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**Court :** Rajasthan

**Decided On :** Dec-10-1958

**Reported in :** AIR1959Raj220

**Judge :** K.K. Sharma and; D.S. Dave, JJ.

**Acts :** [Constitution of India](#) - Article 226; Rajasthan Minor Mineral Concession Rules, 1955 - Rules 45, 56 and 57

**Appeal No. :** Writ Petn. No. 178 of 1958

**Appellant :** B.S. Jakhar

**Respondent :** Govt. of Rajasthan and Mining Engineer Deptt. of Mines and Geology, Govt. of Rajasthan

**Advocate for Def. :** B.C. Chatterji, Asst. Govt. Adv.

**Advocate for Pet/Ap. :** R.L. Maheshwari, Adv.

**Disposition :** Petition allowed

**Judgement :**

**Sharma, J.**

1. This is a petition by Chowdhary B. S. Jakhar under Article 226 of the [Constitution of India](#).

2. According to the petition, the petitioner was permitted to quarry Bajri in the area of three plots measuring 200' x 200', 100' x 50' and 100' x 50' in vil-lage Pamari Pichupara, Tehsil Baswa in district Jaipur in accordance with the lease agreement under the Rajas than Minor Mineral Concession Rules, 1955 (hereinafter to be referred to as the Rules). This permission was upto the 31st of March, 1958, and it was under rule 57(2) of the Rules under annual quarry leases. In the next year the petitioner applied for permit for 3 plots measuring an area of 400'x400', but the same area was delineated into 12 plots or' 200'x200' each and the petitioner was again permitted to quarry in the area of these 12 plots in accordance with a lease agreement.

The petitioner says that the permission is valid upto 31-3-1959 and the highest rent at the rate of Rs. 48/- per plot has been charged from him which he has already paid in full. The petition proceeds that the petitioner was quarrying Bajri from the area of the aforesaid 12 plots delineated on the spot, but on 4-8-1958, he received an order dated 21-7-1958, from the Mining Engineer, Department of Mines and Geology, Government of Rajasthan, Jaipur Division, Jaipur, informing the petitioner that the said Engineer had been directed to cancel the permit of the petitioner which was No. 21071 dated 10-5-1958, with immediate effect.

The petitioner says that the reason given for cancellation is that the area has not been delineated in regular small plots previously approved by the Director of Mines and Geology (hereinafter to be referred to as the Director) as required by rule 57 of the Rules. The petitioner challenges the said order (Ex. 2) dated 21-7-1958 (hereinafter to be referred to as the impugned order) as illegal on the following grounds:

(1) The petitioner was not allowed an opportunity of showing cause before the said order was pass-ed,

(2) the reason given in the impugned order is wrong and against the contents of the permit Ex. 1, and

(3) the plots were delineated on the spot. The petitioner says that the impugned order is under the directions of the Government of Rajasthan and therefore he has no right of appeal and there being no adequate and efficacious remedy available to him, he has approached this Court to obtain a writ, direction or order quashing the impugned order.

3. On behalf of the State a written statement has been filed. It has been admitted that the petitioner had been given a lease of the three plots mentioned in para 1 of his petition under the previous order. But it has been added that they were leased out to the petitioner under a mistake or error apparent on the face of the record and that that mistake could not be rectified in time and the petitioner thus worked out the lease. As regards the permission for the next year, i.e. upto 31-3-1959, it has been stated that the petitioner had himself delineated 12 big plots measuring 200'x200' each and applied for permission to quarry in all these 12 plots and that a permission was given by the Mining Engineer vide permit No. 21071 dated 10-5-1958.

It has been added that no lease agreement was entered into and later on it was revealed that small regular plots for which a permit under rule 57(2) of the Rules could be given should have been delineated by the Director in minor mineral areas for the purpose of granting fixed annual mining leases. In the case of the petitioner no small regular plots were delineated by the Director and as such the granting of the permit under rule 57(2) was a mistake or an error apparent on the face of the record and as such the said mistake or error was rectified under rule 56 of the Rules and the permit issued by the Mining Engineer was subsequently cancelled, Vide Order No. 1645/58 dated 21-7-1958. It has been stated that the rectification was made within time fixed by rule 56 of the Rules. The petition has been objected to also on the ground that an alternative remedy lay by way of appeal or by way of suit.

4. We have heard Shri R. L. Maheshwari on behalf of the petitioner and Shri B. C. Chatterji on behalf of the State. When the case came up for hearing on the last date, i.e. 27-11-1958, while considering the preliminary objection of Mr. Chatterji that the writ petition did not lie because an alternative remedy was available to the

petitioner, it was found that it is not clear as to who is responsible for the order regarding the cancellation of the permit of the petitioner. The Mining Engineer concerned has said in the impugned order that he had been directed to cancel the permit issued to the petitioner and therefore he should stop work,

It was, therefore, thought that a direction might have been given by some superior authority of the Mining Engineer and learned counsel for the State was ordered to make it clear whether there was any particular or general) direction of the Director or of the Government cancelling the lease of the petitioner. To-day, the learned Assistant Government Advocate has filed certain papers and it appears from the letter of the Director dated 1-7-58 to the Secretary to the Government Mines and Labour Department, Rajasthan, that the Mining Engineer Jaipur had cancelled the annual mining leases granted to Shri Ved Prakash, Shri Gyan Prakash and Shri Hari Ram and that he had forwarded his proposal for delineation of quarries in Dhoond river suggesting plots of 110'x165' and quarry rent of Rs. 48/- thereon.

This letter shows that the proposal of the Mining Engineer had not been approved and he had been informed that allotment of plots for Bajri area made by the Mining Engineer could not be agreed to by the Director. In this letter it has been stated that the Mining Engineer had been asked to cancel all the annual mining leases for Bajri granted by him as per list attached to the letter for the current year to avoid any dis-similarity in the Bajri cases. It has also been stated that as regards pending applications as per list attached the Director advised the Mining Engineer to refuse all such annual mining leases. It was requested that the above action of the Director be confirmed.

To this letter were attached list of permits granted for Bajri for the year ending March. 1959. In this list is mentioned the permit of 12 plots measuring 200' x 200' each at a rent of Rs. 48/- p.a. per plot in village Pamari Pichupura to the petitioner B. S. Jakhar. It thus appears that the Director requested the Government of Rajasthan to confirm his action that all the permits given in the said list including that of the petitioner be cancelled. The Government, vide its letter No. 6856/F-3(ii) (7) Ind (B) 58/4506 dated the 13th August, 1958, confirmed the action of the Director. On a perusal of these documents, therefore, it becomes clear that the

impugned order of the Mining Engineer was in pursuance of the order of the Government dated the 13th August, 1958, referred to above.

5. It was argued by Shri Maheshwari that in this case the lease of the petitioner has been cancelled under the orders of the Government itself and therefore even if a remedy by way of appeal under Rule 45 of the Rules be technically available to him it would serve no useful purpose, because the Government has already made a final order and it would be very embarrassing, if not altogether impossible, for the Government to cancel it. We have considered this argument of Shri Maheshwari. Shri Chatterji has argued that because there was a general order of the Government it did not mean that if an appeal was taken in a particular case to it, it would be decided in accordance with law after giving a hearing to the petitioner.

Technically speaking, this argument of Shri Chatterji might be correct but the Government having already included the name of the petitioner amongst those whose permits were cancelled on the ground given by the Director it will no doubt be very embarrassing for the Government to cancel its previous order. This Court is not altogether barred from interfering under Article 226 of the [Constitution of India](#) if any alternative remedy is available to the petitioner. This Court exercises its discretion in the matter of petitions under Article 226 of the Constitution and if it thinks in its discretion that although technically there might be an alternative remedy, yet no useful purpose would be served if that remedy is resorted to, this Court can in its discretion interfere under Article 226.

In the special circumstances of this case, we feel that no useful purpose would be served, if the petitioner is driven in this particular case to seek his remedy under Rule 45 of the Rules or by way of a civil suit, because in all probability, the period of his lease would expire before any final order is passed in the case. We, therefore, do not feel embarrassed in this particular case to interfere with the impugned order.

6. Now coming to the question whether a case has been made out for quashing the impugned order, it was argued by Shri Maheshwari that the impugned order is said to be under Rule 56 of the Rules. It was argued that under the said rule only a

mistake or error apparent on the face of the record might be rectified, but it was argued that in the present case there was no mistake or error apparent on the face of the record. It was argued that in deciding the question whether in the impugned order there was any mistake or error apparent on the face of the record, the requirements of natural justice demanded that the petitioner should have been given an opportunity of being heard before the permit, which had been granted to him and had been acted upon by the petitioner for some time, was canceled. Shri Chatterji on behalf of the State argued that under Rule 56 there is no provision for any such notice and therefore the Mining Engineer or the Director or, for the matter of that, the Government could rectify the error in question without any notice to the petitioner.

7. We have considered the arguments of both the learned counsel. Rule 56 reads as follows:

'The Government or an officer acting under these rules, as the case may be, may at any time within six months from the date of an order passed by it under these rules, rectify on its own motion any mistake or error in the order apparent on the face of the record, and, shall, on an application in writing made within the said period, rectify any such mistake or error which has been brought to its or his notice by an applicant for the grant of a mineral concession: Provided that no such rectification having or purporting to have prejudicial effect on another applicant for the grant of the same mineral concession shall be made unless such other applicant has been allowed a reasonable opportunity of being heard.'

Of course, it does not say that before a mistake or error apparent on the face of the record is rectified by the Government or an officer acting under the Rules as the case may be, of its or his own motion any notice is necessary. However, the proviso to this rule shows that if an applicant for the grant of mineral concession applies for the rectification of any such mistake, as has been just referred to, a reasonable opportunity of being heard shall be allowed to such other applicant for the grant of the same mineral concession who might be prejudicially affected by the rectification.

Thus, according to this rule, if the petitioner had applied for the rectification of any mistake as is mentioned in Rule 56, a notice should have been necessary to such other applicant on whom the rectification sought for would have prejudicial effect. Although there is nothing in the rule as to whether a notice should have been given to the person who has obtained a permit if rectification was made at the instance of some other applicant for the grant of the same mineral concession, yet, in our opinion, the ends of natural justice required that in such a case also a notice should be given to the holder of a permit if rectification has been sought for by some other applicant for the grant of the same mineral concession. In the interest of natural justice, to our mind, it is also necessary that a notice should be given to the holder of a permit if the rectification is required to be made by the Government or the officer acting under the Rules on its or his own motion, as the case may be, which might prejudicially affect the holder of the permit.

In the present case, the order which has been made certainly prejudicially affects the holder of the permit, namely, the petitioner in this case and we do not think that the Mining Engineer, or the Director, or for the matter of that, the Government were justified in passing the impugned order or the orders in pursuance of which the impugned order has been made without giving a reasonable opportunity to the petitioner of being heard. In this view of the case, we think it proper to quash the order of the Mining Engineer dated 21-7-58, that of the Director dated 1-7-58 and that of the Government of Rajasthan dated 13-8-58 so far as the permit of the petitioner of 12 plots measuring 200'x200' each of Bajri in village Pamari Pichupara at an annual rent of Rs. 48/- per plot is concerned.

8. In the circumstances, we need not go into other questions raised in this case about the validity of the impugned order.

9. The petition is allowed. The order of the Mining Engineer dated 21-7-58 regarding the cancellation of the permit No. 21071 dated 10-5-58 issued to the petitioner for Bajri in the area of 12 plots measuring 200'x200' each in village Pamari Pichupara, tehsil Baswa, and the order of the Director of Mines and Geology, Rajasthan, Udaipur dated 1-7-58 and that of the Government of Rajasthan (Industries, Mines and Labour Department) dated 13-8-58 so far as

they relate to the said permit are quashed. The authorities concerned shall be at liberty to consider the case of the said permit after giving reasonable opportunity to the petitioner of being heard. The petitioner shall get costs of this petition from the State of Rajasthan including Rs. 50/- as counsel's fee.

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