

Kalpnath Singh

v.

Udai Nath

(Supreme Court Of India)

HON'BLE MR. JUSTICE ALTAMAS KABIR HON'BLE MR. JUSTICE A.K. PATNAIK

Kalpnath Singh v. Udai Nath

Civil Appeal No. 6520 Of 2010 | 11-08-2010

A.K. Patnaik, J.

1. Leave granted.

2. This is an appeal against the judgment and order dated 21.05.2008 passed by the Allahabad High Court in Civil Miscellaneous Writ Petition No.49158 of 2007.

3. The facts very briefly are that on 04.01.2007, the District Magistrate, Varanasi, issued a public notice inviting applications from the general public for setting six vacant sand mining areas of District Varanasi under the Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (for short "the Rules"). On 05.02.2007 the appellant and respondent No.1 and two others applied for one of the six mining areas, namely, Mokulpur, Khand-I, Plot No.349 measuring about 30 acres and furnished the documents mentioned in the public notice. By a notification dated 15.02.2007, Rules 6(1)(g) was introduced in the Rules requiring that in case the area applied for is having annual lease amount or dead rent, as the case may be, of rupees two lacs or more, then the applicant shall also furnish 'No Objection Certificate' from the authorities mentioned therein. The Collector, Varanasi, issued a notice dated 02.04.2007 to all the applicants including the appellant and the respondent No.1 to submit 'No Objection Certificate' by 12.05.2007. While the respondent No.1 submitted 'No Objection Certificate' beyond the time stipulated in the notice of the District Magistrate, the appellant did not submit the 'No Objection Certificate'. Thereafter, the Mine Supervisor, Varanasi, submitted a verification report on the merits of the four applicants and in this verification report inter-alia stated that all the four applications were complete and have been received on the same date and therefore their comparative preference will have to be determined under Rule 9(2) (e) of the Rules and on such determination the appellant, who has a better financial status than the respondent No.1 and who also has experience of mining work and no other candidate had such experience in mining work, had to be given preference for grant of said mining lease. On 03.08.2007 the District Magistrate, Varanasi, sent the recommendations of the Mine Supervisor, Varanasi, to the State Government for grant of the mining lease for excavation of the sand area in favour of the appellant. On 21.09.2007, the State Government granted permission to the District Magistrate to execute lease in favour of the appellant for a period of 3 years for 30 acres in village Mokulpur, Khand-I, Plot No.349 subject to completion of all formalities stipulated in the amendment to the Rules.

4. Aggrieved, the respondent No.1 filed Writ Petition No.49158 of 2007 under Article 226 of the Constitution of India in the Allahabad High Court and contended inter-alia that he belongs to the Nishad community, which is a Socially Educationally Backward Class, and under Rule 9(2)(e) of the Rules was entitled to preference in respect of mining lease of sand exclusively found in the river bed and that the appellant did not submit 'No Objection Certificate' in accordance with the amended Rule 6(1)(g) of the Rules by 12.05.2007 as stipulated in the notice dated 02.04.2007 of the District Magistrate and therefore his application was incomplete. The High Court accepted the contentions of the respondent No.1 and quashed the order dated 21.09.2007 of the State Government granting permission as well as the recommendation dated 03.08.2007 of the District Magistrate for grant of mining lease of the area in favour of the appellant and directed the District Magistrate, Varanasi to grant the mining lease of the area in favour of respondent No.1 as per his entitlement under Rule 9(2)(e) of the Rules.

5. Since the main dispute between the parties in this case is with regard to interpretation of Rule 9 of the Rules, we quote Rule 9 of the Rules herein below:

"9. Preferential right of certain persons:- (1) Where two or more persons have applied for 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 lease over the applicant whose application was received later.

Provided that where such applications are received on the same day, the State Government may after taking into consideration the matters specified in sub rule (2), grant the mining lease to such one of the applicants as it may deem fit.

(2) The matters referred to in sub-rule (1) are:

(a) Any special knowledge or experience in mining operations possessed by the applicant;

(b) The Financial resources for the applicant;

(c) The nature and quality of the technical staff employed or to be employed by the applicant;

(d) The conduct of the applicant in carrying out mining operations on the basis of any previous lease or permit and in complying with conditions of such lease or permit or the provisions of any law in connection therewith; and

(e) In respect of mining lease for sand or morrum or bajari or boulder or any of these in mixed state, exclusively found in the river bed, if other things are equal, preference shall be given to a person or

group of persons, whether incorporated or not who belong to Socially Educationally Backward Classes (such as Mallah, Kewat, Bind, Nishad, Manjhi, Batham, Dhiwar, Themer, Chai, Sirahia, Turha, Raikwar, Kaiwrt, Khulwat, Tiya, Gaudia, Godia and Kashyap) and other such castes or citizens, as notified by the State Government from time to time who have obtained a certificate in Form MM-14 from the concerned District Officer, or such other officer authorized in this behalf by the State Government, certifying that such person/persons is/are traditionally engaged in excavation of sand/morrum for their livelihood and who are resident of the District for which the application has been given;

(f) Such other matters as may be considered necessary by the State Government.

(3) Notwithstanding anything contained in sub-rule (1) and (2), the State Government may, for any special reasons to be recorded grant a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

6. Learned counsel for the appellant submitted that a reading of Rule 9 of the Rules would show that where the date of receipt of applications for a mining lease in respect of the same land is the same, the State Government has to take into consideration the matters mentioned in clauses (a), (b), (c) & (d) of sub-rule (2) of Rule 9 of the Rules and on such consideration if merit of the applicants is found equal, preference shall have to be given to a person belonging to a Socially Educationally Backward Class as provided in clause (e) of sub-rule (2) of Rule 9 of the Rules. He further submitted that in the present case the Mine Supervisor had clearly indicated in the verification report that the appellant had experience in mining operations whereas the respondent No.1 had no such experience and that the appellant had financial resources worth of Rs.25 lacs whereas the respondent No.1 had financial resources worth of Rs.10 lacs only and therefore the application of the appellant was superior in merit than that of respondent No.1 considering the matters specified in clauses (a) and (b) of sub-rule (2) of Rule 9 of the Rules. He further submitted that since the applications of the appellant and respondent No.1 were not equal in merit, clause (e) of sub-rule (2) of Rule 9 of the Rules which provides that "if other things are equal", preference shall be given to a person belonging to a Socially Educationally Backward Class, had no application. He submitted that the High Court, therefore, fell into error in applying clause (e) of sub-rule (2) of Rule 9 of the Rules to the facts of the present case and in directing the State Government to grant the mining lease in favour of respondent No.1. Learned counsel for respondent No.1, on the other hand, submitted that the interpretation given by the High Court of Rule 9 of the Rules is correct.

7. The High Court has held in the impugned judgment that when two or more applications for grant of lease are received on the same day, and the State Government is satisfied that both the applicants have the financial resources to operate the lease and both the applicants have the requisite experience of mining activities, then the person, who is a member of economically and socially backward community such as 'Nishad', will be entitled to grant of lease under clause (e) of sub-rule (2) of Rule 9 of the Rules. According to the High Court, the expression "if other things are equal" in clause (e) of sub-rule (2) of Rule 9 of the Rules if is read to mean that the applicants are

equal in financial resources and length of experience and other respects, then there would hardly be any case in which a person of a Socially Educationally Backward Class would get the benefit of clause (e) of sub-rule (2) of Rule 9 of the Rules. In the opinion of the High Court, therefore, the District Magistrate and the State Government committed an error in understanding the expression "if other things are equal" in clause (e) of sub-rule (2) of Rule 9 of the Rules and they ought not to have denied the preference to respondent No.1 who belongs to a Socially Educationally Backward Class.

8. The interpretation of Rule 9 of the Rules adopted by the High Court, in our considered opinion, was not correct. The proviso to sub-rule (1) of Rule 9 of the Rules is clear that where applications for a mining lease in respect of the same land are received on the same day, the State Government may, after taking into consideration the matters specified in sub-rule (2), grant the mining lease to such one of the applicants it may deem fit. Any special knowledge or experience in mining operations possessed by the applicant and the financial resources of the applicants are two of the matters specified in clauses (a) and (b) in sub-rule (2) of Rule 9 of the Rules. In clause (e) of sub-rule (2) of Rule 9 of the Rules, however, it is stated that in respect of mining lease for sand exclusively found in river bed, "if other things are equal", preference shall be given to a person or group of persons who belong to Socially Educationally Backward Classes and such other castes of citizens as notified by the State Government. The expression "if other things are equal" in clause (e) of sub-rule (2) of Rule 9 of the Rules would obviously mean that the applicants are found by the State Government to be equal in other matters specified in clauses (a), (b), (c) and (d) of sub-rule (2) of Rule 9 of the Rules. In other words, the preference under clause (e) of sub-rule (2) of Rule 9 of the Rules is to be given to a person or group of persons belonging to Socially Educationally Backward Classes, if only such person or group of persons was equal to other applicants in matters specified in clauses (a), (b), (c) and (d) of sub-rule (2) of Rule 9 of the Rules.

9. The verification report of the Mine Supervisor and the recommendations of the District Magistrate placed before the State Government clearly indicated that the appellant had more experience in mining operations as compared to respondent No.1 and had also better financial resources than that of respondent No.1 and therefore the appellant and respondent No.1 were not equal in matters specified in clauses (a) and (b) of sub-rule (2) of Rule 9 of the Rules. The State Government, therefore, was fully within its powers to decide to grant the lease in favour of appellant and not to give preference to respondent No.1 under clause (e) of sub-rule (2) of Rule 9 of the Rules and the High Court while exercising the power of judicial review could not have reversed this decision of the State Government.

10. The High Court has also held that the appellant had not submitted the 'No Objection Certificate' mentioned in Rule 6(1)(g) of the Rules and therefore his application was not complete in all respects on the date when the recommendation was made by the Collector to the State Government for grant of mining lease and the State Government granted its approval to the mining lease in favour of the appellant making it subject to filing of 'No Objection Certificate' before execution of the mining lease. In the opinion of the High Court, Rule 6 of the Rules not only provides for filing of 'No Objection Certificate' but also lays down that when 'No Objection Certificate' is not furnished by a person, his application for mining lease shall not be considered and therefore the appellant could not have been granted the lease by the State Government.

11. While the Counsel for the respondent No.1 supported this conclusion of the High Court, Counsel for the appellant submitted that Rule 6(1)(g) of the Rules was introduced in the Rules by the notification dated 15.02.2007, whereas the public notice inviting applications had been issued by the District Magistrate, Varanasi on 04.01.2007 and the application had been filed by the appellant on 05.02.2007 before Rule 6(1)(g) of the Rules was notified and came into force and for this reason the State Government did not reject the application of the appellant for non-furnishing of 'No Objection Certificate' and instead granted the permission for grant of mining lease in favour of the appellant subject to furnishing 'No Objection Certificate' as per Rule 6(1)(g) of the Rules.

12. We are of the considered opinion that the High Court was not right in taking a view that the State Government could not have granted the mining lease in favour of the appellant when the appellant had not furnished the 'No Objection Certificate' along with the application or after the notice was issued by the District Magistrate to him to furnish the same. Sub-rule (2) of Rule 6 of the Rules provides that if the application for mining lease is not complete, such application shall not be considered. When the appellant filed his application on 05.02.2007, there was no provision in Rule 6 requiring a person to furnish along with his application the 'No Objection Certificate'. It was only thereafter that on 15.02.2007 the notification was issued by the Government introducing Rule 6(1)(g) in the Rules which requires that in case the area applied for has an annual lease amount or dead rent, as the case may be, of rupees two lacs or more, then the applicant shall also furnish 'No Objection Certificate' from the authorities mentioned therein. Since the appellant was not required to furnish the 'No Objection Certificate' when he submitted his application on 05.02.2007, his application could not be held not complete and nothing prohibited the District Magistrate or the State Government to consider the application of the appellant for the mining lease. The respondent No.1 in his reply, however, has relied on Rule 26 in Chapter-IV of the Rules which provides that no person shall be allowed to bid at the auction or take part in the tender proceeding for a lease if he has not furnished 'No Objection Certificate' from the authorities mentioned therein. This provision, as we have noticed, applies to an auction or a tender proceeding for a lease under Chapter-IV of the Rules and does not apply to a lease granted under Chapter-II of the Rules. There was, therefore, nothing in the Rules which prohibited the State Government to grant permission to the District Magistrate to execute the lease in favour of the appellant subject to his furnishing 'No Objection Certificate' in accordance with the amended Rules.

13. In the result, we allow this appeal and set aside the impugned judgment and order dated 21.05.2008 of the Allahabad High Court in Civil Miscellaneous Writ Petition No.49158 of 2007. No costs.