

RAJASTHAN HIGH COURT

Golcha Minerals Pvt. Ltd

Vs.

Union of India

S. B. Civil Writ Petn. No. 2106 of 1991

(Rajesh Balia, J.)

27.05.2004

ORDER

Rajesh Balia, J.

1. This petition is directed to challenge the order passed by the Central Government in Revision in exercise of its power under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957 (for short "MMRD" Act) as it was existing at the relevant time, allowing the revision petition filed by M/s. Moiniya Minerals and setting aside the grant made in favor of the preset petitioner of a mining lease for mining pyrophllite grant made by the State on 3-6-1982 and setting aside the order dated 9-1-1983 by which the sanction was made in favour of the petitioner for inclusion of mineral soap-stone in the existing mining lease for pyrophllite.

2. The chequered history through which this petition has reached this stage shows that the area in question originally was part of existing mining lease in favor of M/s. Udaipur Mineral Development Syndicate (Pvt.) Ltd. (UMDS) for soap-stone which was to expire on 30th April, 1981. It is not in dispute that the area for which the existing mining lease was in force in favor of the UMDS was in excess of 10 sq. Kilometer. The maximum permissible limit upto which a mining lease can be granted by the State at a time for any mineral or group of minerals specified in Schedule under Section 6 of the MMRD Act was reduced to 10 sq. km. during the currency of said Mining lease in favor of UMDS. It is also not in dispute that existing mining lease for area exceeding 10 sq. km. did not automatically stand reduced, nor the holder was required to surrender immediately the excess area as per amended provision.

3. The holder of existing minerals UMDS for soap-stone had applied for its renewal under the Mineral Concession Rules well in time, a year in advance.

4. In the aforesaid fact situation, on 28-6-1980 the present petitioner applied for grant of mining lease for pyrophyllite in respect of area in question before the expiry of mining lease in favor of UMDS and during its subsistence a notice of the application made by the present petitioners (Golcha Minerals Pvt.Ltd.) was given to the existing lessee UMDS as required under sub-rule (4) of Rule 24 of the Mineral Concession Rules, 1960 as was in force at that time.

5. It appears the holder of existing mining lease in respect of soap-stone did not opt to apply for the mining lease for pyrophyllite within six months as envisaged under sub-rule (5)(b) of Rule 24 of the MCR and the State Government was left free to consider the original application for grant of minerals in respect of pyrophyllite to the present petitioner.

6. It further appears from the material on record that this application was not dealt with or decided by the State Government until it received consent or no objection from the original lessee vide communication made in June, 1981 and ultimately, the lease was sanctioned in favor of the present petitioner in respect of major mineral pyrophyllite on 3rd June, 1982 for an area of 64.75 hectares near village Kachola in District Bhilwara.

7. Subsequent to the aforesaid grant which had been confirmed by executing a lease deed in favor of the petitioner, the area in question covered by mining lease for soap-stone in favor of UMDS was declared free for grant vide notification dated 28th September, 1982 (Annexure-4) annexed with the writ petition making it known that anybody desirous of seeking a mining lease in respect of the area can apply after 30 days of the expiry of the notification.

8. The notification further mentioned that the area has been notified free for grant because it was the area in excess of 10 sq. Kms. of the area held by UDMS which has been surrendered.

9. Pursuant to notification dated 20th September 1982, the respondents Moiniya made an application dated 31st Jan. 1983 for grant of mineral soap-stone in respect of 187 Hectares of land situated in village Kachola Tehsil, MandalgarhDistt. Bhilwara. This also included the area which has been declared free for grant vide notification dated 28th September, 1982.

10. The application by Moiniya Minerals was not decided within the period envisaged under Rule 24(1) and was deemed to be rejected. Before deemed rejection, M/s

Moiniya Minerals had received a letter from Mining Engineer, Bijolia that only 32.12 Hectares was lying free and was available for grant and desired consent of the applicant for payment of minimum dead rent for area of 32.78 Hectares only, which consent was submitted by him on 14-1-1984.

11. Before M/s. Moiniya Minerals had applied for grant of mining lease for soap-stone on 30th December, 1982. M/s. Golcha Minerals applied for inclusion of soap-stone in its existing mining lease for pyrophllite. That prayer was granted on 9-11-83 before deemed rejection of application filed by M/s. Moiniya Minerals.

12. Aggrieved with the deemed rejection of his application dated 31-1-1983 and sanction of application for inclusion of soap-stone in the existing mining lease for pyrophllite held by M/s. Golcha Minerals Pvt. Ltd., M/s. Moiniya Minerals filed a revision before the Central Government challenging the two orders specifically within limitation. However, in the revision petition, a prayer was also made for ignoring grant of M. L. Kachola block for pyrophllite to M/s. Golcha Mineral Pvt. Ltd. as void-ab-initio. The prayer was also made to grant the area in question for mineral soap-stone to the applicant Moiniya Minerals.

13. The principal contention raised for seeking this relief was on the ground that mining lease of UMDS had expired on 30th April, 1981, but the consent of UMDS for grant of minerals for pyrophllite in favour of M/s. Golcha Minerals (P) Ltd. was given only in June, 1981 i.e. after the expiry of lease and when UMDC had no right to hold the lease of area in question which was in excess of the maximum permissible limit that could be held by UMDS. It is for this reason alone, it was contended that the lease sanctioned in favor of the present petitioner for pyrophllite was void *ab initio* and therefore, consequently inclusion of mineral soap-stone in his lease could not be made.

14. However, before the Court in the course of arguments, it was stated that if lease granted in favor of the present petitioner for pyrophllite is not held void ab initio, the subsequent inclusion of soap-stone in his lease would not be invalidated and the respondent M/s. Moiniya Minerals would not get precedence in the matter of considering his application dated 31-1-1983.

15. The contention on the other hand by the petitioner is that he has made an application during the continuance of the mining lease in favor of M/s. UMDS before expiry of its term. Section 6 would not come in operation to hold any part of the lease to be invalid until expiry of term of lease in favor of the UMDS on 30th April, 1981. The lease had been approved for renewal by the State Government for which renewal

application was made well in advance in April, 1980 and the matter was pending consideration before the Central Government for permitting the UMDS to hold area under said lease in excess of 10 sq. kms. which the Central Government was competent to grant under sub-section (2) of Section 6. Therefore, neither continuance of mining lease during the period of pendency of application of renewal can be considered to be illegal nor the grant of mining lease for mineral other than for which lease was existing in favor of UMDS could be held invalid. The case of the petitioners were fully governed by Rule 24(4)(5) and (6) of Mineral Concession Rules, 1960 (for short 'MCR') under which a lease could validly be granted to the petitioner for a mineral other than the mineral which was subject matter of lease held by UMDS before the area under subsisting lease were to be declared free for grant.

16. The respondents on the other hand, reiterated the contentions that were raised before the Central Government and accepted by the Central Government for holding that the lease granted in favor of the petitioner for pyrophyllite on 3rd June, 1983 was not proper.

17. The question that arise for consideration is whether the lease granted in favor of the present petitioner on 3rd June, 1982 can be considered void *ab initio* so as not to result in any legal consequences and can be ignored in subsequent proceedings without there being any necessity to indulge in appropriate proceedings to set it aside, or if it is not considered void *ab initio*, could it be declared invalid when there was no challenge made before the Central Government by filing an appropriate application for setting aside it within limitation by any person aggrieved with such grant.

18. The foundation of this controversy stems from the amendment made in Section 6 of the MMRD Act, 1957. Section 6 was substituted by Mines and Minerals (Regulation and Development) (Amendment) Act, 1972 ordaining that no person shall acquire in respect of any mineral or prescribed group of associated minerals one or more prospecting licenses covering a total area of 10 sq. Kms. Significantly, the amendment did not make any provision to affect the existing leases whether one or more in favors of any person in respect of any mineral or prescribed group of associated minerals as on the date, Section 6 was substituted by limiting the maximum area for which a mining lease or leases covering the total area exceeding 10 sq. Kms. could be granted. The prohibition was against acquisition of mining leases in excess of 10 sq. Kms. of area in a State, but no prohibition was envisaged about the continuance of the existing leases covering a total area of more than 10 sq. kms, until its term. No provision was made for immediate surrender of any area in excess of 10 sq. kms, that

may be subject, of mining lease of any mineral or associated group of minerals by any person. Therefore, the existing mining lease in favour of UMDS at the time of introduction of Section 6, in excess of 10 sq. kms. did not become invalid or suffer from any restrictions in respect of operation of mining in any area or portion thereof under any provision of MCR 1960. The other provisions of Mineral Concession Rules continue to govern the existing grants.

19. Learned counsel for the parties had not been able to place any provision of the Act or the Rules contrary to the aforesaid conclusion that can be drawn from reading Section 6 of the Act of 1957 as substituted by the Amending Act, 1972. It is also not in dispute that as on the date Section 6 was substituted, the mining lease in question was existing in favour of UMDS and question would not have arisen until the question of renewal would arise and the question of continuance of mining lease or surrender of excess area could be decided while considering application for renewal and answer would depend whether renewal would have been granted in favour of UMDS for total area in excess of 10 sq. Kms. It is also not in dispute that the Mining Lease in question in favour of UMDS was to expire on 30th April, 1981. The holder of mining lease M/s. UMDS had applied for its renewal in April, 1980.

20. It is also not the case of any of the parties that the limitation put on the acquisition of minerals in excess of 10 sq. kms. was absolute. In terms of proviso to sub-section (1) of Section 6 this power was reserved with the Central Government to allow a mining lease in excess of 10 sq. kms. if it considers it in the interest of development of the mineral and it is necessary to do so it may permit any person to acquire one or more prospective licenses or mining leases covering area in excess of 10 sq. kms. area. The only thing required was that such order is to be made on the basis of reason to be recorded in writing. Therefore, it cannot be said that while application for renewal submitted by the holder UMDS of a mining lease covering a total area in excess of 10 sq. kms. was pending consideration with Central Govt., the existing grant would automatically become void or inoperative in respect of any area exceeding 10 sq. kms. on the expiry of the term of lease.

21. Another aspect of the matter is that Section 6 of the MMRD Act or the Rules framed for that purposes are silent as to which of the area in excess of 10 sq. kms. the holder of the prospective license or lease will be required to surrender. If a person holds one or more mining lease covering the total area in excess of 10 sq. kms. the stage for surrendering any area of mining lease would arise only when question of renewal would arise for consideration. At this stage, either the lease holder himself

can surrender the area in excess of 10 sq. kms. which he does not require by identifying that area and it may be for the authorities under the Mineral Concession Rules to decide whether to accept or not to accept such surrender if the renewal is not granted at all. The holder of the lease when applying for renewal may not specify the area to be surrendered in excess of 10 sq. kms. In that event, the question has to be determined by affording an opportunity to the holder of license or lease before deciding to refuse renewal in respect of the additional area applied for. In case no renewal application is made, the entire mining lease comes to an end and the question of its continuance would not arise.

22. It is in the aforesaid senario, the undisputed facts of the care are to be viewed. As noticed above, the mining lease in question in favors of UMDS was to expire on 30th April, 1981. The renewal for entire mining lease was applied for in April, 1980 i.e. to say one year before the expiry of the term of lease. The application had not been rejected whether whole or in part. But in fact, the State Government, so far as its jurisdiction was concerned, had no objection to the renewal of the entire area of mining lease i its favors and therefore, it had allowed the renewal subject to approval by the Central Government. Since lease exceeding 10 sq. kms.of area could be granted by renewal by the Central Government, it was for the Central Government to decide whether it would permit the acquisition of mining area by renewal in excess of the 10 sq. kms. in exercise of its power under clause (b) of sub-section (1) of Section 6. The said application had not been decided until the grant of pyrophllite mineral in favor of the present petitioner.

23. The further facts which are not in dispute are that while the mining lease in question in favor of UMDS was subsisting and no ineligibility to hold area in excess of 10 sq. kms. was tagged with UMDS as on the date the petitioner has applied for grant of mining lease in respect of pyrophllite in respect of the part of the area which was held by UMDS for a mining lease in respect of soap-stone. That application was necessarily required to be considered in terms of the Rule 24 of the Mineral Concession Rules as was then existing. Rule 24 of the Mineral Concession Rules, as it was existing at the time when this question has arisen read as under :-

24. Disposal of application for mining lease - (1) An application for the grant of a mining lease shall be disposed of within (twelve months) from the date of its receipt.

(2) An application for the renewal of a mining lease shall be disposed of within (six months) from the date of its receipt.

(3) If any application is not disposed of within the period specified in sub-rule (1), it shall be deemed to have been refused.

(4) where an application for a mining lease for a mineral or minerals not specified in the existing mining lease or mining leases is made for the whole or part of the area held under mining lease by a person other than the lessee the State Government shall notify this fact (by Registered Post/Acknowledgment Due) to the person who already holds mining leases for another mineral in the land applied for.

(5) (a) if on receipt of information referred to in sub-rule (4), from the State Government the lessee applied either for prospecting licence or mining lease for newly discovered mineral or minerals within six months from the date of communication of the information by the State Government the lessee shall be preferred in respect of such grant.

(b) If the lessee fails to apply for prospecting licence or mining lease within six months, then this fact will be intimated to the applicant by the State Government and the State Government will consider the original application in accordance with the Rules.

(6) The period of (twelve months) referred to in sub-rule (1) in respect of application received under sub-rule (4) shall be counted from the date of communication of the information regarding the failure of the lessee to apply for prospecting licence or mining lease within the period of six months mentioned in sub-rule (5).

24. The mining lease in respect of mineral pyrophyllite was applied on 28th June, 1980. The notice of such application was required to be served in terms of sub-rule (4) of Rule 24 to UMDS who was already holding the mining lease for mineral soap-stone in that area. Once that notice was given to UMDS, holder of mining lease in respect of soap-stone, a preferential right was created in its favor of get lease in respect of pyrophyllite also. On receipt of such information about the application of the petitioner for acquiring minerals in respect of pyrophyllite, UMDS could apply for grant of mining lease in respect of such new mineral also within six months of the date of communication of information by the State Government and not thereafter. It is also clear from clause (b) sub-rule (5) that if within six months, UMDS, the holder of existing minerals did not respond, it became the obligation of the State Government to intimate the petitioner-applicant of these facts and thereafter it was for the State Government to consider the original application for grant of mining lease for pyrophyllite in accordance with the Rules.

25. In fact, in the event of existing lessee of the area in question refused to apply for the new mineral applied for or fails to respond within six months of the date of communications, the application for grant of mining lease for new mineral becomes pending in real sense.

26. Significantly, sub-rule (6) provided that such application made for grant of different mineral in an area which is covered by existing lease for another mineral, if it remains undecided for 12 months in terms of sub-rule (1), it may be deemed to have been refused. The period of 12 months commences from the date communication of the information regarding the failure of the existing lessee to apply for prospecting license or minerals within the period of six months mentioned in sub-rule (5).

27. Apparently, the scheme of the rule does not require the consent of existing lease holder for grant of mining lease of a different mineral in favor of the third party. It is a matter of giving opportunity to the existing holder of mining lease in that area to a preferential claim to acquire lease in respect of such mineral applied for by subsequent applicant. But on failure of UMDS to opt for acquisition of mineral of pyrophyllite within six months after he was informed of the application, it was for the State Government to inform the petitioner about these facts and consider his application on merit in accordance with rules. No more validity was required.

28. The facts noticed above clearly goes to show that the UMDS has not opted at any time to acquire the minerals in respect of pyrophyllite within six months or thereafter from the date of giving information of application submitted by the present petitioner on 28-6-80. The period of six months within which either UMDS could have claimed grant made in his favor would have expired earliest on 28th December, 1980. That being so, the application for grant of pyrophyllite by the present petitioner would become ripe for consideration earliest by 28th December, 1980 or sometime thereafter. That date also fell before the stage for surrounding any part of existing mining lease in favor of UMDS had reached. Therefore, it is reasonable to infer that the applicant for grant of pyrophyllite in respect of the area in question became ripe for consideration of the State Government during the continuance of the mining lease and did not suffer from any infirmity. The consent of UMDS was wholly irrelevant factor to be considered, hence, date of communication of its consent is also immaterial and cannot affect the validity of grant, if it is otherwise so.

29. Once the application became pending, there is no provision under the Mineral Concession Rules that such application would automatically lapse with the expiry of

existing mining lease so as to render it non est simultaneously with the expiry of mining lease in favor of UMDS. The mining lease has been granted in favor of the present petitioner on 3rd June, 1982 after the application was deemed to have been refused in terms of sub-rule (6) read with Rule 1 and revision against that has been allowed by the Central Government for reconsideration and until time of grant, the area held by UMDS was neither subjected to surrender nor was made free for grant by notification made in terms of Section 59.

30. Therefore, it is apparent that there was no impediment with the State Government for grant of mining lease of pyrophllite in the area covered by existing mining lease held by UMDS on 3rd June, 1982 when the application filed by the present petitioner was validly pending. "The mining lease in favor of the UMDS has been approved for renewal by the State Government and was awaiting decision of the Central Government and there was no specified area exceeding 10 sq. kms. out of the mining lease held by UMDS which could be said to be beyond the area which may be retained by UMDS.

31. Thus, viewed from any point of view, it cannot be said that the mining lease granted in favor of petitioner on 3rd June, 1982 in respect of mineral pyrophllite suffered from any such infirmity which would render the lease to be void *ab initio* and non est and could be ignored without any proceedings for setting aside it by any person aggrieved with such grant.

32. It may be noticed that as on the date of grant, the present respondent who has applied for mining lease for soap-stone after the area was declared free for grant for soap-stone was not in picture who could have been aggrieved with grant of pyrophllite. Therefore, there was no challenge for grant of pyrophllite by anyone.

33. Once the area in question became free from the existing grant in favor of UMDS, the petitioner as well as the contesting respondent could apply for fresh grant of mineral soap-stone. So far as the present petitioner is concerned, he has only to apply for inclusion in his existing lease. The contesting respondent could apply for grant of fresh mining lease in respect of soap-stone. Any application to be made by the contesting respondent would have brought into play operation of Rule 24 and even if the petitioner had not applied for grant of soap-stone, on an application being made by the respondents, he was entitled to receive a registered notice of such application before the application made by respondent No. 3 could have been considered in terms of sub-rule (5)(b) of Rule 24 as it was existing during 1983 and that would have given

preferential right to the present petitioner to apply for mining lease in respect of soap-stone also in addition to his existing mining lease for pyrophyllite. In view of that even if the petitioners were not to make an application for inclusion of soap-stone in his existing lease, on an application being made by the respondent, the petitioner would still have got prior right to opt for its inclusion in his lease under Rule 24(5)(a).

34. In fact, in the present case, the application for inclusion of soap-stone, in the existing mining lease has been made prior to making of an application by the respondent No. 3, and the petitioner has otherwise preferential right to be considered for grant of mining lease for soap-stone, even if it is assumed that earlier grant was not valid, the application for inclusion having been given after expiry of 30 days of Notification under Rule 59 was issued.

35. In view of the aforesaid, obviously the conclusion reached by the Central Government cannot be sustained. The Central Government has reached its conclusion by ignoring the scheme of Section 6 of the MMRD Act and Rule 24 of the MCR in respect of the existing mining lease and by erroneously assuming that the existing lease in excess of 10 Sq. Kms. had automatically ceased to exist *qua* any specific area, for which there is no warrant under law.

36. Accordingly, the writ petition succeeds and is allowed. The order of the Central Government under challenge is quashed and the order passed by the State Government in favor of the petitioner is restored. As a result of this, any order passed by the State Government in compliance of the Central Government order will automatically come to an end.

37. There shall, however, be no order as to costs.

Petition allowed.