

M/S. ALANKAR GRANITES INDUSTRIES AND ORS.

v.

P.G.R. SCINDIA, MLA AND ORS.

JANUARY 18, 1996

[J. S. VERMA, S.P. BHARUCHA AND K. VENKATASWAMI, JJ.]

Mines and Minerals (Regulation and Development) Act, 1957/ Karnataka Minor Mineral Concession Rules, 1969 :

S.15/Rules 3, 3A, 66—Minor Minerals—Quarry leases for—Granite—Prohibition on quarry leases—Order passed by State Government under Rule 3 granting quarry leases for black, pink and multicoloured granite on government lands notwithstanding prohibition contained in Rule 3A—Held invalid.

The Government of Karnataka, by notifications dated 22.5.1990 and 4.1.1991, amended Rule 3A of the Karnataka Minor Mineral Concession Rules 1969. By the two amendments absolute restriction on grant of lease of Government lands for quarrying granite was relaxed in favour of certain category of persons specified therein. Validity of these amendments was challenged in writ petitions filed before the High Court which granted stay in favour of the petitioners therein. Meanwhile the State Government by its order dated 18.6.1991, passed under Rule 3, granted to 203 leasees, quarry leases for black, pink and multi coloured granite on Government lands. Writ petitions were filed before the High Court challenging these leases as contrary to the prohibition contained in Rule 3A of the Rules. The plea of the leasees that the Government made these grants in exercise of its power of relaxation in special cases, as provided in Rule 66 of the Rules, was rejected by the High Court holding that Rule 66 was inapplicable in the field covered by Rule 3A; and since the leases could not be granted because of the prohibition under Rule 3A, the power of relaxation of the Rules under Rule 66 was not available. The Single Judge of the High Court allowed the writ petitions and quashed the grants. The Division Bench of the High Court dismissed the appeals of the lessees.

In the present appeals filed by the lessees before this Court, besides supporting the leases on the ground of Rule 66 of the Rules, it was contended for the leasees that by virtue of the order passed by the High Court in the earlier writ petitions, the power under Rule 3(1) of the Rules

was available for making the grants with the prior approval of the Government which was accorded on 18.6.1991.

Dismissing the appeals, this Court

HELD : 1.1. There is no basis to uphold that grant of any of the present 203 quarry leases under Rule 66 of the Karnataka Minor Mineral Concession Rules, 1969 particularly when that rule was not even resorted to by the Government for making any of these grants. The Government Order dated 18.6.1991 granting the leases was issued exercising the power only under Rule 3 without even a reference to Rule 66. There is a clear statement in the order that the Government had decided to resort to Rule 3 for the purpose of making these grants on the applications which had been made expressly under Rule 3 of the 1969 Rules. [728-C-D; 727-F-G].

1.2. Even otherwise, Rule 66 requires the Government to form its opinion keeping in view the public interest. It is implicit in Rule 66 that such opinion of the Government must be formed after considering facts and circumstances of each case and on reaching the conclusion that it was the requirement of public interest to authorise the grant of a quarry lease on such terms and conditions, other than those prescribed in the Rule, as may be specified by the Government. This requirement precedes the making of the grant on the terms and conditions specified for the purpose and it cannot be subsequent to the grant for the purpose of justifying the grant without prior satisfaction to this effect leading to the relaxation of the rules.

[727-G-H, 728-B-D]

1.3. In the case of the present 203 leases, the power of relaxation was not exercised separately in each individual case. The Government Order dated 18.6.1991 merely authorises grant of mining leases under Rule 3, notwithstanding the prohibition contained in Rule 3A and the ultimate power of granting the quarry leases was exercised by the Director of Mines and Geology and not by the Government in individual cases as is required by Rule 66. [728-C-D]

2. As regards the effect of the order in the earlier writ petitions challenging the validity of amendments made in Rule 3A, it is clear that operation of the rule, was not suspended. Nor has the rule been struck down. The prohibition in Rule 3A did exist at the time of making the present grants and, therefore, these grants having been made against the said prohibition were rightly held to be invalid. The judgment of the High Court

holding these grants to be invalid does not suffer from any infirmity.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1683-1716 of 1996 Etc.

From the Judgment and Order dated 25.6.93 of the Karnataka High Court in W.A. No. 842-43/92, 1454-55/93, 838-39/92, 1804-05, 993- 94, 1806-07, 860-61, 862-63, 855-56, 971/92, 1468-69/93, 972/92, 1456-57/93, 1458-59, 1466-67, 1464-65, 1462-63 1452-53 of 1993.

Harish N. Salve, Soli J. Sorabjee, Kapil Sibal, Ms. Indira Jaisingh, S.K. Kulkarni, D.L.N. Rao, Nikhil Sakhardande, Pritesh Kapoor for M.T. George, K.K. Mani, R. Sasiprabhu, P.R. Ramasesh, Ms. Sangceta Kumar, P. Mahale, Rajesh Mahale, S.N. Bhat, M. Veerappa, P.P. Singh and E.C. Vidya Sagar for the appearing parties.

The Judgment of the Court was delivered by

J.S. VERMA, J. The grant of in all 203 leases for quarrying granites in government lands under Rule 3 of the Karnataka Minor Mineral Concession Rules, 1969 contrary to the prohibition contained in Rule 3A therein was challenged in the Karnataka High Court in writ petitions which were allowed by the learned single judge and those grants were quashed. The writ appeals by the grantees of the mineral concession have also been dismissed by a Division Bench of the High Court. Hence, these appeals by special leave by the grantees.

All the 203 leases, out of which 61 were of renewal while the rest were fresh grants relate to quarrying of minerals in Government lands.

In exercise of the powers conferred by Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957 Government of Karnataka made rules known as Karnataka Minor Mineral Concession Rules, 1969 (for short "the Rules"). Rule 3 provides for restriction on grant of quarry leases. Rule 3A was introduced by amendment by a notification dated 5.9.1979 restricting grant of quarry leases in respect of Black Granites. Rule 3A was amended by a notification dated 21.5.1980 extending the definition of 'Black Granite'. Then by a notification dated 23.6.1981, Rule 3A was further amended by substituting the word 'Black Granite or pink Granite' for the words 'Black Granite'. A further amendment was

made in Rule 3A by a notification dated 27.3.1982. Later by a notification dated 22.5.1990 the Government amended Rule 3A by which the absolute restriction on the grant of lease of government lands for quarrying granites in favour of private parties was relaxed in favour of certain categories of persons specified therein; and then by a notification dated 4.1.1991 a further amendment in Rule 3A was made. A challenge to the validity of the amendment made in Rule 3A in 1990 and 1991 was made in certain writ petitions wherein the High Court granted a stay in favour of the petitioners therein. At this stage the Government of Karnataka issued an order dated 18.6.1991 for grant of quarry leases for black, pink and multi-coloured granite under Rule 3. It is under the said order dated 18.6.1991 that these 203 quarry leases were granted under Rule 3. The challenge in the writ petitions which have been allowed leading to these appeals is to the 203 quarry leases so granted under Rule 3.

It is appropriate at this stage to quote in extenso the aforesaid order dated 18.6.1991 which is as under :

"PROCEEDING OF THE GOVERNMENT OF KARNATAKA

Sub : Granting of quarry Leases for Black pink and multi-coloured granite under rule 3 of Karnataka Minor Mineral Concessions Rules, 1969.

READ : Government letters No. CI 51 MMN 91 dated 3.5.1991, 4.5.1991 and 9.5.1991.

PREAMBLE :

With a view to encash the favourable international market trend in respect of ornamental granite and keeping in view the export potential on the request of Government of India in this behalf besides bringing in additional revenue to the State exchequer apart from checking the illegal and unscientific granite exploitation, the Government of Karnataka amended Rule 3A of the Karnataka Minor Mineral Concession Rules, 1969 providing for grant of Quarry leases in favour of 100% Export-oriented industries, private entrepreneurs who have distinct industrial programme. In this behalf two notifications were issued as per No. CI. 304 MRC 87 (P) dated 22.5.1990 and CI. 214 MRC 90(P) dated 4.1.1991.

The amendment so effected have been the subject matter of litigations as the validity of these amendments have been challenged before the Hon'ble High Court and some of the writ petitioners obtained stay orders to operate these amendments.

By virtue of such stay orders the purpose behind which Rule 3A has been amended could not be achieved. While the Government have made efforts to get the stay vacated the plethora of writ petitions filed before the High Court in way of ensuring scientific quarry activities in this State forcing the Government to search for other provisions in the Karnataka Minor Mineral Concession Rules, 1969.

Rule 3 of Karnataka Minor Mineral Concession Rules, 1969 is the principal Rule conferring power on the department of Mines and Geology to grant quarry leases with the prior approval of the Government. In the light of stay orders and availability of the principal Rule 3 the matter has been got legally examined. It is felt that because of the pendency of the litigation under Rule 3A, there is no systematic and scientific quarrying and the interest of the State Revenue is affected to a great extent and therefore it is felt that there is no bar to act under Rule 3 of the Karnataka Minor Mineral Concession Rules, 1969 until the validity or otherwise of the Rule 3A brought out by the two notifications dated 22.5.1990 and 4.1.1991 is determined.

GOVERNMENT ORDER NO. CI. 51 MMN 91(1)
BANGALORE, DATED 18-6-1991

In the circumstances explained in the preamble Government have decided to resort to Rule 3 of Karnataka Minor Mineral Concession Rules, 1969 and at the same time vest with the Director of Mines and Geology power to dispose of the applications seeking Quarry Leases in respect of all lands and that the Director of Mines and Geology shall be the controlling officer even in respect of land coming under Forest Zone. However, in respect of Forest area, the grant of lease would be subject to the applicants obtaining clearance under the Forest Conservation Act.

2. Necessary amendments to Rule 2(1)(c) defining the Controlling

Officer in respect of forest area also on the above lines are being issued separately. Similarly, the Government hereby notifies the Deputy Director (Mineral Administration) as the Competent office in respect of all specified minor minerals including the ornamental granites.

3. The Director of Mines and Geology while disposing off the application received under Rule 3 of the Rules 1969 shall ensure that the area for which applications seeking Quarry Leases are received is not involved in any of the High Court Litigation. Further, the Director of Mines and Geology shall also follow scrupulously the separate set of guide-lines issued in this behalf.

By order & in the name of
the Governor of Karnataka
Sd/ (Nanjegowda)
Desk Officer,
Commerce and Industries Dept.,
(Mines)"

Rule 3(1) and Rule 66 which alone are relevant for the points raised for consideration in these appeals are as under :

"CHAPTER II

GRANT OF QUARRYING LEASE IN RESPECT OF LAND IN WHICH MINES MINERALS BELONG TO GOVERN- MENT.

3. Restrictions on grant of Quarrying Lease - (1) No quarrying lease shall be granted to any person other than an Indian citizen, except with the prior approval of the Government.

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66. Relaxation of rules in Special Cases - In cases where the Government is of the opinion that public interest so requires, it may authorise the grant of a quarrying lease or a quarrying permit on such terms and conditions other than those prescribed in these rules, as the Government may, by order, specify:

Provided that notwithstanding anything contained in these rules such safeguards, territorial, financial or otherwise may be provided to the lessees with a view to safeguarding the interest of any industry or trade in order to avoid unhealthy competition among the lessees, and to prevent any fall in the trade and to see that the minor mineral is exploited in a scientific and a systematic manner."

It is unnecessary to quote Rule 3A as originally inserted in 1979 and amended later from time to time since the grant of the aforesaid 203 quarry leases in the present case is neither made thereunder nor are they supported on that basis.

These grants were expressly made under Rule 3 by virtue of the Government Order dated 18.6.1991. However, an attempt was made in the High Court to support these grants on the basis of Rule 66 which confers on the Government the power of relaxation of Rules in special cases. The High Court has rejected the submission that these grants can be sustained on the basis of Rule 66.

The High Court has held that Rule 66 does not apply in the field covered by Rule 3A and since these leases could not be granted because of the prohibition contained in Rule 3A, the power of relaxation of the Rules conferred by Rule 66 is not available. In our opinion, in the present case even this further question does not arise. A plain reading of the Government Order dated 18.6.1991 leaves no doubt that it was the power only under Rule 3 which was exercised for making these grants and this conclusion was reached on the basis of legal opinion obtained by the Government for this purpose. There is a clear statement in the order that the Government had decided to resort to Rule 3 for the purpose of making these grants on applications which had been made expressly under Rule 3 of the 1969 Rules. In such circumstances, the belated attempt at the hearing of the matters in the High Court to support the grant under Rule 66 is clearly untenable when power was exercised only under Rule 3 without even a reference to Rule 66. It is difficult to accept the submission that Rule 66 is available to support these grants. Even otherwise Rule 66 requires the Government to form its opinion that public interest requires the grant of quarrying leases on such terms and conditions other than those prescribed in these rules, as the Government may, by order, specify. It is

implicit in Rule 66 that such opinion of the Government must be formed after considering the question of making such a grant with reference to the facts and circumstances of each case and on reaching the conclusion that it was the requirement of public interest to authorise the grant of a quarry lease on such terms and conditions other than those prescribed in these rules as may be specified by the Government. This requirement precedes the making of the grant on the terms and conditions specified for the purpose and it cannot be subsequent to the grant for the purpose of justifying the grant without prior satisfaction to this effect leading to the relaxation of the rules. Moreover, by its very nature, the power of relaxation is to be exercised separately in each individual case, which too has not been done in the case of these 203 leases. The Government Order dated 18.6.1991 merely authorises grant of mining leases under Rule 3, notwithstanding the prohibition contained in Rule 3A and it is thereafter that the Director of Mines and Geology proceeded to consider the total of 2350 applications made under Rule 3 for making the grant in 203 cases only. The ultimate power of granting the quarry leases was exercised by the Director in each case and not by the Government in individual cases as is required by Rule 66. There is, thus, no basis to uphold the grant of any of these 203 quarry leases under Rule 66, particularly, when that rule was not even resorted to by the Government for making any of these grants.

The further question whether in the present case Rule 66 was available to make the relaxation notwithstanding the express prohibition contained in Rule 3A does not, therefore, arise for consideration and it is unnecessary to express any concluded opinion on that point. This argument on behalf of the grantees who are the appellants in these appeals is, therefore, rejected.

Shri Soli J. Sorabjee, the learned counsel for some of the appellants, advanced another argument to support these grants. He submitted that by virtue of the said order of the High Court in the earlier writ petitions challenging the further amendments made in Rule 3A, the power under Rule 3(1) was available for making these grants with the prior approval of the Government which was given by the order dated 18.6.1991. We are unable to accept this submission. The said order in the earlier writ petitions merely had the effect of requiring the applications of the petitioners in those writ petitions to be disposed of without reference to Rule 3A but the validity of the grant made to those petitioners had to be adjudicated with

reference to Rule 3A unless Rule 3A was struck down leading to its obliteration. Admittedly, Rule 3A was not struck down and, therefore, the validity of the grant, if any, made even in favour of those petitioners had to be decided with reference to Rule 3A. This being so, no benefit accrued to any other person by virtue of those stay orders. It is clear that the operation of Rule 3A was not suspended and Rule 3A has not been struck down. The prohibition contained in Rule 3A against making any such grant, therefore, continued to operate.

Shri Sorabjee also contended in the alternative that even after the stay order in the earlier writ petitions came to an end after the High Court judgment, the grants already made have to be examined on the basis of Rule 3A as it existed on the date of the grant. We find no merit in this submission. The prohibition in Rule 3A did exist at the time of making the impugned grants and, therefore, these grants having been made against the said prohibition were rightly held to be invalid, and do not require any further consideration. The judgment of the High Court holding these grants to be invalid does not suffer from any infirmity.

Consequently, these appeals, along with all the connected matters aforementioned, are dismissed with costs.

Appeals dismissed.