

**Smt. Kunti Devi Vs. State of U.P. and ors.**

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**SooperKanoon Citation :** [sooperkanoon.com/482342](http://sooperkanoon.com/482342)

**Court :** Allahabad

**Decided On :** Apr-28-2009

**Reported in :** 2009(3)AWC3031

**Judge :** Arun Tandon, J.

**Appellant :** Smt. Kunti Devi

**Respondent :** State of U.P. and ors.

**Disposition :** Petition allowed

**Judgement :**

**Arun Tandon, J.**

1. These two writ petitions have been filed by two unsuccessful applicants qua grant of mining lease in respect of the plots of village Babhanpura and Singhwar, district Varanasi. The mining lease in respect of the same has been granted in favour of respondent Ashok Kumar Singh.

2. Since both the writ petitions raise common issues of fact and law, they have been clubbed and are being decided by this common judgment. Facts of the case in brief are as follows:

3. The District Magistrate, Varanasi published an advertisement dated 5.7.2007 inviting applications for grant of mining lease in respect of various plots of land

situate in villages Singhwar, Babhanpura, Chandpur and Narottampur, district Varanasi.

4. In the present writ petition the mining lease in respect of plot situate in village Singhwar and Babhanpura has been questioned, therefore facts relevant qua the same alone are being mentioned herein below:

5. In response to the advertisement published, six applications were received including those of two writ petitioners and Ashok Kumar Singh. The applications were processed and it was found that only the applications of two writ petitioners and Ashok Kumar Singh were complete in all respect and therefore worth consideration. The applications of the other three applicants were rejected.

6. The District Magistrate after considering the applications alongwith documents filed by the respective parties, prepared a note qua the grant of mining lease with reference to the priority as provided under Rule 9 (2) of the U.P. Minor Minerals (Concession) Rules, 1963 (hereinafter referred to as 'Rules, 1963'). The recommendation was made on 27.12.2007. In the recommendation so made it was proposed that the mining lease in respect of the plots of the village Singhwar be granted in favour of Ashok Kumar Singh. The recommendation so made by the District Magistrate was questioned before the State Government by Smt. Kunti Devi (one of the petitioner) on the ground that Ashok Kumar Singh was involved in illegal mining in respect of the contract granted in his favour in respect of the village Badgawan, tehsil Sakaldeeha, district Chandauli and therefore he was ineligible for grant of any fresh mining lease. In the aforesaid proceedings initiated by Smt. Kunti Devi, the second petitioner Udai Nath also intervened by making an application.

7. The State Government by means of the order dated 24th April, 2008 decided the matter between the parties and found that the recommendation made in favour of Ashok Kumar Singh was not in accordance with law and in the interest of administration in the background that he was involved in illegal mining as per records available. State Government, therefore, remanded the matter to the District Magistrate for determining the preference afresh.

8. In order to keep the records straight, it may be recorded that revision filed by Ashok Kumar Singh in respect of village Babhanpura, being Revision No. 33 of 2008 was also rejected under the same order.

9. Feeling aggrieved with the order of the State Government, Ashok Kumar Singh filed writ petition before this Court, being Writ Petition No. 24568 of 2008. The writ petition was decided under the judgment and order of this Court dated 17.11.2008. The Hon'ble Court directed the matter to be re-examined by the State Government after taking into consideration the subsequent revision filed, i.e., Revision No. 98 (R) of 2008 as well as the reports, which are on record therein. The determination of the priority qua the grant of mining lease was directed to be considered in accordance with law afresh.

10. On remand the State Government by means of the impugned order dated 30th March, 2009, after reconsidering the preference qua all the three applicants with reference to Rule 9 (2) of the Rules, 1963, has proceeded to record a finding that under various clauses of Rule 9 (2) three preferences falls in favour of Ashok Kumar Singh, while two each fall in favour of the present petitioners. It has, therefore, been held that Ashok Kumar Singh is more suitable for grant of mining lease in respect of plots of both the villages, i.e., Singhwar and Babhanpura. It is against this order that the present two writ petitions have been filed.

11. On behalf of Smt. Kunti Devi, Sri M. D. Singh 'Shekhar' senior advocate assisted by Sri R. D. Tiwari, advocate contended before this Court that in its earlier order the State Government, i.e., dated 24.4.2008 amongst others recorded a categorical finding that Ashok Kumar Singh has indulged in illegal mining. This finding was based on the reports of the district authorities wherein it was reported that Ashok Kumar Singh was involved in illegal mining qua his contract of village Badgawan, tehsil Sakaldeeha, district Chandauli. He submits that the State Government on remand should have considered the records as were existing on the date of the earlier order and should not have taken into consideration the subsequent two reports, which had been obtained on an application made by Ashok Kumar Singh subsequent to order dated 24.4.2008. It is contended that the subsequent reports were liable to be ignored.

12. It is also pointed out that the revision filed by the writ petitioner Kunti Devi against the subsequent reports of the District Magistrate, whereby Ashok Kumar Singh was said to have been absolved of the charge of illegal mining, was party before the State Government, being Reference No. 33 (R) of 2008, and was decided only on 31st March, 2009. While the State Government proceeded to record a finding in the order impugned dated 30.3.2009, passed one day prior, that Ashok Kumar Singh is not involved in illegal mining.

13. Sri M. D. Singh 'Shekhar', senior advocate further points out that from the recommendation of the District Magistrate as well as from the order of the State Government it is apparently clear that the solvency certificate produced by Ashok Kumar Singh alongwith his application was for a sum of Rs. 6,00,000 (six lacs) only, while the lease rent for one year of the plots of village Singhwar is Rs. 6,18,000, and that of village Babhanpura Was Rs. 3,00,000 and odd. Ashok Kumar Singh, therefore, did not possess the minimum amount of solvency as required, rendering him ineligible for grant of mining lease. Reliance in that regard has been placed upon the Division Bench Judgment of this Court dated 21.5.2008 passed in Writ Petition No. 49158 of 2007. It is contended that until and unless an applicant is possessed of solvency, which is equivalent to one year's of lease rent of the plots in question, he cannot be considered for grant of mining lease.

14. With regard to Udai Nath Sri M.D. Singh has pointed out that the preference granted in his favour qua earlier experience of mining, based on MM-14 certificate produced by Udai Nath, is misconceived, inasmuch as the correctness of such MM-14 was specifically disputed by Smt. Kunti Devi before the State Government and it was obligatory upon the State Government to have obtained report from the district authorities as to whether such MM-14 certificate had been issued on the strength of the relevant documents available with the district authorities or not. Unless the correctness of the MM-14 certificate was examined, no preference could be granted under Clause 9 (2) (e).

15. On behalf of Udai Nath, it is contended by Shri Devbrat Mukherjee, advocate that on the last date of submission of the application, with reference to the notice published for settling the lease right for mining under tender notice dated 5.7.2007,

application complete in all respects was filed by the writ petitioner, i.e.; Udai Nath only. The other two persons namely Kunti Devi and Ashok Kumar Singh had filed incomplete applications and therefore in view of Rule 6 (1) (g) the application of the petitioner alone was competent on the relevant date. He submits that the application of the petitioner was, therefore, prior in point of time vis a vis Kunti Devi and Ashok Kumar who had completed their applications after notice under Rule 6 (2) was issued. Therefore, the date of making of the application by Kunti Devi and Ashok Kumar would be the date on which they completed the required formalities for making the application. In view of Rule 9 (1), the petitioner Udai Nath was entitled for grant of mining lease as the lease is to be granted with reference to the application received first in point of time.

16. It is further contended that the preference under Section 9 (2) (a) was also available to the writ petitioner having regard his experience of mining operations, details whereof have been mentioned in Annexure-3 to the writ petition. The aforesaid aspect of the matter has completely ignored by the State Government.

17. Having regard to the provisions of Rule 9 (2) (e) the petitioner being Mallah by caste and being a member of Nishad Community was entitled to the preference qua allotment of patta under said clause also.

18. Lastly it is contended that under Rule 9 (2) (b) the only statutory requirement is that the financial resources available to the applicant had to be disclosed. Udai Nath in fact had filed affidavit of his real uncle and mother-in-law stating that they were solvent to the tune of Rs. 15 lakhs and they further undertook to bear all financial responsibilities if the lease was granted in favour of the petitioner, i.e., Udai Nath. Benefit of the said financial resource has been illegally denied.

19. The contentions so raised on behalf of the writ petitioners are opposed by Sri Shashi Nandan, senior advocate assisted by Sri Manish, advocate. He, with reference to Rule 9 (2), it is vehemently contended that the Rule talks of preference only, it does not lay down the criteria for eligibility. The eligibility condition for grant of lease are provided under Rule 6. Similar is the position as per the advertisement made by the District Magistrate for the purpose. Neither Rule 6 nor the advertisement prescribe any minimum amount of solvency to be

produced as a condition precedent for consideration of the application. He clarifies that Rule 9 (2) (b) talks of financial resources available to the applicant only and therefore the extent of solvency mentioned in the application is a complete misnomer qua a consideration of the preferential claim under Rule 9 (2) '(b). He submits that the State Government has to examine as to whether the person concerned has the financial resources for running the mining lease with reference to the amount of lease rent payable for examining the preference qua such grant. Such determination of preference cannot be equated with eligibility condition mentioned in Rule 6/Advertisement. He submits that the Division Bench judgment of the High Court, referred to above, does not take note of the aforesaid statutory provision and does not lay down the law as suggested by Sri M.D. Singh. He clarifies that petitioner is not excluded from the zone of consideration only because the solvency certificate submitted by him alongwith his application was to the tune of Rs. 6,00,000 only.

20. With reference to the consideration of subsequent reports with regards to charge of illegal mining, he points out that such consideration was directed under order of this Court dated 17.11.2008, passed in Writ Petition No. 24568 of 2008. The subsequent report dated 29th June, 2008 established beyond doubt that the charge of illegal mining was not established against Ashok Kumar Singh. Even otherwise he contends that the earlier reports of the authorities were ex parte and such ex parte reports could not be the basis for coming to a conclusion that Sri. Ashok Kumar Singh was involved in illegal mining, as no order holding him guilty of illegal mining and imposing penalty thereon was passed. He submits that ex parte enquiry reports cannot be conclusive proof of the charge of illegal mining, more so when such enquiry reports have been found to be incorrect as per the subsequent enquiry report of the district authority. The State Government has rightly held in these circumstances that the charge of illegal mining was not established against Sri Ashok Kumar Singh.

21. For appreciating the controversy raised in the present writ petitions, Rules 6 and 9 of the Rules, 1963 are relevant for our purposes, which reads as follows:

6. Application fee and deposit for grant of mining lease.-(1) Every application for grant of mining lease shall be accompanied by-

(a) a fee of one thousand rupees ;

(b) a deposit of two thousand rupees for meeting the preliminary expenses, other than those specified in Rule 17; and

(c) four copies of the cadastral survey map on which the area applied for is clearly marked, and in case such area is not covered by cadastral survey, four copies of topographical survey map on a scale of at least 4' x 1 mile, on which the area applied for is accurately marked ;

(d) a certificate issued by District Officer or by such officer as may be authorized by the District Officer in this behalf, showing that no mining dues are outstanding against the applicant:

Provided that such certificate shall not be required where the applicant has furnished an affidavit to the satisfaction of the State Government, stating that he does not hold or had not held any mining lease or any other mineral concession in the territory of the State ;(e) a certificate of caste and residence of the applicant, where the application is for mining lease of sand, or morrum or bajri or boulder or any of these in mixed state ;

(f) a character certificate given by the District Officer of the district, where the applicant permanently resides ;

(g) in case the area applied for is having annual lease amount or dead rent, as the case may be, of rupees two lacs or more, then the applicant shall also furnish no objection certificate of the following authorities:

(i) Authorized Officer of the Income Tax Department,

(ii) Authorized Officer of the Trade Tax Department,

(iii) District Magistrate of the district, where the applicant permanently resides,

(iv) Senior Superintendent of Police/ Superintendent of Police of the district, where the applicant permanently resides.

(2) If the application is not complete in any respect or is not accompanied by the fee, deposit or the documents mentioned in Sub-rule (1), the District Officer or the Officer authorized by the State Government in this behalf, by fifteen days notice require the applicant to complete the application in all respects or, to deposit the fee or furnish the documents within such time as may be specified in the notice and if the applicant fails to do so within the specified time, such application shall not be considered.

9. Preferential right of certain persons.-(1) 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 the applicant, whose application was received later:

Provided that where such applications are received on the same day, the State Government may, after taking into consideration the matters specified in Sub-rule (2), grant the mining lease to such applicants as it may deem fit.(2) The matters referred to in Sub-rule (1) are-

(a) any special knowledge or experience in mining operations possessed by the applicant ;

(b) the financial resources of the applicant ;

(c) the nature and quality of the technical staff employed or to be employed by the applicant ;

(d) the conduct of the applicant in carrying out mining operations on the basis of any previous lease or permit, and in complying with the conditions of such lease or permit or the provisions of any law in connection therewith ;

(e) In respect of mining lease for sand or morrum or bajri or boulder or any of these in mixed state, exclusively found in the river bed, if other things are equal, preference shall be given to a person or group of persons, whether incorporated or

not who belong to socially and educationally Backward Classes (such as Mallah, Kewat, Bind, Nishad, Manjhi, Batham, Dhiwar, Themer, Chai, Sorahia, Turha, Raikwar, Kaiwrt, Khulwat, Tiya, Gaudia (Dodia and Kashyap) and other such castes of citizens, as notified by the State Government from time to time who have obtained a certificate in Form MM-14 from the concerned District Officer, or such other officer authorized in this behalf by the State Government, certifying that such person/persons is/are traditionally engaged in excavation of sand/ morrum for their livelihood and who are resident of the District for which the application has been given; and

(f) such other matters as may be considered necessary by the State Government.

(3) Notwithstanding anything contained in Sub-rules (1) and (2), the State Government may, for any special reasons to be recorded, grant a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

22. Rule 6 lays down the conditions for making of the application for grant of mining lease. A bare reading of Rule 6 (1), quoted above, establishes that the same provides procedure for application being made for grant of mining lease and the conditions to be satisfied for making of the application. While Rule 6 (2) provides that in case the application filed is not complete then notice is to be issued for completion of the formalities and it is only when a candidate does not complete the formalities within the time specified in the notice, his application is to be rejected.

23. Rule 9 of the aforesaid Rules provides that if two or more persons apply for a mining lease, the applicant whose application is received earlier shall have a preferential right for the grant of lease over the applicant whose application is received later. If the applications are received on the same day, the State Government may take into consideration the matter as specified in Sub-rule (2) for grant of mining lease. Sub-rule (2) lays down the conditions \* on which such preference for grant of mining lease is to be considered in respect of applicant whose applications are received on the same day. The conditions mentioned under Rule 9 (2) (a), (b), (c), (d) and (e) only lay down the criterion for grant of

preference and cannot be treated to be the eligibility conditions to be precise essential conditions, i.e., non-fulfilment of which would render the applicant ineligible for grant of mining lease.

24. This Court may add that if an applicant does not satisfy any of the requirements mentioned under Rule 9 (2) he would at best, not entitled to the preference provided therein. However, it cannot be said that he has become ineligible for consideration, inasmuch as in the given case all applicants, who have submitted their application, may not satisfy the requirements of Rule 9 (2) and therefore in such a contingency Rule 9 (2) (f), would come into play, which permit the State Government to consider other matters necessary for the grant.

25. From a joint reading of Rule 9 (1), (2) and (3) what simply follows is that Rule 9 (2) lays down a criteria of preference, which are to be taken into consideration while evaluating the applications which are received on the same day. They cannot be equated or treated as eligibility condition and, therefore, mere non-fulfilment of any of the conditions contained in various Clauses of Rule 9 (2) would not make the person ineligible for consideration for grant of mining lease.

26. In the aforesaid legal background this Court may now examine the contention raised on behalf of the parties.

27. So far as the condition raised on behalf of Udai Nath with reference to Clause 9 (1) of the Rules is concerned, it is no doubt true that Udai Nath submitted his complete application within the time specified in the advertisement and that his was the first application, but this in the facts of this case will not give him a right to claim allotment under Clause 9 (2) for the following reasons:

28. In the advertisement last date for submission of the application was provided and therefore all applications received up to the cut off date shall be treated within the time and it is wholly immaterial as to who has filed the first application vis-a-vis the other candidates all of whom have submitted their applications within the date mentioned in the application. Further since under Clause 6 (2) an opportunity is contemplated to be provided granting 15 days time to the applicant to remove the defect, and after such notice if defects are removed what logically follows is that

the defect stand removed from the date on which application was made. Any other interpretation would lead to a situation where the application itself would be treated beyond the date mentioned in the advertisement and therefore cannot be considered. Such interpretation would also frustrate the every purpose of Rule 6 (2). Therefore this Court holds that all applications filed in response to an advertisement providing for a cut off date (irrespective of the date of filing) if filed within the date mentioned, would be treated to have been made on the same date. If any defect is noticed in the application of a particular candidate and he is permitted to remove the defect under Rule 6 (2) and if such defects are removed within the time specified, then the removal of the defect would relate back to the date of making of the application. All such applications become complete and are liable to be treated as if the same were filed on the same date. Provision of Rule 9 (2) was therefore become attracted in respect of all such applications.

29. So far as the objection raised by Smt. Kunti Devi qua Ashok Kumar Singh being possessed of solvency of Rs. 6,00,000 and therefore ineligible for grant of mining lease in respect of village Singhwar vis-a-vis one years lease rent whereof is more than six lacs, is concerned, the same also does not appeal to the Court. As already noticed above, Rule 9 (2) (b) talks of financial resources of the applicant only. It does not lay down the eligibility conditions of being possessed of the requisite amount of solvency. Meaning thereby the State Government is obliged to consider the financial resources of the applicant while determining his preference, it cannot be treated to be a condition of the eligibility. Therefore, this Court hold that Ashok Kumar Singh was not rendered ineligible only because of having produced a solvency of Rs. 6,00,000 only. The contention of Udai Nath also appears to be correct when he submits that his financial resources were also required to be considered with reference to the solvency of his uncle and mother-in-law, who were solvent to the tune of Rs. 15,00,000 and had further undertaken to bear all financial responsibilities if the lease was granted in favour of Udai Nath.

30. The Division Bench judgment relied upon by Sri M. D. Singh 'Shekhar' dated 21.5.2008 passed in Writ Petition No. 49158 of 2007 is dearly distinguishable in the facts of the present case, inasmuch as scope of Rule 9 (2) was neither subject-matter of consideration in the said writ petition nor has been examined.

31. This leads the Court to the two most hotly contested matters before this Court (a) finding of the State Government that the conduct of the Ashok Kumar Singh in respect of his lease granted qua the village of district Chandauli being satisfactory and (b) that the preference granted in favour of Udai Nath only on the basis of the MM-14 certificate produced by him.

32. So far as the allegation of illegal mining against Ashok Kumar Singh is concerned, this Court may record that there are conflicting reports on record in respect of such illegal mining by Ashok Kumar Singh in respect of the lease granted qua the land situate in village Badagaon, district-Chandauli. It appears that the State Government has not taken care to examine the records nor has stated in the impugned order as to whether any statutory proceedings were initiated against Ashok Kumar Singh qua such illegal mining in accordance with the statutory rules or not. If there were statutory proceedings/order then the enquiry reports lose thereof significance and statutory orders/ proceedings must prevail. Moreover, Sri M. D. Singh 'Shekhar' is right in submitting that the State Government should examine the entire records pertaining to district Chandauli and should have then come to a conclusion qua the charge of illegal mining, which has not been done. I am also of the view that when the challenge made to the MM-14 Certificate itself by Smt. Kunti, as granted in favour of Udai Nath, it was obligatory upon the State Government to have obtained verification from the district authorities as to whether said MM-14 was issued with reference to the document relevant for the purpose or not, which has also not been done.

33. In view of the aforesaid, I have little or no justification to record that the findings recorded by the State Government on the following three issues cannot be approved of:

(a) Udai Nath cannot be granted the preference under Rule 9 (2) (b) on the ground he had produced solvency certificate of his uncle and mother-in-law ;

(b) That there is nothing on record to establish that the charge of illegal mining against Ashok Kumar Singh ;

(c) Udai Nath is entitled to the preference on the strength of MM-14 produced by him.

34. All three issues needs re-examination by the State Government with reference to Rule 9 of the U.P. Minor Minerals (Concession) Rules, 1963 in light of the observations made above. For the said purpose State Government must summon the original records from district Chandauli and verification reports from the district authorities, who had issued MM-14 Certificate in favour of Udai Nath. Consequently the order passed by the State Government dated 31st March, 2009 is hereby set aside.

35. Let the matter of preference be re-examined by the State Government in accordance with law after affording opportunity of hearing to the parties at the earliest.

Both the writ petitions stands allowed subject to the observations made above.

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