

(1974) 06 BOM CK 0007
Bombay High Court (Nagpur Bench)
Case No: Spl. C.A. No. 606 of 1968

Madan Gopal Kaura

APPELLANT

Vs

Collector, Nagpur District and
another

RESPONDENT

Date of Decision: June 27, 1974

Acts Referred:

- Mines and Minerals (Development and Regulation) Act, 1957 - Section 15

Citation: (1974) MhLj 920

Hon'ble Judges: U.R. Lalit, J; D.B. Padhye, J

Bench: Division Bench

Advocate: G.J. Ghate and D.D. Deshraj, for the Appellant; V.P. Salve, for the Respondent

Final Decision: Dismissed

Judgement

D.B. Padhye, J.

By this petition, the petitioner seeks to challenge the orders of the Collector, Nagpur, dated 10-1-1967 and 29-4-1967 as also the order of the Government dated 28-5-1968.

2. The petitioner is a Quarry Contractor and a quarry lease was granted to him for the period 10-5-1965 to 9-5-1970. When the lease was granted the rules which are known as Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966 were not in force. In some writ matters which came before this Court in respect of similar mining leases which were granted according to the instructions contained in the Ex-Madhya Pradesh Government Mining Manual in the Nagpur Division, a view was taken by this Court that in the absence of specific rules of the State Government to be framed u/s 15 of the Mines and Minerals (Regulation and Development) Act, 1957, all leases required for extraction of mining minerals according to the instructions of the Ex-Madhya Pradesh Government Mining Manual are rendered ineffective in law. These writ petitions were Special Civil Applications Nos. 139, 140

and 149 of 1966. In view of the observations made in the judgment, it appears that the State Government framed these rules which came into force from 15-12-1966. These rules require how the applications are to be made for the purposes of claiming a lease, what were the requirements for making the applications and how the matters are to be considered while granting leases. After these rules came into force, the Collector took the view that the lease which was granted to the petitioner for the period 1965 to 1970 was ineffective and, therefore, cancelled the same by his order dated 10-1-1967 and the petitioner was advised to apply afresh under the said rules for obtaining a mining lease or prospecting licence for minor minerals, if he so desired.

Acting on this advice, the petitioner applied for a mining lease under the aforesaid rules in respect of the area in question, namely, part of Khasra No. 219 with an area of 6.44 acres. By this application, he asked for the lease for a period of 10 years. This application was considered by the Collector and by his order dated 29-4-1987 acting under clause (vi) of sub-rule (1) of rule 2 of the aforesaid Rules, he granted mining lease over an area of 6.44 acres out of Khasra No. 219 for extracting building stones to the petitioner. However, though the period of lease asked for was 10 years by the petitioner in his application, it was granted for a period of 5 years with effect from 1-1-1967 with a renewal clause. The petitioner has been working this mine under this lease granted to him and after the expiry of the first 5 years he also exercised his option of renewal of the lease with effect from 1-1-1972 and is continuing with the said lease for a further period of 5 years commencing from 1-1-1972.

3. The petitioner first contends that his lease granted in the year 1965 should not have been cancelled and if that lease had continued, he would have been able to work the mine for a period of 5 years, i.e. upto the year 1970 under that lease and for a further period of 5 years on exercise of the option of renewal, i.e. till the year 1975. It is not necessary for us to go into that question because of the further events that have taken place. In pursuance of the advice given by the Collector, the petitioner did apply for a fresh lease, and was granted a fresh lease for a period of 5 years commencing from 1-1-1967, which lease would, in the first instance, continue upto 31-12-1971 and on account of the renewal clause, it would further continue till 31-12-1976. The petitioner did exercise his option of renewal and under the renewal clause he has been working the said mine and would be entitled to continue to work the said mine till 31-12-1976 or till the date when the 5 years period expires. Therefore, granting any relief to the petitioner by quashing the order dated 10-1-1967 by which his lease was cancelled, would be useless relief because on quashing of that order, the petitioner would be relegated to his original position and under the original lease of 1965 he would have been entitled only to work the mine upto 1975, whereas now he is entitled to work the mine till the end of the year 1976. Such relief which would be utterly useless would not be granted by this Court.

4. So far as the order dated 29-4-1967 granting a lease for a period of 5 years effective from 1-1-1967 with renewal clause is concerned, the contention of the petitioner is that since he has asked by his application a lease for a period of 10 years, the Collector was bound to grant a lease for a period of 10 years as asked for by him and he was not competent to grant a lease only for a period of 5 years. This argument is advanced for the purposes of getting an advantage of a further period of 10 years which by virtue of this order, the petitioner does not get. The petitioner's contention is that if the lease had been granted to him for a period of 10 years as asked for by him with effect from 1-1-1967 he would have been entitled to work the mine under that lease, in the first instance, till 1-1-1977 and by exercising his option of renewal, he would have been able to work it for a further period of 10 years i.e. till 1-1-1987. On the construction, however, of the rules, the contention on behalf of the petitioner cannot be accepted. Rule 16 of the Maharashtra Minor Mineral Extraction (Vidarbha Region) Rules, 1966, which gives the period of mining lease, provides as Under:

16. Period of mining Lease-(1) The period for which a mining lease may be granted shall not, except with the approval of Government, exceed 10 years. The lease shall be renewable at the option of the lessee for one period not exceeding the duration of the original lease.

The petitioner wants to construe this rule to mean that the Collector is bound to give the lease for a period of 10 years and nothing less than that, and if however a lease for a period more than 10 years is to be granted then only the approval of the Government is to be taken. The rule, however, does not bear out this construction. The rule only says that the period of the lease shall not exceed 10 years. It does not say that the period of the lease must be 10 years. If the power is given to the Collector to grant leases for a period not exceeding 10 years, then the leases can be granted for any period upto 10 years and the Collector would have power, therefore, to grant a lease for a period of 5 years, as has been done in the present case.

5. The learned counsel for the petitioner has relied upon a decision of the Supreme Court in [State of Rajasthan Vs. Hari Shankar Rajendra Pal](#), , in support of his contention that under rule 16 the leases must be for a period of 10 years. Under the Rules of the State of Rajasthan, the ordinary period of the lease was to be 5 years unless the lessee required it for a shorter period. We may quote rule 30 of Rajasthan Minor Mineral Concession Rules, which is relied upon by the petitioner. It reads:

Period of lease: A mining lease may be granted for a period of 5 years unless the applicant himself desires a shorter period.

Here, the word "may" in this rule has been construed to mean "shall" and was said to be a mandatory provision. But this construction was reached by the Supreme Court on the basis of the last portion in that rule and on the basis of that, the 5 years

period was taken to be a mandatory period for which a lease had to be given and it could not be less than that. We may quote the reasoning given by their Lordships of the Supreme Court in paragraph 20 of the judgment. It is:

The word "may" in the main provision of the rule must mean "shall" and make the provision mandatory. This is obvious from the last portion of the provision. If the State Government had discretion to fix any period of the lease, the last portion of the provision would be redundant. The Government could fix the period of the lease at any period shorter than five years. But the provision requires the fixing of a period shorter than 5 years only when the applicant desires a shorter period. The period of the lease, therefore, can be shorter than five years only when the applicant desires and not when the Government desires. The Government must fix the period of the lease at 5 years in the absence of any expression of desire by the applicant for taking the lease for a shorter period.

It will be seen that the last portion of rule 30 of the Rajasthan Rules is not to be found in rule 16 made by the State of Maharashtra and this construction, therefore, which has been put on rule 30 of the Rajasthan Rules by the Supreme Court will not be of any assistance to the petitioner in construing rule 16 of the Maharashtra Rules. It appears to us to be clear that under rule 16 the Collector has got the power to grant a lease for any period whatsoever, upto the maximum period of 10 years and he is not bound, as is contended by the petitioner, to grant a licence for 10 years alone. This contention of the petitioner has, therefore, no force and we have no hesitation in rejecting the said contention. This was in fact the point which has been urged on behalf of the petitioner. By the way the petitioner also alleged that the leases to some other persons have been given for a period of 10 years and, therefore, there has been a discrimination so far as the petitioner is concerned. The State Government in appeal has taken that argument into consideration and it has been found on the facts of this case that there has been no discrimination.

6. The Collector, who is the authority for granting the leases, has stated that he has been following the uniform policy of granting leases for a period of 5 years and if he is following such uniform policy, there could not be any discrimination as contended by the petitioner. It may be that earlier, leases for 10 years have been granted, but now he has been following the uniform policy which has been followed in the case of the petitioner. The contention of the petitioner is that 5 years' period is too short a period to work the mine because at the initial stage he has to incur a lot of capital expenditure for starting the work of mining and this expenditure cannot be recouped in a period of 5 years and, therefore, 10 years would be a reasonable period and that was contemplated by rule 16. This argument has also no force because even in the Rajasthan case 5 years period is taken to be a reasonable period for which a mining lease could be granted and not only that, but even in the case of this petitioner previously 5 years leases have been granted and accepted and it cannot be said that this period for which a lease has been granted is an

unreasonable period. Besides in addition to the 5 years period of lease, the lessee has also one more period of 5 years by way of option if he chooses to exercise one and thus he gets a minimum period of 10 years to work the mine. In any case, however, this factor cannot be taken into consideration in construing rule 16, for holding as is contended on behalf of the petitioner, that the Collector could not grant a lease for a period of less than 10 years.

7. Thus all the contentions raised on behalf of the petitioner fail. The petition, therefore, fails and is dismissed with costs.