
(2016) 09 JH CK 0104
In the Jharkhand High Court
Case No : W.P. (C) No. 5278 of 2016

APCO Infratech Private Limited

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 27-09-2016

Acts Referred:

Environment (Protection) Act, 1986 — Section 5

Citation : (2017) 2 JCR 11

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Pandey Neeraj Rai, Advocate, for the Petitioners; Mr. Bhanu Kumar, Advocate, for the Respondent Nos. 3 and 4; Ms. Aparajita Bhardwaj, J.C. to A.A.G, for the Respondent-State

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J.—; Heard learned counsel for the parties.

2. Petitioner contends that in view of the notification dated 13th March, 2013 (Annexure-4) issued under Section 5 of Environment (Protection) Act, 1986 incorporating amendment to the notification dated 14th September, 2006 bearing no. S.O.1533(E) of the Ministry of Environment and Forests to the effect "provided that no fresh environment clearance shall be required for a mining project or activity at the time of mining lease, which has already obtained environment clearance, under this notification", petitioner, who is a lessee of minor mineral, whose lease has been extended for a period of 10 years with effect from 14th March, 2015 vide (Annexure-9) and "Lease Agreement" (Annexure-10), is not required to obtain fresh environmental clearance as the existing environmental clearance granted by respondent no. 3 dated 7th May, 2014 (Annexure-8) would be deemed to continue during currency of renewal period.

3. Consequential reliefs have been asked for by directing the respondents to

treat the environmental clearance of the petitioner granted vide Annexure-8 dated 7th May, 2014 as being deemed to have been extended during currency of renewal lease period. An alternative prayer has also been made to direct the respondent no. 3 to issue an order declaring notional grant of formal extension of environment clearance with effect from 14th March, 2015.

4. Petitioner had on its own also earlier made a request to extend the environmental clearance for further period of the lease with effect from 13th March, 2015 vide Annexure-11 before respondent no. 4. Respondent no. 4 vide Annexure-13 dated 12th August, 2016 directed the petitioner to make a fresh application before District Environment Impact Assessment Authority in respect of grant of environmental clearance in view of the notification dated 15th January, 2016 and 20th January, 2016 issued by Ministry of Environment and Forests, Government of India (Annexures-14 & 14/1) requiring mandatory environmental clearance for leases of minor minerals having an area even less than 5 Hectares.

5. Perusal of the notification dated 15th January, 2016 does not leave any room of doubt that requirement of fresh environmental clearance is mandatory during renewal period also unless the project has valid and subsisting environmental clearance. It is clear from the notification dated 15th January, 2016 that the aforesaid requirement has also been made mandatory in view of the judgment dated 27th February, 2012 passed by Hon'ble Supreme Court in I.A. Nos.1213 of 2011 in Special Leave Petition (Civil) No. 19628/19629 of 2009 reported in (2012) 4 SCC 629, copy of judgment has also been placed by learned counsel for respondent nos. 3 and 4. Notification dated 15th January, 2016 concerning minor mineral is therefore in the nature of a specific subordinate legislation on the subject. Therefore, it would also have a overriding effect over the notification dated 13th March, 2013 (Annexure-4) incorporating amendment in the notification dated 14th September, 2016 of Ministry of Environment and Forests. The schedule of instant notification dated 15th January, 2016 also makes it amply clear as per the note prescribed thereunder in the following terms:

"The mining leases which have obtained environmental clearance under Environment Impact Assessment Notification, 1994 and Environment Impact Assessment Notification, 2006 shall not require fresh environmental clearance during renewal provided the project has valid and subsisting environmental clearance."

6. This is a complete answer to the contention of the petitioner. Besides this the environmental clearance granted by Annexure-8 letter dated 7th May, 2014 also clearly stipulates that it is valid for the balance period of lease i.e., up to 13th March, 2015.

7. In such circumstances, petitioner is required to pursue his application for environmental clearance before respondent no. 5, District Level Environment Impact Assessment Authority, Dhanbad with complete necessary enclosures and

requisites as prescribed under the Act, Rules and Notification made thereunder.

8. Accordingly, the writ petition is disposed of.