

Durga Prasad Vs Union of India and Others

Court: Delhi High Court

Date of Decision: Feb. 25, 2000

Acts Referred: Constitution of India, 1950 " Article 226
Mineral Concession Rules, 1960 " Rule 22(3), 26(3), 72
Mines and Minerals (Development and Regulation) Act, 1957 " Section 30

Citation: (2000) 3 AD 569 : (2000) 53 DRJ 687 : (2000) 3 RCR(Civil) 475

Hon'ble Judges: Surinder Kumar Aggarwal, J; Devinder Gupta, J

Bench: Division Bench

Advocate: Mr. P.N. Lekhi and Mr. Rohit Aggarwal, for the Appellant; Mr. Mukul Rohatgi Mr. Jasvir Malik and Mr. Saurabh Kirpal, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

S.K. Agarwal, J.

The petitioner by this writ petition is seeking quashing of the order dated 20th May, 1992 passed by Dr. A. Vravalli,

Joint Secretary (Law) and Mr. Surendra Mishra, Joint Secretary (Mines). Revisional Authority constituted u/s 30 of the Mines and Minerals

(Regulations and Development) Act, 1957 (for short the Act) and Rule 55 of the Mineral Concession Rules, 1960 (for short "the Rules"), by which

the revisional authority set aside the order dated 30th November, 1988, passed by State of Haryana (Respondent No. 2) granting lease to Durga

Prasad (Petitioner) for a period of ten years; and the orders dated 24th January, 1989 and 7th February, 1989 passed by State of Haryana

(Respondent No. 2) rejecting mining lease applications of the respondents No. 3 and 4 and remanding the matter back to Government for

reconsideration of the mining lease applications of the petitioner as well as, of respondents 3 and 4, along with other applicants, in accordance with

law.

2. Facts giving rise to this petition, briefly, are that State of Haryana, vide notification dated 15th January, 1988 issued under Rule 59(1) of the

Rules, invited applications for grant of mining lease for China Clay over an area of 96.7 hectares in village Anangpur, Ballabgarh, District

Faridabad, Haryana. It was an old mine for which State Government wanted to give fresh lease. The applications could be filed within 30 days of

the notification.

3. Six persons submitted applications, viz. Durga Prasad (petitioner), M/s. Bhaskar Stone Warepipes Limited (BSWL Respondent No. 3), J.L.

Jaiswal (Respondent No. 4), Kartar Singh, M/s. Rajdhani Minerals and M/s. Mohan Ram & Company in the prescribed form. Each applicant

under Rule 22 of the Rules, was required to file, along with the application, a mining plan of the area, duly approved by the Indian Bureau of Mines

(for short IBM), since China Clay was a major mineral. None of the applicants initially filed mining plan. Director (Industries), Government of

Haryana, vide letter dated 8.4.1988, under Rule 26(3) of the Rules, called upon all the applicants, to complete their applications and submit their

mining plans; all the applicants sought extension of time for the same but even in the extended time the mining plans were not submitted. On 20th

September, 1988 the petitioner submitted his mining plan and the Director (Industries) recommended his name to the State Government stating that

his was the only complete application.

4. Thereafter on 30th September 1988 Director (Industries) sent a final notice to the remaining five applicants calling upon them to submit their

mining plans within a period 10 days; they were also asked to appear before the Secretary (Industries) to make submissions if any, on 22nd

November, 1988 on which date only Mr. Jaiswal (respondent No 4) appeared and on behalf of BSWL (Respondent No 3) adjournment was

sought on the ground that their Managing Director was ill and was advised medical rest up to 29th November, 1988; remaining applicants also

sought time. After hearing Mr. Jaiswal who was present Secretary (Industries) recommended to the Government the application of the petitioner

for grant of lease to him which was finally approved by the State Government on 30th November, 1988. The lease was executed in his favor on

6th December, 1988 and possession of the same was delivered on 19th December, 1988. Subsequently however, vide orders dated 24th January,

1989 and 7th February 1989 Applicants BSWL (Respondent No. 3) and Mr. Jaiswal (Respondent No. 4) respectively were informed that their

applications were rejected on account of their failure to submit duly approved mining plans.

5. Respondents No. 3 and 4 thereafter filed revision petitions before the Revisional Authority as provided u/s 30 of the Act challenging the orders

dated 30.11.1988 and 6.12.1988 granting lease in favor of the petitioner as also said two orders dated 24th January, 1989 and 7th February,

1989 rejecting their application.

6. BSWL, Respondent No. 3 pleaded that they had submitted the mining, to the IBM on 24th April, 1988 and had resubmitted the plans after

modifications on 11th May, 1988 and the same were pending approval. IBM which is a Government authority did not seek any further

clarification. By letter on 25th December, 1988 by the office of the IBM they were informed that as the lease had already been granted to the

petitioner on 30th November, 1988, Therefore, no useful purpose would be served in approving their mining plan. It was pleaded that it could not

attend the hearing before the Secretary (Industries) on 22nd November, 1988 on account of the illness of the Managing Director of the Company.

They claimed priority under the Rules being actual user of the mineral for their own industry. It was stated that their plant is located in Faridabad

which requires 30,000 tonnes of China Clay per annum, and he should have been given priority u/s 11(3) of the act. Mr. Jaiswal Respondent No.

4 also claimed priority on the ground that he was a qualified Geologist and had experience of over 20 years in mining and Therefore, had

preferential right under the said provision. It was interalia also submitted that all applications received after the notification for grant of mining rights

should have been handled by a common order.

7. Revisional Authority vide the impugned order dated 20th May, 1992 after examining relevant record of the State Government and hearing

respondent No. 3 and 4 as well as the petitioner held that initially neither the petitioner nor respondents 3 and 4 had submitted approved mining

plans along with their applications Therefore, their applications were not complete; that none of the parties had even filed the consent letters from

land owners and that since the State Government were following procedure under Rule 22 of the Rules it was incumbent upon the State authorities

to hold that the petitioner's application as well as the applications of respondents 3 and 4 were incomplete and remanded the matter to the state

Government for fresh consideration of the mining lease applications of the applicants in accordance with law.

8. The impugned order dated 20th May, 1992 passed by the Revisional Authority sought to be challenged by invoking jurisdiction. The petitioner

has pleaded the above facts and has attacked the impugned order on the grounds that the same are illegal, arbitrary unjust and unfair.

9. Respondent No. 2 State of Haryana, has filed their counter affidavit opposing the writ petition. It is pleaded by the State Government that under

Rule 72 the lessee is under obligation to pay compensation to the holder of the surface rights of land in lieu of the likely damage to be caused to the

land because of the mining operation. The petitioner was obliged to obtain the consent of the land owner of the surface rights before commencing

mining operation as required under Rule 22(3)(h) of the Rules.

10. In reply to the stay application it was further submitted that the petitioner was guilty of concealing material fact. It was pleaded that the

petitioner was not complying with the order dated 17th May, 1989 passed by High Court of Punjab and Haryana in CW No. 4698\88 wherein

Hon"ble Court directed that Shri Durga Prasad petitioner herein, would be at liberty to continue mining operation subject to his furnishing security

to the extent of Rs. 20 per metric tonne of the clay extracted by him to the satisfaction of the Mining officer, Faridabad. It was further ordered that

if the security was not furnished he would be restrained from extracting China Clay.

11. It was pleaded that infact mining lease for the said area was earlier granted to M/s. Ishwar Industries Limited for a period of 20 years w.e.f

30th October, 1964. On expiry of the said lease it was not renewed by the State Government and same was granted to the petitioner. M/s. Ishwar

Industries Limited challenged the order dated 30th November 1988 granting mining lease to petitioner in the High Court of Punjab and Haryana

wherein the above noted interim orders were passed.

12. It was further pleaded by the respondent No. 2 State of Haryana that the petitioner between January, 1990 and 26th May, 1992 had already

extracted 73564 metric tonnes of China clay for which the Security at the rate of Rs. 20/- per metric tonne amounts to Rs. 14,71,280/- and

despite notices the balance security of Rs. 8,73,280 had not been given by the petitioner as per the orders of Hon"ble Court. After the orders

were passed by Revisional Authority possession of the mine was taken on 27.5.92 at 9.00 A.M. by the State Government from the petitioner and

that the documents, filed by the petitioner in support of his claim to possession were not genuine. It was also submitted that under the garb of the

interim orders dated 7th July, 1992 based by this Court ordering that the possession of the petitioner be not disturbed the petitioner is continuing to

evade compliance of the orders dated 17th May, 1989 of the High Court of Punjab with regard to the deposit of security amount.

13. At this stage before proceeding further, it will be appropriate to summarise the facts as revealed from the material available on record.

(i) Vide notification dated 15th January, 1988, issued under Rule 59(1) of the Rules, respondent No. 2 invited applications for grant of mining

lease rights for china Clay in an area of 96.73 hectares in village Anangpur, Ballabgarh, Faridabad, which was earlier with Ishwar Industries

Limited. The petitioner, respondents 3 and 4 and three others, applied for the same. None of the applications, was accompanied with duly

approved mining plans, as provided under Rule 22(3)(e) or the statement in writing that the applicant has obtained consent of the owners under

Rule 22(3)(e) of the Rules.

(ii) On 8th April, 1988, Director of Industries of respondent No. 2 acting under Rule 26 (3) called upon the applicants to submit their mining plans

duly approved by the Regional Director, IBM. Thereafter respondent No. 3 submitted the mining plans on 24th April, 1988 with the IBM,

Dehradun, and resubmitted the same after removal of the objections on 11th May, 1988 and was awaiting their approval. In the mean time on 20th

Sept., 1988, the petitioner submitted his mining plans. Consequently, his application was held to be the only complete application and the same

was recommended for the grant of mining lease.

(iii) On 30th Sept., 1988, Director Industries issued a final notice to the remaining five applicants giving them ten days" time to submit their duly

approved mining plans and they were asked to appear before the secretary (Industries) on 22nd November, 1988 for a personal hearing on which

date Mr. Jaiswal, respondent No. 4 appeared and pleaded his case. However, as the Managing Director of respondent No. 3 was sick, an

application supported by the medical certificate, was made seeking an adjournment. On 30th Nov., 1988, petitioner was granted the mining lease

by the State Government and on 6th December, 1988 lease agreement was executed in his favor and the possession of the mine was taken by him.

(iv) On 24th January, 1989 and 7th February, 1989 BSWL respondent No. 3 and Mr. Jaiswal, respondent No. 4 were informed that their

applications were rejected.

(v) Respondent No. 3 and 4 filed revision petition u/s 30 of the Act read with Rule 55, before the Central Government; challenged the order of the

State Government dated 30th Nov., 1988 granting mining lease rights to the petitioner, he was also imp leaded as a party. After hearing the parties

vide order dated 20th May, 1992 Revisional Authority set aside the order and remanded the matter back to the State Government for fresh

consideration of the applications which has been challenged.

(vi) In respect of the same mining area. M/s. Ishwar Industries Ltd. Who were earlier licensee, have challenged the order of allotment of this mine

dt. 30th September, 1988, to the petitioner (CW. 4698/88) in High Court of Punjab and Haryana in which interim order dated 17.5.1989 was

passed. These facts have been concealed by the petitioner in this writ petition.

(vii) Respondent No. 2, State of Haryana, is supporting the impugned order dated 20th May, 1992 the Central Government and opposing the writ

petition. It is further pleaded that the petitioner is also violating the interim orders passed by the High Court of Punjab and Haryana on 17.5.1989

under the garb of stay order dated 7th July, 1992 passed by this Court.

14. We have heard Sh. P.N. Lekhi, learned senior Advocate for the petitioner, Sh. Mukul Rohatgi, learned senior Advocate for respondents 3

and 4, Sh. Jasvir Malik, Standing Counsel for respondent No. 2 and have been taken through the record.

15. Mr. Lekhi, on behalf of the petitioner argued that the impugned order of the Revisional Authority holding that application of the petitioner too

was incomplete, is totally perverse and against the material on record as the petitioner had duly submitted a duly approved mining plan on 20th

September, 1988 before consideration of his application on merits by the State Government; that under Rule 26(3) of the Rules, if his application

was not complete in any other respect then the state Government was bound to give him notice u/s 26(3) of the Rules to enable him to make up the

deficiency or, to furnish further documents, if any. As the State Government did not call upon him to furnish any other document, Therefore, the

Revisional Authority, could not come to the conclusion that the application of the petitioner too was incomplete. It was further argued that on the

relevant date, under the unamended Rule 22(h) of the Rules a statement in writing of the persons holding surface rights over the area was required

to be furnished only for starting ""prospecting operations"" and not for starting of ""mining operation "" . This Rule was amended on 20th February,

1991 and the expression ""prospecting operation"" was substituting for ""mining operation"" and the amendment could not be applied retrospectively.

16. As the arguments raised by learned counsel for the parties are based on the scope and interpretation of the Rules dealing with grant of mining

leases contained in chapter IV of the Rule of the Mineral Concession Rules, 1960, in order to appreciate the respective contentions, the relevant

Rules are reproduced hereinbelow :-

CHAPTER IV

Grant of mining leases in respect of land in which the minerals vest in the Government.

RULE 22. Applications for grant of mining lease :- (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-1 through such officer or authority as the State Government may specify in this

behalf.

(2) *****

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

(a) (x x x x)

(b) (x x x x)

(c) (x x x x)

(d) (x x x x)

(e) (x x x x)

(i)

(v) (x x x x)

(f) an affidavit stating that the applicant has

(i) filed up to date income tax returns;

(ii) paid the income tax assessed on him, and

(iii) paid the income tax on the basis of self assessment as provided in the Income Tax Act, 1961;

(g) an affidavit showing particulars of area mineral wise in each state, which the applicant or any person jointly with him-

(i) already holes under a mining lease;

(ii) has already applied for but not granted;

(iii) being applied for simultaneously;

(h) a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the

consent of the owner for starting prospecting operation;

RULE 26. Refusal of application for grant and renewal of mining lease :-

(1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the

applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.

(2) An application for the grant or renewal of a mining lease made under Rule 22 or 28 as the case may be, shall not be refused by the State

Government only on the ground that Form - I or Form - J as the case may be, is not complete in all material particulars, or is not accompanied by

the documents referred to in clauses (b), (c) and (d) of subrule (3) of Rule 22.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State

Government shall by notice, require the applicant to supply the omission or, as the case may be, furnish the document, without delay and in any

case not later than thirty days from the date of receipt of the said notice by the applicant.

RULE 72. Payment of compensation to owner of surface rights etc.:-

(1) The holder of a prospecting license or mining lease shall be liable to pay to the occupier of the surface of the land over which he holds the

prospecting license or as the case may be, the mining lease, such annual compensation as may be determined by an officer appointed by the State

Government by notification in this behalf in the manner provided in subrules (2) to (4) (2). In the case of agricultural land, other than land referred

to in subrule (4), the amount of annual compensation shall be worked out on the basis of the average annual net income from the cultivation of

similar land for the previous three years.

(3) In the case of non-agricultural land, the amount of annual compensation shall be worked out on the basis of average annual letting value of

similar land for the previous three years.

(4) The annual compensation referred to in subrule (1) shall be payable on or before such date as may be specified by the State Government in this

behalf.

17. Bare reading of subrule 3 of Rule 22 reveals that every application for the grant or renewal of a mining lease is mandatorily required to be

accompanied by the fee/documents as mentioned in clauses (a) to (h), of this Rule. Clause (h) provided that in case the applicant is not the owner

of the land, his application is required to be accompanied by the statement in writing that he has obtained surface rights or the consent of the land

owner for starting prospecting operations. The expression prospecting operations" is defined under the Act as to mean any operation undertaken

for the purposes of exploring, locating or proving the mineral deposits. Similarly, under the Act the expression "mining lease" is defined as a lease

granted for the purposes of operations and includes a sub-lease. The word "prospecting" means searching for a mineral with a view to further the

operations. The expression "prospecting operation" occurring in clause 3(h) of the Rules was amended and was substituted with the expression

"mining operations" which came into force on 20.2.91.

18. In this case there is no dispute that the petitioner is not the owner of the land. It is also not in dispute that he had not obtained surface rights

over the area. Therefore, the question which arises for consideration is whether the application for grant of the mining lease was required to be

accompanied by a statement in writing that he had obtained the surface rights or the consent of the land owners. The argument of the petitioner at

the first look appears attractive but on a deeper look it is not so, for more than one reason. Chapter IV of the Rules deals with grant of "mining

leases" in respect of the land in which the minerals vest in the Government. Rules contained in this chapter do not deal with the grant of licences for

starting "prospecting operation". Sub-rule 3 of Rule 22 is couched in a mandatory language and provides the documents to be furnished along with

the application for grant of mining lease. Thus a reading of heading of the Chapter IV and the language of sub-rule 3 of Rule 22, shows that this

deals with only grant of mining leases and not for grant of licences for prospecting operations. Therefore, requirement of clause (h) even when it

was unamended must be read only for grant of mining leases. The use of expression ""for prospecting operations"", in clause (h) is really superfluous.

19. Further it does not stand to reason that for carrying out a ""prospective"" operation, one would require to obtain the ""surface rights or the

consents of the land owner"" and not for starting the mining operation. Prospecting operation is only for the purpose of locating the mine and if for

that purpose the consent of the land owners is necessary, because their rights may be effected such a consent would also be essential for starting of

the ""mining operation"", on the basis of the same logic, because risk to surface land is equal in mining operation as well as in prospective operation.

20. It is well settled proposition of law that if the language in an enactment is capable of more than one interpretation ,one which would lead or

cause mischievous consequences should be averted. Reference in this regard can be made to the following observations of the Supreme Court in

Sachida Nand Singh and Another Vs. State of Bihar and Another, .

It is a settled proposition that if the language of a legislation is capable of more than one interpretation, the one which is capable of causing

mischievous consequences should be averted. Quoting from Gill Vs. Donald Humberstone & Co. Ltd., 1963 1 WLR 929. Maxwell has stated in

his treatise that ""if the language is capable of more than one interpretation we ought to discard the more natural meaning if it leads to unreasonable

result and adopt that interpretation which leads to a reasonably practicable result"".

21. The essence of this clause and of sub rule 3 of Rule 22 is that the applicant must obtain the surface rights of the area or consent of the land

owners before starting any prospecting operations or for mining lease. Therefore, we are of considered opinion that even under the unamended

clauses (h) in case the mining lease, consent of the land owners was essential.

22. Next comes the question as to whether the application could be treated as incomplete when no notice under sub-rule 3 of Rule 26 was given

by the State Government in that regard. It is true that the State Government did not issue notice calling upon the petitioner to submit the consent of

the land owner, but the absence of any such notice, cannot make an application for grant of mining lease complete if the same was in violation of

the sub-rule 3 Rule 22 of the Rules. To say that an application is not complete is one thing and to reject the application in the absence of such a

notice, is quite another. Central Government while exercising statutory powers u/s 30 of the Act to held that the application of the petitioner was

not complete on this account, remanded the matter to the State Government.

23. Central Government, u/s 30 of the Act has the power either on its own motion or on an application in the prescribed form to revise any order

passed by the State Government. The State Government being a subordinate authority is bound by the order of the Central Government. As we

have held that even under the old Rule 22(3)(h) a statement regarding consent of the lease owner in writing was required to be attached with the

application for grant of mining lease, Therefore, the finding of the Revisional Authority to the effect that the application of the petitioner too was

incomplete cannot be said to be perverse.

24. Further under Rule 72 of the Rules the petitioner was under an obligation to pay compensation to the holders of the surface rights, in lieu of the

land likely to be damaged because of the mining operation. The counter affidavit of respondent No. 2, reveals that the petitioner, had not complied

with this statutory requirements. In view of all this we find no merits in this contention.

25. At this juncture it may be recalled that on 20th Sept., 1988, Director of Industries recommended the application of the petitioner stating that his

application was the only complete application, if that was so on that day, other applications ought to have been rejected. This was not done, rather

on 30th Sept., 1988 a final notice to the rest of the applicants was sent asking them to submit their approved mining plans within ten days. They

were asked to appear before Secretary of Industries on 22nd Nov. 1988; on that date one of the applicants sought adjournment on the ground

that Managing Director was sick which was declined. Lease in favor of the petitioner was granted on 30th Nov, 1988, and possession was

delivered to the petitioner on 6th December, 1988, even than the respondents No. 3 and 4 were not informed. They were admittedly informed on

24th Jan., 1989 and 7th Feb., 1989. All this to say the least shows that all applications were not dealt with simultaneously which is not permissible

in law.

26. Lastly, it was argued that the petitioner had made huge investments after grant of mining lease to him, Therefore his mining lease should not

have been cancelled by the revisional authority by the impugned order. As on date this argument again has no force. Lease was granted to the

petitioner for ten years in 1988 which period has already expired. Vide orders dated 7.3.92 stay against dispossession was granted to the

petitioner. Again while the matter was being heard and question of renewal of the lease came up for consideration, vide order dated 29th July,

1999, it was ordered that in case the authorities decided to extend the lease in favor of the petitioner for any further period such extension shall be

subject to the outcome of the present petition and that the petitioner will not claim any equities in his favour. The petitioner has already reaped

benefits of this lease for more than 10 years. At this juncture it is a question of renewal of lease only.

27. Powers of the revisional authority u/s 30 of the Act are in the nature of quasi judicial powers. The decisions arrived at on the basis of the

material, can only be interfered with, in exercise of writ jurisdiction corporation on limited grounds. The order passed by the revisional authority is

well reasoned order and it is neither without any jurisdiction nor in violation of the principles of natural justice. The jurisdiction of the High Court is

corrective and not appellate and is confined to the errors of law of error apparent on the face of record. No fault can be found with the findings

and conclusion of Revisional Authority.

28. Even otherwise, we would also like to observe that in 1992 when the Writ Petition was filed, the Petitioner did not disclose the fact that the

Order of State Government (Respondent No. 2) dated 30.9.88 vide which the petitioner had been granted mining lease, was a subject matter of

another Writ Petition No. 4698/88, in the High Court of Punjab and Haryana and an interim order dated 17th May, 1989 was operating against

the petitioner. Respondent No. 2 has also pleaded that the petitioner was violating the interim order dated 17.5.1989 under the garb of the stay

obtained from this Court on 7.7.1992. We are not concerned with the same in this petition, except to the extent that the writ petition itself is liable

to be dismissed on the ground of concealment of material fact, of the earlier writ petition which was pending in the High Court of Punjab &

Haryana concerning the same lease in favor of the petitioner. However, we have chosen to deal with various contentions raised in the writ petition

on merits.

29. For the foregoing reasons we are not inclined to interfere with the orders passed by the Revisional Authority in exercise of our writ jurisdiction.

Earlier orders granting stay to the petitioner against dispossession stands vacated. Writ petition is dismissed with costs quantified at Rs. 10,000/-.

30. Interim orders stand vacated.