

Man Singh Vs. the District Magistrate, Banda and Others

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Court : Allahabad

Decided On : Jan-29-1993

Reported in : AIR1993All220

Judge : V.K. Khanna and ;S.R. Singh, JJ.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 15; Uttar Pradesh Minor Mineral (Concession) Rules, 1963 - Rules 23, 23(1) and (2), 27, 27-A and 27-B; [Constitution of India](#) - Articles 11, 14, 19(9) and 226

Appeal No. : Civil Misc. Writ Petn. No. 40896 of 1992

Appellant : Man Singh

Respondent : The District Magistrate, Banda and Others

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : Ashok Bhushan and ;R.C. Srivastava, Advs.

Judgement :

ORDER

S.R. Singh, J.

1. By means of the petition in hand under Art. 226 of the [Constitution of India](#), the petitioner seeks issuance of a writ of certiorari quashing the auction notice dt. 31st

Oct. 1992 issued by the District Magistrate, Banda, notifying to the general public that settlement of Sand/Moram in district Banda for the year 1992-93 would be done through auction, tender or auction-cum-tender segment-wise (Khand-wise) as stipulated/specified in the impugned auction notice annexed as Annexure 8 to the writ petition.

2. We have heard Sri R. C. Srivastava, learned Senior Advocate appearing for the petitioner and the learned Standing Counsel appearing for the respondents.

3. The learned counsel appearing for the petitioner urged that the impugned notice enumerates division of district Banda in sixteen segments (Khands) for the purposes of auction sale with a view to granting mining lease in respect of sand/Moram in the district of Banda, whereas in the yester years there were 19 different areas, to be settled separately in the Tahsil Banda alone and, urged the learned counsel, division of the district by means of the impugned order into larger areas by clubbing smaller ones, is arbitrary and tends to create monopoly for large sized contractors which is against declared tack of the government as indicated in paragraph 7 of the Government Order No. 6134/18-12-90-10/90 dt. 16th Nov. 1990, annexed as anne-xure 5 to the writ petition which reads as below.

'(7) Neelami/Nivida/Nilami Evam Ni-vida Pranali Se Parihar Sweekrat Kiye Jane Hetu Kshetra/ Kshetron Ki Niyuntam Athwa Adhikam Shetraphal Ki Seema Nirdharit Kiye Jane Ki Avashyakta Nahi Hei. Jahan Tak Sambhav Ho Chhote Chhote Kshetra Jisme Swatantar Roop Se Bina Kisi Byavdhan Ke khaman Karya Kiya Ja Sakta Hai, Sweekrat Kiye Jayen. Aise Kshetra, Jo Poorva Se Patte/Permit Par Sweekrat Kiye Jate Rahe hein, Un Kshetron Me Yatha Sambhav Koi Parivartan Na Kiya Jaye.'

The submissions made by the learned counsel do not carry conviction with us. Rule 23(1) of U.P. Minor, Minerals (Concession) Rules 1963, (hereinafter referred to as the Rules) provides that the State Government, may, by general or Special order, declare area or areas, which may be leased out by auction or by tender or by auction-cum-tender such area or areas, as contemplated by sub-rule (3), may be leased out according to the procedure described in Chapter IV of the Rules. Procedure for grant of lease by auction has been prescribed in R. 11, while the

one by tender is contemplated by R. 27-A of the Rules. The procedure for grant of lease by auction-cum-tender is provided in R 27-B of the Rules. The mining areas were specified by the State Government by means of notification dt. 13th May 1980 issued under S. 23(1) of the Rules, a copy of which has been annexed as Annexure-1 to the writ petition. The declaration of mining area under R. 23 (1) of the Rules May, however, be not confused with the division or sub-division of the area so declared into different sectors or segments for purposes of settlement. The impugned notice dividing the entire district Banda into sixteen segments, is in respect of the mining area so declared as aforesaid by the State Government under R. 23(1) of the Rules by means of the notification dt. 13th May 1980 referred to above. The impugned notice issued by the District Magistrate is not in respect of any area which is not included in the notification dt. 13th May 1980. All that the District Magistrate seems to have done for purposes of settlement under-Chapter IV of the Rules is that certain smaller areas have been clubbed together to constitute a sector/segments (Khand) as indicated in the impugned notice which bespeaks that the mining area declared by the State Government by means of aforesaid notification dt. 13th May 1980 falling in Tahsil Banda, has been divided into six segments (Khands). However, our attention was not invited to any provisions or the Rules interdicting such arrangement being made by the District Magistrate for valid reasons.

4. So far as the submissions that the manner in which the mining areas have been rearranged by the District Magistrate by means of the impugned notification, tends to create monopoly and defeats the Government policy embodied in cl. (7) of the Government order dt. 16th Nov. 1990, is concerned, we find that cl. (7) of the Government Order dt. 16-11-90, is not couched in any interdictory language. Rather, the expression used therein is 'as far as possible' and this expression in our opinion enables the District Magistrate to divide the mining area into smaller segments only as far as possible. The expression 'as far as possible' no doubt suggests that there must be valid reasons for dividing the area to be leased out into such segments, that is to say, normally the area to be leased out is to be divided into smaller segments but if, for valid reasons, the division of the area into much smaller segments is not in public interests, then nothing contained in the Government order operates as an obstacle in the way of the District Magistrate, to

recast the area into somewhat bigger segments. The question, therefore, that requires consideration, is whether the District Magistrate was justified in dividing the district Banda into sixteen segments as against then existing division into nineteen segments of Tahsil Banda alone. In combined reading of paras 8, 9 and 10 of the counter affidavit, makes it amply clear that the then existing smaller units 'were monopolised by local musclemen due to which auctions could not fetch reasonable price causing great loss to the Government revenue' and the District Magistrate while re-arranging the mining areas of the district into sixteen segments/units for the purposes of mining settlement under Chapter IV of the Rules, had in mind the interest of the revenue besides 'local conditions and other related problems of the area.' In paragraph 3 of the counter affidavit, it has been specifically averred that 'in previous years, certain unpleasant incidents coupled with murder and heinous crimes took place between different parties, who by their local influence and muscle power, had monopolised on their appointed areas in which no other party could dare to enter or offer any bid.' It is also averred in the said paragraph that the petitioner happens to be such a person. Copies of the reports dt. 23rd Mar. 1992 and 25th Feb. 1992 submitted by the Supdt. of Police Banda to the District Magistrate have been annexed as Annexure-2 A and 2-B to the counter affidavit. From what has been stated in these reports and in the counter affidavit, we have no manner of doubt that the decision taken by the District Magistrate in re-arrangement of the area declared under S. 23(1) of the rules in units sectors indicated in the impugned notification for the purposes of settlement of the mining lease under Chapter IV of the Rules, was based upon consideration of valid materials on record and is not in any manner vitiated. The division of the mining areas of district Banda for purposes of settlement of the mining lease under Chapter IV into sixteen units segments cannot be branded as arbitrary or violative of Arts. 11 and 19(g) of the [Constitution of India](#). The interest of revenue the primary concern of settlement of mining operation, has well been taken care of by the District Magistrate and the division of the mining area into various segments indicated in the impugned notice does not in any manner result in infringement of any of the rights of the petitioner, nor does it defeat any public policy. Accordingly, we do not find any merits in the submission of the learned counsel for the petitioner that the division of the area as made by the District

Magistrate by means of the impugned notice is either arbitrary or violative of any provision contained in the Government order dt. 16-11-1990.

5. The learned counsel for the petitioner then urged that rearrangement of mining area as carried out by means of the impugned notice is in conflict with the judgment of this Court dt. 1-9-1992 annexed as Annexure 6 to the writ petition. A perusal of the judgment indicates that in his earlier writ petition, the petitioner has sought for issuance of a writ, order or direction in the nature of mandamus directing the respondents to auction different mining areas in Tahsil Banda, district Banda in separate and distinct auctions as per practice in vogue previously. While disposing of the writ petition, a Division Bench of this Court observed as under:

'No doubt sub Rule 2 of R. 23 empowers the District Magistrate by virtue of delegation of powers that from time to time only that area or areas shall be leased out by auction or by tenders which was declared by the District Magistrate. In the instant case, Annexure-5, which is a notification with the ensuing auction to be held on 27th July 1992, does not clarify the units of mining area and, therefore, in the opinion of this court alleged auction notice being not in consonance with the provisions of sub-rule (2) of R. 23 of the mining Rules 1965) is set aside. Consequently, the District Magistrate Banda is directed that afresh auction notice be issued specifying the areas of each unit separately.'

A perusal of the impugned notice annexed as Annexure-8 to the writ petition clearly indicates that mining areas are clearly defined therein with reference to segments and it has been unambiguously stated therein that auction would be held segment-wise (Khand-wise) as would be evident from the expression 'Neelami Hetu Vigyapit Kshetron Ke Anusar Khand-wise Nadi Ki Balu/Moram Kshetron Ka Vivaran' followed by details of the various units of the mining areas falling within the district of Banda. In our considered opinion, the impugned notice fulfils the requirements of the directions contained in the order of this Court dt. 1-9-1992 disposing of the earlier writ petition filed by the petitioner against an earlier auction notice.

6. No other point was pressed into service before us.

7. Having regard to the above discussions and conclusions, the writ petition lacks merit and is accordingly dismissed.

8. Petition dismissed.

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