

Santosh Kumar Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Jul-11-2006

Reported in : AIR2007All23

Judge : A.K. Yog and; V.C. Misra, JJ.

Appellant : Santosh Kumar

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

1. Heard learned Counsel for the petitioner and Shri Vishnu Pratap learned standing counsel on behalf of the respondents and perused the record.
2. The petitioner, who held earlier mining lease, which was to expire, submitted an application for renewal, as contemplated under Rule 6A, U. P. Minor Minerals (Concession) Rules, 1963. The said application was found in order under Rules 6A read with Rule 6 of the said Rules, 1963. There was no application/prayer to condone delay in filing this application.
3. The District Magistrate/District Mines Officer, however, found that there was delay of 7 days in submitting the application, i.e. 7 days beyond six months as referred to in Rule 6A of the Rules, 1963. The District Magistrate referred the matter to the State Government with the recommendation to condone the delay as

provided under Rule 6A(2) of Rules, 1963. The State Government rejected application of the petitioner vide impugned order dated May 19, 2006/annexure-9 to the writ petition on the ground that the petitioner has failed to show cause for the delay in submitting application for renewal of mining lease in his favour.

4. The petitioner has prayed for issuing a writ, order or direction in the nature of certiorari quashing the impugned order dated 19-5-2006 passed by respondent No. 1/State of U. P. (annexure-9 of the writ petition) and also a writ of mandamus commanding the respondents-authorities to condone the delay of 7 days in filing the lease and another writ of mandamus to direct the respondent Nos. 1 and 2 to sign the lease deed and other usual lease deed.

5. Vide our order-dated 6-7-2006, this Court required the respondents to produce original record containing applications of all the applicants (including the petitioner) in the matter for renewal of lease. Consequently, original record has been placed before us.

6. We have perused the report/order dated 3-12-2005 passed by the District Magistrate wherein he found that the application was in accordance with rules but 7 days delay be condoned by the State Government.

7. It is conceded by the learned standing counsel that there is no provision in Rules, 1963 requiring an applicant to submit an application for condonation of delay or give explanation or disclose the cause of delay and give justification to satisfy that ground given is sufficient to warrant condonation of delay.

8. It is argued by the Standing Counsel that unless application is filed giving cause for delay, the State Government is not in position to assess/adjudicate the sufficiency of cause of the delay.

9. The petitioner submitted that applications for condonation of delay in the case of others (even though the delay in submitting application by those applicants was for larger period) were allowed by the State Government.

10. Learned Counsel for the petitioner submitted that before application for renewal is rejected an opportunity ought to have been given to submit

reasons/cause for seeking condonation of delay. In support of his argument, reference is made to Rules 6, 6A, 7 and 8 of the Rules, 1963 which are reproduced for convenience:

6. Application fee and deposit for grant of mining lease.-

(1) Every application for grant of a mining lease shall be accompanied by-

(a) a fee of one thousand rupees,

(b) a deposit of two thousand rupees for meeting the preliminary expences, 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 may on a scale at least 4' = 1 mile, on which the area applied for is accurately marked.

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

Provided further 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.

(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 authorised by the State Government in this behalf, shall, by fifteen days notice require the applicant to complete the application in all respect or, to deposit

the fee or furnish the documents within such time as may be specified in the notice and if the applicant to do so within the specified time such application shall not be considered.

6-A. Application fee etc. for renewal of mining lease-

(1) An application for renewal of mining lease may be made at least six months before the date of expiry of the mining lease along with four copies of the map of leasehold area showing clearly the area applied for renewal and the provisions of Clauses (a) and (b) of Sub-rule (1) of Rule 6 shall mutatis mutandis.

(2) The State Government may condone the delay caused in making the application for renewal of mining lease after the period specified in Sub-rule (1).

7. Enquiry and Report.- The District Officer shall, unless he is authorized to grant or renew the mining lease, cause an enquiry to be made into all relevant matters and, within two months from the date of receipt of application for mining lease, forward two copies of the application along with his report to the State Government or to such other authority as the State Government may have authorised in this behalf.

8. Disposal of application-

(1) The State Government or the authority authorised by it in this behalf may subject to the provisions of these rules and after making such further enquiry as it may consider necessary-

(a) in case of application for grant of a mining lease refuse or grant the mining lease for the whole or part of the area applied for and for such period as it may consider proper.

(b) in the case of application for renewal of a mining lease, refuse or renew the mining lease for the whole or part of the area applied for and for such period, not exceeding the period of the original lease, as it may consider proper.

Provided that where an application for grant or renewal of a mining lease is refused or the area is reduced, reasons therefore shall be recorded and

communicated to the applicant.

11. Learned Counsel for the petitioner referred to Rule 6(2) of Rules, 1963 and pointed out that District Officer is required for giving 15 days in case application is not complete in any respect of Rules 6(1) of Rules 1963. It is contended that application for renewal is also an application and, therefore, if 'application for renewal' is not complete, District Magistrate ought to have given opportunity in this respect to remove the defect. In support of his argument, learned Counsel for the petitioner referred to Rule 7, which requires District Officer to cause an inquiry to be made into all relevant matters and within two months from the date of receipt of application of mining lease forward two copies of application (along with his report to the State Government).

12. The said Rule 7 of Rules, 1963 uses the expression 'application' in the case of 'application for renewal' of mining lease. Rule 8 of Rules, 1963, which requires State Government to process the application for renewal of mining lease subject to satisfaction of requirement of the other Rules and also after making such other inquiry as it may consider necessary. If application to 'renew mining lease' is not filed before six month (sic) Rules, 1963) the application was certainly not in order and in absence of an application for condonation of delay it should be treated as defective or incomplete. To this extent, the District Magistrate had no jurisdiction to entertain the applications of the petitioner and refer it to the State Government. The fact that application without condonation of delay, was entertained and referred to the State Government, if the provisions of Rules 6(2) are kept in mind the District Magistrate was supported to have given notice requiring applicant (petitioner) to complete the application in this respect also. If application for condonation of delay was essential the District Magistrate should have rejected the application himself on the ground of being incomplete (instead of recommending to the Government for condoning the delay).

13. In this view of the matter, we find that the impugned order dated 19-5-2006 (annexure-9 to the writ petition) cannot be sustained and is liable to be set aside.

14. The impugned order dated 19-5-2006 is hereby set aside with a direction to the respondent No.1 to consider the application afresh after giving full opportunity

to the petitioner to submit explanation for condonation of delay to avoid delay as matter is quite old. We further direct the petitioner to file certified copy of this judgment along with an application for condonation of delay before respondent No. 1 within four weeks from today and if the petitioner files an application for condonation of delay, as stipulated, respondent No. 1 shall decide the same in accordance with, law within one month of receipt of such application.

15. While dealing with the instant case, we are of the opinion that the rules framed are inadequate and it is advisable that specific provision be made requiring the applicant, in the case of renewal of mining lease to file an application for condonation of delay, and adequate amendment be incorporated in rules to avoid ambiguity in future. For this purpose, a copy of this judgment shall be sent to the Principal Secretary Industrial Development for consideration of the State Government to take steps, in order to avoid unnecessary litigation in Court on this issue, if so advised.

16. Petition stands allowed. No order as to costs.