

PETITIONER:
AJIT SINGH

Vs.

RESPONDENT:
UNION OF INDIA & ORS

DATE OF JUDGMENT 03/11/1995

BENCH:
AGRAWAL, S.C. (J)
BENCH:
AGRAWAL, S.C. (J)
G.B. PATTANAIK (J)

CITATION:
1996 AIR 475 1995 SCC Supl. (4) 224
JT 1995 (8) 182 1995 SCALE (6) 203

ACT:

HEADNOTE:

JUDGMENT:

JUDGMENT

S.C. AGARWAL, J :
Leave granted.

We have heard the learned counsel for the parties.

This appeal relates to grant of mining lease in respect of the minor mineral, viz. marble, under the provisions of the Rajasthan Minor Mineral Concession Rules, 1977 [hereinafter referred to as 'the 1977 Rules'].

The facts, in brief, are as follows :

One Rajesh Vardia was granted a mining lease for marble in respect of an area covering 7500 sq. mts. near Village Tripura Sundari in Banswara District in the State of Rajasthan. The said lease was granted for a period of 15 years from January 2, 1976 but it was cancelled by order dated October 12, 1979. One Babulal Modi submitted an application for grant of mining lease for an area of 10,000 sq. mts. on December 16, 1981. Babulal Modi was granted a lease in respect of 7570 sq. mts; including a part of the area covered by the mining lease granted to Rajesh Vardia, by order dated July 12, 1982. Babulal Modi failed to execute a formal lease agreement in Form No. 8 within the period prescribed under the 1977 Rules and by virtue of Rule 19 of the 1977 Rules the order for grant of mining lease stood revoked. Babulal Gupta, respondent No. 5 herein, filed an application dated October 20, 1982 for grant of lease in respect of an area which was overlapping the area held by Rajesh Vardia and subsequently granted to Babulal Modi. The said application of respondent No. 5 was rejected by the Mining Engineer, Udaipur, by order dated February 24, 1983 on the ground that the area for which lease was sought was not available for grant. Respondent No. 5 filed another application for grant of mining lease for the same area on January 19, 1983. Ajit Singh, appellant herein, also filed an application on January 20, 1983 for grant of mining lease in respect of an area covering 22,500 sq. mts. By order

dated July 26, 1983 the Mining Engineer, Udaipur granted mining lease in respect of an area covering 10,173 sq. mts. out of the area of 22,500 sq. mts. for which the appellant had submitted the application and in pursuance the said order the appellant obtained the mining lease on August 10, 1983 which was registered on August 18, 1983. The second application of respondent No. 5 dated January 19, 1983 was rejected by the Mining Engineer, Udaipur, by order dated April 19, 1983 on the ground that it was pre-mature. Respondent No. 5 filed two appeals against the orders dated February 24, 1983 and April 29, 1982 and January 19, 1983 were rejected. The said appeals were dismissed by the Additional Director, Mines, Udaipur by order dated August 12, 1983. The appeal filed by respondent No. 5 against the said order of the Additional Director, Mines, Udaipur was partly allowed by the State Government of Rajasthan by order dated July 3, 1984 whereby mining lease was granted in favour of the appellant and it was directed that the remaining area other than that granted to the appellant should be granted in favour of respondent No. 5. Respondent No. 5 preferred a revision application against the order of the State Government dated July 3, 1984 before the Central Government under Section 30 of the Mines and Minerals (Regulation and Development) Act, 1957. The said revision application of respondent No. 5 was allowed by the Central Government by order dated March 12, 1987. The Central Government held that the grant of mining lease in favour of Babulal Modi stood revoked on October 12, 1982 when the period of three months for the execution of the lease deed lapsed and the first application dated October 20, 1982 submitted by respondent No. 5 could not be rejected on the ground that the area was not available for grant. The Central Government set aside the order granting the mining lease to the appellant as well the order dated February 24, 1983 passed by the Mining Engineer, Udaipur, and the order dated August 12, 1983 passed by the Additional Director, Mines and order dated July 3, 1982 passed by the State Government and remanded the matter to the State Government for passing appropriate order on the application dated October 20, 1982 submitted by respondent No. 5 on merits. The Central Government did not go into the question as to whether the second application dated January 19, 1983 submitted by respondent No. 5 was pre-mature. The appellant filed a writ petition (writ petition No. 1064 of 1987) in the Rajasthan High Court wherein he challenged the legality and validity of the order dated March 12, 1987 passed by the Central Government. The said writ petition was dismissed by the learned single Judge dated April 4, 1991. The Special Appeal (D.B. Civil Special Appeal No. 167 of 1991) filed by the appellant against the judgment of the learned single judge has been dismissed by the Division Bench of the High Court by concurring judgments (per V.S. Kokje and R.R. Yadav. JJ.).

Two questions broadly arise for consideration in this appeal, viz, (i) whether the first application dated October 20, 1982 submitted by respondent No. 5 was premature; and (ii) whether the second application dated January 19, 1983 submitted by respondent No. 5 was pre-mature.

For answering the first question, it is necessary to take note of Rule 19(1) of the 1977 Rules which provided as follows :

"19. Execution of lease. - (1) Where a lease has been granted or renewed under these rules, the formal lease in Form No. 8 shall be executed within three

months from the date of receipt of the sanction by the applicant and if no such formal lease is executed within the aforesaid period, the order granting the lease shall be deemed to have been revoked. The competent authority shall sign the agreement on behalf of the Governor of Rajasthan as required under Article 229 of the Constitution of India "Provided that where the State Government or any officer authorised by the State Government to grant lease on its behalf is satisfied that there are sufficient reasons to believe that the grantee is not responsible for the delay in the execution of the formal lease, the State Government on that officer as the case may, be may permit the execution of formal lease within a reasonable time after the expiry of the aforesaid period of three months."

A perusal of the said provisions shows that after the grant of the mining lease a formal lease is required to be executed within three months from the date of the receipt of the sanction by the applicant and if not such format lease is executed within the said period, the order granting the lease has to be deemed to have been revoked. In the proviso to sub-rule (1) of Rule 19 provision is made that the state Government or any officer authorised by the State Government to grant lease on its behalf, may permit execution of formal lease within a reasonable time after the expiry of the aforesaid period three months, if the State Government or such officer is satisfied that there are sufficient reasons to believe that the grantee is not responsible for the delay in the execution of the formal lease. In the present case, the applicability of the proviso does not arise and only the main part of sub-rule (1) of Rule 19 has to be considered.

The period of three months had to be counted from the date of receipt of the sanction by the applicant and not from the date of the grant of mining lease. The Central Government, in passing the order dated March 12, 1987, has erroneously proceeded on the basis that the period of three months has to be counted from the date of grant of lease, i.e., July 12, 1982 and on that basis the Central Government has held that the deemed revocation would be operative on October 12, 1982. The Central Government has also expressed the view that for the purpose of revocation of the grant under Rule 19 it is not necessary to pass any formal order by the State Government since deemed revocation would take place by operation of law after the expiry of the period of three months prescribed in Rule 19.

In the High Court one of the learned Judges [V.S. Kokje J.] has taken note of the fact that the intimation of the order dated July 12, 1982 regarding grant of mining lease was received by respondent No. 5 on August 16, 1982 and the period of three months, when counted from August 16, 1982 expired on November 15, 1982 and, therefore, the application dated October 20, 1982 submitted by respondent No. 5 was premature. The other Judge [R.R. Yadav. J] while agreeing that the period of three months prescribed under Rule 19 has to be counted from the date of the receipt of the order granting sanction of the lease, was not inclined to disturb the order passed by the Central Government for the reason that the High Court, in exercise of its powers under Article 226 of the Constitution, would not permit the appellant to

place before the Court fresh material, namely, Annexure 1-A to the writ petition, which showed that the letter dated July 12, 1982 granting the mining lease was received by Babulal Modi on August 16, 1982. According to Yadav. J. since the said document was not placed before any of the tribunals and the matter is to be decided by the State Government afresh after remand it would not be proper to make further comments on the same regarding its credibility and reliability.

In view of the clear language used in sub-rule (1) of Rule 19, the relevant date for counting the period of three months for the purpose of execution of a formal lease agreement has to be counted from the date of the receipt of the sanction of the mining lease by the applicant. The case of the appellant is that the sanction dated July 12, 1982 for grant of mining lease on the application of Babulal Modi was received by him on August 16, 1982. It is no doubt true that this fact was not brought out in the proceedings before the State Government or the Central Government. The Central Government did not consider it necessary to go into the question of the date of receipt of the sanction by Babulal Modi because it has proceeded on the basis that the period of three months has to be counted from the date of the grant of sanction of lease, i.e., July 12, 1982. The fact that this fact was brought out, for the first time, by the appellant in the writ petition, by filing the document Annexure 1-A, could not stand in the way of the High Court considering the said documents and deciding whether on the basis of the said document the said letter dated July 12, 1982 was received by Babulal Modi on August 16, 1982. Yadav. J. has refused to take note of the said document thought it had been placed on record with the writ petition. An additional affidavit dated September 12, 1995 has been filed by the appellant in this Court and a copy of the letter dated December 13, 1982 from the Assistant Mining Engineer to the Mining Engineer, Udaipur has been annexed as Annexure I to the said affidavit. In the said letter it is stated that the letter dated July 12, 1982 regarding grant of lease in favour of Babulal Modi was sent to the said party by registered A.D. dated July 30, 1982 requesting him to get the lease deed executed and the said letter was received by Babulal Modi in August 16, 1982 and that the period of three months had expired on November 15, 1982 and that the party had so far not completed the formalities for the execution of the lease deed. Along with the said affidavit a copy of the relevant entry in the despatch register has also been filed which shows that the letter No. ML 126/81 regarding grant of mining lease was sent to Babulal Modi vide entry no. 1143 dated July 30, 1982 in the Dispatch Register and that it was actually sent by registered post on August 2, 1982. There is no reason to doubt the authenticity of these documents which have been filed by the appellant. We, therefore, proceed on the basis that the letter dated July 12, 1982 regarding grant of mining lease was received by Babulal Modi on August 16, 1982 and the period of three months for the execution of the formal lease, as required by Rules 19(1), expired on November 15, 1982 and the grant of mining lease in favour of Babulal Modi would be deemed to have been revoked only on November 15, 1982. The first application dated October 20, 1982 submitted by the respondent No. 5 was, therefore, pre-mature and was rightly rejected by the Mining Engineer by his order dated February 24, 1983.

We may now come to the question whether the second application dated January 19, 1983 submitted by respondent

No. 5 was pre-mature. The answer to this question would depend upon the question whether on January 19, 1983 the area in question was available for grant. The appellant has placed reliance on the provisions of Rules 56 and 57 of the 1977 Rules in this regard. The said Rules provide as under :

"Rule 56. Availability of the areas for re-grant to be signified an entry in the register for mining lease and rent-cum-royalty lease :- No area which was previously held under mining lease or rent-cum-royalty lease shall be treated as available for regrant unless an entry to this effect has been made in the register of mining lease or rent-cum-royalty lease and 15 days have elapsed from the date of such entry. The aforesaid entry in the register of mining lease shall be made at least 3 months before the date of expire of original lease or with in 15 days from the receipt of determination order, as the case may be. In case of rent-cum-royalty lease the entry shall be made on the date of the notification under rule 27(4). In the case of mining lease for area of 1 sq. km. or above the date from which it shall be treated as available for re-grant shall be notified in the Rajasthan Gazette at least 30 days in advance. The notification shall mention the relevant rule under which the grant shall be made either by auction or by application.

Note :- (a) for the purpose of this rule, the register required to be maintained under rules 10(2) and 24(2) shall be deemed to be the register for entry under this rule.

(b) In case of a renewal application for mining lease the entry in the said register shall be made within 15 days of the rejection of renewal application.

Rule 57. Premature application : - Application for grant of mining lease in respect of areas which have been previously held under a Mining lease but in respect of which there is no entry in the register as provided for in the foregoing rule, shall be deemed to be premature and shall be disposed of by the Government accordingly and the application fee paid shall be refunded."

The Central Government has expressed the view that Rule 56 is not applicable in this case inasmuch as the said Rule governs declaring an area available for grant if held under a mining lease and an area cannot be held under a mining lease unless the mining lease is executed and the possession is taken by the person to whom the area is granted under the mining lease. The learned single Judge appears to have proceeded on an erroneous impression that the Central Government has held that the provisions of Rules 56 of the Rules have not been complied with in the present case. Both the learned judges on the Division Bench of the High Court have, however, held that Rule 56 has no application in a case where the person to whom the lease has been granted

fails to execute a formal lease under Rule 19 and there is deemed revocation of sanction. Yadav J. has, however, held that no extract of entry from the register of mining lease has been filed to show the date on which the entry in the said register was made and that the alleged admission that an entry was made and that the alleged admission that an entry was also made in the register of mining leases maintained at the office of Mining Engineer, Udaipur was not sufficient to confer right on the appellant to obtain the lease of the disputed mining area on the basis of his application dated January 20, 1983 while respondent No. 5 had also moved an application for grant of the said area on January 19, 1983. According to the learned judge if the entry was made in the register on January 4, 1983, in pursuance of order dated January 4, 1983 then the application of respondent No. 5 dated January 19, 1983 and the application of the appellant dated January 20, 1983 would be mature and that if the entry in the register was made on any subsequent date, then it is to be decided by the State Government as to whether these two applications were mature or pre-mature.

Shri Arun Jaitley, the learned senior counsel appearing for the appellant, has submitted that Rule 56 serves a useful purpose inasmuch as it curbs corruption and favoritism by fixing the date on which a particular area is available for grant of mining lease and thereby enables all applicants to have an equal opportunity of submitting their applications for grant of lease. The submission of Shri Jaitley is that keeping in view the said object underlying Rule 56, it should be applied in all cases where lease is to be regranted including cases where the grant of a lease has been revoked under Rule 19 on the ground of failure on the part of the applicant to execute the formal lease deed within the prescribed period. Shri Jaitley has urged that otherwise applicants would try to obtain secret information from the office about the dates of dispatch and receipt of the letter regarding grant of sanction and this would encourage corruption. The said contention of Shri Jaitley, though attractive, cannot be accepted. Rule 56 refers to regrant of mining lease in respect of an area which was previously held under a mining lease. In a case where an order for grant of mining lease has been passed but no formal lease deed is executed by the applicant and the grant stands revoked under Rule 19(1) of the 1977 Rules, it cannot be said that the area was previously held under a mining lease. Merely because there is a practice of making an entry in the register of mining leases maintained under Rule 10 of 1977 Rules in respect of grant of mining lease which stands revoked, it cannot be held that Rule 56 is applicable. Shri Jaitley has also placed reliance on Rule 57 which prescribes that an application for grant of mining lease in respect of areas which have been previously held under a mining lease but in respect of which there is no entry in the register has to be treated as pre-mature. Rules 57, in our opinion, also looks at areas previously held under a mining lease and covers the same field as that covered by Rule 56. Rule 57 does not widen the scope of Rule 56 and it cannot be construed to mean that Rule 56 is applicable in cases where mining lease has been sanctioned but no formal lease deed has been executed and as a result the order granting the mining lease stands revoked under Rule 19(1).

In this context, it may be mentioned that in the Rajasthan Minor Mineral Concession Rules, 1986 this lacuna has been removed and in Rule 59(1) of the 1986 Rules, which contains provisions similar to those that contained Rule 56

of the 1977 Rules, it has been provided :

"No area which has been previously held under a mining lease or in respect of which order of grant has been made but the same has been revoked shall be treated as available for regrant unless an entry to this effect has been made in the register of mining lease, the area has been notified as 'free area' on the notice board of Mining Engineer Assistant Mining Engineer and 15 days have elapsed from the date of such notification and entry in the register."

[emphasis supplied.]

It must, therefore, be held that Rule 56 of the 1977 Rules has no application in the present case and the application dated January 19, 1983 submitted by respondent No. 5 cannot be said to be pre-mature on the basis of the provisions of Rule 56.

The non-applicability of Rule 56 of the 1977 Rules would mean that there is no provision in the 1977 Rules for specifying the date on which an area in respect of which the grant of mining lease stands revoked under Rules 19(1) would be available for regrant. Yadav J. has expressed the view under Rule 19 of the 1977 Rules the area would be available for regrant immediately after the expiry of three months which is to be computed from the date of receipt of receipt of the sanction by the applicant and that no formal order of revocation of the sanction is required. It is no doubt true that in view of the expression 'deemed revocation' in Rule 19(1) of the 1977 Rules, revocation of the sanction is automatic on the expiry of the period of three months prescribed under Rule 19(1) except in case where the period for execution of mining lease is extended under the proviso to sub-rule (1) of Rule 19. Such a revocation has two consequences. In the first place it terminates the right of the grantee of mining lease flowing from such grant. Secondly it enables another person to obtain a mining lease in respect of the area covered by the grant which stands revoked. The first consequence is confined to the applicant who was granted the mining lease and whose grant stands revoked. The other consequence involves third parties who wish to apply for grant of mining lease in respect of the area covered by the grant which stands revoked.

So far as the applicant in whose favour the grant of mining lease was made which grant stands revoked under Rule 19(1), the revocation takes effect from the date when the period of three months prescribed under Rule 19 (1) or the extended period under the proviso to Rule 19 (1) expires and the right that had accrued to the said applicant in the basis of the grant comes to an end. But in respect of third parties the matter regarding availability of the area in question for regrant cannot be allowed to rest on the internal communications between the concerned officials of the State Government and the applicant for the mining lease the relevant facts regarding which would not be known to public and are only contained in the office files. Since grant of mining lease involves grant of a privilege by the State, every applicant for such mining lease must have an equal opportunity to apply for the same. This can be achieved only if a public notice is issued about the availability of the area for regrant so that an intending applicant knows about the availability of the area for grant and can submit his application for that purpose.

It appears that the Directorate, Mines and Mineralogy

Department, Government of Rajasthan has issued a circular dated December 10, 1976 in respect of applications for lease of mining of minerals or lease of rent-cum-royalty.

In paragraph 4 of the said Circular, it is stated :

"4. Who has been granted lease of mining or rent-cum-royalty under Non-Principal Minerals Concessions Rule, 1959 and he does not execute contract in the prescribed time as per Rules then on expiry of prescribed period for execution of contract, the order of sanction deemed to be considered as revoked and that area should be notified as free zone according to Rules is appropriate time i.e. if the area is more than one mile then it should be published in the gazette and if the area is less than one mile then it should be notified on the Notice Board of the office for the period of 15 days."

Paragraph 4 of the said Circular envisages a situation where grant of the lease stands revoked on account of failure on the part of the applicant to whom lease has been granted to execute formal lease deed as per the Rules and it requires that the areas should be notified as free zone according to Rules in appropriate time and if the area is more than one mile then it should be published in the gazette and if it is less than one mile, it should be notified on the notice board of the office for 15 days. It is no doubt true that the said Circular was issued under Non-Principal Minerals Concession Rules, 1959 prior to the 1977 Rules, but the guide lines contained in paragraph 4 of the said Circular appear to have been followed even after the coming into force of the 1977 Rules because after the revocation of the sanction of mining lease for marble in area 150 x 50 meters in favour of Rajesh Vardia a notice dated October 18, 1979 was issued declaring the said area as a vacant area after 15 days from the date of issue of the said notice excluding the date of issue. As regards the area in question in the present case. The following office order was issued by the Mines Engineer, Udaipur on January 4, 1983

"That Shri Babu Lal Modi s/o Shri Ganga Lal r/o Ratarbagh was sanctioned mining lease near village Tripuratu District Banswara vide office order No. Udaipur/illegible/MR/ML 23182/2495 dated 12.7.82 for 10/5 years. The applicant has not completed necessary formalities for execution of contract within the fixed period of three months for execution of contract.

Therefore the said sanction order dated 12.7.82 is revoked and the said area is declared for re-allocation after 15 days excluding the day of publication of this order."

We have not been shown any provision in the 1977 Rules which prescribes that in a case where the grant of a mining lease stands revoked under Rule 19(1) of the 1977 Rules, the area is available for regrant immediately after such deemed revocation. The 1977 Rules are silent in this aspect. It would, there, be permissible to issue an administrative order fixing the date on which the area in respect of which a grant had been made and which grant stands revoked under Rule 19(1) on account of failure on the part of the

applicant to execute a formal lease deed within the prescribed period of three months, would be available for regrant. Such an administrative order would be permissible since it would not be inconsistent with the Rules. The order dated January 4, 1983 is such an administrative order. It cannot be considered to be inconsistent with the 1977 Rules and effect can be given to the said order. The said order when it says that 'the sanction order dated July 12, 1982 is revoked only means that the said sanction order stands revoked on the expiry of the period prescribed for the execution of a formal lease deed under Rule 1991 of the 1977 Rules. No fault can be found in the said order dated January 4, 1983 when it says that 'the area is available for re allotment after 15 days excluding the day of publication of the said order'. This would mean that the area became available for regrant only on January 20, 1983. The application dated January 19, 1983 submitted by respondent No. 5 before the expiry of 15 days from the day of publication of the order dated January 4, 1983 has, therefore, to be considered as pre-mature with regard to the area covered by the area for which mining lease had been earlier granted to Babulal Modi.

Since we have come to the conclusion that the application dated October 20, 1982 and January 19, 1983 submitted by respondent No. 5 were both pre-mature the same were liable to be rejected and the order of the Central Government dated March 18, 1987 as well as judgment dated April 4, 1991 of the learned Single Judge and the impugned judgment of the Division Bench of the High Court dated July 18, 1994 cannot be upheld and have to be set aside. The order of the State Government dated July 3, 1984 is restored.

In the result the appeal is allowed and the order dated March 18, 1987 passed by the Central Government, the judgment dated April 4, 1991 passed by the learned single judge in Writ Petition No. 1064 of 1987 and the judgment dated July 18, 1984 passed by the Division Bench in D.B. Special Appeal No. 167 of 1991 are set aside and the order dated July 8, 1984 passed by the State Government is restored. In the circumstances, the parties are left to bear their own costs.