Abdul Malik Vs. State of U.P. and Others

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Court : Allahabad

Decided On : Jan-29-1994

Reported in : AIR1994All376

Judge : Om Prakash and ;V.P. Goel, JJ.

Acts : Mines and Minerals (Regulation and Development) Act, 1957 - Sections 15; Uttar Pradesh Mines and Minerals (Concession) Rules - Rules 3(1) and (2), 5(1), (2) and (3), 6, 7, 8(1), (2) and (3), 9, 9(1), (2) and (3), 23, 24, 66 and 68; Evidence Act, 1872 - Sections 56; Constitution of India - Articles 136 and 226

Appeal No. : Civil Misc. Writ No. 35464 of 1993

Appellant : Abdul Malik

Respondent : State of U.P. and Others

Advocate for Def. : M/s. Rakesh Dwivedi, ;Sandeep Saxena and ;V.K. Singh, Advs., ;L.K. Uniyal, S.C.

Advocate for Pet/Ap. : M/s. V.B. Upadhaya and ;Sri Mukesh Prasad, Advs.

Judgement :
ORDER

1. Involving a common question, these three petitions, are filed by contractors carrying on mining operation in forest area, seeking a common relief that

Government Order dated 10-9-1993 (Annexure '5' to the writ petition of Abdul Malik) be quashed. The petitioners also seek quashing of order dated 28-9-1993 filed by the U.P. State Mineral Development Corporation Limited, Lucknow (Annexure '1' to the writ petition of Vijayant Jaiswal) and the minutes of the meeting taking decision in favour of various Corporations and rejecting the applications of the petitioners.

2. Abdul Malik, Vijiyant Jaiswal and Gurdeep Singh (petitioners) made applications 3-8-1993 to carry on mining operation in different areas. Abdul Malik applied for Gola Plot No. 4 and Gola Plot No. 5 Vijiyant Jaiswal applied for lower Kosi area, and Gurdeep Singh applied for Gola Plot No. 1 inter alia. For Gola Plot No. 4 the U.P. Forest Corporation completed its application on 8-9-1993 and for Gola Plot No. 5, the U.P. State Mineral Development Corporation made an application on 23-8-1993. For lower Kosi area, the U.P. Forest Corporation made an application on 7/8-9-1993 and for Gola Plot No. 1, the Kumaon Mandal Vikas Nigam Ltd., Nainital, submitted an application on 20-8-1993. Whereas the applications of the petitioners were rejected, the applications made by these Corporations on later dates were accepted by virtue of impugned G.O. dated 10-9-1993, which states that for winning minor minerals from the river beds situate in the forest areas of the district Nainital, preference will be given to such Corporations of the U. P. Government which are engaged in mining operations. The G.O. purported to have been issued in exercise of the powers conferred by Rule 9(2) of the Uttar Pradesh Miner Minerals (Concession) Rules, 1963 (for brevity's sake 'the Rules'), which have been framed in exercise of the rule making power conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 (for short 'the Act).

3. The contention of the petitioners is that the impugned G.O. is arbitrary and wholly invalid, as no preference can be given to a class, either it be a Corporation of the State of U.P. or any other entity, under sub-rule (2) of Rule 9 of the Rules. It is, further, contended by them that the applications of the aforesaid Corporations though were submitted later i.e., after 3-8-1993 when the petitioners submitted their applications, could not have been accepted on account of any preference being created in favour of such Corporations by the impugned G.O.

4. Sri V. B. Upadhyaya, learned Counsel for Abdul Malik-one of the petitioners-made leading arguments and his arguments have been adopted by the Counsel for the remaining petitioners. His submission is that under Rule 9(2), the State Government may for special reasons grant a mining lease to an applicant, who applied later in preference to those who applied earlier, but no standing directions can be given thereunder giving preference to a particular class. He submits that the G.O. far exceeded the scope of Rule 9(2) creating preference in favour of the particular class, i.e. the Corporations owned by the State of U.P., which are engaged in mining operations. Preference vis-a-vis point of time is quite distinct from the preference vis-a-vis a class-says Sri Upadhayaya.

5. The question for consideration is whether the impugned G.O. created a preference in favour of the particular class, i.e., the Corporations engaged in mining operations, either owned by the State of U. P., or in which the said State is interested, and, if so, whether such class preference can be legally created under sub-rule (2) or Rule 9. For convenient appreciation, sub-rule (2) of Rule 9 is reproduced below:

'9. (2) The State Government may, for special reasons to be recorded, grant mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.'

6. The language employed in sub-rule (2) of Rule 9 is plain and simple and it clearly points out that an applicant who applied later can be preferred over the one who applied earlier, but for the reasons to be recorded by the State Government. It does not say any thing more than this. When the applications are received and when they are scrutinised by the State Government, then it may prefer an applicant whose application was received later in preference to an applicant whose application was received earlier, provided there are special reasons for doing so and which are reduced into writing. The language of sub rule (2) of Rule 9 is quite different from that of sub-rule (3) of Rule 9, which clearly refers to a preference to be given to a Cooperative Society. Sub-rule (3) of Rule 9 states that in respect of mining lease for excavation of sand, preference shall be given to a Co-operative Society registered or deemed to be registered of the same district

under any law for the time being in force, consisting of persons who are engaged in carrying on the occupation of excavation of sand as a profession. Sub-rule (3) mandates that preference shall be given to a Co-operative Society, consisting of persons engaged in carrying on the occupation of excavation of sand as a profession, when a mining lease for excavation of sand is contemplated to be given by the State. No such preference for a particular class is stated in sub-rule (2) of Rule 9.' The cardinal principle of interpretation is that when language of a particular provision is plain and unambiguous, then the same should be read as such without importing foreign words into it. Sub-rule (2) of Rule 9 can at no stretch of imagination be read in such a manner so as to create a preference in favour of a particular class. Chapter II of the Rules does not lay down any procedure for inviting applications. Rule 5(1) states that an application for grant of a mining lease shall be addressed to the State Government in Form MM 1. Sub-rule (2) of Rule 5 names the authorities whom such applications are to be handed over. Applications, so received, shall be entered in a register of mining applications in Form MM 2 under sub-rule (3) of Rule 5. Rule 6 enjoins upon an applicant to make a deposit or pay fee prescribed for making such applications. Rule 7 empowers the District Officer to cause an enquiry to be made into the relevant matters and if he is satisfied, then he may forward the applications within two months of the date of receipts to the State Government. Rule 8(1) states that the State Government or the authorised Officer may refuse or grant the mining lease for the whole or a part of the area applied for after making such further enquiry as may be deemed necessary. Sub-rule (2) of sub-rule (3) of Rule 8 lays down the time limit for disposing of such applications. Rule 9 is important for the purposes of the cases in hand. Sub-rule (1) states that where two or more persons have applied for a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of lease over an application whose application was received later. The petitioners and the Corporations, whose applications have been accepted, had applied for the same areas and following sub-rule (1) of Rule 9 ordinarily applications of the petitioners, which were received earlier for the same areas, should have been accepted. Sub-rule (1) of Rule 9 is based on the principle 'first come first served'. When persons more than one applied for the same area, then it is just and proper to give

preference to the person whose application was reveived earlier than the one who applied later. The proviso to sub-rule (1) covers a situation when more than one person applied for the same area at the same point of time. In that situation, the proviso says that the applications will be considered taking into consideration the factors/circumstances as enumerated in clauses (a) to (e). Sub-rule (2) is an exception to sub-rule (1), inasmuch as, it empowers the State Government to grant a mining lease to an applicant whose application was reveived later in preference to an applicant whose application was received earlier. Under sub-rule (1) an applicant who made application earlier is to be preferred, but under sub-rule (2) an applicant who submitted application later, may be preferred for special reasons to be recorded by the State Government. Neither sub-rule (1) nor sub-rule (2) refers to a class preference. For giving preference to an applicant who made an application later in point of time, it is not necessary for the State Government to issue any order in that behalf, because that preference can be given by operation of the statutory Rule i.e., Rule 9(2) Sri Upadhyaya is right in pointing out that the impugned G.O. has given preference to the particular class, namely, the Corporations owned by and belonged to the State Government, and that cannot be done under that Rule, because under Rule 9(2) only an application of a Corporation, if it is received later, can be accepted for special reasons to be recorded by the State Government, though the same is prohibited by sub-rule (1) of Rule 9. What is not permitted by sub-rule (1), is permitted by sub-rule (2) of Rule 9, provided there are special reasons for doing so and further provided that such reasons are duly recorded by the State Government.

7. Taking semantic view of Rule 9(2), it must be held that in exercise of powers under Rule 9(2), no preference can be created for any class. To that extent, the impugned G.O. is illegal.

8. Sri Rakesh Dwivedi, learned Additional Advocate General, urged that there is noillegality in the impugned G.O., in as much as,it refers to Rule 9 (2) and the factual positionbeing that the applications of the Corporations having been accepted, were receivedlater than the applications of the petitioners.It is one thing to say that the applications ofthe Corporations, which were received laterthan the applications of the petitioners, maybe accepted for the reasons to be recorded

bythe State Government under Rule 9(2), atgiving preference to the Corporations owned,by and belonged to the State Governmentpurportedly under Rule 9(2), is entirelydifferent. The question is whether any preference can be given to such Corporations byissuing directions under Rule 9(2)? In ourconsidered view, no standing order can bepassed by the State Government giving preference to the Corporations or for that matterto any other class under Rule 9(2). An application which is received later either from aCorporation or from any one else, can beaccepted under Rule 9(2) for the specialreasons to be recorded by the State Government. The Corporations cannot be given.preference over other applicants in exercise ofthe power, purporting to have been exercisedunder Rule 9(2).

9. Sri Dwivedi also argued that under Rule 68, the State Government may authorise the grant of any mining lease for the purpose of winning any mineral in terms and conditions different from those laid down in these Rules, if it is of opin that in the interest of mineral development it is necessary so to do by passing an order in writing and recording reasons. His submission is that if power to issue the impugned G.O. cannot be found under Rule 9(2), then the same be traced in. Rule 68. The submission of Sri Upadhyaya is that Rule 68 does not lay down a different procedure for granting a mining lease, but what it says is that when a lease is granted, its terms and conditions can be varied from those laid down in these Rules. In short, the submission of Sri Upadhyaya is that under Rule 68, only terms and conditions of a lease can be varied from those which are laid down in the Rules and not the procedure for granting a mining lease. In our view, it is difficult to trace the power for creating preference for a class under Rule 68.

10. Sub-rule (1) of Rule 3 clearly bars mining operation in any area within the state of any minor minerals, to which these Rules are applicable, except under and in accordance with the terms and conditions of a mining lease or permit granted under Rules. Sub-rule (2) of Rule 3 clearly states that no mining lease or mining permit shall be granted otherwise than in accordance with the provisions of these Rules. Chapter II in the Rules lays down the procedure and the manner for granting a mining lease. Rule 9 falls in Chapter II and while granting a mining lease, the provisions as contained in Rule 9, have got to be considered. No lease can be granted without complying with the provisions of Rule 9. As already pointed

out, Rule 68 does not lay down alternative method for granting a mining lease, but it confers power on the State Government to make relaxation in the terms and conditions of a lease.

11. In Shiv Charan Sharma v. Union of India, 1981 ALJ 641, the petitioner made an application for the grant of a mining lease for mining sand on 9th July, 1979. A subsequent application was made by him on 6-2-1980. Likewise, respondent Nos. 3 and 4 also made a similar application on 12-9-1979 and another on 6-1-1980. The State Government passed an order on 16-2-1980 granted lease to respondent Nos. 3 and 4, The petitioner challenged the said order dated 16-2-1980 on the plea that a notification issued under Rule 23 of the Rules was in force on 16-2-1980 and, consequently, impugned order dated 16-2-4980 could not have been passed, no auction as contemplated by Rule 23 having taken place. The notification issued under Rule 23 was no doubt, withdrawn by issuing a notification under Rule 24 on 15-3-1980. The question for consideration was whether lease could have been granted to respondent Nos. 3 and 4 on 16-2-1980, when a notification issued under Rule 23 was already in force. Rule 23 which falls in Chapter IV declares that lease may be granted by auction or by tender or by auction-cum-tender in respect of the area, which is declared by the State Government either by general or special order. The order under Rule 23 having remained in force on-16-2-1980, lease could have been granted only in the manner as provided in Chapter IV. But in derogation of that procedure, the lease was granted on 16-2-1980 in favour of respondent Nos. 3 and 4 and then the petitioner challenged the validity of that order. This Court then held that considering the prohibitory provisions as contained in Rule 3(2), a lease could have been granted only in the manner as provided in Chapter IV and not otherwise. It was argued on behalf of respondent Nos. 3 and 4 that under Rule 66, the State Government was competent to relax all the Rules and grant the lease in favour of respondent Nos. 3 and 4. Such submission was negatived by this Court in Shiv Charan (supra) in these words:

'This rule, in our opinion, does not permit the State Government to grant a mining lease to any person of its choice ignoring the requirements of Chapter II or Chapter IV, as the case may be. It only entitled the State Government to make

relaxation in regard to the terms and conditions laid down in these rules in respect of a grant to be made if the State Government is of the opinion that it is necessary so to do in the interest of mineral development. The procedure for the grant contemplated either in Chapter II or Chapter IV will have to be followed even if relaxation of the rules is to be granted..... Even at the risk of repetition, we wish to emphasise that it is not open to the State Government to pick out any person to its choice under Rule 68 by ignoring the requirements of Chapter II or Chapter IV and to grant a mining lease to such a person and thereby shut the door for everyone else to obtain a mining lease either by making an application for grant of such a lease as contemplated by Chapter II of the Rules or from participating in the auction which may be held under Chapter IV of the Rules as the case may be.'

Chapter II is relevant for granting applications made for obtaining a lease for carrying on a mining operation. The procedure laid down in that Chapter for granting a lease has got to be followed and without that no lease can be granted even under Rule 68, which simply refers to the relaxation of the terms and conditions of a lease, which is granted in accordance with the Rules.

12. No doubt, no lease can be granted in favour of the afore-mentioned Corporations on the basis of a class preference which is sought to be created by the impugned C.O. dated 10-9-1993, but then the question is whether the leases granted to such Corporations can be said to be illegal even if all the ingredients of Rule 9(2) are fulfilled. It is not disputed that the applications of the Corporations, which have been accepted, were either received later or if any application was made earlier that was completed on a later date. The applications which are received later may be accepted under Rule 9(2), provided there are special reasons and they have been recorded by the State Government. It is also not disputed that the reasons have been recorded for by passing the petitioners and for accepting the applications of the Corporations, which were received later. The reasons are common. It is stated that in the year 1991-92, private contractors carried on mining operations in most of the areas and they indulged in indiscriminate felling of the trees outside their areas and according to the Forest Authorities they also committed theft of such timber and for that reason, in 1992-93 leases were granted to the Corporations, whose work was found satisfactory. It

is also stated that by granting a lease to a Corporation, more employment opportunity is provided to the public. Yet another reason was given that the whole area in respect of which the petitioners applied, is terrorist stricken area and the grant of a lease to a Corporation would facilitate maintaining law and order situation. The decisions taken by the authorities on the basis of such reasons to accept the applications of the Corporation in the impugned minutes of the meeting cannot be interned unless there are materials on record to show prima facie that the impugned decisions were recorded with mala fide or arbitrarily. In Maharashtra State Board of Secondary and Higher Secondary Education v. K.S. Gandhi, (1991) 2 SCC 7I6 : (1991 AIR SCW 79), the Supreme Court ruled down that when the evidence justified the finding recorded in a domestic enquiry, it was not open to the High Court under Article 226 to evaluate the evidence and to interfere with the finding and that under Article 226 or Article 136 by the High Court or by the Supreme Court, the Court does not sit as a court of appeal on the finding of facts recorded by the domestic enquiry body, nor has power to evaluate the evidence as an appellate authority and to come to its own conclusion. If the conclusions reached by the Board can be fairly supported by the evidence on record, then the High Court or the Supreme Court has to uphold the decision, though the appellate court of facts may be inclined to take a different view.

13. The decision based on the reasons recorded by the Authorities will not, therefore, be evaluated by this Court under Article 226. Moreover, this Court can take judicial cognizance of the fact that the entire Tarai area of district Nainital and some other areas in the State of U.P. are terrorist -- sticken -- area and maintenance of law and order situation will be more convenient, if the employees of the Corporations owned by or belonged to the State of U.P. carry on mining operations in that area than the employees of the private contractors. Also this Court cannot doubt the reason that the private contractors indiscriminately indulged in felling of the trees and they caused huge loss to the State by committing theft of such timber. These reasons are good enough to ignore the applications of the petitioners, which were made earlier than the applications of the Corporations. The State is not merely interested in realising only revenue, but is equally interested in the preservation and development of forest. It cannot grant a lease to the private contractors knowingly well that the security of the State is at

the stake by the nefarious activities of the terrorists. The reasons recorded by the Authorities are no doubt, special in nature and, therefore, the requirements of Rule 9(2) stand fulfilled. This being so, leases can be granted to the aforesaid Corporations under Rule 9(2) without any legal inhibition and without taking recourse to the impugned G.O. dated 10-9-1993, though while recording the minutes of the meetings when recommendation was made to accept the applications of the Corporations, reference has been made to the impugned G.O. On the facts and circumstances of these cases, reference to the impugned G.O. is irrelevant and action as envisaged under Rule 9(2), which has been taken in these cases, could have been taken independent of the impugned G.O.

14. We are, therefore, of the view that the applications of the relevant Corporations were rightly accepted in respect of the areas for which the petitioners applied. In all these cases interim orders were passed to the effect that until further orders settlement in pursuance of the impugned G.O. dated 10-9-1993 may be made, but the same shall not be implemented, meaning thereby, lease-deed would not be executed in favour of the Corporations. In view of the foregoing legal position, all these interim orders deserve to be vacated and the Corporations in question would be entitled to get the leases executed and to carry on the mining operations for the remaining period of the year 1993-94.

15. In the result, all the petitions are partly allowed and the impugned G.O. dated 10-9-1993 insofar as it directs to give preference to the Corporations belonging to or owned by the State of U.P., is quashed. The interim orders dated 28th and 29th September, 1993, are vacated.

16. Petition partly allowed.