

MANU/BH/0035/1995

Equivalent Citation: AIR1995Pat168, 1996(1)BLJR419, 1996(1)PLJR251

**IN THE HIGH COURT OF PATNA
FULL BENCH**

Civil Writ Jurisdiction Case No. 3199 of 1987

Decided On: 03.02.1994

Appellants:**Vishnu Kumar Khatar
Vs.**

Respondent:**State of Bihar and Ors.**

Hon'ble Judges/Coram:

B.N. Agrawal , S.B. Sinha and R.M. Prasad , JJ.

Counsel:

For Appellant/Petitioner/Plaintiff: Rajendra Prasad Singh, Anil Kumar Upadhyay, Shakalya Kaushik, BijayKumar Pandey, Syed Farman Ahmad and Mahesh Prasad Singh

For Respondents/Defendant: Ram Suresh Roy, S.C.I. and Ashok Kumar Singh, Special P.P., Rajendra Prasad, J.C. to Special P.P.

JUDGMENT

B.N. Agrawal, J.

1. This writ application has been filed for quashing the order dated 10-3-1987 passed by respondent-Collector, contained in Annexure-1, whereby the petitioner's application for renewal of mining lease was rejected and the order dated 26-5-1987, contained in Annexure-2 and 28-7-1987, contained in Annexure-8, passed by respondent-Mines Commissioner, affirming the aforesaid order of rejection.

2. Necessary facts for disposal of this writ application are that the petitioner was granted a mining lease in November, 1980 for a period of five years with respect to a stone quarry over an area measuring 17.75 acres comprising of lands of plot Nos. 699 and 700, situate in village Ratanpur in the district of Nawadah. After grant of the lease, the petitioner started carrying on mining operation and out of the aforesaid forest land, nine acres was broken up before coming into force of the Forest (Conservation) Act, 1980 (hereinafter referred to as the Act) and mining operation continued thereon. As the period of lease was going to expire, the petitioner filed an application on 22-7-1985 for renewal of the lease. Upon the said application for renewal, the petitioner was informed by the respondent Assistant Mining Officer under this letter dated 22-11-1985 that respondent-Collector had allowed his application for renewal for a period of five years and the petitioner was directed to deposit the requisite amount which was duly deposited on 2-12-1985, whereafter on 5-12-1985 the petitioner submitted lease deed for the purpose of due execution. Since the deed of lease was not executed by the respondent-Collector, the petitioner moved the respondent-Mines Commissioner, who by his order dated 2-12-1986 passed in Revision Case No, 115 of 1986, contained in Annexure-3, remanded the matter to the respondent-Collector for execution of deed of lease in accordance with law. Thereafter, the respondent-Collector by his order dated 10-3-1987, contained in Annexure-1 recalled his earlier order by which renewal application was granted and

rejected the application for renewal filed by the petitioner on the ground that approval of the Central Government, as required under Section 2 of the Act, was not obtained for renewal of the lease.

3 . Against the aforesaid order, the petitioner preferred a revision before the respondent-Mines Commissioner, who by his orders dated 26-5-1987, contained in An-nexure-2 and 28-7-1987, contained in An-nexure-8, upheld the aforesaid order as approval of Central Government, as required under Section 2 of the Act, was not obtained. Hence this writ application.

4. When this writ application was placed for hearing before a Division Bench on 8-8-1988, the matter was referred to Full Bench as in the opinion of the learned Judges, there was apparent conflict between two Division Bench judgments of this Court, viz., judgments in Upendra Jha v. State of Bihar (1987 BBCJ 632) : (MANU/BH/0041/1988 : AIR 1988 Pat 263) and Indian Iron Steel Co. v. State of Bihar (C.W.J.C. No. 683 of 1987(R)) and, accordingly, this case has been placed before us.

5 . Learned counsel appearing on behalf of the petitioner in support of this writ application could not point out any conflict in the aforesaid two decisions of this Court. He however, raised two points; firstly, that the Collector had no jurisdiction to recall his order by which order for renewal of the lease was passed, even though no formal deed of lease was executed and approval of the Central Government under S. 2 of the Act was required to be obtained, but had not been obtained. Secondly, it was incumbent upon State Government to refer the matter to the Central Government for according approval under Section 2 of the Act and thereafter only final order should have been passed upon renewal application.

6 . Learned counsel appearing on behalf of the respondents, on the other hand, submitted that approval of the Central Government was necessary even in case of renewal of the present lease in relation to that very area of land which had been broken up prior to coming into force of the Act, in view of the decisions of the Supreme Court in the cases of Ambica Quarry Works v. State of Gujarat (MANU/SC/0853/1988 : AIR 1987 SC 1073) and Rural, Litigation and Entitlement Kendra v. State of U.P. (MANU/SC/0415/1988 : AIR 1988 SC 2187). As such the respondent-Collector was quite justified in recalling his order. Learned counsel next contended that this writ application has become infructuous and no useful purpose will be served by giving a direction to the State Government to refer the matter to the Central Government for according approval for renewal of the lease, as in the year 1990 no further application for renewal of the lease was filed on behalf of the petitioner. Therefore, it has been submitted that it is not necessary to dispose of this writ application on merit. I find force in the contention of learned counsel appearing on behalf of the respondents that if the writ application has become infructuous, it is not necessary to dispose of the same on merit.

7 . Now the question to be considered is whether this writ application has become infructuous or not. From the aforesaid facts, it becomes clear that the lease was granted in favour of the petitioner in the month of November, 1980 for a period of five years, which expired in the month of November, 1985. If the application for renewal would have been granted, the same would have expired in the month of November, 1990, as under Sub-rule (2) of Rule 25 of the Bihar Minor Mineral Concession Rules, 1972 (hereinafter referred to as the Rules), the date of commencement of the period for which a mining lease is granted shall be the date on which lease deed is executed. Sub-rule (3) of the said Rules lays down that in the

case of renewal of lease, date of commencement of the mining lease shall be the date on which the previous lease expired. From the aforesaid Rules, it would appear that the original lease commenced in the month of November, 1980 which expired after five years in the month of November, 1985. Even if the lease would have been renewed, the same would have commenced from November, 1985 and would have expired by November, 1990. Since the period has expired during the pendency of this writ application in November, 1990, it was incumbent upon the petitioner to file a second application for renewal in the month of November, 1990. Learned counsel appearing on behalf of the petitioner could not point out anything to show that the petitioner has filed an application for further renewal of the mining lease in the month of November, 1990. Therefore, the Court has to proceed on the assumption that no such application for renewal has been filed by the petitioner. Even if a direction is given to State Government to refer the application filed by the petitioner in the year 1985 for grant of renewal of lease and approval is accorded by Central Government, the petitioner cannot carry out mining operation on the basis of the said order, as the period has already expired in November, 1990, in view of the fact that no application was filed on his behalf in the year 1990 for further renewal of the mining lease for a period of five years from November, 1990.

For the foregoing reasons, I am clearly of the view that this writ application has become infructuous; as such, no relief can be granted to the petitioner therein.

8. In the result, this writ application fails and is accordingly dismissed. But in the circumstances of the cases, I direct that parties shall bear their own costs.

Sd/- B.N. Agrawal, J.

S.B. Sinha, J.

9. I agree with the operative portion of the judgment of my learned Brother B.N. Agrawal, J. that the writ petition should be dismissed, but I would like to add a few words of mine.

10. As fact of the matter has been stated by my learned Brother, it is not necessary to reiterate the same.

11. The contention of Mr. Rajendra Prasad Singh, the learned counsel appearing on behalf of the petitioner was that the State of Bihar had adopted a policy decision as reflected in its office order dated 20th January, 1982, and 12th February, 1986 as contained in Annexures-4 and 5 to the writ application.

The learned counsel contended that the State is bound by the aforementioned policy decision and thus the petitioner's application for grant of renewal of mining lease should have been disposed of in terms thereof.

12. From a perusal of the circular letter dated 12th February, 1986 as contained in Annexure-5 to the writ petition, it would appear that the said letter was issued on the basis of the decisions of this Court in Mahabir Prasad Janjhari's case in C.W. J.C. No. 492 of 1981 and the decision of the Supreme Court in Banshi Ram Modi's case reported in MANU/SC/0012/1985 : AIR 1985 SC 814.

13. Mr. Rajendra Prasad Singh firstly submitted that S. 2 of the Forest (Conservation) Act will not be applicable in the instant case as the order for renewal of mining lease had already been passed. He next submitted that the execution of the mining lease

was merely a formality and therefore the respondents were bound to renew the same as in relation thereto order had already been passed. He also submitted that the State thus was estopped and precluded from refusing to renew the mining lease. He further submitted that duty to obtain approval from the Central Government was that of the State Government and the petitioner could not suffer owing to laches on the part of the State Government.

14. The submissions of Mr. Singh cannot be accepted for more than one reason. The order directing renewal of mining lease of the petitioner for a period of five years as would appear from the letter dated 22-11-1985 addressed to him by the Assistant Mining Officer is of no consequence inasmuch as the Collector apparently failed to take into consideration the mandatory provisions of the Forest (Conservation) Act, 1980.

15. Section 2 of the Forest (Conservation) Act is absolutely clear and unambiguous which in no uncertain terms mandates that an order for non-forest purposes can be passed by the State of Bihar only upon obtaining prior approval of the Central Government. Obtaining of prior approval of the Central Government, thus, was sine qua non before the application of renewal of the mining lease could have been even considered by the Collector on merits. The said order being contrary to and inconsistent with the provisions of Forest (Conservation) Act, 1980 was a nullity and thus neither the State was obliged to execute any deed of lease pursuant to or in furtherance thereof, nor this Court can issue a writ of or in the nature of mandamus directing the State to execute the deed of mining lease in terms of the order of the Collector passed in that regard.

16. Further it is well known that the rule of estoppel cannot be applied where the same contravenes provisions of a statute. It is well settled that, renewal is a fresh grant and the mining leases can claim renewal of mining leases only if the conditions precedent therefor, are fulfilled and not otherwise.

17. In this connection it is useful to refer to Sub-rule (3) of Rule 25 of the Bihar Minor Mineral Concessions Rules, 1972, which postulates that the renewal of lease comes into force with effect from the date of expiry of the previous lease which in this case is November, 1985.

18. In Bansi Modi's case (MANU/SC/0012/1985 : AIR 1985 SC 814) the Supreme Court was dealing with absolutely a different situation and the said decision has no application to the fact of this case.

19. The Supreme Court in *Ambica Quarry Works v. State of Gujarat* reported in MANU/SC/0853/1988 : AIR 1987 SC 1073, the Supreme Court held as follows (at p 1076 of AIR) :--

"The rules deal with a situation prior to the coming into operation of 1980 Act, 1980 Act was an Act in recognition of the awareness that deforestation and ecological imbalances as a result of deforestation have become social menace and further deforestation and ecological imbalances should be prevented. That was the primary purpose writ large in the Act of 1980. Therefore, the concept that power" coupled with the duty enjoined upon the respondents to renew the lease stands eroded by the mandate of the legislation as manifest in 1980 Act in the facts and circumstances of these cases. The primary duty was to the community and that duty took precedence, in our opinion, in these cases. The obligation to the society must

predominate over the obligation to the individuals."

20. The aforementioned decision has been followed by the Supreme Court in its later decisions in Rural Litigation and Entitlement Kendras v. State of U.P. reported in AIR 1988 SC 2187, wherein it was held as follows (at p. 2201 of AIR):-

"In view of the provision of the Conservation Act and the opinion expressed in Ambica Quarry Works case (MANU/SC/0853/1988 : AIR 1987 SC 1073) (supra) with which we are in agreement, the decrees also would not be sustainable where prior approval of the Central Government has not been obtained. We agree with Brother Mukherjee that whether it is a case of first grant or renewal following exercise of option by the lessee, the compliance of S. 2 of-the Conservation Act is necessary as a condition precedent."

21. This aspect of the matter has again been considered by Division Benches of this Court of which I was a member.

In Kawaljit Singh Ahluwalia v. Union of India reported in 1992 BBCJ 215, it was held :--

"Renewal of mining lease amounts to a fresh grant. In such a situation, the prior approval of the Central Government in terms of Forest (Conservation) Act, 1980 is required to be obtained by the State Government even before an order on the application of mining lease filed by the petitioner can be passed by it."

22. In M/s. Nirmal Kumar Pradeep Kumar's case (CWJC No. 2406 of 1993 (R)) reported in 1994 (1) BJR 44 it was held:--

"The Forest (Conservation) Act is special law. The said law, would, therefore, prevail 'over the provisions of Mines and Minerals (Regulation and Development) Act or the rules framed thereunder. Thus in this case, the principles expressed in the maxim Generalia Specialibus Non-Derogant shall apply.

In Jogendra Lal Saha v. State of Bihar reported in MANU/SC/0282/1991 : AIR 1991 SC 1148, the Supreme Court has held that Sections 82 and 83 of the Forest Act, 1927 are special provisions which prevail over the provisions of Sale of Goods Act.

Further, the Forest (Conservation) Act contain a non-obstante clause. The said Act is also a later statute. In that view of the matter too the provisions of the Forest (Conservation) Act shall prevail over the provisions of Mineral Concessions Rules even it be held that Sub-rule (6) of Rule 24A has any application in the facts and circumstances of this case.

In this view of the matter, the petitioner is not entitled to carry on any mining operation unless a fresh lease is granted in its favour upon obtaining prior approval of the Central Government not only in terms of the Forest (Conservation) Act, 1980 but also in terms of Sub-section (3) of Section 8 of the Mines and Minerals (Reg. and Dev.) Act, 1957."

23. Yet in another recent decision in Khanna Construction v. State of Bihar reported in 1994 (1) BLJR 62, a Division Bench has held:--

"There can be no doubt that renewal of lease amounts to a fresh grant and even for grant of renewal of lease, the State Government was bound to obtain prior approval of the Central Government in terms of Section 2 of the said Act, if the lease hold area in favour of the petitioner fell within the reserve forest."

24. This aspect of the matter has also recently been considered by the Supreme Court in *Tarun Bharat Sangh, Alwar v. Union of India* reported in 1993 AIR SCW 1308 wherein it was held (at p. 1317 of AIR SCW):-

"Once an area is declared as protected forest, it comes within the purview of the Forest (Conservation) Act, 1980. It becomes a forest land within the meaning of Section 2. The effect of this position is that no non-forest activity can be carried on in the said Area except with the prior approval of the Central Government. Even the State Government cannot carry on any such non-forest activity in the said area without such prior approval. That the mining activity amounts to non-forest purpose is beyond dispute. Thus, the grant of mining lease/licences and their renewal by the State Government, without obtaining the Prior approval of the Central Government, in respect of the mines situated within the Protected Forest, after January, 1, 1975 is contrary to law."

25. The law on the subject, is therefore, no longer res-integra.

26. It is true that a duty has been cast upon the State Government to approach the Central Government for obtaining its prior approval. In a given case this court in exercise of its jurisdiction under Art. 226 of the Constitution of India could have directed the State Government to perform its duty, but as the terms of the lease has expired, no fruitful purpose will be served thereby as it is well known that this court does not issue any futile writ.

My learned Brother B.N. Agarwal, J. in this situation has rightly held that this writ application has become infructuous even for the purpose of granting such a relief to the petitioner.

27. For the foregoing reasons, I agree with the order proposed to be passed by my learned Brother B.N. Agrawal, J.

R.M. Prasad, J.:-- 28. I agree with the judgment of my learned brother B.N. Agarwal, J. but I would like to add a few words of mine.

29. Mr. Rajendra Prasad Singh, learned Counsel appearing for the petitioner had contended that even if it is a fact that there was no further renewal application filed after the expiry of the period, for which the petitioner had made application for grant of renewal of mining lease in the year 1985, which remain undisposed of on account of the fact that the State Government did not perform its duty to obtain approval of the Central Government the writ application should not be dismissed on this mere technicality and the relief sought for by the petitioner should not be refused on that count. According to Mr. Singh there is no fault on the part of the petitioner, for which he should be penalised by rejection of this writ application on the mere technicality that no application was filed on his behalf in the year 1990 for further renewal of the mining lease for a period of five years from Nov. 1990.

30. In my opinion, there is no substance in the submission of Mr. Singh. It is true

that a duty has been cast upon the State Government to approach the Central Government for obtaining its prior approval. It is also true that in the present case, this Court in exercise of its writ jurisdiction could have directed the State Government to perform its duty, but only if the petitioner would have been vigilant in pursuing this matter. There being gross laches on the part of the petitioner in pursuing the matter in this court so much so, that even the period, for which application for renewal was filed also expired, in my opinion, he is not entitled for any relief in the extra ordinary expeditious remedy available to a citizen under Article 226 of the Constitution of India.

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