A LABOUR CONTRACT CO-OPERATIVE SOCIETY, PALIKUR, KURNOOL DISTT. REP. BY ITS SECRETARY

v.

DIRECTOR OF MINES AND GEOLOGY, HYDERABAD AND OTHERS.

B SEPTEMBER 22, 1992

[S. RANGANATHAN, V. RAMASWAMI AND B.P. JEEVAN REDDY, JJ.]

C *Andhra Pradesh Minor Mineral Concession Rules. 1966:*

Section 12(4) and 13(2)—Minor Minerals—Lease—Grant/renewal of—Consideration of applications—Giving of preference—Procedure to be followed.

D *The Word "within" appearing in S.12(4) inappropriate—Deletion of the Word—Suggested.*

An extent of 40 acres of land containing lime stone slabs was leased out to the father of the fourth Respondent. He applied for renewal of the
E **lease 90 days before the expiry of the lease, as contemplated under Rule 13(2) of the Andhra Pradesh Minor Mineral Concession Rules, 1966. However, he withdrew his application later. His son made an application for grant of lease in respect of 18 acres out of the total extent of 40 acres, Later the appellant Society applied for lease in respect of the entire extent of 40 acres. Both the applications remained pending till the expiry of 90**
F **days from filing and were deemed to have been rejected as per Rules. Both the applicants filed revision petitions before the Government which allowed the applications and remitted the matter to the Deputy Director for disposal. In the meantime the fifth Respondent Society also applied for lease in respect of the entire extent of 40 acres.**

G **The Deputy Director passed orders granting lease in respect of 18 acres in favour of the fourth Respondent, viz. the son of the previous lease and the remaining 22 acres in favour of the fifth Respondent Society, and rejected the application of the appellant. An appeal to government having failed, the appellant filed a Writ Petition before the High Court. A Single**
H **Judge held that the grant of lease in favour of the fourth Respondent was**

valid but the rejection of appellant's application was illegal. The lease in favour of fifth Respondent was set aside and the Deputy Director was directed to reconsider the applications of the appellant and the fifth Respondent. The appellant preferred an appeal under cl. 15 of the Letters Patent. The fifth Respondent filed Cross objections. The Division Bench dismissed the appeal and allowed the Cross-objections. The appellant preferred the present appeal by special leave. A B

On behalf of the appellant, it was contended that if the application of the appellant filed within 30 days of expiry of the lease was considered belated, the application of the fifth respondent which were filed long after the expiry of the lease were also barred by limitation and could not have been considered. It was also contended that the application of the fourth respondent could not have been treated as filed within time. C

Dismissing the appeal, this Court enunciated the scheme of the Rules and, D

HELD: 1. The authorities were not right in rejecting the appellant's application as barred by time. This Court does not propose to send back the matter to the authorities in view of the time that has elapsed since the grant in favour of Respondent No.5. The term of the lease is five years only. A major portion of that term is already over. The Division Bench has rightly pointed out that among the appellant and the fifth respondent the latter is entitled to preference for more than one reason viz., the fifth respondent society is composed of members of Vadde Community who are the traditional stone-cutters. Though they do not belong to Scheduled Castes or Scheduled Tribes, they are at the lowest rung among the backward classes, whereas the petitioner society is composed of mere labourers who do not necessarily belong to the traditional stone-cutter community. E F

[809-H; 810 A-B]

2. The existing lessee had indeed applied for renewal ninety days before the expiry of his lease. But before it could be granted or rejected it was withdrawn on 17.7.87, which means that the field was now clear for considering the second category applications i.e., those received in terms of Rule 12(4). The grant of the fourth respondents application is, therefore, perfectly in order since it was received prior to 30 days before the expiry of the lease. However, it was only for 18 acres. 22 acres still remained, in respect of which the third category applications had to be considered. The G H

A **application received within thiry days of the expiry of the lease and the applications received after the expiry of the lease stand on the same footing. The application of the Petitioner was not entitled to any preferential consideration on account of the fact that it was filed before the expiry of the lease, because it was filed *within* thiry days of the expiry of the lease. It did**
B **not fall in the second category but only in the third category. [809 E-G]**

3. The appellant Society admittedly holds a lease in respect of 65 acres whereas the fifth respondent has none apart from the one in controversy. Even if this fact is taken into consideration, still the fifth respon-
C **dent is entitled to preference, because its area is far smaller than that of the appellants. [810-E]**

4. The presence of the word "within" in Rule 12(4) has given room for some avoidable controversy. The said word appears to have crept into the sub-rule incautiously. It is not used either in sub-rule(2) of Rule 13 or for that matter in the latter portion of Rule 12(4). It must be noticed that
D **the first half of Rule 12(4) expressly referes to Rule 13(2) and says that if no application is made thereunder others can apply. The said words cannot and can never mean anything different than what is provided by Rule 13(2). It is for this reason that the word "within" therein is inappropriate and ought to be ignored. The Rule-making authority would be**
E **well advised to delete the same. [808 B-D]**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 4027 of 1992.

From the Judgment and Order dated 20.4.92 of the Andhra Pradesh
F High Court in W.P. No. 1062 of 1991.

K. Madhava Reddy, D Prakash Reddy and G. Narasimhulu for the Appellant.

S. Padmanabhan, T.V.S.N. Chari, Ms. Anjani Aiyagar, Sridhar and
G Ram Kumar for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted.

H This Appeal is directed against the Judgment of a Division Bench of

the Andhra Pradesh High Court dismissing Writ Appeal 1062 of 1991 preferred by the Appellant. The main issue in this appeal is the interpretation to be placed upon sub-rule (4) of Rule 12 of A.P. Minor Mineral Concession Rules, 1966. A

Survey No. 650/1 Palukar Village in Kurnool District is of an extent of 40 acres. It contains a minor mineral, lime stone slab. One Venkatesan was granted a lease for the said extent earlier. The term of his lease was expiring on 20.8.87. He applied for renewal of the lease 90 days before the expiry of his lease as contemplated by sub-rule 2 of rule 13 of the said rules. On 17.7.87 however he withdrew his application. On 18.7.87 his son, the fourth respondent, applied for grant of lease in respect of 18 acres in the said survey number. No orders were passed thereon by the appropriate authorities. On 10.8.87 the appellant, a Labour Cooperative Society, applied for lease in respect of the entire extent of 40 acres. Both these applications remained pending till the expiry of 90 days from the respective dates they were filed, with the result that they were deemed to have been rejected. Both of them filed revisions before the Government which were allowed and their applications remitted for disposal in accordance with law to the Deputy Director of Mines and Geology, Cuddapah. B C D

On 17.2.88, fifth respondent which too is a Labour Cooperative Society applied for lease in respect of the entire extent of 40 acres. E

On 3.10.1988, the Deputy Director passed orders granting lease in respect of 18 acres in favour of fourth respondent (son of the previous lessee) and the remaining 22 acres in favour of the fifty respondent. The application filed by the appellant was rejected as barred by time. Against the said order the appellant filed a Writ Petition in the High Court which was rejected in view of the alternative remedy of appeal to Government, provided by Rules. Appellant accordingly preferred an appeal to the Government which was dismissed on 28.3.1989. He then filed the writ petition No. 4748/89 from which the present appeal arises. The writ petition was heard and disposed of by a learned Single Judge, who held that the grant of lease in favour of the fourth respondent is proper and valid but that the rejection of the application filed by the appellant is illegal. The grant in favour of the fifth respondent was set aside and the Deputy Director directed to reconsider the applications of the appellant and the fifth respondent in accordance with the rules. Against the judgment of the F G H

A learned Single Judge the appellant preferred Writ Appeal No. 1062 of 1991 while the fifth respondent preferred cross objections. Both of them were heard by a Division Bench which disposed of the Writ Appeal in the following terms :

(1) The order of the learned Single Judge confirming the grant in
B favour of the fourth respondent is unexceptionable.

(2) The learned Judge was not right in setting aside the grant in favour of the fifth respondent. The grant in favour of the fifth respondent is equally valid and proper. Accordingly the Writ Appeal was dismissed
C and the cross objections filed by the fifth respondent were allowed.

Shri K. Madhava Reddy, learned counsel for the appellant submitted that the Division Bench erred in holding that the application filed by the appellant on 10.8.87 was barred by limitation and also in holding that the application of the fourth respondent was well in time. He submitted that
D if the appellant's application submitted within 30 days of the expiry of the lease (in favour of Venkatesan, the previous lessee) is barred by time so is the application of the fifth respondent which was filed long after the expiry of the said lease. The learned counsel also assailed the correctness of the holding that the application of the fourth respondent was within time and that it was rightly allowed.
E

For a proper appreciation of the issues in controversy it is necessary to notice the relevant Rules. A.P. Minor Mineral Concession Rules, 1966 were been framed by the Governor of Andhra Pradesh in exercise of the rule making power conferred upon him by section 15(1) of the Mines and
F Minerals (Regulation and Development) Act, 1957 Rules 12 and 13 prescribe the manner in which the leases of minor minerals are to be granted and renewed. In so far as they are relevant, they read as follows :

"*Rule 12 :* (Sub-rule (1) omited as unnecessary).

G (2) Whenever more than one application are received for grant of a quarry lease, the (Deputy Director) shall dispose of the applications in order of preference specified below :-

(i) Applications of Government Department and Govern-
H ment Corporations and Companies;

(ii) Applications of Labour Contract Co-operative Societies;

(iii) Applications of unemployed persons who possess any recongnised qualification in Geology, Geophysics, or Mining Engineering or any other allied subjects;

(iv) Other applications;

(3) (Omitted as unnecessary.)

(4) In case where the quarry lease holders fail to apply for renewal of the lease of the areas within ninety days before the expiry of the lease held by them, as required under sub-rule (2) of Rule 13, fresh application for grant of quarry lease, in respect of those areas, will be entertained thirty days before the expiry of the lease :

Rule 13 : Disposal of application :- (1) The application for the grant of a quarry lease shall be disposed of within ninety days from the date of its receipt and if it is not disposed of within that period, the application shall be deemed to have been refused. (The lease deed shall be executed within ninety days from the date of grant of lease or within such further period as the Director may allow in this behalf and if no such lease deed is executed within the said period due to any default on the part of the applicant, the (Deputy Director) may revoke the order granting the lease).

(2) The application for the renewal of a quarry lease shall be made at least ninety days before the expiry of the period of lease to the (Deputy Director) and it shall be disposed of before the expiry of the lease period. If the application is not so disposed of within that period, it shall be deemed to have been not renewed.

Provided that where an application for grant of quarry lease is rejected or deemed to have been refused under these rules, the fee paid by the applicant under sub-rule (1) of Rule 12 shall be refunded to the applicant;

A Provided further that where an application for grant of quarry lease is rejected on account of any lapse on the part of the applicant in supplying any material information, the fee paid by the applicant under sub-rule (1) of Rule 12 shall be forfeited to the Government.)"

B We have heard the counsel for the parties on the interpretation to be placed upon the above Rules. The presence of the word "within" in Rule 12(4) has given room for some avoidable controversy. The said word appears to have crept into the sub-rule incautiously. The said word ('within') is not used either in sub-rule (2) of Rule 13 or for that matter in C the latter portion of Rule 12(4). It must be noticed that the first half of Rule 12(4) ("In case where ..... under sub-rule (2) of Rule 13") expressly refers to Rule 13(2) and says that if no application is made thereunder others can apply. The said words cannot and can never mean anything different than what is provided by Rule 13(2). It is for this reason that we say the word "within" therein is inappropriate and ought to be D ignored. The Rule-making authority would be well advised to delete the same. On a proper and harmonious reading of Rules 13(2), 12(4) and other allied provisions, the following scheme emerges:

(1) An existing lessee has to apply for renewal, if he so chooses, at E least ninety days before the expiry of the period of his lease. Such application has to be disposed of before the expiry of his lease. If it is not so disposed of, the application must be deemed to have been rejected (Rule 13(2)).

(2) Within ninety days of the expiry of the lease and thirty days before F the expiry of the lease, it is open to others too to apply for grant of lease in respect of the area, or a part of the area, held by the lessee (Rule 12(4)). These applications may be termed as Second Category applications. If any such application or applications are received under Rule 12(4) they should be considered and disposed of in accordance with law.

G (3) Applications for lease received within thirty days of the expiry of the lease and those received after the expiry of the lease constitute the third category. These applications too have to be considered and disposed of in accordance with law.

H (4) The above three categories are in the descending order. Each

category enjoys a preference over the other. In other words, the application for renewal filed by the existing lessee under Rule 13(2) shall be taken up first and disposed of. If renewal is granted, exhausting the area of lease, no occasion arises for considering the applications falling in the second and third category. In case, however, where no application for renewal is filed or where it is filed but rejected, the second category applications shall have to be taken up and considered. If any of them are allowed and lease granted, exhausing the area of lease, there is no occasion for considering the third category applications. In case, no application falling in the second category is received or if received, is rejected, does the occasion arise for taking up and considering the third category applications.

5. We may clarify in the interest of unbroken exploitation of mineral wealth, that the authority can well receive the applications falling within all the three categories, if and when filed. For example, he ought not to refuse to receive the second category applications merely because the renewal application is filed and so on. But the applications received shall be placed in their proper category and considered in the order indicated above.

Now let us consider the facts of this case in the light of the above understanding of the relevant Rules. The existing lessee had indeed applied for renewal ninety days before the expiry of his lease. But before it could be granted (or rejected, as the case may be) it was withdrawn on 17.7.87, which means that the field was now clear for considering the second category applications i.e., those received in terms of Rule 12(4). The application of the fourth respondent was the only application received in terms of Rule 12(4). The grant of the said application is, therefore, perfectly in order. However, it was only for 18 acres. 22 acres still remained, in respect of which the third category applications had to be considered. As clarified hereinabove, the application received within thirty days of the expiry of the lease (like the one filed by the appellant) and the applications received after the expiry of the lease (like the one filed by Respondent No.5) stand on the same footing. The application of the Petitioner was not entitled to any preferential consideration on account of the fact that it was filed before the expiry of the lease, becuase it was filed *within* thirty days of the expiry of the lease. It did not fall in the second category but only in the third category.

It must, accordingly, be said that the authorities were not right in

A rejecting the appellant's application as barred by time. We do not, however, propose to send back the matter to the authorities in view of the time that has elapsed since the grant in favour of Respondent No. 5. The term of the lease is five years only. A major portion of that term is already over. We, therefore, propose to give a quietus to the controversy. If so, question
B arises who among the two Labour Cooperative Societies should be preferred. The Division Bench has pointed out, rightly in our opinion, that among the two of them, the fifth respondent is entitled to preference for more than one reason viz., (1) the fifth respondent society is composed of members of Vadde Community who are the traditional stone-cutters. Though they do not belong to Schedule Castes or Scheduled Tribes, they
C are at the lowest rung among the backward classes, whereas the petitioner society is composed of mere labourers who do not necessarily belong to the traditional stone-cutter community.

(2) The appellant/society admittedly holds a lease in respect of 65 acres whereas the fifth respondent has none-apart from the one in con-
D troversy. Mr. Madhava Reddy has brought to our notice that even the fifth respondent has a lease in respect of 15 acres. Even if we take that fact into consideration, still the fifth respondent is entitled to preference, because its area is far smaller than that of the appellants.

E For the above reasons, the appeal fails and is accordingly dismissed.

No. costs.

G.N. Appeal dismissed.