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Court : Allahabad

Decided On : Dec-05-2006

Reported in : AIR2007All58

Judge : R.P. Misra and ;Shishir Kumar, JJ.

Appellant : Arvind Agrawal

Respondent : State of U.P. and ors.

Advocate for Pet/Ap. : Mr. Das, Mr. Sanghi

Disposition : Petition dismissed

Judgement :
ORDER

1. The present writ petition has been filed for quashing the impugned order dated 7-8-2006 filed as Annexure 1 to the writ petition. Further prayer is for issuing a writ in the nature of mandamus directing the District Magistrate, Banda to grant mining lease to the petitioner in plot No. 332 in an area of 2 acres situate in village Barokhar Khurd, District Banda.

2. The facts arising out of the present writ petition are that on 8-8-2003 the petitioner submitted an application for grant of ruining lease in plot No. 332 in an area of 2 acres situate in Village Barokhar, tehsil and district Banda for excavation of sand stones (Khanda, Boulder and Gitti). The application of the petitioner was

submitted for grant of mining lease under Chapter-II of U.P. Minor Minerals (Concession) Rules, 1963 (in short the U.P. MMC Rules, 1963). The District Magistrate after having the application asked for a report from the S. D. M. /Geologist. A copy of the same has been filed as Annexure-2 to the writ petition. The Divisional Forest Officer gave a No-Objection Certificate for grant of mining lease vide its letter dated 5-9-2003. On 27-9-2003 the Assistant Geologist has also submitted a report indicating therein that the aforesaid plot can be awarded for mining lease and has recommended the case of the petitioner. After the report submitted by the authorities, the mining lease was required to be granted by the District Magistrate, Banda but the matter was kept pending and the District Magistrate has not passed any order although the requirement was complete on 27th September, 2003.

3. By 20th amendment in U.P. MMC. Rules, 1963 was inserted on 27-8-1994 and by means of the aforesaid amendment, Rule 72 was inserted in the U.P. Minor and Minerals Concession Rules, 1963. Rule 72 provides inviting application on availability of area for regrant on mining lease to be notified. On 8-11-2004 the District Magistrate, Banda issued notice inviting applications for grant of mining lease regarding various other areas including the area of plot No. 332 of village Barokhar Khurd. Copy of the same has been filed as Annexure-5 to the writ petition. The application filed by the petitioner was not being considered by respondent No. 2 deliberatly though the same was filed prior to the amendment inserted in the rules. The formalities which were required to be done, were made by the petitioner prior to the notification issued by respondent No. 2. The petitioner filed a writ petition before this Court bearing No. 52118 of 2004 and the said writ petition was disposed of finally vide its order dated 22-8-2005 and this Court has passed the following order:

(1) Heard counsel for the petitioner and Standing counsel for the respondents.

(2) According to the petitioner, he had filed an application for grant of mining lease on 8-8-2003 before respondent No. 2. As it has not been decided he has filed the present writ petition.

(3) In the circumstances of the case it would be appropriate that the petitioner's application dated 8-8-2003 may be decided ; by the concerned respondent by a reasoned order at an early date, and if possible, within three months from the date of receipt of certified copy of this order. The petitioner along with certified copy of this order will also file a copy of his aforesaid application, other necessary documents and a duly stamped self-addressed envelope. The concerned respondent after faking decision will communicate the same to the petitioner.

(4) With these observations the writ petition is disposed of.Dated 22-8-2005 Sd/ Yatindra Singh. J.Sd/ R.K. Rastogi, J.

4. From the perusal of the aforesaid order it was directed that the application of the petitioner be considered within a period of three months but as the matter was kept pending and was not decided in spite of the order passed by this Court, a Contempt Application No. 2677 of 2006 was filed by the petitioner. The said contempt application was decided on 13-7-2006 and the Hon'ble Court was pleased to pass the following order.

Heard learned Counsel for the applicant.

This contempt petition has been filed with' the allegation that in spite of an order dated 22-8-2005 passed by this Court in Writ Petition No. 52118 of 2004 the opposite party, District Magistrate, Banda has not decided his claim and representation though the stipulated time has elapsed.

The opposite party, District Magistrate, Banda is bound by the order of this Court and in case he does not decide it within a month of receipt of this order, without any reasonable cause, the Court would have no option except to punish him under Section 12 of the Contempt of Courts Act and other allied powers.

The applicant shall supply a duly stamped registered envelope addressed to the opposite party, district magistrate, Banda along with a copy of the claim/representation and another self addressed stamped envelop to the office within two weeks from today. The office shall send a copy of this order along with the self addressed envelope of the applicant together with the claim/representation

to the opposite party, District Magistrate, Banda within three weeks from today and keep a record thereof.

The opposite party, district Magistrate, Banda shall decide the claim and representation of applicant and intimate him of the order through the self addressed envelope within a week thereafter.

In case, opposite party, District Magistrate, Banda does not comply with the aforesaid direction, it would be open to the applicant to approach this Court again.

With the aforesaid observations, this petition is finally disposed off at this stage.D/- 13-7-2006 Sd/- D.P. Singh, J.

5. It has further been submitted that when the Hon'ble Court passed the order in contempt petition, then the District Magistrate, Banda obtained a report from the Mines Officer. The District Officer has given a report that the petitioner has filed an application for mining lease and all the formalities were completed but before granting of the mining lease to the petitioner on 8-11-2004, the notices were issued by the District Magistrate including the area for which the petitioner has submitted the application. The application of the petitioner was before the notice, thus it was not considered. Further opinion has been given that in similar circumstances similarly placed persons have been granted mining lease. Ignoring the aforesaid contents of the report and without looking into the provisions of the rules, the District Magistrate has passed the impugned order dated 7-8-2006 arid rejected the application of the petitioner.

6. It has been submitted on behalf of the petitioner that it is the admitted position that the method of notifying the availability of area under Rule 72 was inserted in the Mining Rules by means of 20th Amendment dated 27-8-1994. Admittedly the application of the petitioner was filed prior to the date of notification and all the requirements were made complete even prior to the issuance of the notice by respondent No. 2 dated 8-11-2004. In spite of the report submitted in favour of the petitioner by the Mines Department for grant of mining lease to the petitioner as far back as on 27-9-2003, the District Magistrate kept the matter pending without any reason.

7. The District Magistrate has erred in law in including the area applied by the petitioner in the notice dated 8-11 2004. The District Magistrate without looking into the provisions has held that the application of the petitioner was prior to the issuance of the notice, as such, the same is liable to be rejected. Further submission has been made on behalf of the petitioner that respondent No. 2 has misconstrued the provisions of discovered area/ Khoji Patta on the basis of the Government Order issued on 25-5-1995. It is true that the preferential right granted in the Government Order dated 25-5-1995 was withdrawn on 27-8-2002 but the said provision is not applicable in the case of the petitioner as the application of the: petitioner was for grant of mining lease under Chap-ter-II of Rules 1963. The impugned order which has been passed is upon a wrong interpretation of the legal provision and also based on non-application of mind because the order of respondent No. 2 is ignoring the contents of the report of the Mining Officer-in-charge and without ooking into the provisions of the rules. When the process of the notice was inserted under Rule 72, the District Magistrate has passed the impugned order on 7-8-2006 and rejected the application of the petitioner. It is an admitted position that the petitioner has submitted an application prior to the notification issued by the District Magistrate. In such a situation the petitioner submits that the petitioner's application cannot be rejected and respondent No. 2 has wrongly notified the area for which the application of the petitioner was already pending. The petitioner submits that according to Rule 5, the application for grant of mining lease in Form MM-1 is to be addressed to the State Government and the application shall be entered in a register of mining application in Form MM-2. Reliance has been placed upon Rule 6 and it has been submitted on behalf of the petitioner that the procedure has been prescribed under Rules 6 and 6-A for grant of mining lease, how the application is to be made and how it will be considered. Rules 7 and 8 are relating to an inquiry and report and disposal of the application. It has been provided that as soon as the application in conformity with Rule 6 is filed, the District Officer shall make an inquiry into all the relevant matters within two months from the date of receipt of the application of mining lease and will forward the true copies of the application along with his report to the State Government or to such other authority as the State Government may have authorized in this behalf. Rule 8 provides regarding disposal of the

application. Rules 5, 6, 6-A, 7 and 8 are being reproduced below:

5. Application for grant or renewal of mining lease-

(1) An application Form MM-1 for grant of mining lease or in Form MM-1(a) for renewal shall be addressed to the State Government.

(2) The application referred to in Sub-rule (1) shall be submitted in quadruplicate to the District Officer or to the officer authorized in this behalf by the State Government. Such officer shall endorse the receipt of the application on all the four copies entering the place, time and date of receipt. One copy shall be returned immediately to the person presenting the application.

(3) The application referred to in Sub-rule (1) shall be entered in a register of mining application in Form MM-2.

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

(a) a fee 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 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 authorized 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 of ficer authorized by the State Government in this behalf, shall, by fifteen days notice re quire the applicant to complete the applica tion 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 do not 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 of renewal of mining lease may be made at least six months be fore the date of expiry of the mining lease along with four copies of the map of lease hold area showing clearly the area applied for renewal and the provisions of Clauses (a) and (d) of Sub-rule (1) of Rule 6 shall mutatis mutandis apply.

(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 of 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 authorized in this behalf. 8. Disposal of application-

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

(a) in case of application for grant of a mining lease refuse or grant the mining lease for the whole or part of the areas 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 areas is reduced, reasons therefore shall be recorded and communicated to the applicant.

8. In view of the aforesaid facts the petitioner submits that the rejection of the application of the petitioner on the ground that it is prior to the date of notification, as such the same is not in accordance with Rule 72 cannot be considered, is illegal. Further it has been submitted that the petitioner's application does not come in the Khoji Patta. The respondents have misread that the application of the petitioner was made on the ground that the petitioner has discovered the area.

9. In view of the aforesaid fact, the petitioner submits that the order dated 7-8-2006 is liable to be quashed and the application of the petitioner be allowed and he may be granted mining lease. The petitioner has placed reliance upon a judgment of this Court reported in 1995 ALJ Page 926 Kanhaiya Lal Mallah v. State of U.P. and Anr. and reliance has been placed upon paras 9 and 10 of the said judgment. The same are reproduced below:

9. For the reasons, the submission of the Standing Counsel deserves to be rejected. Otherwise also, cardinal principles of law is that a statutory rule as far as possible should be so interpreted as to give full effect to its plain and unambiguous language without importing in it any foreign words and without subtracting therefrom any word. The legislation is so far as it is free from ambiguity should be understood as it stands. If the contention of the Standing Counsel is accepted, then that would amount to reading down into Rule 72(1) what in fact, does not exist therein. We are, therefore, loathe to accept the submission of the StandingCounsel. The argument canvassed by the Standing Counsel, if accepted,

would lead to endless confusion. There is nothing in Rule 72(1) to indicate that no notice for making the area, in respect of which a declaration is made under Rule 24, available for regrant, is required and that such notice is needed only when an existing lease granted under Chapter II or a lease envisaged by Rule 23, in Chapter IV, expires.

10. For the reasons, we hold that a notice of not less than thirty days as envisaged by Rule 72(1) of the Rules, is required in respect of an areas which has become available for regrant as a result of declaration made under Rule 24 of the Rules, in the same way as it is required in other two situations when the areas has become available for regrant of lease upon the expiry of an existing lease granted under chapter II, or upon expiry of a lease, envisaged by Rule 23. under Chapter IV of the Rules.

10. A counter affidavit has been filed on behalf of respondent No. 5 and it has been stated that certain incorrect facts have been pleaded in the writ petition. Regarding insertion of Rule 72, the date has been mentioned as 27-8-2004 though it should have been 27-8-1994. It has further been stated in the counter affidavit that since all the preferential rights have been withdrawn by the Government Order dated 27-8-2002 and therefore, mining lease, if any, sought for granted, cannot be granted on the basis of first come first serve basis, and thus the petitioner's application for grant of mining lease is liable to be rejected. It has further been held in the impugned order that the mining area available for mining lease was notified on 8-11-2004 and the application, which was to be moved for grant of mining lease since 9-12-2004 to 17-12-2004 according to Rule 72, the petitioner did not apply for grant of lease whereas several other applicants applied and their cases were considered. Admittedly the application of the petitioner for grant of mining lease was dated 8-8-2003 about one year and 4 months back to the notification under which the area in question was notified as available for grant of mining lease, therefore, the application has rightly been rejected. It has further been submitted by respondent No. 5 that the area in question for the purpose of mining lease has already been granted in favour of respondent No. 5 and the same has been submitted for approval as required to the State Government. This fact has been concealed by the petitioner and the petitioner has obtained an ex parte interim

order, therefore, the writ petition is liable to be dismissed. Further submission has been made on behalf of respondent No. 5 that the petitioner has an alternative remedy by way of filing an appeal under Rule 77 of the Rules 1963.

11. On behalf of respondent Nos. 1 to 3 a counter affidavit has been filed and it has been averred in the counter affidavit that vide amendment in Rule 72 of UP MMC Rules, 1963 brought through the Notification dated 27-8-1994 which provides that the District Magistrate shall notify the availability of mining area through a notification in accordance with law. The area in question Gat No. 332 measuring 3.75 acres was notified for mining lease on 18-11-2004 and the applications were invited from 9-12-2004 to 17-12-2004 from eligible persons. In pursuance of the aforesaid advertisement the applications were received from respondent Nos. 1 to 10. After considering the applications in terms of the relevant Rules and Government Orders issued from time to time, the District Magistrate decided to grant the mining lease in question in favour of Faizan Ahamad on 17-6-2006 according to law. It has further been averred in the counter affidavit that the petitioner's application for grant of mining lease is dated 8-8-2003, which is prior to the mining area being notified and it was actually notified for the purpose of grant of mining lease on 8-11 -2004 as the said application which was prior to the date of notification, is not liable to be considered. As the 20th Amendment was brought vide amendment dated 27-8-2004 and that was fully applicable in the case of the petitioner, the petitioner has wrongly misguided the Court regarding the date of 20th amendment in Rule 72 as 27-8-2004 in place of 27-8-1994 and has succeeded in obtaining an ex parte interim order in his favour. As the petit ioner has never submitted an application for grant of mining lease in pursuance of the advertisement dated 8-11-2004, therefore, the application of the petitioner cannot be considered.

12. Sri Alok Kumar Singh, learned Standing Counsel who appears on behalf of the respondents has submitted that the petitioner has applied the above application under Chapter II of U.P. MMC Rules, 1963 on the ground of discover. It appears that the report on the basis of the application filed by the petitioner was obtained. The District Magistrate on 8-11-2004 issued notice-inviting application regarding various areas including the plot for which the petitioner has made an application

earlier. The petitioner has never challenged the notice dated 8-11-2004. On the basis of the notice various persons have made applications and the same has been accordingly decided in compliance with the rules.

13. Sri Alok Kumar Singh learned Standing Counsel has further submitted that according to Rule 72 of the U.P. MMC Rules, 1963, if any area is vacant for mining, the same has to be granted in total consonance and conformity of Rule 72. Rule 72 is being quoted below:

72. Availability of area for re-grant on mining lease to be notified.--

(i) If any area, which was held under a mining lease under Chapter II or on reserved under Section 17A of the Act becomes available for re-grant on mining lease the District Officer shall notify the availability of the areas through a notice inviting for applications for grant of mining lease specifying a date, which shall not be earlier than, thirty days from the date of notice and giving description of such area and a copy of such notice shall be displayed on the Notice Board of his office and shall also be sent to Tehsildar of such area and the Director.

(ii) The applications for grant of mining lease under Sub-rule (1) shall be received within seven working days from the date specified in the notice referred to in the said sub-rule. If, however, the number of applications received for any area is less than three, the District Officer may further extend the period for seven more working days and if even thereafter, the number of applications remains less than three, the District Officer shall notify the availability of the area afresh in accordance with the said sub-rule.

(iii) An application for grant of mining lease for such area which is already held under a lease or notified under Sub-rule (1) of Rule 23 or reserved under Section 17-A of the Act and whose availability has not been notified under Sub-rule (1) shall be deemed to be premature and shall not be considered and the application fee thereon, if paid shall be refunded.

14. In such a situation it has been submitted on behalf of the respondents that the District Magistrate has rightly issued notice inviting applications for grant of mining

lease in accordance with the above rules. The learned Standing Counsel has placed reliance upon a judgment of the Apex Court reported in : [2001]1SCR1085 A- One Granites v. State of U.P. and Ors. It has been submitted that the Apex Court has examined the provisions of Rule 72 and has held that after notifying the availability through notice by the District Officer who brings it to the notice of the public at large so that the interested applicants may make application and such applications be considered on merit. He has placed reliance upon para 17 of the said judgment. The same is being quoted below -

17. The language used in Rule 72(1) on a literal meaning being given, would undoubtedly support the contention of Mr. Das and Mr. Sanghi, appearing for the appellant that this procedure would not apply when the areas in question had been held under a lease not under Chapter II but under Chapter IV. But such an interpretation should be avoided inasmuch as the very purpose of Rule 72 which has been engrafted in the rules will totally get frustrated. The object of having such provision in transparency in the matter of granting mining lease and restrict any under- hand dealing with the minerals by the permit granting authority. The object of notifying the availability through a notice by the District Officer is to bring it to the notice of the public at large, so that an interested applicant can make an application and such application could be considered on its own merit, when more than one applications are received in respect of the same areas. The lease under Chapter-II of the Rules could be granted for a period not exceeding ten years, as provided in Sub-rule (1) of Rule 12 and under Sub-rule (2) of Rule 12, if the State Government is of the opinion that it would be necessary in the interest of mineral development, it may grant the lease for any period exceeding ten years but not exceeding fifteen years. The Rules also contemplate renewal of such lease. Rule 19(2) empowers the State Government to determine any lease on the grounds indicated thereunder, after giving the lessee a reasonable opportunity of stating his case. The area which was being operated upon on the basis of a lease obtained under Chapter II when becomes available for re-grant if the prescribed procedure under Rule 72 is not followed, then it may lead to favouritism and bias, ultimately resulting in corruption of the permit granting authority. It is to prevent such abuse, the Legislature have brought into the Rules, the procedure prescribed under Rule 72, the duty of notifying the availability for the area by the District Officer. In case

of auction lease, it is not necessary, since the procedure prescribed for grant of auction lease in Rule 27 itself indicates that the District Officer or the Committee authorized is duty bound to at least give a notice 30 days before the date of auction in the manner indicated under the Rules by providing the date, time and place of auction and if for any reason, the auction is not completed on the notified date, then a fresh auction could be held after giving a shorter notice of at least seven days. Thus the procedure followed for grant of lease by auction as provided under Rule 27 or tender as provided under Rule 27(A) or auction cum tender, as provided under Rule 27(b) is itself sufficient notice to the public: to enable them to participate in the auction /tender / auction-cum-tender and question of any clandestine dealing in such case would not arise. But in a case when the areas was held under auction /auction-cum-tender under Chapter IV and the State Government withdraws the area from the said procedure, where after provisions of Chapter II, the normal procedure for granting lease becomes applicable as in the case in hand, then if Rule 72 is interpreted in the manner, as contended by the learned Counsel of for the appellant, then it would frustrate the purpose of transparency and openness engrafted in Rule 72 and such an interpretation will be against the legislative intent. It is a cardinal principle of construction that the Courts must adopt a construction which would suppress the mischief and advance the remedy. In other words, the Court must adopt a purposive interpretation of the provisions under consideration. So construed, it is difficult for us to accept the contention of Mr. Das appearing for the appellant that Rule 72 has no application to the case in hand merely because the area in question had been held by the previous lessee for some period under auction/tender basis under chapter IV, particularly when on 30th of March, 1995 the District Magistrate withdrew the area held under auction/tender system to the normal procedure of grant of mining lease under Chapter II w.e.f. 1-4-1995.

15. As in the present case the District Magistrate has issued an advertisement for grant of mining lease strictly in compliance with the mandatory provisions of the rules, therefore, the petitioner cannot claim that the rejection of the application which is admittedly prior to the date of notification by the District Magistrate has not been considered and rejected. Admittedly the application of the petitioner is dated 8-2-2003 and has not made any application after the notification dated 8-11-

2004, therefore, it cannot be considered. Further submission has been made on behalf of the respondents that in view of the Apex Court judgment A-One Granites (2001 All LJ 584) (supra) it has clearly been held that such type of the application will not be considered in response to the notice under Rule 72. Reliance has been placed upon paras 19 and 20 of the said judgment which is being quoted below:

19. The last question which falls for consideration is whether the High Court was justified in giving a direction to the district Magistrate to consider the application dated 4-7-1995 filed by the respondent No. 4 for grant of mining lease. It is true that on the earlier occasion this Court found that the notice was valid, but the order for grant of mining lease being contrary to Rule 72, was held to be invalid. In the operative portion of the judgment it was specifically directed that 'the respondents will be at liberty to issue a fresh notice for the grant of lease in accordance with law and keeping in view the observations contained herein', which would obviously mean that a fresh notice for grant of lease was required to be issued in accordance with Rule 72 of the Rules. As this Court observed for issuance of fresh notice, we do not find any reason as to how the application filed on 4-7-1995 by respondent No. 4 pursuant to notice dated 30-5-1995 could be considered. If a fresh notice is issued, all concerned persons including the appellant and respondent No. 4 can apply for the grant.

20. This being the position, we are of the view that the High Court was not justified in quashing the order of the District Magistrate dated 4-10-1997 and giving a direction to him to consider application dated 4-7-1995 filed by respondent No. 4. In our view, the authorities are now required to issue fresh notice in terms of Rule 72 of the Rules and consider the applications for grant of lease filed pursuant thereto in accordance with law and no application filed earlier either pursuant to previous notices or otherwise shall be considered.

In view of the aforesaid the respondents submitted that the writ petition filed by the petitioner is liable to be dismissed.

16. We have considered the submissions made on behalf of the parties and have perused the record. There is no dispute to this effect that by 20th Amendment Rule 72 was inserted and made effective from 1994 and from the perusal of Rule

72 it is clear that when the area is available it has to be notified through a notice inviting applications for grant of mining lease and will specify the date which shall not be earlier than 30 days from the date of notice and will also give the description of such area and a copy of such notice shall be displayed on the notice board of the office and the same will be sent to the Tehsildar of the said area. Therefore if the District Magistrate who is the authority according to rules comes to conclusion that a particular area is available for mining lease, then according to Rule 72, he will notify the same and will invite the applications according to the said rule. If any application has been made prior the date of notification by the competent authority, that cannot be treated to be in conformity with Rule 72. The Apex Court in the case of A-one Granites (2001 All LJ 584) (supra) has clearly held that Rule 72 is a mandatary provision for granting the mining lease. If that has not been followed, the grant of mining lease is illegal. Admittedly the District Magistrate, Banda has issued a notice on 8-11-2004 and it is also not disputed that admittedly he application of the petitioner is prior to 8-11-2004, therefore, the District Magistrate was not obliged in view of the provisions of Rule 72 to consider the said application.

17. Under the rules mining operation in respect of any minor minerals can be taken only in accordance with the terms and conditions of the mining lease or mining permit granted under the rules. Such a lease could be granted under Chapter-II which prescribes the procedure and Rule 9 provides for a preferential right even two or more persons applying for mining lease in respect of some land. The mining lease could also be granted under Chapter-IV by way ofauction/tender/auction-cum-tender. When State Government by special or general order do not declare that the area in question could be leased out by auction or by tender or by auction-cum-tender as provided under Rule 23, the procedure for grant of lease by auction is provided under Rule 27. Rule 24 provides and empowers the State Government to withdraw any area which has been declared under Sub-rule (1) of Rule 23 and once the area is withdrawn under Rule 24, then the prescribed procedure is in Chapter-II for grant of mining lease, becomes available. Thus the procedure provided under Chapter-II of the rules being the normal procedure, Chapter-IV is an exception to the same. In such a view it will be useful to quote Rules 23 and 24 of the rules, which run as under:

23. Declaration of area for auction/tender/auction-cum-tender lease-- (1) The State Government may be general or special order declare the area or areas which may be leased out by auction or by tender or by auction-cum-tender.

(2) Subject to directions issued by the State Government from time to time in this behalf no areas or areas shall be leased out by auction or by tender or by auction-cum-tender for more than five years at a time.

Provided that the period in respect of in situ rock type mineral deposit shall be five years and in respect of river bed mineral deposit shall be one year at a time.

(3) On the declaration of the area or areas under Sub-rule (1) the provisions of Chapters II, III and VI of these rules shall not apply to the area or areas in respect of which the declaration has been issued. Such area or areas may be leased out according to the procedure described in this Chapter.

(4) The District Officer shall get the area or areas declared under Sub-rule (1), evaluated for quality and quantity of mineral for fixing minimum bid or offer by the Director, Geology and Mining, Uttar Pradesh or by an officer authorized by him before the date fixed for auction or tender or auction-cum-tender, as the case may be.

24. Withdrawal of area from auction or tender or auction-cum-tender-The State Government may by declaration withdraw any area or areas declared under Sub-rule (1) of Rule 23 or part thereof from any system of lease referred to therein and from the date of withdrawal specified in the declaration which shall not be the date during the subsistence of a lease granted under this Chapter, the provisions of Chapters II, III and VI of these rules shall become applicable to such area or areas.

18. As regards the contention raised on behalf of the petitioner that his application has wrongly been rejected on the ground taking into consideration the G.O. dated 27-8-2002, as the petitioner submits that he has not submitted the application for preferential right on the basis of Khojipatta, in spite of the aforesaid fact, the submission made on behalf of the petitioner is not acceptable that the Government

Order dated 27-8-2002 has been issued to the effect that as there is a provision under Rule 72 for making, an application and the procedure prescribed, therefore, to maintain transparency, it will be necessary that the vacant area be notified for the purpose of granting mining lease and it is in the public interest. On the basis of the application made on behalf of the petitioner, the Court has directed to produce the record relating to the present case. Sri Alok Kumar Singh, the learned Standing Counsel has produced the original record before this Court and we have perused the same. The contention of the petitioner is not acceptable as the application of the petitioner is admittedly prior to the date of notification i.e. 8-11-2004. Rule 72 provides that immediately after the notification, a clear notice of 30 days from the date of notice be given, subject to Clause-2 of Rule 72 states that application for grant of mining lease under Sub-rule (1) shall be received within 7 working days from the date of specific notice referred to in the said subrule. Only to maintain the transparency further it has been provided that if the number of application received for an area is less than 3, the competent authority may further extend the period of 7 more: working days and even thereafter a number of application remains less than three, the District Officer shall notify the availability of area afresh in accordance with the said sub-rule.

19. From the perusal of the aforesaid rule it is clear that the application can only be entertained immediately after the expiry of 30 days within a week prescribed in the notice after the notification. If any application has been filed prior to the date of notification that cannot be considered. The area which was being operated on the basis of a lease obtained under Chapter-II when becomes available for re-grant, if the prescribed procedure under Rule 72 is not followed, then it may leave to favoritism and bias ultimately resulting corruption in permitting to the granting authority. To prevent the abuse of the process, the procedure has been prescribed under Rule 72. The object of notifying the availability through notice by the competent authority is to bring it to the notice of public at large, so that interested persons can make an application and such applicant can be considered on its own merit.

20. Noting the submissions made on behalf of the parties we are of opinion that the rejection of the application of the petitioner which is admittedly prior to the date

of notification, has rightly been rejected because a mining lease can only be granted total in conformity with Rule 72 of the Rules. If the application has not been filed in conformity with Rule 72, the same is liable to be rejected.

21. In view of the aforesaid fact, we find no merit in the writ petition. The writ petition is devoid of merit and is hereby dismissed. The interim order dated 30-8-2006 is hereby discharged.

22. No order as to costs.

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