

CASE NO.:
Appeal (civil) 10106 of 2003

PETITIONER:
M/s Medley Minerals India Ltd.

RESPONDENT:
State of Orissa & Others

DATE OF JUDGMENT: 17/09/2004

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

Srikrishna, J.

The appellant calls in question the judgment and order dated 1.8.2003 of the Division Bench of the Orissa High Court, by which a quarry lease granted in favour of the appellant was quashed and cancelled.

On 11.2.1993 one Jitendra Kumar Lohia was granted quarry lease No.192 for quarrying of decorative stones in village Gandhargola, Tehsil Titilagarh, District Bolangir, Orissa. The said lease was for a period of 10 years from 11.02.1993 to 10.2.2003. The said Jitendra Kumar Lohia and members of his family formed and incorporated themselves into a company under the Companies Act, 1956, in the name and style of Medley Minerals India Private Limited the appellant before us. Jitendra Kumar Lohia is one of the Directors of the said company. On 15th October 1998 Jitendra Kumar Lohia applied to the competent authority under the Orissa Minor Mineral Concessions Rules, 1990 (hereinafter referred to as 'the Rules') for transfer of the lease under Rule 12 in favour of the appellant company. This application was not disposed of for a long time.

Even when his above application was pending before the competent authority on 11th October, 2002 (much prior to 90 days before the expiry of the lease), Jitendra Kumar Lohia applied to the competent authority under Rule 9 of the Rules for renewal of the quarry lease granted in his favour. In the said application for renewal of the quarry lease, it was specifically stated thus :

"I have already applied for transfer of the subject Quarry Lease in favour of M/s Medley Minerals India Ltd. Should the said application for transfer be accepted before the renewal of this lease, then this application may be considered on behalf of the proposed transferee in the said application in the said application i.e. M/s Medley Minerals India Ltd."

The attention of the competent authority was specifically drawn by this application to the fact that Jitendra Kumar Lohia had already applied for transfer of quarry lease no. 192 to the appellant company and further, " if the same application for transfer is accepted by the competent authority then this application for renewal may be considered on behalf of the transferee i.e. M/s Medley Minerals India Ltd".

On 5th February 2003, the State Government and the competent authority acting upon the application dated 15.10.1998 filed by Jitendra Kumar Lohia made an order transferring the existing quarry leave no.192 from the name of Jitendra Kumar Lohia to the name of

the appellant company for the unexpired period up to 10th February, 2003. This order specifically notes that Jitendra Kumar Lohia had applied to the State Government on 15.10.1998 for transfer of the existing quarry lease in favour of the appellant company and that the proposed transferee and the transferor belong to the same category i.e. Category IV 6-a of Rule 6 of the Rules. The transfer of lease was granted for the unexpired period of the lease up to 10.2.2003, inter alia, on the following conditions:

"(iii) Sri Jitendra Kumar Lohia, the transferor and his family members as they hold controlling interest in the proposed transferee company will seek prior permission from the competent authority if they wish to transfer such controlling interest in favour of an outsider (i.e. other than himself & his family members).

(iv) The transfer lease deed will be executed between the transferor and the transferee in presence of Mining Officer, Bolangir in compliance of all formalities as per law and after clearance of up to date mining dues in respect of this quarry lease."

The appellant company entered into a deed of indenture with the State Government and Jitendra Kumar Lohia on 7.2.2003, which, inter alia, contains the following two stipulations:

"2. The transferee hereby covenant with the State Government that from and after transfer and assignment of the Lease the Transferee shall be bound by and be liable to perform, observe and confirm and be subject to all the provisions of all the covenants, stipulations and conditions contained in said Lease herein before recited in the same manner in all respect as if the lease had been granted to the Transferee as the lessee thereunder and he had originally executed it as such."

viii. The Transferee has made a fresh security deposit of Rs.3,000/- (Rupees three thousand only) and the Transferor hereby agree that the deposit made by the latter be deemed to have been made by the former.

x. Sri Jitendra Kumar Lohia, the Transferor and his family members hold controlling interest in the proposed Transferee Company, will seek prior permission from the Competent Authority if they wish to transfer controlling interest in favour of an outsider (i.e. other than himself and his family members)."

After executing the deed of transfer on 7.2.2003, the appellant company by way of abundant caution made an application on the same day for renewal of the lease in continuation of the application for renewal already made by Jitendra Kumar Lohia on 11.10.2002. The State Government and the competent authority not having made any order for renewal of the quarry lease in favour of the appellant before the date of expiry i.e. 10.2.2003, it amounted to a deemed refusal under the Rules. The appellant applied for reconsideration of such deemed refusal of application for renewal of quarry lease under the proviso to sub-rule (2) of Rule 9 by his application dated 7.2.2003. In the

application for renewal of quarry lease in Form E, the appellant specifically averred:

" Any other particulars which the applicant wishes to furnish.

(a) The application for this renewal had already been filed by Sri Jitendra Kumar Lohia on 11.10.2002 before the subject Quarry Lease had been transferred in our favour. Therefore, this application may be treated in continuation of his application dated 11.10.2003 for the same Quarry Lease.

(b) We have set up a Cutting and Polishing Unit in industrial Estate of Titilagarh, documents in support of which are enclosed separately."

The application of the appellant was routed through the Mining Officer, Bolangir Circle to the Director of Mines, Orissa. The application was recommended for favorable consideration by the Mining Officer who also stated:

"The original lessee Shri J.K. Lohia had applied for R.Q.L. on 11.10.2002, i.e. within the time prescribed for applying for renewal under OMMC Rules 1990. But subsequently as a result of earlier application the Q.L. was transferred in favour of M/s Medley Minerals India Ltd. Which has been executed on 7.2.03. Consequently, the transferee company has also additionally applied for R.Q.L. in continuation of the earlier R.Q.L. application of the transferor. Therefore, the stipulation of O.M.M.C. Rules to apply for R.Q.L. prior to 90 days before expiry of the Q.L. may be treated as complied."

In his appeal to the State Government for reconsideration under the proviso to Rule 9(2) the appellant drew the attention of the State Government to the facts and circumstances of the case under which the transfer order itself was made on 7.2.2003, although the transferred lease itself was to expire on 10.2.2003. It was also pointed out that, in the circumstances, it was impossible for the appellant to apply for renewal of the transferred lease before a period of 90 days before the date of expiry.

On 22.3.2003 the State Government made an order granting renewal of the quarry lease for decorative stone for a further period of 10 years from 10.2.2003. The order makes it clear that the order had been made on the application dated 7.2.2003 made by the appellant for renewal of the lease and also to the fact that the appellant company had accepted the terms and conditions under which the renewal was proposed. The order granted renewal of quarry lease "for a period of 10 years subject to the conditions laid down in the State Government letter No. 5423 dated 22.5.2003".

On 31.5.2003 a Deed of Indenture for renewal of quarry lease was executed between the State Government and the appellant. The appellant thereafter took possession of the leased area and started its quarrying operations, which fact was intimated to the Mining Officer by a letter dated 2.6.2003.

The fourth respondent, a rival business company aspiring for a

quarry lease of the same type, filed a writ petition before the High Court challenging the order of the State Government dated 22.5.2003 by which the quarry lease for decorative stones over the scheduled area had been renewed in favour of the appellant and also seeking a direction to the State Government to consider grant of a quarry lease in its own favour. The High Court by its impugned judgment took the view that though there had been no contravention of the provision to Rule 9(3) of the Rules, there has been contravention of Rule 9(2), consequently allowed the writ petition and quashed the renewal of the quarry lease granted in favour of the appellant.

Being aggrieved, the appellant is in appeal before us.

Mr. Ramamoorthy, learned counsel for the appellant, urged that a conspectus of the facts and circumstances clearly indicate that Jitendra Kumar Lohia, who held the quarry lease in his favour, had already applied for its renewal on 11.10.2002, much before the prescribed limit of 90 days before the expiry of the lease as required under Rule 9. It is also clear that even at that time the application for transfer of the quarry lease was pending with the State Government. The State Government's order was made on 5th February 2003 and the transfer deed was executed on 7th February, 2003. The transfer of lease was only for the unexpired period i.e. from 7.2.2003 to 10.2.2003. Thus it was impossible for the appellant to have complied with the requirements of Rule 9(2), namely, to make an application in Form E at least 90 days before the expiry of the lease. He also drew our attention to Rule 31 under which the State Government is empowered "in the interest of mineral development, to relax the provisions of these rules in deserving cases in such manner as they deem proper". Learned counsel contended that in the circumstances the State Government was fully justified in relaxing the rules and treating the application dated 7.2.2003 as continuation of the earlier application of Jitendra Kumar Lohia for renewal of the lease. Thus, according to the learned counsel, the High Court was not justified in quashing the renewal of the quarry lease in favour of the appellant. The learned counsel for the State Government supported the view canvassed by the appellant's counsel.

The learned counsel for the fourth respondent contended that there was no such relaxation at all as evident from the impugned order. He pointed out from the recital in the impugned order that what had been relaxed was only "prescribed time limit for disposal of the application as provided in proviso to sub-rule (3) of Rule 6 of the OOMC Rules" in exercise of the State Government's power of relaxation under Rule 31. The learned counsel pointed out that Rule 6(3) was only the rule which laid down the period within which the application by the competent authority is required to be disposed of. As a matter of fact, sub-rule (3) of Rule 6 was omitted w.e.f. 8.2.1994 and was not even in existence on the date on which the State Government made the impugned order. He also alleged that application for renewal was granted contrary to the provisions of Rule 9 and was vitiated by malafides.

We are unable to accept the contention of the learned counsel for the 4th respondent that the action of the State Government was vitiated by malafides. It is trite that plea of malafides has to be specific and demonstrable. Not only this, but the person against whom the malafides are alleged must be made a party to the proceedings and given reasonable opportunity of hearing. We find no such attempt made in the writ petition before the High Court. At the highest even putting the most liberal construction on the writ petition, what was alleged was contravention of the Rules and, consequently, legal malafides and nothing beyond that. The argument of malafides must therefore fail. Next, it is urged by the learned counsel for the respondent that it is an elementary principle of law that an individual shareholder of a company cannot be considered as equivalent to the company, for company has a distinct legal personality. Consequently, he contends that the application made by Jitendra Kumar Lohia could not have enured to the benefit of the appellant company. According

to him, Jitendra Kumar Lohia and the appellant being two distinct legal entities, the assumption of the State Government, that the application for renewal of the quarry lease could be treated as a continuation of Jitendra Kumar Lohia's application, was erroneous and unsustainable in law. We are unable to accept this contention. We have highlighted as to how the State Government and Jitendra Kumar Lohia treated the application for renewal of quarry lease made by Jitendra Kumar Lohia as enuring for the benefit of the appellant company. If the State Government had treated them to be separate legal entities, there was no question of imposing a condition on the appellant that the transfer of the lease was granted on the specific condition that Jitendra Kumar Lohia and his family members hold the controlling interest in the company. The facts and circumstances belie this contention of the learned counsel for the fourth respondent. It cannot be accepted.

Learned counsel for the fourth respondent took us through the provisions of Rule 9 and contended that there is contravention of the proviso to Rule 9(3). In fact, we find no such contention urged or accepted before the High Court as evidenced from its judgment. On the contrary, the judgment of the High Court clearly holds that there was no contravention of the proviso to Rule 9(3). The writ petition succeeded only on the sole ground that there was contravention of Rule 9(2) inasmuch as the application of a renewal made by the appellant company was not made at least 90 days before the expiry of the lease. Barring this contention, nothing else seems to have appealed to the High Court.

The contention, in our view, has no substance for two reasons. First, the State Government was justified in treating the appellant's application as continuation of the application for renewal of the lease made by Jitendra Kumar Lohia. Secondly, the State Government had enough powers to relax the provisions of the Rules "in the interest of mineral development in deserving cases in such manner as they deem proper". True, that the order of the State Government quotes a wrong rule for relaxation, but, that, in our view hardly matters. As long as the State Government had the power of relaxation, then irrespective of any recitation, it must be construed that the State Government has in its discretion made the order by exercising its power of relaxation. Looked at from this point of view, we find no substance in the contention.

In the result, we are of the opinion that the High Court erred in quashing the order No.5507/IV(E)(DS)SM 4/2003 dated 22nd May 2003, by which the quarry lease had been renewed in favour of the appellant company.

Hence, this appeal is allowed. The impugned judgment of the High Court is set aside and the State Government's order dated 22.5.2003 is restored.

No order as to costs.