

SUPREME COURT OF INDIA

Ramakant Dwivedi

Vs.

Rafiq Ahmad & Ors.

C.A.No.4 of 2016

(Anil R.Dave and [AdarshKumarGoel,JJ.](#))

04.01.2016

JUDGMENT

Adarsh Kumar Goel, J.

(Arising Out of SLP (Civil) No.28249 of 2015)

1. Leave granted. This appeal has been preferred against order dated 18th June, 2015 passed by the High Court of Judicature at Allahabad in PIL No.35233 of 2015 granting an interim order against excavation of minor minerals by the appellant in respect of lease executed in his favor on 17th October, 2013. 2013(2) ADJ 166.

2. In the impugned order, the High Court observed that lease granted to the appellant was in violation of its judgments dated 29th January, 2013 in *Nar Narain Mishra versus The State of U.P¹* and dated 12th September, 2014 *Sukhan Singh versus State of U.P²*. . In *Nar Narain Mishra*, the operative part of the High Court order is as follows:

“In the result, all the writ petitions are disposed with the following directions:

1) The prayers made by the petitioners/applicants for considering their applications for renewal of their mining leases which were pending on 31/5/2012, and the applications for grant of fresh leases which were pending on 31/5/2012 are refused.

2) The Government Order dated 26/7/2012 and all consequent steps taken thereunder are quashed.

3) Notices issued by the District Magistrate inviting applications by E- tendering consequent to the Government Order dated 31/5/2012, cannot be allowed to be finalized and are quashed with liberty to the respondents to issue fresh notice in accordance with law.

4) Parties shall bear their own costs."

3. According to the appellant, on 27th April, 2013, the pre-existing lease in his favour which expired on 18th November, 2010, was renewed for further period of three years upto 26th April, 2016. Approval was granted on 14th March, 2011 and environmental clearance was granted on 21st September, 2012. It is submitted that order of the Government dated 31st May, 2012 was not applicable and was later withdrawn on 22nd October, 2014 and thus, the lease was valid.

4. This submission though also supported by the State, cannot be accepted. The High Court has rightly held that the renewal was in pursuance of the Government Order dated 26th February, 2013 which itself was in conflict with the order of the High Court in *Nar Narain Mishra (supra)* as reiterated in *Sukhan Singh (supra)*. In view of order of the High Court dated 29th January, 2013 in *Nar Narain Mishra (supra)* all pending applications as on 31st May, 2012 stood rejected. In the case of the appellant, environmental clearance was granted on 21st September, 2012 and renewal was granted on 27th April, 2013. Orders of the High Court in *Nar Narain Mishra* and *Sukhan Singh (supra)* which are not under challenge clearly debarred the grant of lease under Chapter II after 31st May, 2012. This aspect has been dealt with in greater detail in Civil Appeal Nos.4845-4846 of 2015 titled *Sulekhan Singh & Co. versus State of U.P.* with which the present appeal was tagged, which is being separately decided today. Stand of the State, to the contrary, can also not be appreciated. Reference may be made to the finding recorded by the High Court in the impugned order:

"A Division Bench in the case of *Nar Narain Mishra v. State of U.P. and others* reported in 2013 (2) ADJ 166, after interpreting the Government Order dated 31.5.2012 recorded as principle of law, that once notification has been published by the State Government in exercise of powers under Rule 23 of the Rules 1963, for vacant areas being available for grant of leases under Chapter IV of Rules, 1963, no grant/renewal on the pending applications can be made, after 31.5.2012. The State was not satisfied with the legal position so explained. It came out with a Government Order dated 26.2.2013, which provided that pending applications, for renewal/grant in respect of which orders of approval have already been made by the State Government or by the competent authority shall not be controlled by the judgment in the case of *Nar Narain Mishra (Supra)* such cases may be processed further.

This Government Order dated 26.2.2013 came up for consideration before another Division Bench of this Court in the case of *Sukhan Singh v. State of U.P. and others* reported in 2014 (11) ADJ 89. The Division Bench has held that the Government Order dated 26.2.2013 cannot deviate from the legal position, as has been explained in the case of *Nar Narain Mishra (Supra)*.

It, therefore, follows that no application which was pending on 31.5.2012 can be proceeded with for grant/renewal of lease under Chapter II/VI of the Minor Minerals Concession Rules, 1963 after 31.5.2012. The grant, if any, after 31.5.2012 can only be made under Chapter IV of the Rules of 1963 i.e. by e-auction or tendering. The State and its Officers have shown little or no respect to the orders of this Court.

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Prima facie, we find no substance in the contention raised. In our opinion, once a notification dated 31.5.2012 had been issued declaring that all the vacant areas are available for grant of lease only under Chapter IV, no lease subsequent thereto under Chapter VI could be executed. The area remains vacant till the execution of the lease deed. The Execution of the lease in the facts of the case has taken place after 31.5.2012. Mere grant/approval in our opinion will not alter the legal position. The concern of the Court is both, in respect of best use of natural resources by the State as well as for avoiding the degradation of environment, especially near the river beds."

5. Last submission on behalf of the appellant is that on 22nd October, 2014 the State of U.P. has declared that the mining leases will be given under Chapter II and Order dated 31st May, 2012 was withdrawn. In the present case, lease was granted in violation of judgment of the High Court as already noted. Subsequent withdrawal of the Government order dated 31st May, 2012 could not benefit the appellant as on the date of grant of lease in favour of the appellant, the said Government order was operative.

6. In these circumstances, we do not find any ground to interfere with the impugned interim order and leave the issue on merits to be finally decided by the High Court.

7. The appeal is dismissed.

Adarsh Kumar Goel,J.

C.A.No.4845-4846 of 2015

1. These appeals by special leave have been preferred against order dated 6th February, 2015 in Civil Misc. Review Application Nos.5064 and 5065 of 2015 and order dated 15th December, 2014 in Civil Misc. Writ Petition Nos.38034, 38064, 12622 and 12663 of 2014 passed by the High Court of Judicature at Allahabad.

2. The question for consideration is whether the High Court was justified in quashing mining lease granted in favour of the appellants vide orders dated 24th May, 2014 and 26th May, 2014 on the ground that the said leases were granted in violation of the Government Order (G.O.) dated 31st May, 2012. Under this order, mining leases could only be granted under Chapter IV of the U.P. Minor Minerals (Concession) Rules, 1963 (the Rules) by way of e-tendering in the interest of transparency and to safeguard the public revenue.

3. Appellants Sulekhan Singh and company were the petitioners in the High Court in Civil Miscellaneous Writ Petition Nos. 12663 of 2014. The appellants Manoj Kumar Sood and Makhan Singh were jointly the petitioners in the High Court in Civil Miscellaneous Writ Petition Nos. 12622 of 2014. They sought direction for grant of mining lease. Upon grant of

lease in pursuance of interim order in their favour, Mohammad Aakil and Masihul Khan private respondents herein, sought cancellation of mining leases granted to the appellants.

4. The Mines and Mineral (Development and Regulation) Act, 1957 (MMDR) provides for development and regulation of mines and minerals. Section 15 provides for making rules by the State Governments for regulating grant of mining leases and other matters in respect of 'minor minerals'. The State of U. P. framed the Rules in exercise of the said power. The Rules contain two sets of procedure for grant of mining lease. Chapter IV of the Rules provides for grant of lease by auction while Chapter II provides for grant of lease otherwise than by way of auction. Prior to 31st May, 2012, the leases were being granted in the State of Uttar Pradesh under Chapter II. G.O. dated 31st May, 2012 changed this practice, providing that:

“To bring transparency in connection of approval of mining lease in the state, the decision has been taken to grant lease through e-tendering system by inviting tenders under the provisions of chapter-4 of Uttar Pradesh Minor Minerals (Concession) Rules, 1963. By this step, by lifting the minor minerals on remission, the transparency would increase and along with that competition would take place and due to that State Government would get maximum rate.”

5. The above change of policy appears to be consistent with the position of law that State largesse ought to be distributed by non arbitrary method consistent with Article 14 of the Constitution .

6. It is a matter of public knowledge that the Government of India appointed a Commission of Inquiry consisting of Shri Justice M.B. Shah, a former Judge of this Court, inter alia, to enquire into the deficiencies of management and regulatory and monitoring systems on account of which illegal mining could not be tackled, vide notification dated 22nd November, 2010. The Commission was also to suggest remedial measures. The said Commission gave its reports, including report dated March, 2012 (in respect of State of Goa), June, 2013 (in respect of the State of Odisha) and October, 2013 (in relation to the State of Jharkhand). In its report for the State of Goa, the Commission found that procedure for grant of lease/renewal of lease required streamlining for transparency. It was further suggested that the authority to decide the applications should be a committee headed by Additional Chief Secretary (instead of a lower rank officer) and should also have representatives from Departments of Mines, Revenue, Forest and Environment. It was also suggested that mining leases should be granted by public auction for transparency and increase in revenue of the State and also to check corruption/favoritism.

7. In its report submitted in June, 2013, in relation to the State of Orissa, referring to a letter of the Chief Minister of Orissa, it was inter alia observed by the Shah Commission:

"Competitive bidding should be the general methodology for grant of lease of the finite valuable national resources."

8. These developments led to policy changes to ensure fairness and transparency in allotment of mineral concessions and optimal utilization of mineral resources through sustainable mining practices. Policy changes include 2015 amendment to the MMDR and amendments to rules by some of the States, providing for auction as predominant way of giving mining leases.

9. The G.O. dated 31st May 2012, passed by the State of U. P. came to be challenged before the High Court inter alia on the ground that applications already made prior to 31st May, 2012 were required to be dealt with without applying the G.O. dated 31st May, 2012. This plea was rejected by the High Court vide its judgment dated 29th January, 2013 in *Narain Mishra Vs. The State of U.P.*³. Special leave petition filed against the High Court judgment was dismissed by this Court . The Division Bench of the High Court relied upon judgment of this Court in *State of Tamil Nadu Vs. M/s. Hind Stone*⁴ and held that pendency of application did not create any vested right for the application being considered otherwise than by way of order dated 31st May, 2012. The High Court upheld the stand of the State which was as follows:

“The State stand is that there is no inviolable rights of renewal in a lease and the right of consideration of the renewal and the claim of renewal of the lease have to be dealt with in accordance with the Rules as existing at the relevant time. It is submitted that declaration under Chapter IV having been issued all areas stand notified for settlement under Chapter IV, the renewal of lease cannot be granted since renewal can be granted only in accordance with the procedure prescribed under Chapter II which provision is no more applicable. When the State issued the Government Order on 31.5.2012 applying the same to all vacant areas, it intended to apply the Government Order on the areas which were not occupied. No exception has been provided in the Government order exclude out those areas in respect of which renewal applications are pending. An application for renewal of lease is in essence an application for grant of lease and same principle has to be applied with regard to applications which are pending for grant of lease and on similar analogy, if the submissions of the petitioners are to be accepted those areas on which applications for grant of lease have been submitted should also be kept out of purview of the Government Order dated 31.5.2012. No such intention or object is decipherable from the Government order. By subsequent Government Order dated 5.9.2012, the State Government has provided that those areas where renewal has been sanctioned or granted on or before 5.9.2012, shall not be settled under Chapter IV.”

10. The High Court also rejected the objection that the order dated 31st May, 2012 was required to be confined only to “Boulder” and did not extend to “Building Stone”. It was observed:

"Government Order dated 31/5/2012, uses the word "Boulder". However, the Government Order dated 31/5/2012, does not confine to the word "Boulder" which is found in the Riverbed. The word "Boulder" can be used for the minerals which is found in the Riverbed as well as the mineral which is found "In situ rock deposit".

Petitioner's case in the writ petition is that since the word "Boulder" is found only in the Riverbed, the Government Order dated 31/5/2012, does not cover "Imarti Patthar" is misconceived since the Government Order dated 31/5/2012, does not confine the word "Boulder" to one which is found in the Riverbed. In this context a look of 1st Schedule and 2nd Schedule to the Rules, 1963 makes it clear that the word "Boulder" is included in the heading "Building Stone" as well as when found in mixed form in the Riverbed."

11. Further, following the judgment of this Court in *Deepak Kumar Vs. State of Haryana*⁵, the High Court directed that measures for protection of environment as noted by this Court be adopted while granting mining leases.

12. The High Court held that no direction for grant of a lease contrary to G.O. dated 31st May, 2012 could be issued and cancelled all applications pending on 31st May, 2012. The concluding part of the order of the High Court is as follows:

"In the result, all the writ petitions are disposed with the following directions:

5. The prayers made by the petitioners/applicants for considering their applications for renewal of their mining leases which were pending on 31/5/2012, and the applications for grant of fresh leases which were pending on 31/5/2012 are refused.

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7. Notices issued by the District Magistrate inviting applications by e- tendering consequent to the Government Order dated 31/5/2012, cannot be allowed to be finalized and are quashed with liberty to the respondents to issue fresh notices in accordance with law."

13. In spite of the said judgment of the High Court, certain leases were granted in violation of G.O. dated 31st May, 2012 which came to be challenged before the High Court. Reiterating its view, in its judgment dated 12th September, 2014 in *Sukhan Singh versus State of U.P.*⁶, it was held that no pending application as on 31st May, 2012 could be taken cognizance of. It was held that :

"19. The basic position in law is that the mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for the grant or renewal of a lease and, an application has to be disposed of on the basis of the rules as they stand on the date of the disposal of the application.

20. This being the clear position in law which has been enunciated in the judgment of the Supreme Court in *State of Tamil Nadu (supra)*, it would be impermissible to accept the contention of the fourth respondent that its applications were liable to be disposed of, not on the basis of the provisions of Chapter IV but under Chapter II of the Rules. Besides, the acceptance of any such submission would be contrary to the

law laid down by a Division Bench of this Court in Nar Narain Mishra (supra) which follows the decision of the Supreme Court."

14. It is in this background that the present matters were considered by the High Court. To seek an exception to G.O. dated 31st May, 2012, the appellants contended that they had already applied in pursuance of notice dated 18th July, 2009 in accordance with Chapter II of the Rules. When the said notice was cancelled and fresh notice dated 10th August, 2010 was issued, the appellants challenged the same. They were relegated to their departmental remedy. They challenged the order passed by the department again by another writ petition and the High Court directed the matter to be considered vide order dated 10th February, 2012. As the said order was prior to 31st May, 2012, appellant acquired a right to get lease as an exception to order dated 31st May, 2012. The High Court passed an interim order in their favor which led to the grant of mining leases on 24th May, 2014 and 26th May, 2014.

15. The stand of the appellants was held to be against the earlier High Court judgments. Thus, after hearing finally, the High Court rejected this plea as follows:

"It is not in dispute that their applications for grant of lease had not been disposed of prior to the date of declaration made under Rule 23 (1) of the Rules of 1963 and they had been granted the lease by means of order dated 24.05.2014 and 26.05.2014, after the date of declaration, i.e.31.05.2012. In Nar Narain Mishra's case, this Court held that those petitioners, who have claimed mandamus for directing consideration of their lease renewal application, which were pending on 31.05.2012 could not be granted any relief. Similarly applications for grant of fresh lease under Chapter II of the Rules, 1963, which were pending on 31.05.2012 could also not be directed to be considered.

In Public Interest Litigation (PIL) No.31643 of 2014, *Sukhan Singh vs. State of U.P. & others*. This Court has considered the judgment of the Hon'ble Supreme Court rendered in Deepak Kumar's case (supra) as well as judgment of this Court in Nar Narain Mishra's case (supra) and has held that "The basic position in law is that the mere filing of an application either for the grant of a lease or for the renewal of a lease does not confer a vested right for the grant or renewal of a lease and, an application has to be disposed of on the basis of the rules as they stand on the date of the disposal of the application."

16. Additionally, the appellants also argued that the G.O. dated 22nd October, 2014 cancelled G.O. dated 31st May,2012 and decided to proceed with the grant of mining leases under Chapter II instead of Chapter IV. It was submitted that in view of change of policy, G.O. dated 31st May, 2012 could not be taken into account. This plea was also rejected by the High Court as the amended policy dated 22nd October, 2014 could not be made applicable to the grant of lease at a time when the said revised policy was not in force. The High Court observed:

"Through supplementary affidavit, the respondent no.2 and 3 have brought on record the 37th Amendment of the Rules of 1963, which is called "The Uttar Pradesh Minor Mineral (Concession) (37th Amendment) Rules,2014".

By this amendment, several directions issued by this Court as well as Hon'ble Supreme Court have been incorporated. The State Government has also issued a Government Order dated 22.10.2014 whereby provisions 2, 3 and 6 of the Rules of 1963 have been made applicable. The Government Order also requires a fresh exercise for grant of lease under the terms of Government order dated 22.10.2014 as well as under the provisions of 37th Amendment of the Rules of 1963. Several subsequent developments in the matter as has been made as discussed above, do not lead us to permit the respondents no.4 and 5 to operate their leases further."

17. When the matter came up for consideration before this Court, an interim order dated 15th May, 2015 was passed permitting the appellants to operate the mining leases in question. This appears to be on account of the fact that the State of U.P. supported the stand of the appellants by filing affidavit dated 13th April, 2015 and submitted that "Building Stone" were not covered by G.O. dated 31st May, 2012. We now find that this stand is clearly contrary to the judgment of the High Court in *Nar Narain Mishra (supra)*.

18. On the other hand, Respondent No.4, the original writ petitioner before the High Court, has filed an affidavit objecting to the grant of leases in favour of the appellants under Chapter II and supported the view taken by the High Court. In its counter affidavit dated 8th May, 2015, the said respondent has pointed out that in view of earlier judgment of the High Court in *Nar Narain Mishra and Sukhan Singh (supra)* grant of mining lease under Chapter II was not permissible. The G.O. dated 31st May, 2012 covered "Building Stone" also. It was also submitted that mining lease of less than five hectares was not permissible in view of judgment of this Court in *Deepak Kumar (supra)* which also rendered lease in favour of the appellants illegal. It is further pointed out that Special Leave Petition (Civil) No.35075 of 2014 filed against the judgment dated 12th September, 2014 of the High Court of Judicature at Allahabad in *Sukhan Singh* was dismissed by this Court on 5th January, 2015.

19. We have considered the rival submissions and perused the record.

20. The plea of the appellants that they had acquired a vested right prior to G.O. dated 31st May, 2012 cannot be accepted. Order dated 31st May, 2012 was issued by the State of U.P. to bring about transparency and to safeguard the Government revenue and was consistent with the decisions of this Court in Article 14 of the Constitution. The validity thereof was upheld by the High Court in *Nar Narain Mishra (supra)*. The said judgment applied to the mineral in question as specifically laid down by the High Court. The High Court upheld the stand of the State that pendency of application did not create any right in favour of the appellants. All applications pending as on 31st May, 2012 stood rejected including the application of the appellants. Admittedly, the appellants did not make an application after the changed policy dated 22nd October, 2014 and thus the said G.O. had no application to the

present case. We are not called upon to decide validity of order dated 22nd October, 2014 in cancelling order dated 31st May, 2012. This question can be gone into as and when raised.

21. In *Hind Stone* (supra), this Court observed:

“13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of GOMs No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of GOMs No. 1312 should be dealt with as if Rule 8-C had not come into force. The submission was that it was not open to the government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the application disposed of on the basis of the rules in force at the time of the making of the application. No one has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant of renewal of leases made long prior to the date of GOMs No. 1312 should be dealt with as if Rule 8-C did not exist.”

22. Reiterating the decision in *Hind Stone* (supra), this Court in *Monnet Ispat & Energy Ltd. vs. Union of India*⁷ held as under:

“132 Minerals—like rivers and forests—are a valuable natural resource. Minerals constitute our national wealth and are vital raw material for infrastructure, capital goods and basic industries. The conservation, preservation and intelligent utilization of minerals is not only the need of the day but is also very important in the interest of mankind and succeeding generations. Management of minerals should be in a way that helps in the country’s economic development and which also leaves for future generations to conserve and develop the natural resources of the nation in the best possible way. For the proper development of economy and industry, the exploitation of natural resources cannot be permitted indiscriminately; rather the nation’s natural wealth has to be used judiciously so that it may not be exhausted within a few years.

133 No person has any fundamental right to claim that he should be granted mining lease or prospecting licence or permitted reconnaissance operation in any land belonging to the Government. It is apt to quote the following statement of O.

Chinnappa Reddy, J. in Hind Stone (SCC p. 213, para 6) albeit in the context of minor mineral,

“6. ... The public interest which induced Parliament to make * the declaration contained in Section 2 ... has naturally to be the paramount consideration in all matters concerning the regulation of mines and the development of minerals ”.

He went on to say: (Hind Stone case, SCC p. 217, para 10)

“10. ... The statute with which we are concerned, the Mines and Minerals (Development and Regulation) Act, is aimed ... at the conservation and the prudent and discriminating exploitation of minerals. Surely, in the case of a scarce mineral, to permit exploitation by the State or its agency and to prohibit exploitation by private agencies is the most effective method of conservation and prudent exploitation. If you want to conserve for the future, you must prohibit in the present.”

23. It was further observed:

"182.7. The doctrine of promissory estoppel cannot be invoked in abstract. When it is sought to be invoked, the court must consider all aspects including the result sought to be achieved and the public good at large. The fundamental principle of equity must forever be present to the mind of the court. Absence of it must not hold the Government or the public authority to its promise, assurance or representation.”

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188.3 Where the decision of an authority is founded in public interest as per executive policy or law, the court would be reluctant to interfere with such decision by invoking the doctrine of legitimate expectation. The legitimate expectation doctrine cannot be invoked to fetter changes in administrative policy if it is in the public interest to do so.”

24. In view of the above, we do not find any merit in these appeals. We also do not approve the stand of the State of U.P. in supporting the appellants, as already mentioned.

25. Accordingly, the appeals are dismissed. Interim order granted by this Court stands vacated. The State will assess the extent of pecuniary advantage taken by the appellants under the interim order and recover the same from the appellants.

Judgment Referred.

¹(2013) 2 ADJ 0166

²(2014)11 ADJ 0089

³(2013) 2 ADJ 0166

⁴(1981) 2 SCC 0205

⁵(2012) 4 SCC 0629

⁶(2014) 11 ADJ 0089
⁷(2012)11 SCC 0001