Supreme Court of India
C. Buchivenkata Rao vs Union Of India & Ors on 8 March, 1972
Equivalent citations: 1972 AIR 1324, 1972 SCR (3) 665
Author: M H Beg
Bench: Beg, M. Hameedullah

PETITIONER:
C. BUCHIVENKATA RAO

Vs.

RESPONDENT:
UNION OF INDIA & ORS.

DATE OF JUDGMENT08/03/1972

BENCH:
BEG, M. HAMEEDULLAH
BENCH:
BEG, M. HAMEEDULLAH
GROVER, A.N.

CITATION:
1972 AIR 1324 1972 SCR (3) 665
1972 SCC (1) 734

ACT:
Mineral Concession Rules, 1949, rr. 27 and 32--Application not accompanied by map and containing defects re : area--If should be rejected.
Practice--If legal representative can continue application for mining lease--Equities.

HEADNOTE:
The application of one B for a mining lease was rejected on the ground that another applicant V had a prior claim. B's writ application was dismissed by the High Court and while his appeal in this Court was pending he died and his sons were allowed to be impleaded as legal representatives subject to any -objection that may be taken to their right to continue the appeal.
On the question whether Vs application was defective because it was not in accordance with r. 27 of the Mineral Concession Rules and because of want of a map and 'some details regarding area, and therefore, whether B's. application should have been granted,
HELD : (1) The details mentioned in r. 27 are intended for the correct identification of the individual to whom the lease is to be granted, the minerals which are to be mined the area in respect of which the lease was to be granted and

the qualifications of the applicant. Rules 32(2), introduced in 1955, before the grant of V's application, shows that individual qualifications of the applicants including their special knowledge, .their capacity to engage technically efficient staff, their financial soundness and stability, bad to be taken into account in determining the question of priority. There is no prohibition against the grant of an application on the ground that the application is defective or not accompanied by a map. There is also no provision in the Act showing that defects in an application could. not be subsequently removed. The form of the application is subordinate to the essential facts to be taken into account before granting a lease. The information given in the application is intended for the satisfaction of the authorities granting the lease, so that, .after considering the merits and making a grant up Proper details are embodied in the lease actually granted. ply of necessary details is directory and not mandatory. It was not the cage here that as a result of the defects in V's application the lease itself could not be executed. Therefore, the mere want of a map or of details describing the area for which the lease was applied for, would not make the application itself void or of no effect. If it did not produce a defect which affected the validity of the leak, and the details supplied in the application corresponded with the contents of the lease after- the alleged lacuna had been removed the grant of the lease to V was valid. [669-F-H; 67OB-F]

(2) In order to enable a legal representative to continue a legal proceeding, the right to sue or pursue a remedy must survive the death of his predecessor. Under the rules, the right of an applicant on the strength of a superior claim cannot be separated 'from his personal qualifications. [671 G-H]

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Moreover, there is no provision in the Rules for imploding an heir to continue the application for a mining lease. The scheme under the Rules is that if an applicant dies, a fresh application has to be presented by the heirs or legal representatives if they desire to apply far the grant of a lease. It may be that they may obtain priority over an earlier applicant if they are continuing the business or industry of the decreased, but it would be on a fresh application setting out their qualifications. Therefore, the heirs had no right to continue the appeal in this Court. [672A-C]

Dhani Devi v. Sant Bihari & Ors., [1969] 2 S.C.R. 507, distinguished.

(3) The acceptance of V's claim by the Government on the strength of which he had made his investment, clothes his claim with an equity which could not be defeated without clear proof of some overriding legal right or terest of another claimant, and, there is no such right in the heirs

of B [672G-H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2580 of 1969. Appeal from the judgment and order dated August 6, 1969 of the Andhra Pradesh High Court in Writ Petition No. 3124 of 1967.

A.Subba Rao, for the appellants.

S.P. Nayar, for respondent No. 1.

P.Ram Reddy and A. V. V. Nair, for respondents Nos. 2 and 3. P. P. Rao and T. V. S. Narasimhachari, for respondent No. 4. The Judgment of the Court was delivered by Beg, J. This appeal, from a Judgment and order of the Andhra Pradesh High Court dismissing the appeallant's Writ Petition, comes up before us by Certificate under Article 133(1)(a) of the Constitution, in the following circumstances One Buchivenkata Rao had filed application on 1-9-1959 and 1-8-1960 under Mineral Concession Rules, There in after referred to as 'the Rules' before the Collector of Nellore, for the grant of a mining lease to him of an area mentioned in his applications. He alleged that his applications complied with the rules framed under the Mines and Minerals (Regulation and Development Act of 1957. The State Government rejected the application of 11-8-1960 on 7-12-1960, but granted the application made on 4th October, 1950, by the Respondent Kumara Rajah of Venkatagiri (hereinafter referred to as Venkatagiri). The ground on which the application of the appellant Rao, was rejected was that Venkatagin' had a prior claim. The appellant Rao had then preferred a Revision application to the Central Government under the Mineral Concession Rules which came into force on 11th November, 1960,.

The Central Government had rejected the revision application on the ground that it was not filed within the prescribed time. Upon a Writ Petition filed in the High Court of Andhra Pradesh, the order of rejection of the revision application by the Central Government was quashed. The Central Government was directed to consider Rao's application on merits. The Central Government had, after giving due opportunity to be heard to the appellant Rao, dismissed his application on 18th October, 1967, holding that Venkatagiri had priority over his claim. Rao then filed a second Writ Petition which was dismissed on 26th September, 1969. The judgment and order of dismissal are now under appeal before us.

The judgment of the High Court shows that the appellant Rao had relied on the following three grounds only at the time of agruments on his Writ Petition :-firstly, that the application of Venkatagiri was not made in accordance with Rule 27 and 32 of the said Rules of 1949; secondly, that the application of Venkatagiri was not for a fresh lease but for the continuation of a previous lease so that it did not fall within the purview of the rules; and, thirdly, that the Central Government had, not considered in detail the various comments offered by the State Govt. with regard to each ground of revision.

A contention noticed by the High Court, as a separate ground of attack, was that the Central Govt. had relied upon a ruling of a Single Judge of the Punjab High Court in J. A. Trivadi Brothers v. Union of India(1), holding that Rules 27 to 29 did not make defective applications void, but this view had been reversed by a Division Bench of that Court. This was no really a separate ground but a contention relating to the effect of failure to comply strictly with Rules 27 to 29 of the Rules of 1949. The main contention of Rao was that the application of Venkatagiri had to be disregarded as it failed to comply with the rules, and, therefore, was not an application in the eye of law, so that, out of several competing applications, Rao's application. ought to have been granted. The High Court, made it clear that other grounds were taken in Rao* petition, but were not argued there. In this Court, a fresh ground, neither taken nor argued before the High Court, is sought to be urged in addition to the other grounds before the High Court which were repeated before us. We will take up the grounds advanced in the High Court and again in this Court before considering the entertain ability of the fresh ground.

At this stage, before dealing with the first ground, we may set out the relevant rules 27 and 32 of 1949 which run as follows "27. Application for mining, lease-An application for a mining lease shall, in case of land in which the mine-

(1) A.I.R. 1959 Punjab 589.

rals belong to Government, be made to the State Government concerned through such officer or authority as it may appoint in this behalf and shall contain the following particulars :-

(a)(i) If the applicant is an individual, his name, nationality, profession, and residence, and

(ii) if the applicant is a partnership firm, a company or an association or body of individuals, whether in corporated or not, its name, nature and place of business, place of registration of incorporation and except in the case of a company which is not a private company as defined in the Indian Companies Act, 1913 (VII )of 1913) the names and addresses of the individuals constituting such partnership firm, company, association or body.

(b) The number and date of the notification of the grant or renewal of certificate: of approval of the applicant;

(c) A description, illustrated by a map or plan, showing as accurately as possible the situation, boundaries and area of the land in respect of which the lease is required;

(d) The mineral or minerals which the applicant intends to mine;

(e) The areas and minerals within the jurisdiction of the State Government for which the applicant or any person joint in interest with him already holds a mining lease;

(f) If the applicant holds a prospecting license for the area applied for, the number and date of such license;

(g) The period for which the lease. is required; and

(h) The industry, if any, which the applicant proposes to develop and the location of such industry.

Explanation :-The map or plan referred to in item (c) should give sufficient information to enable identification of the area in respect of which the lease is required".

"32. Priority-(1) If more than one application regarding the same land is received, preference shall be given to the application received first. unless, the State Govern-

ment, for any special reason, and with the prior approval of the Central Government decides to the contrary.

Provided that where more than one application in respect of the same land is received on the same day, the State Government, after taking into consideration the matters specified in sub-rule (2) and after obtaining the prior approval of the Central Government, may grant the mining lease to such one of the applicants whom it considers to be the most suitable. Provided further that no application shall be deemed to be incomplete for the purposes of this rule on account of the omission or misdescription of the number and date of the prospecting licence and of the profession or residence or nationality in the case of an individual or of the place of business in the case of a partnership firm, a company or an association or body of individuals, whether incorporated or not, if such omission or misdescription, is corrected within a period specified by the State Government or an Officer appointed by that Government in this behalf.

(2) The matters referred to in the proviso to subrule (1) shall be the following namely:-

(i) experience of the applicants in mining;

(ii) financial soundness and stability of the applicants;

(iii) special knowledge of geology or mining and the technical staff already employed or to be employed for the work.

It is clear to us that the details mentioned in Rule 27 are intended for the correct identification of the individual to whom the lease is to be granted, the minerals which are to be mined, the area in respect of which the lease was to be granted, and the qualifications of the applicant. Considerable emphasis was placed on the word 'shall' in Rule 32 with regard to the priority to be given between different applicants. This rule does not directly affect the question whether an application for a lease could be considered a proper application or not by the authorities concerned. The second proviso to this rule, however, provides for the manner in which certain defects may be cured. Rule 32, sub- rule (2), introduced in 1955 before the grant of the application of Venkatagiri, shows that the individual qualifications of the applicants including their special knowledge, their capacity to engage technically efficient staff, their financial soundness and stability, had to be taken into account in determining the question of priority. Again Rule 26, imposing certain restrictions, prohibits the

grant of the lease to any person who does not hold a certificate of approval from the State Government or who has not produced an Income tax clearance certificate. It does not prohibit any grant on the ground that the application for it is defective or not accompanied by a map. The form of the application seems to be subordinate to the essential facts, to be taken into account before granting a lease. There is no provision in the Act showing that the defects in an application which is accompanied by the fee prescribed in Rule 28 cannot be subsequently removed. The information given in the application is intended for the satisfaction of the authorities granting the lease so that, after considering inherits and making a grant, proper details are embodied in the lease actually granted. It was not urged anywhere that, as a result of any defects in the applica- tion, of Venkatagiri, the lease. itself could not be executed. This indicates that the omission to file a proper map initially was cured.

The High Court had relied on a decision of this Court in Banarsi Das v. Cane Commissioner, U.P.(1) where conditions similar to those laid down by Rule 27 were held to be directory. It had also held that, even assuming that some of the requirements in the rules may be mandatory, it could not be held that the mere want of a map or of details, describing the area for which the lease was applied for, would make the application itself void or of no effect. We are, therefore, unable to find any error in the view adopted by the High Court that the supply of necessary details was directory and not mandatory. If it did not produce a defect which affected the validity of the lease, and the details supplied in the application corresponded with the contents of the lease after the alleged lacuna had been filed up, the grant of the lease to Venkatagiri was valid. As regards the second ground that the application of Venkatagiri had to be interpreted as an application for the continuation of an already existing lease and not for the grant of 'a fresh lease, we find that the High Court had rejected this contention by pointing out that the application was on a form which complied, with Rule 27 so that it could be treated as a fresh application. We find nothing wrong with the High Court's interpretation of the application made by Venkatagiri.

The High Court had also found, as a fact, that the order of the Central Government disclosed that it was based on relevant considerations and could not be said to have omitted consideration of anything material simply because the details of matters considered were not fully set out. We concur with this view and are (1) A.I.R. 1963 S.C. 1947.

671. unable to hold that the order of the Central Government was vitiated on the third ground urged on behalf of Rao. We may now refer to the fresh question which was sought to be raised on behalf of the appellant by means of an application before us. This was, that this Court had pointed out in Nookala Satharamaiah v. Kotaiah Naidu & Ors.(1), that, on 15th September, 1956, the Mineral Concession Rules were amended and. a new sub-rule 28(1-A) was introduced which provided that every application under- Rule 27, shall be disposed of within nine months from the date of its receipt, and had, held that the effect of- the amended Rule 57, which was further amended on 14-9-1956, was that an application remaining undisposed of within the period prescribed will be deemed to be rejected. It was urged that we should allow this point to be argued for the first time in this Court although it was neither raised nor argued in the High Court. it was submitted that this was a pure question of-law on which no investigation of facts afresh was required.

On the other hand, it has been contended, on behalf of the contesting respondent, that a new _point should not be allowed to be urged at this stage for which reliance was placed on Bhagwati Saran & Anr. v. State of Uttar Pradesh(2), S. L. Aggarwal v' General Manager, Hindustan Steel Ltd.(3), Chitra Ghosh & Anr.v. Union of India & Ors.(4) Even if we had been disposed to consider this new ground on the plea that exceptional circumstances justified our going into it, we must here point out another fact which affects the very maintainability of the appeal before us now.The appellant B. Rao died on 18-2-1970. His sons filed an application in this Court on 20-7-1970 for impleading them as the heirs and legal representatives of the deceased. This application was tentatively allowed, on 3-11-1970, under the orders of the Registrar of this Court, subject to such objections to the rights of the substituted appellants to be heard and to continue this appeal on behalf of the deceased' as may be taken before us at the hearing of the appeal.

It has to be remembered that, in order to enable a legal re- presentative to continue a legal proceeding, the right to sue or to pursue a remedy must survive the death of his predecessor. In the instant case, we have set out provisions showing that the rights which an applicant may have had for the grant of a mining lease, on the strength of an alleged superior claim, cannot be separated from his personal qualifications. No provision has been pointed out to us in the rules for impleading an heir who could continue. the application for a mining lease. The scheme under the rules (1) [1971] (1) S.C.R. 153.

(3) [1970] (3) S.C.R. 363 at 365.

(2) [1961] (3) S.C.R. 563 at 568.

(4) [1970] (1) S.C.R. 413 at 420.

seems to be that, if an applicant dies, a fresh application has to be presented by his heirs or legal representatives if they themselves desire to apply for the grant of a lease. It may be that the heir,, and legal representatives, if they are continuing the business or industry of the deceased and have, the required qualifications, obtain priority over an earlier applicant on account of special reasons for this preference. But, in each case, they have to apply afresh and set out their own qualifications. It has not been shown to us that any of the legal representatives have applied afresh. The legal, representatives only claim to be entitled to succeed the deceased Buchivenkata Rao under a will. The assumption underlying the application is that, whatever right the deceased may have had to .obtain a lease survived and vested in the heirs after his death. We are unable to accept the correctness of this assumption. In support of the contention on behalf of the heirs of Buchivenkata Rao, our attention was drawn to the case of Dhani Devi v. Sant Bihari & Ors.(1) which related to a right to obtain transfer of a permit for a Motor vehicle under Section 61, sub. s. 1(2) of the Motor Vehicle Act. It was held there that, in the case of the death of an applicant for the grant of a permit in respect of his motor vehicle, the Regional Transport Authority had the power to substitute the person succeeding to the possession of the vehicle in place of the deceased applicant. It was pointed out there that the right to the permit was related to the possession of the vehicle. Moreover, there was a rule enabling the Transport Authorities to substitute the heir or legal representatives of the .deceased. No such rule applicable to the case of the heirs of the deceased Buchivenkata Rao has

been pointed out to us. Therefore, we are unable to hold that the heirs, who have been heard, had any right to continue, the appeal before us. This feature of the case is decisive not only on the right to be heard on the fresh ground but also on the right to advance any argument in support of the appeal of the deceased.

We may mention that it was also urged that the matter was so, old that any reversal of the grant of the mining lease to Venkatagiri, as long ago as 1960, would involve considerable dislocation and injury to respondent Venkatagiri without any fault on his part. The respondent Venkatagiri must have invested considerable amount of money in mining operations. The acceptance of the claim of Venkatagiri by the Government on the strength of which Venkatagiri made his investment clothes Venkatagiri's claim with an equity which could not be defeated without clear proof of some legal right or interest of another claimant. We are (1) [1969] (2) S.C.R. 507.

unable to see any such right in the heirs of the deceased Buchivenkata Rao.

Consequently this 'appeal is dismissed but we make no orders as to costs in this Court.

V.P.S. Appeal dismissed.