

FINAL ORDER NO. 29/2008

DATED: 4.9.2008

(In Revision Application File No. 9(4)/2005-RC-II)

M/s Arya Chemicals

Applicant

Versus

State Government of Gujarat

Respondent

ORDER

Under section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and Rule 55 of the Mineral Concession Rules, 1960 (MCR).

This Revision Application has been filed by M/s. Arya Chemicals, the Applicant, to challenge the Order No. PLA/1101/2402/CHH of Industrial Mines Department dated 15.10.2004 passed by the State Govt. of Gujarat, (hereinafter referred to as the "Impugned Order").

2. Through the impugned order, the State Govt. has rejected the prospecting licence (PL) application for limestone over an area of 300.00 acres in Village Bolas, Taluk Veraval Di, Distt. Junagadh. On 15.10.04.

3. The ground of rejection cited in the impugned order are that the applicant was not present for the personal hearing on 13.7.2004, the

area is used by farmers for grazing cattle and granting of PL in the area may lead to public unrest.

4. The petitioner has stated in the revision application that the applicant could not remain present during personal hearing on 13.7.2004 as they were busy with other work. The Govt. has taken a one sided decision. The area applied is exposed and no grass have been growing making it practically a waste land. Therefore grant of P.L. for an area which is practically wasteland will create law and order problem is not tenable. For technical opinions the petitioner has stated that the officer had left for technical inspection of other application. However, if the petitioner is called separately, they are ready to attend the inspection date.

5. The State Govt. in their comments have stated that the concern revenue authority has opined that the applied area is covered by thorn fencing for grazing the cattle and encroached by the village farmers. Moreover, the applied area is not open waste land and there are possibilities of law and order problems, if the land is allocated under prospecting license application. Therefore, considering the negative revenue opinion the prospecting license application is rejected which is legal and proper.

Technical opinion is an important part for deciding prospecting license application. The applicant's role for remaining present at site is very critical wherein one has to show the applied areas as per the map and survey number as shown in the application precisely.

Moreover, the applicant has to furnish the details of applied/granted/existing mining lease/prospecting license area held by him after the submission of the application because such information is needed to decide the maximum admissible area under the section 6(1)(a) of the Mines and Minerals (Development and Regulation) Act, 1957. In addition to this, applicant has to show financial soundness and submit the project report/proposal for the usage of mineral applied for. Thus, this information is to be furnished personally by the applicant at the time of technical spot inspection of the applied areas as a part of prescribed technical report. Therefore, the applicant was asked for remaining present at the spot personally through registered A.D. post.

The applicant did not remain present at the time of technical spot inspection for the reason that so many applicants were called and officer had been to spot for inspection of other applied area. It is also claimed that in-spite of waiting, he could not meet the officer and therefore, applicant went back without meeting the officer and if called alone for such inspection he was willing to remain present. Such plea of the applicant was not reasonable on technical and logistical ground. The prospecting license rejection order dated 15.10.04 is legal and proper and therefore, requested to reject the revision application in question.

6. We have gone through the case records and the impugned order dated 15th October, 2004 passed by the Industrial Mines Department. Of the State Government of Gujrat. The State

Government has rejected the PL application of the applicant on the ground that the area applied for belong to Gram Panchayat in the form of waste graze land while the survey No.128 Paikea, measure 300 acres in private property and hence cannot be allowed by the Gram Pachhayat on the other hand. The State Government official, Shri J.M. Patel, submitted that the party has produced the consent of the Gram Panchayat that the land can be made available to the applicant and it will not affect the cattle grazing land. In view of the admission by the representative of the State Government, the impugned order is liable to be set aside and the case is remanded de novo consideration.

Order

Accordingly we set aside the impugned order dated 15.10.2004 and remand the case to the State Government for de novo consideration in respect of the Panchyat Land in view of the consent of the Gram Panchayat for availability of its land and the same will not effect the cattle grazing land. The State Government shall reconsider and pass the order in accordance with law and with due compliance of the principles of natural justice within three months from the receipt of the order.

Sd/-

(T.N. TIWARI)
Additional Legal Adviser

Sd/-

(A.K. MEHTA)
Director (Mines)

