

Can a grant of Mining lease be challenged in the Court of Law?

Every mining operation i.e. operations undertaken for the purpose of winning any minerals, in India is carried out by way of reconnaissance permit, prospective license and mining leases. The Mines and Minerals (development and Regulation) Act, 1957 and the Mineral Concession Rules, 1960 prescribe and outline procedure and conditions for the grant and for obtaining of the same. Any violation of any rule or provision of law vitiates the whole proceeding rendering the mining activity illegal. The grant and the manner of operation of mining lease has in the recent past come under the scanner for a variety of reasons that includes non-transparency, and being arbitrary. The following judgment pronounced by the Hon'ble Andhra Pradesh High Court is one of case law dealing with this issue. This Article aims to briefly discuss the findings of the courts and decision arrived by the Court. The Notification and order granting mining lease for a piece of land in Andhra Pradesh had been challenged before the court by way of writ petition.

Tapal Timmappa and Sons V. State of Andhra Pradesh W.P No. 9723 of 2007, W.P No. 14116/2007 and 14818/2007

The Law:

Subsection (2) of the Section 4 of the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 provides that no mining lease shall be granted by the State in a manner otherwise than in accordance with the provisions of the MMDR Act and the Minerals Concession Rules, 1960. Section 10 of the MMDR Act provides that every application for the mining lease in respect of any land (in which the minerals vest in the Government) shall be made to the State Government concerned in the prescribed form and the State Government may grant or refuse to grant the lease having regard to the provisions of the Act and the Rules.

Sub-section 4 of the Section 11 provides that all the applications received during the time period provided in notification shall be considered simultaneously as if all the applications have been received on the same day. Sub-section 3 of section 11 provides that the State government while granting or refusing application shall consider whether the applicant is possessed with special knowledge or experience in mining operations, required financial resources, nature and quality of technical staff, investment and other matter as prescribed in notification.

Rule 26 (1) of Mineral Concession Rules 1960 provides that the state government before refusing applications of the applicants are bound to show cause all the applicants and provide them with the opportunity to answer as to why their applications should not be refused. Rule 59 provides for publication of notification for the re-grant of an area for mining lease. The Rule further provides that the area shall be available for re-grant after the expiry of 30 days period from date of publication of notification. And rule 60 states that any application received before publication of above notification or before the expiry of the period specified in notification shall be considered as pre-mature applications and shall not be considered.

The Facts Leading to Dispute:

An area of land in the state of Andhra Pradesh was notified by the state government for re-grant of mining lease. The Petitioner's Grandfather had been previously granted the mining lease for the

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same land and now after the death of grandfather was possessed with just possessory right over the land. The petitioner was also not served with notice as to determination of the lease that had been granted previously in favour of their grandfather. Applications were made for seeking mining lease and thereafter the government granted mining lease in favour of Sixth respondent and the ninth respondent on the ground that they were the earliest applications after the publication of notification and thus had preferential right. The State also rejected the other applications on the ground that they had been received after 30 days from the date of calling application under the notification. The applicants were also later show-cause after the decision in respect of mining lease had been taken in favour of the 6th and 9th respondents for replying as to why their applications should not be refused. This notice was issued by the first respondent i.e. State after the successful applicants had obtained approval from the central government in regard to start mining operations under mining lease. This notification and order was challenged by the petitioners on the ground of being violation of the provision of the Act and rules and principles of natural justice. The Petitioner by way of writ petition contended that the whole proceeding of grant of mining lease was pre-judged in favour of the 6th and 9th respondents and was in gross violations of the provisions and mandate of law provided under the MMDR Act and Mineral concession Rules, 1960.

The Respondent on the other hand contended that the State had processed all the applications (for mining lease) strictly in accordance to the provisions of the MMDR Act and Mineral Concession Rules and the Petitioners were neither vested with the statutory right or vested right to get the mining lease and thus the writ petition was misconceived and liable to be dismissed. The respondent also contended that the writ petition was not maintainable in view of the petitioner not exhausting the alternative statutory remedy available to them.

Finding and Decision of the High Court:

The Court allowed the writ petition of the petitioners and held that the notification issued was defective in nature. The Court also set aside the order of the grant of mining lease in favor of the 6th and 9th respondent on the ground that it was unfair, arbitrary, illegal and contrary to the provisions of the MMDR Act and Mineral Concession Rules.

The Court held that the writ petition of the petitioner was maintainable and observed that the presence of an alternative remedy was not an absolute bar to the grant of relief by the court in exercise of its extraordinary jurisdiction under Article 226 of the Constitution. The Court said that the court may exercise or refuse to exercise its power having regard to the facts and circumstance of the case and may interfere with the impugned order if it comes to the conclusion that the petitioner wants to seek enforcement of any fundamental right or where there is failure to principles of natural justice or where the proceedings and order are wholly without jurisdiction or vires of the act is challenged.

The Court observed that the notification published under Rule 59 was ambiguous and defective in nature and had not prescribed any end date i.e. date till which the prospective applicant could make applications to the State for seeking mining lease. The court thereby held that hence it was unreasonable for the First respondent to insist upon any limitation of time for consideration of

applications received. The court further said that in absence of any cut-off date, any application received cannot be termed as belated and eschewed.

The Court further observed that after the amendment to sub-section 4 of section 11, the law stood changed and hence all the applications seeking grant of mining lease cannot be disposed on first cum first serve basis and there was no preferential right in favour of any of them. The court further said that all applications that had been received by the First respondent during 30 days after notification come into effect were required to be considered simultaneously as if all the applications have been received on the same day after considering their relative merits in terms of sub-section 3 to section 11 of the MMDR Act. The Court further said on the facts and circumstance of case where under all the applications were not considered itself shows that during the grant of mining lease, there was clear departure from the mandatory procedure prescribed under section 11 (4) and hence the grant of mining lease to 9th respondent was liable to be set aside. The Court further observed that the combined reading of section 11 (4) and rule 26 makes it clear that the relative merits of all the applications should be considered and those applications that are not satisfactory should be refused after giving opportunity to the applicant to present their side as required under Rule 26 even before the proposal are submitted recommending application of a particular applicant. The Court further said that since this procedure was not followed, the mere issuance of the show cause notice after the decision had been taken in favour of the 9th respondent cannot be held to be in compliance with the rule of audi alteram contained in Rule 26 and hence the refusal of the Petitioner's application and the entire proceedings were vitiated and illegal. The Court further said that the purpose of section 11 (4) and rule 26 is to guarantee to fair consideration of all the applications received for the grant of mining lease and hence any deviation from the prescribed procedure vitiates the entire proceedings.

Hence, the Andhra Pradesh High Court held that the entire proceedings as to grant of mining lease was pre-judged in favour the 9th respondent and hence in view of the above was liable to be set aside.

Law Senate Comment:

The specific procedure as prescribed by MMDR Act and Minerals Concession Rules 1960 were with sole object of granting mining lease to an applicant to exploit the minerals efficiently and hence all factors enumerated under sub-sections (3) and 4 of section 11 and rule 26 are intended to afford reasonable opportunity to every applicant to prove their capacity to undertake mining operations under the mining lease and guaranteed fair consideration of all the applications and hence thereby the procedure prescribed by the MMDR Act and Rules has to be mandatorily be followed and any deviation from the prescribed procedure shall vitiate the entire proceedings.

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