

S.P. Roy and Another Vs. State of U. P. and Others

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Court : Allahabad

Decided On : Sep-15-2000

Reported in : 2000(4)AWC3112

Judge : M. Katju and; Onkareshwar Bhatt, JJ.

Acts : Mineral Concession Rules, 1960 - Rule 51; Uttar Pradesh Minor Minerals (Concession) Rules, 1963 - Rule 70

Appeal No. : C.M.W.P. No. 35792 of 1993

Appellant : S.P. Roy and Another

Respondent : State of U. P. and Others

Advocate for Def. : S. C.

Advocate for Pet/Ap. : Jitendra Pandey, Adv.

Judgement :

M. Katju and Onkareshwar Bhatt, JJ.

1. Heard learned counsel for the parties.

2. The petitioners have challenged the publication notice dated 25.5.1993 and has prayed for a mandamus directing respondents not to interfere in his excavation and transportation of silica sand.

3. The petitioners deal with silica sand, which is a major mineral, as contrasted to ordinary sand, which is a minor mineral. A major mineral is governed by the Mineral Concession Rules, 1960, while a minor mineral is governed by the U. P. Minor Minerals (Concession) Rules, 1963, both these rules being made under the Mines and Minerals (Regulation and Development) Act, 1957.

4. The grievance of the petitioners is that the respondents harass them when they are transporting silica sand by requiring them to produce transit passes and pay transit fee, which is not required by any law.

5. Learned counsel for the petitioners submitted that requirement of transport pass and transit fee for transporting silica sand, which is not a minor mineral, is totally beyond the jurisdiction of the State authorities. Learned counsel for the petitioner urged that no doubt under Rule 70 of the U. P. Minor Mineral (Concession) Rules, the authorities can demand showing of transit pass issued by the lease holder, but this provision is only regarding transport of minor minerals, and there is no similar provision in the Mineral Concession Rules, 1960 which deals with major minerals. However, learned standing counsel relied on Rule 51 of the Mineral Concession Rules, 1960 which states ;

'The holder of a prospecting licence or a mining lease shall furnish to the State Government such returns and statements and within such period as may be specified by it.'

6. In our opinion, the above provision does not permit the authorities to require transit pass and transit fee from transporters of silica sand. Hence, the action of the respondents is clearly illegal.

7. The petition is therefore, allowed, and a mandamus is issued to the respondents not to insist on production of transit pass and transit fee from the petitioners. The impugned notice is quashed.