PETITIONER:
PREM NATH SHARMA

Vs.

RESPONDENT:
STATE OF U.P AND ANR.

DATE OF JUDGMENT: 09/04/1997

BENCH:
CJI, J.S. VERMA, B.N. KIRPAL

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL, J.

The appellant had, under the provisions of Uttar Pradesh Minor Minerals (Concession) Rules, 1963 (for short 'the Rules') on 17th September, 1977, been granted a lease of a plot of land admeasuring 10 acres in Mahoba Tehsil, Hamirpur District. This lease was for a period of ten years and on the basis thereof the appellant set up a granite unit.

The aforesaid lease was extended from time to time. The tenure of the lease having expired a public notice dated 31st March, 1995 was issued by the District magistrate, Hamirpur for grant of a fresh lease for the area which was being exploited by the appellant. This notice was published on 2nd April, 1995 and was issued under Rule 72 of the Rules. Rule 72, as it stood at the relevant time. was as under:-

> " Availability of area for re-grant to be notified-- (i) If any area, which was held under a mining lease under Chapter II or on reserved under Section 17-A of the Act, becomes available for re-grant on mining lease the District officer shall notify the availability of the area through a notice inviting applications for grant of mining lease specifying a date, which shall not be earlier than thirty days from the date of the notice and giving description of such area and a copy of such notice shall be displayed on the Notice Board of his office and shall also be sent to the Tehsildar of such area and the Director.
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> (ii) The application for grant of mining lease under sub-rule (1) shall be received within seven working days from the date

specified in the notice referred to in the said sub-rule. If, however, the number of applications received from any area is less than three, If, however, the number of applications received from any area is less than three, the District officer may further extend the period for seven more working days and if even thereafter, the number of applications remains less than three, the District Officer shall notify the availability of the area afresh in accordance with the said sub-rule.

(iii) An application for grant of mining lease for such area which is already held under a lease or notified under sub-rule (1) of Rule 23 or reserved under Section 17-A of the Act and whose availability has not been notified under sub-rule (1), shall be premature and shall not be considered and the application fee thereon, if paid shall be refunded."

According to Rule 72 (ii), the applications for the grant of a mining lease were to be received within seven days from the specified date. it is common ground that the specified date. it is common ground that the specified date as per the aforesaid notice was 2nd May, 1995 and applications for the grant of mining lease could be filed between 2nd May, 1995 and 9th may, 1995.

It appears that on the very first date, i.e., 2nd May, 1995, nine applications including that of the appellant, for the grant of the mining lease were filed. The District Magistrate vide his order dated 6th May, 1995, informed the appellant that his application for grant of the mining lease had been approved. The appellant was required, in token of acceptance of the terms of the lease, to submit an agreement along with a treasury challan of Rs.30,000/- to enable the execution of the lease deed. According to the appellant the needful was done and the stamp papers worth Rs.30,065/- were furnished to the office of the Mines officer on 12th May, 1995 so as to enable the District magistrate to execute the lease deed in favour of the appellant.

The District Magistrate did not, however, execute the lease deed. Thereupon, the appellant filed writ petition No.15290/95 seeking a writ of mandamus requiring the court to direct the respondents therein to execute the lease deed in the appellant’s favour pursuant to the sanction communicated to the appellant vide order dated 6th May, 1995.

During the pendency of the aforesaid writ petition the District Magistrate, Mahoba, issued a fresh notification dated 30th may 1995. According to the respondents the state Government had arrived at the conclusion that the first notice dated 31st March, 1995 was not in accordance with the provisions of Rule 72 inasmuchas the seven days time for acceptance of the application for grant of the mining lease as contemplated by Rule 72 inasmuchas the seven days time for acceptance of the application for grant of the mining lease as contemplated by Rule 72 was not mentioned in the notice and , therefore, the order dated 6th May , 1995 sanctioning the lease was cancelled and a fresh notice dated

30th May 1995 was issued. This led to the appellant filing a second writ petition No.16886 of 1995 challenging the fresh notice dated 30th May, 1995. it appears that one other applicant, namely, Achintya Kumar Tripathi also filed a writ petition No. 15338 of 1995, seeking a writ of mandamus restraining the respondents from executing a lease in favour of the appellant herein and he also prayed for a restraining the respondents from executing a lease in favour of the appellant here in and he also prayed for a direction to the respondent to grant the mining lease in his favour.

The Division Bench of the High Court by common judgment dated 24th April, 1996 dismissed the three writ petitions. It came to the conclusion that the requirement of communicating in the notice that application for grant mining lease under Rule 72 (i) shall be received within seven working days from the date specified in the notice was mandatory . In view of the fact a that this was not specified, therefore, the notice dated 31st March, 1995 had not been issued in accordance with the provisions of Rule 72 and, consequently, respondents were right in not acting on the basis of the said notice and executing the lease deed in favour of the appellant. The High Court did not think it necessary to consider the claim of Achintya Kumar Tripathi in his writ petition. Direction was issued that as the fresh notice dated 30th may, 1995 had expired the respondents should issue a fresh notice in accordance with the provisions of Rule 72 and invite fresh applications.

Challenging the correctness of the aforesaid decision of the Allahabad High Court it was submitted by the learned counsel for the appellant that Rule 72 did not require that the notice should itself specify the dates when applications for lease could be submitted. He further contended that the appellant had been exploiting he mines since 1977 till the expiry of the last lease on 31st March, 1995. The appellant was a mechanical engineer and had pursued higher studies in UK and he had invested a huge amount of money in setting up the requisite machinery and in building up the infrastructure for carrying out the mining operations. He, therefore, had a preferential right to get the lease under sub-rule (1) of Rule 9 of the Rules.

Notice for the grant of mining lease is issued under sub-rule (i) of Rule 72. This sub-rule requires the notice to invite applications for re-grant of mining lease specifying a date which was not to be earlier than thirty days from the date of the notice. The notice is required to give the description of the area where the re-grant of the mining lease is available. Sub-rule (i) does not require the period within which the application for grant of lease can be filed or the last date by which the application will be received to be specifically stated in the notice which is issued. The reason for this is that the period within which the application for grant of lease can be filed is specified by Rule 72 (ii) itself. As per this sub-rule the applications are to be received within seven working days from the date specified in the notice. The date which was specified in the notice dated 31st March ,1995 was that of 2nd May, 1995 was that of 2nd May, 1995. If the number of applications are less than three then this sub-rule requires the District officer to further extend the period for seven more working days. If again the number of applications remains less than three then the availability of the area has to be notified afresh. In our opinion, while mentioning of the dates within which the applications may be filed may be desirable but non mentioning of the same will not in any way invalidate the said notice. Reading the rule as a whole

it is only the specified date which has to be stated in the notice, Reading the rule as whole it is only the specified date which has to be stated in the notice, which cannot be earlier than thirty days of the notice, and the date on being so notified sub-rule (ii) of Rule 9 clearly stipulates the period within which the applications can be filed, that period being of seven days. The High Court, in our opinion, was therefore, 1995 to be bad because of the non-specification of the seven days period within which the applications could be filed.

There is, however, one other reason why no relief could have been granted to the appellant. As we have already noted by notice dated 31st March, 1995 the specified date was 2nd May, 1995. On that day itself nine applications were filed. According to sub-rule (ii) of 72 applications could be filed during a period of seven days, i.e., by 9th May, 1995. The District Magistrate did not, however , wait and by order dated 6th May, 1995 he communicated to the appellant that grant of lease in his favour gad been sanctioned. This the District Magistrate could not do. He was under an obligation to entertain applications for the grant of lease for a period of seven days after the specified date, i.e., till 9th May, 1995. it is only after the period of seven days is over that the District Magistrate could consider the applications received before deciding as to whom the lease should be granted.

It was submitted by the learned counsel for the appellant that the appellant had a preference to get the lease and in fact on the very first date itself, i.e., 2nd May, 1995 nine applications were received. It was further submitted that even though by order dated 6th May, 1995 the appellants application was approved in actual fact no further applications were received till 9th May, 1995 or even thereafter. It was, therefore, submitted that by not waiting till after 9th May, 1995 and by according sanction on 6th May, 1995 the District Magistrate had committed no illegality.

In order to appreciate the aforesaid submission it is necessary to examine Rule 9 under which the preferential right is claimed by the appellant relevant portion of which is as under:

> " Preferential right of certain person-(1) Expect as provided in sub-rules 92) and 93) 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 an applicant whose application was received later.
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> Provided that where such applications are received on the same day, the state Government may, after taking into consideration the matters specified below grant the mining lease to such one of the applicants as it may deem fit:
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> (a) past experience;
> (b) financial resources;
> (c) 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) such other matters as may be considered necessary by the state Government.

(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.

(3) In respect of mining lease for excavation....."

Sub-rule (1) of Rule 9 states that where two or more persons apply for a mining lease in respect of the same land, then the application received earlier shall have a preferential right for the grant of lease over an applicant whose application was received later. But this is subject to the provisions of sub-rule (2) and sub-rule (3) of Rule 9, to which we will presently refer.

The proviso to sub-rule (1) deals with a situation where two or more persons apply for a mining lease in respect of the same land on the same day. In such a case the state Government had to take into consideration the matters specified in the said proviso before deciding as to whom the lease is to be granted. In the present case nine applications were received on 2nd May, 1995. Including that of the appellant. In those circumstances the state Government was required to act in accordance with the provisions of proviso to sub-rule (1) of Rule 9 and presumably, it took into consideration the factors mentioned therein while deciding on 6th May, 1995 to grant the mining lease to the appellant.

While an application received earlier in point of time has a preference over a later application, as provided by sub-rule(1) of Rule 9, nevertheless the State Government has been given the power under Sub-rule (2) of Rule 9 to grant a mining lease to an applicant whose application was received later in preference to an application whose application was received earlier. This can be done for special reason which have to be recorded. in other words, an application received earlier in point of time will normally get a preference over an application received later but the earlier applicant does not get an undefeasible right to get the lease because the state Government, under sub-rule (2) of Rule 9, has the power to accept an application which is received later in point of time. Similarly an applicant under sub-rule (3) will be given preference to an applicant under Rule 9 (1) even though his application may be later in point of time. we, however, make it clear that a later application which could be considered under sub-rule (2) or cub-rule (3) can only be that whose application which has been filed within the period specified by Rule 72(ii). For example an application received after 9th May, 1995, pursuant to the earlier notice dated 31st March, 1995, could not have been considered by the State Government either under sub-rule (2) or(3). An application received after the prescribed period of time will not be regarded as a valid application, but all

applications received within the seven days period, i.e., 2nd May, 1995 to 9th May, 1995 in this case, had to be considered.

Even though nine applications were received on 2nd May, 1995 the State Government was not precluded from considering or even granting lease in favour of an applicant whose application was received later provided the conditions under sub-rule (2) or sub-rule (3) in his case was held to be satisfied. This being so no decision accepting an application could have been taken by the District Magistrate by considering the preference under Rule 9(1) before the period of seven days had elapsed. Had order dated 6th May, 1995 not been passed, it is possible that a more deserving applicant than the appellant herein may have filed an application by 9th May, 1995 on the consideration of which the state Government , for reasons to the recorded, could have been pursuaded to grant a mining lease. A provision like sub-rule (2) of Rule 9 had necessarily to be incorporated so that the application of the most deserving applicant was not rejected merely because the applications of the other applicants were received earlier. For example if in the instant case for reasons beyond its control, the appellant had not been able to file the application for the grant of the mining lease on the very first date itself, i.e., 2nd May, 1995, when eight other applications were received but had filed its application say on 3rd may, 1995 then his application being later in point of time, would not have been considered but for the provisions contained in sub-rule (2) of Rule 9. This sub rule , in such an eventuality would have enabled the applicant to satisfy the State Government that for special reasons preference should be given to his application and the mining lease granted notwithstanding that eight other persons had applied earlier. The opportunity granted by Rule 72 (ii) to prospective applicants to apply for a mining lease was denied when within four days of the receipt of the application the District Magistrate on 6th May, 1995 took a decision whereby he decided to grant the lease in favour of the appellant. This could not be done.

From the aforesaid discussion it will follow that it is not the notice dated 31st March, 1995 which suffered from any legal infirmity but it is the acceptance of the application before 9th May, 1995 which was bad in law. The said order dated 6th May, 1995 being contrary to Rule 72(ii) was rightly not acted upon and, therefore, the only course which was open to the respondents was to issue a fresh notice, which it did on 30th May, 1995. The conclusion of the High Court that the writ petitions filed by the appellant could not be allowed was correct, though for a different reason.

For the aforesaid reasons these appeals are dismissed. The respondents will be at liberty to issue a fresh notice for the grant of lease in accordance with law and keeping in view the observations contained herein. There will be no order as to costs .