

Dharambir Singh

Vs

Union of India and Others

SLP (C) No. 18150 of 1996

(K. Ramaswamy, G. B. Pattanaik, Faizanuddin JJ)

19.09.1996

ORDER

1. The petitioner has filed this special leave petition against the judgment of the High Court of Punjab and Haryana made on 9-7-1996 in CWP No. 9624 of 1996. The petitioner had applied for mining lease and the prospecting licence claiming that he had discovered limestone minerals in Bhemdenti Dostpur, Mohindergarh District in the State of Haryana. The Government has notified that area under Rule 59 of the Mineral Concession Rules, 1960. The petitioner challenged the reservation of the area in revision before the Central Government and prayed for grant of the lease in his favour. The Mines Tribunal of the Central Government while setting aside the notification issued by the State Government, declined to grant mining lease to the petitioner stating that the State Government had done so in its discretion and that the Central Government would not curtail the said discretion as it is its property. The High Court dismissed the writ petition in limine. Hence this special leave petition.

2. Shri Rohtagi, learned counsel for the petitioner, placing reliance on sub-section (2) of Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957, contended that the petitioner having filed an application for mining lease has got preferential right and the Mines Tribunal and the High Court were not right in rejecting his prayer. We find no force in the contention. Section 11 of the Act reads as under :

"11. (1) Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person :

Provided that the State Government is satisfied that the licensee -

(a) has undertaken prospecting operations to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the prospecting licence; and

(c) is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or 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 the licence or lease, as the case may be, over an applicant whose application

was received later :

Provided that where any such applications are received on the same day, the State Government after taking into consideration the matters specified in sub-section (3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section (2) are the following -

(a) any special knowledge, of, or experience in, prospecting operations or mining operations, as the case may be, 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) such other matters as may be prescribed.

(4) Notwithstanding anything contained in sub-section (2) but subject to the provisions of sub-section (1), the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

3. Sub-section (1) of Section 11 envisages grant of a prospecting licence in respect of a land and a prospecting licensee has a preferential right for obtaining a mining lease in respect of the land over any other person; provided, however, that the conditions enumerated in clauses (a) to (c) in proviso thereto are satisfied. Further, sub-section (2) states that subject to the provisions of sub-section (1), where two or more persons have applied for a prospecting licence or 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 the licence or lease, as the case may be, over an applicant whose application was received later. It is also, again, subject to the conditions enumerated in the proviso. Sub-section (3) is not material for the purposes of this case. Sub-section (4) further provides that notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government, may for any special reasons to be recorded and with the previous approval of the Central Government grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

4. Thus it would be seen that while granting a prospecting licence or mining lease, the area of discretion has been circumscribed by several factors enumerated in Section 11. In grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law. Therefore, the Tribunal of the Central Government has rightly held that it being in the area of discretion of the State Government, merely because the applicant had applied for, the State Government was not enjoined to grant the mining lease. The petitioner had taken the plea that since he alone had discovered the mines, he has got a preferential right over any other person. The Tribunal of the Central Government and the High Court rightly rejected that contention of the petitioner; that

contention has not been pressed before us. We find no illegality in the order of the Tribunal refusing to grant mining lease to the petitioner nor is there any illegality in the order of the High Court.

5. The special leave petition is dismissed.