and despatch minerals during the pendency of the appeals. The appeals were finally disposed of by the Deputy Director, Mines, Ranchi on 5th November, 1996 holding the minerals, in question, "not defined" under the first

schedule of the Mines and Minerals (Regulation Development) Act, 1957 or under Sections 4(3); 5 (1) and (2) and 8(2) of the Act, 1957. The petitioners were asked to file fresh applications for mining lease of "Magnasium Silicate (Pyroxenite)" within 90 (ninety) days and the District Mining Officer, Jamshedpur, in the meantime, was directed to allow the petitioners to continue mining and despatch of minerals and to obtain undertaking from petitioners that they will abide by the decision of the Government of Bihar regarding payment of royalty etc.

The petitioners in pursuance of aforesaid order of Deputy Director of Mines, Ranchi dated 5th November, 1996 expressed their willingness to obtain fresh mining lease for the lease hold area. The Deputy Commissioner, East Singhbhum also vide its letter No. 1336 dated 11th November, 1996 directed the petitioners to apply for mining lease of major minerals, namely, "Magnasium Silicate (Pyroxenite)", if they are interested.

The petitioners, on the one hand, applied for grant of fresh mining lease of "Magnasium Silicate (Pyroxenite)", while on the other hand, preferred writ petition, CWJC No. 4187, 4188 and 1996 (R) 4189 for a declaration that Section 2 of Act, 1957 has denuded the State Legislature of the legislative power with respect to Mines & Mineral development and the entire legislative fields taken over by the Parliament. Further declaration was sought for that the petitioners hold a valid existing lease and the letter dated 5th December, 1996 issued by the District Mining Officer, as per the order of the Deputy Director, Mines is illegal and unconstitutional. The writ petitions were dismissed by a Division Bench, vide common judgment dated 22nd April, 1997 with observations that the writ petitions shall not come in the way of the petitioners to pursue their applications for grant of mining lease in respect of the new minerals and the authorities were directed to process the applications and pass final order in accordance with law.

3. Thereafter, fresh applications of petitioners for grant of mining lease for minerals, "Magnasium Silicate (Pyroxenite)" were processed by the Deputy Commissioner, East Singhbhum and vide letter Nos. 4008; 4009 and 4010, all dated 14th November, 2000, the said Deputy Commissioner informed the petitioners the decision to grant mining lease in their favour as per Map of the area enclosed therein. The District Mining Officer, Jamshedpur by his letter Nos. 1325, 1326 and 1327 all dated 22nd November, 2000 also informed the aforesaid facts and asked the petitioners to submit ten copies of lease deed with security money which the petitioners submitted by 30th November, 2000.

4. The 7th Respondent, Narendra Singh, proprietor of M/s. Bharat Mining Company also claimed for execution of lease in this favour. Similar application was preferred by 8th Respondent, P.K. Adityadev. The 7th Respondent by letter dated 4th December, 2000 informed that M/s. Bharat Mining Company has already preferred a revision application before the Ministry of Mines, Government of India on 27th November, 2000, so he requested the Deputy Commissioner, Singhbhum not to take

further action.

It appears that the Government of India, in the meantime, approved the action taken by the State authority for grant of mining lease in favour of petitioners. On the revision application preferred by the Respondents, the Government of India called for comments from the Secretary, Government of Jharkhand submitted with its stand that the petitioners have been rightly granted mining lease. Formal lease were executed in favour of petitioners on 25th June, 2001.

In the revision applications, registered in File Nos. 6 (1)/2000-RC-1; 6(2)/2000-RC-1 and 6 (3)/2000-RC-1, the petitioners were impleaded as parties and on hearing the applications u/s 30 of the Act, 1957 read with Rule 55 of MCR, 1960, they were disposed of by common impugned Order No. 56 of 2001, dated 23rd July, 2001. The competent authorities held that the mining lease for minor minerals having terminated the provisions of Rules 59 and 60 of MCR, 1960 are attracted in the case and the mandatory requirements of aforesaid Rules 59 and 60 having violated, the fresh lease granted in favour of petitioners were held to be nullity and void. The State Government was directed to follow the provisions of Rules 59 and 60 of the MCR, 1960 and take other steps, in accordance with law, before proceeding further.

5. It is not in dispute that the petitioners were granted lease for excavation of minor minerals (stone). In July, 1996, it was detected that the mineral is "Magnasium Silicate (Pyroxenite)", not specified under the first schedule under the Act, 1957. The parties accept that the "Magnasium Silicate (Pyroxenite)" having not defined as minor mineral, to be treated major minerals for all practical purposes.

6. Mr. Ram Balak Mahto, learned Senior counsel for the petitioners by highlighting the relevant facts submitted that the power to grant mining lease in respect of minor or major minerals is vested with the State Govt. With regard to major minerals, the only distinction with minor mineral is that the mining plan is to be approved by the Central Government as per Section 5 of the Act, 1957. It was stated that in the present case, the mineral being "Magnesium Silicate (Pyroxenite)" on the direction of the State Government, the petitioners submitted mining plans which were duly approved by the competent authority of the Central Government.

The relevant provisions, in this regard, are Sections 5, 10 and 11 of Act, 1957 which speak of mining lease in respect of any land, where Section 11 deals with the preferential rights in favour of persons who were granted prospecting licence in respect of any land. However, the power to grant licence under Sections 10 and 11 is with the State Government.

It was submitted that the MCR 1960 has been framed by the Central Government in exercise of power conferred u/s 13 of the Act, 1957, notified vide Notification No. 1398 dated 11th November, 1960, the Rules 9, 11 and 22 of MCR 1960 deals with applications for grant of mining lease which is also to be made by the State Government who can grant or refuse to grant lease of mining operations.

Certain amendments were made in MCR, 1960 in between the year 1989 to 1991 by inserting Rules 22 (a) to 22 (c) suggesting the authorities who can approve the mining plan. Under Rule 54 of MCR 1960, the aggrieved person (s) against any order of the State Government or the competent authority can prefer revision application before the Central Government.

It was submitted that the State Government having satisfied and the mining plans submitted by the petitioners having approved by the competent authority of the Central Government, there is no occasion to interfere with the lease which was validly granted in favour of the petitioners.

The Counsel for the petitioners also placed reliance on Section 12 of Act, 1957 as substituted vide Amended Act, 1999 to suggest preferential rights in favour of petitioners having earlier granted prospecting licence. Reliance was also placed on proviso to Sub-section (5) of amended section and submitted that only in respect of minerals specified in first Schedule, prior approval of the Central Government requires to be obtained, meaning thereby, prior approval of the Central Government is "not required" with regard to minerals not specified in the first Schedule. In Schedule 1, appended to Act, 1957 "Magnesium Silicate (Pyroxenite)" having not mentioned and it being a major mineral, according to the petitioners, there was no requirement to obtain prior permission of the Central Government.

Plea was taken that the mineral "Magnesium Silicate (Pyroxenite)" is not a mineral of much importance, but as the Respondent No. 7 in order to take advantage made claim and preferred revision application, wherein the impugned common order dated 23rd July, 2001 was passed, though the application was not maintainable.

The counsel for the petitioners laid much stress on sub-rules (4) and (5) of Rule 24 of MCR 1960, which are quoted hereunder :

"24. Disposal of application for mining lease :

(2) Omitted

(3) Omitted

(4) Where an application for a mining lease for a mineral or minerals not specified in the existing mining lease or mining leases is made for the whole or part of the area held under mining lease by a person other than the lessee, the State Government shall notify this fact (by Registered Post/Acknowledgement due) to the person who already holds mining leases for another mineral in the land applied for.

(5) (a) If on the receipt of information referred to in Sub-rule (4), from the State Government, the lessee applies either for prospecting licence or mining lease for newly discovered mineral or minerals within six months from the date of communication of the information by the State Government, the lessee shall be preferred in respect of such grant.

(b) If the lessee fails to apply for prospecting licence or mining lease within six months, then this fact will be intimated to the applicant by the State Government and the State Government will consider the original application in accordance with the rules."

7. It was submitted that the petitioners having mining lease for the area had preferential rights over others and they having applied afresh, mining plans having approved by the competent authority of the Central Government, there was no requirement to follow Rules 59 or 60 of the MCR 1960.

Reliance was also placed on Supreme Court's decision in the case of [D.K. Trivedi and Sons and Others Vs. State of Gujarat and Others](#), wherein the Supreme Court observed that the term "mineral" defined by Clause (a) of Section 3 includes all minerals, except mineral oils.

Learned counsel for the petitioners submitted that the aforesaid definition given by the Supreme Court would thus include minor minerals, as also minerals other than minor minerals i.e. major minerals. Rule 24 of MCR 1960 will by necessary implications include both minor and major minerals. As per Sub-rule (5) of Rule 24, the petitioners are entitled for preference over others.

8. No specific plea taken on behalf of the State of Jharkhand. According to the Respondent No. 7, Narendra Singh of Bharat Mining Company, the intention behind the Rule 24 (5) of MCR, 1960 is to enable the existing lessee to exercise option as to whether he is desirous of obtaining either a prospecting licence or a mining licence for the newly discovered mineral within six months from the date of communication. The lessee shall be preferred in the matter of obtaining either prospecting licence or mining lease or the new minerals. If, however, the existing lessee fails to apply for a prospecting licence or a mining lease within six months, it will be open to the State to consider the applications of the original applicants in accordance with law. The Rule 24 does not lay down any rule of priority but the preference. The underlined idea is to avoid conflict and tension between the two persons operating in the same area for two different minerals. In the interest of mineral development and in order to ensure efficient and scientific mining, this provision has been made.

The aforesaid submission made on behalf of Respondent No. 7 seems to be of some substance.

9. In the case of [Shri Saligram Khirwal Vs. State of Orissa and Others](#), the Court noticed and discussed Sub-rules (4) & (5) of Rule 24 of MCR 1960 which was also para material, same to Rules 20 and 32 (1) of the Orissa Minor Mineral Concession Rules, 1983. The question arose for decision was whether an existing licensee can claim preferential treatment in the matter of grant of permission or lease for quarrying of a mineral found within the area leased to him. The Court held that on a fair reading and harmonious constructions of the provisions in Sub-rules (4) & (5) of

Rule 24 of the MCR 1960 and similar Orissa Minor Mineral Concession Rules, 1983, the intention seems to be clear that in a case where there is an existing lessee for a mineral/minerals and a new mineral is to be worked within the area included in his lease, he has a preferential right to take lease/permission for working the new minerals. If the lessee finds new minerals in the area and wants to raise it, he has to inform the competent authority and apply for taking lease for the same, if, on the other hand, the authority wants to grant a lease for the new minerals, it has to notify the existing lessee and giving him the opportunity to apply for grant of lease/permission for working the new minerals. The question of considering the application of any other applicant will arise only if the existing lessee refused to work in new mineral or fails to apply for lease of the said mineral within the prescribed time.

10. The counsel for the Respondent No. 7 relied on a separate rule framed by the State Government u/s 15 of Act, 1957 known as the Bihar Minor Mineral Concession Rules, 1972 (Rules 1972 for short). Rule 21 of 1972 Rules prescribed the conditions for mining lease for a minor mineral and a Form-D prescribed thereunder for mining lease of minor minerals. Clause-9 of conditions of lease for minor minerals prescribed under Part-VII of Rules 1972 stipulates the action to be taken on discovery of other minerals, as extracted hereunder ;

PART VII

The Covenants of the Lessee/Lessees

9. To report discovery of other mineral. (a) Whenever the lessee/lessees shall find in the said lands any mineral other than the said mineral/minerals, the lessee/lessees shall report within 13 days such discovery in writing to the Collector with full particulars of the nature and position of each such find. He/they/it or any of his/their/its employees or employees shall not win and dispose of the newly discovered mineral or minerals without first obtaining a lease in respect of those minerals.

(b) If the lessee/lessees intends/intend to work such newly discovered mineral or minerals he/they/it shall within three months of making such report as is mentioned in Sub-clause (a) of this clause intimate his/their/its intention to the Collector and apply for mining lease in respect thereof in accordance with the rules regulating the grant of mining concessions for that mineral. But such mining lease shall not be claimed as a matter of right.

(c) If the lessee/lessees intimates/ intimate his/their/its intention not to work the newly discovered mineral or fails to intimate intention to work it within a period of three months then it shall be open to the collector to grant a licence or lease for the working of the same to any other person."

11. From Clause-9 (a) while it is clear that the provision relates to any other mineral than that minor mineral if found in the lease hold land, for the other mineral, the lessee cannot claim mining lease, as a matter of right. However, in the present case, the provision of Clause-9 of part-VII of Rules, 1972 is not applicable as it is not a case that any other mineral has been discovered in the lease land where lessee was granted lease to excavate some other minor mineral. In the present case, the mineral for which the lease was allowed first treated as minor mineral, but later on, the same mineral was held to be "Magnesium Silicate (Pyroxenite)", which is not minor mineral.

12. Thus, in the present case, the petitioners cannot derive advantage of Sub-rule (5) to Rule 24 of MCR 1960.

13. Now the question arises that even in a case where there is an existing lessee for excavating a mineral, after notice of new minerals for the purpose of giving preferential rights to the lessee under rule 24 (5) of MCR 1960, the provisions of Rules 59 and 60 of MCR 1960 to be followed or not?

14. Rules 58 and 59 of MCR 1960 fell for consideration before the Madhya Pradesh High Court in the case of J.C. Rishi, Bilaspur v. Union of India, reported in 1967 MPLJ 532. The Court held that for the purpose of Rules 58 and 59, to give notice to the people, in general, when the land already covered under mining lease or prospecting licence or reserved for any other purpose has become available for grant of mining lease, the provision of notice is made because it is almost impossible for a person to know the detail as to when the lease expired or it has been expired prematurely when the lands reserved become available. If the procedure is followed, everyone gets an opportunity for applying for grant of lease and no one can take surreptitious advantage of his specific knowledge that the land has become available. It further held that the provisions do not mean that if a person makes an application and State Government grants application and executing a lease deed, all is rendered null and void in absence of notification of land, as contemplated under Rules 58 and 59 of MCR 1960.

If both the provisions of rule 24 is read with Rules 59 and 60, as per the decision of Orissa High Court in Saligram Khirwal (supra) and Madhya Pradesh High Court in JC Rishi (supra), it can be safely stated that even for giving preference under Sub-rule (5 to Rule 24, the provisions of Rules 59 and 60 to be followed. The general notice to be published, calling for applications and only thereafter, in case the existing lessee applies, can be given preference over the others. In absence of application by others, the question of giving preference to existing lessee does not arise and for such application, a notification inviting applications is required to be published.

15. The competent authority vide impugned final Order No. 56 of 2001 dated 23rd July, 2001 took into consideration the fact that the mining lease of petitioners were terminated. The Deputy Director of Mines, Ranchi vide its order dated 5th

November, 1996 allowed the petitioners to file fresh applications. Similar order allowing the petitioners to file fresh applications for grant of mining lease of "Magnesium Silicate (Pyroxenite)" was passed by the Deputy Commissioner, East Singhbhum, vide its letter No. 1336 dated 11th November, 1996. Their lease having terminated, the petitioners having asked to file fresh applications for lease, which they preferred, the competent authority held that the provisions of Rules 59 and 60 of MCR 1960 is attracted in such case and held the grant of lease without issuance of notification, in general, fulfilling the requirements of Rules 59 and 60, as illegal rendering the lease as nullity.

16. For the reasons stated and discussed above, I am not inclined to differ with the findings of the revisional authority as made vide order dated 23rd July, 2001, nor inclined to interfere with the same.

17. There being no merit, the writ petition is dismissed. There shall, however, be no order, as to costs. Writ dismissed.