

(2009) 07 JH CK 0095

In the Jharkhand High Court

Case No : Writ Petition (C) No. 2869 of 2008

Brahmi Impex Limited

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 17-07-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Act — Section 12, 26
Mineral Concession Rules, 1960 — Rule 12, 26, 26(1), 44, 59
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2),
11(3), 5(1)

Citation : (2009) 57 BLJR 2735

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

**Advocate : N.K. Pasari, for the Appellant; P.K. Prasad, A.G., J.C. to S.C. (Mines),
Md. Mokhtar Khan, Senior Standing CounselG., Anil Sinha A. Mittal, Krishna
Shanker and Abhisek Sinha for the Respondent No. 8, for the Respondent**

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Petitioner in this writ application has prayed:

(i) For issuance of a writ in the nature of mandamus commanding the Respondents and each of them to recommend the case of the petitioner for the grant of mining lease and/or take suitable decision in respect thereof on the application of the petitioner both for the 500 acres of land subsequently notified and also the preferential right of the petitioner in respect of the balance area of land, applied for in terms of Section 11(2) of the M.M.D.R. Act, in respect of its applications.

(ii) For issuance of an appropriate writ commanding the Respondent Nos. 1 and 2 to grant mining lease to the petitioner for mining iron Ore in Karampada Reserve Forests.

(iii) For issuance of an appropriate writ commanding the Respondent Nos. 1 to 7

to treat all applicants for grant of mining lease in respect of Karampada Reserve Forests Iron Ore Mines, equally and without any discrimination.

(iv) For issuance of an appropriate writ in the nature of Mandamus commanding the Respondent Nos. 1 to 7 not to give effect and/or further effect to the purported recommendation by the Respondent Nos. 3 to 7 in favour of the Respondent No. 8 without considering the case of the petitioner.

(v) For issuance of an appropriate writ in the nature of Prohibition restraining the Respondent Nos. 1 to 7 from permitting the Respondent No. 8 to carry on any mining activities of any nature whatsoever at the Meghataburu Iron Ore Mines.

(vi) For issuance of an appropriate writ in the nature of Prohibition prohibiting the Respondents and/or their men, servants and agents from making any further recommendation and/or giving any effect and/or further, effect to recommendation already made in respect of the areas applied for by the petitioner in Karampada Reserve Forests without disposing of the application of the petitioner.

A further prayer which introduced by way of amendment of the original writ application and on the basis of the purported subsequent developments, is for quashing the letter No. 5/17/2008-M.IV, dated 05.06.2008, issued by the under Secretary to the Government of India, Ministry of Mines (Annexure-A to the counter affidavit of the Respondent Nos. 3 to 7), whereby the Central Government's approval for grant of mining lease for Iron Ore and Manganese Ore, over an area of 500 acres in the Meghahatuburu (Karampada Reserve Forests) in the State of Jharkhand, in favour of M/s. Arcelor Mittal Steel India Ltd. (Respondent No. 8).

An additional prayer has also been made for quashing the Annexure-B to the counter affidavit of the Respondent-State, which is a comparative statement of merit of the mining lease occupants.

2. The petitioner, being a public limited Company, duly registered under the provisions of the Companies Act, 1956, pursuant to its objective of setting up an integrated steel Plant and captive power plant in the State of Jharkhand, had submitted an application on 20th May, 2005 to the Government of Jharkhand for grant of mining lease in respect of an area comprising of 1468 hectares within village Karampada, Talluque-Gua, District-West Singhbhum, Jharkhand.

Upon receipt of the petitioner's application, a notice was issued to the petitioner on 05th August, 2005, calling upon him to appear at the hearing, scheduled to be held on 18th August, 2005. The petitioner appeared at the hearing and had submitted all the relevant informations as called upon. However, no decision on the petitioner's application, was conveyed to it.

3. In the meantime, on 09th February, 2007, a memorandum of understanding was entered into between the Government of Jharkhand and the petitioner, for setting up an integrated Steel Plant and captive power plant in the State of

Jharkhand and under which, the State of Jharkhand had assured that it would make best endeavour to ensure that adequate captive mining sources are made available to the petitioner's Company as per requirement, at least for a period of 30 years and had also assured to grant mining licenses and captive mining leases for mines having reserves of 73.2 million tonnes, after following prescribed procedures and on completion of required formalities.

4. Thereafter, in the month of March, 2007, the petitioner filed a fresh application before the concerned authorities; of the Respondent-State for grant of prospecting lease in respect of an area of 3393.93 hectares in Karampada Reserve Forest, Taluque-Gua, District-West Singhbhum, within the State of Jharkhand

5. On 02nd April, 2007, the State Government published a Notification in the extra-ordinary Gazette inviting applications for grant of mining lease in respect of an area of 500 acres of iron ore and manganese ore at Meghahatuburu (Karampada Reserve Forest), Taluque-Gua, District-West Singhbhum within the State of Jharkhand. The petitioner filed its application in response to the notification.

6. After about eight months, on 15th January, 2008, by a Notice issued from the office of the District Mining Officer (Respondent No. 7), the petitioner was called upon to attend the hearing proceedings of the disputes for grant of the said mining lease in respect of area of 500 acres of Meghahatuburu (Karampada Reserve Forest) iron-ore block, scheduled to be held on 18th January, 2008.

In response to the above mentioned notice, the petitioner claims to have forwarded a letter dated 17th January, 2008 enclosing therewith a few documents to the Deputy Secretary, Department of Mines & Geology in support of its claim and to obtain recommendation from the Respondent No. 4, namely, the Secretary of the Department of Mines and Geology, Government of Jharkhand for the allotment of Iron Ore Block to the petitioner in respect of the said Meghahatuburu (Karampada Reserve Forest) Block.

7. The petitioner claims that while it was awaiting a reply to its aforementioned letter, it learnt in the month of February, 2008 from the newspapers that the concerned authorities of the State Government had recommended the Respondent No. 8 for the grant of the mining lease.

The petitioner obtained information under the Right to Information Act regarding the details and considerations on the basis of which, the recommendation was granted in favour of the Respondent No. 8. From the information supplied to him from the office of the Deputy Secretary, Government of Jharkhand, including the comparative statement (Annexure-B to the counter affidavit) and the purported decision, the petitioner could infer that its case has not been considered on merits and instead, it has been victimized for filing earlier proceedings against the State Government before the Jharkhand High Court on false and misleading allegations of "litigation pending before the Jharkhand High Court for cheating

and forgery etc." The petitioner submits that it has further inferred that the Respondent-State has illegally and arbitrarily proceeded to recommend the Respondent No. 8 for the grant of mining lease and in the process, has deprived the petitioner of its lawful claim.

8. Assailing the acts and omissions of the Respondent-State, in the matter for the grant of mining lease, learned Counsel for the petitioner submits that the grievance of the petitioner is two-fold:

(a) Regarding non-consideration of the petitioner's right in respect of 500 acres in the Meghahatuburu (Karampada Reserve Forest) for mining purposes, which has been notified, part of which overlaps with the area prayed for, by the petitioner in its first application.

(b) Non-consideration of the petitioner's purported preferential right in respect of the balance area for which hearing had taken place once in 2005 and again subsequently thereafter.

9. Learned Counsel declares at the outset that the petitioner's challenge in this writ application is to the decision making process of the State Government, and not on the merits of the decision by which the recommendation with respect to the notified 500 acres of land was made.

10. Summarizing the events in chronological order commencing from the date of filing of the petitioner's first application, learned Counsel explains that the petitioner's first application was filed on 20th May, 2005 and thereafter a hearing under the provisions of Rule 26(1) of the Mineral Concession Rules, 1960 was conducted at which, the petitioner had appeared and submitted all the required informations. Despite the hearing, no decision was conveyed to the petitioner on its first application and the State Government had kept the issue pending. It was much later, that the application of the Respondent No. 8 and several other applications were received and a comparative statement (Annexure-11 to the writ petition) of the State Government was prepared. Learned Counsel explains that the initial comparative statement (Annexure-11) indicates that the petitioner's case on merits was not at all considered on the pretext of litigation pending in the Jharkhand High Court.

Learned Counsel explains that the litigation referred to has no nexus with the petitioner's application for grant of mining lease, as because, the litigation was in fact a writ application filed by the petitioner challenging the lack of transparency in respect of claim for lease concerning another iron ore block.

11. Referring next to a subsequent comparative statement (Annexure-B series to the counter affidavit) learned Counsel submits that the subsequent comparative statement reveals that the petitioner's case has not been recommended purportedly under the provisions of Section 11(3) of the M.M.D.R. Act. The subsequent purported rectification for the non-recommendation of the petitioner's case, according to the learned Counsel, was done on 22nd May,

2008. Learned Counsel argues that on the face of the record, the first reasons given by the Respondents authorities for not recommending the petitioner's case, was subsequently abandoned and a substituted ground was declared in the subsequent comparative statement to suggest that the recommendation was not granted in favour of the petitioner u/s 11(3) of the M.M.D.R. Act, 1957. Learned Counsel submits further, that as a matter of fact, before feeding the subsequent ground, the petitioner was not granted any opportunity of being heard on the merits of his claim. This inference, according to the learned Counsel, can reasonably be drawn by the fact that the Respondent-State has not indicated as to when was the petitioner's case subsequently considered on merits and neither have any Minutes of meeting been annexed to the counter affidavit of the Respondent-State showing that deliberations were made resulting in the subsequent Rectification. On the basis of the above grounds, learned Counsel submits that the entire decision making process is vitiated by arbitrariness and is mala fide, and against the principles of natural justice. Learned Counsel adds further that even if the Respondent-State had not recommended the petitioner's case under the provisions of Section 11(3) of the M.M.D.R. Act, it was the demand of the principles of natural justice that the decision maker should assign reasons for the decision taken by them on the petitioner's application and should convey the same to the petitioner. To emphasize his argument, learned Counsel submits that the purported reasons stated in the remarks column of the second comparative statement, against the petitioner, are vague and is by way of "universal remark" adopted in the cases of all the other applicants. There is complete absence of guidelines as to what weightage is given to which of the parameters, prescribed while considering the application of the petitioner.

12. Anticipating the objections of the Respondents on the ground of availability of alternative statutory remedy, learned Counsel submits that the action of the authorities concerned is arbitrary and without any legal foundation and this Court in exercise of its writ jurisdiction under Article 226 of the Constitution of India, has the authority and competence to interfere. In support of his arguments, learned Counsel refers to and relies upon the judgment of the Supreme Court in the case of Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, and also on the judgment in the case of Noble Resources Ltd. Vs. State of Orissa and Another, .

13. Counter affidavit has been filed by the Respondent-State, and a separate counter affidavit has also been filed by the Respondent No. 8. The Respondents in their respective counter affidavits have denied and disputed the entire claim of the petitioner.

14. The substance of the grounds advanced and the stands taken by the Respondent-State, as explained by the learned Advocate General, is as follows:

(i) The Respondent-State has fully followed the procedure laid down u/s 11 of the Mines & Minerals (Development & Regulation) Act, 1957 read with Rules 12/26 of the Mineral, Concession Rules, 1960.

(ii) The petitioner had submitted three separate applications, the first on 20.05.2005 for the grant of the mining lease for iron ore and manganese ore in respect of an area of 1468 hectares within the Karampada Reserve Forest. The second, dated 23.03.2007, was in respect of 3393.93 hectares for grant of prospecting license and the third dated 10.01.2008, for mining lease, in respect of 500 acres within the Karampada Reserve Forests. Since the mining areas overlapped in the various other applications received, all the applications, which were received from the different applicants for prospecting license and mining lease were given due opportunity of hearing under Sections 12/26 of the Mineral Concession Rules by the Committee duly formed/constituted under the chairmanship of the Secretary (Mines) and comprising of the Director (Mines), the Director (Geology) and the Deputy Secretary (Mines & Geology). The Committee heard the applicants and thereafter assessed each applicants on the merits vis-à-vis the prescribed parameters as laid down under the Act and the Rules and only after making a comparative statement, the recommendation in favour of the Respondent No. 8 was made as per the provisions of Section 5(1) of the M.M.D.R. Act, 1957.

(iii) The State Government, on 02.04.2007, issued a Notification under Rule 59 of the 1960 Rules, inviting applications for grant of mining lease in respect of 500 acres of iron ore and manganese ore at Karampada Reserved Forest Area. The applications as per the Notification were to be filed by the interested parties, within 60 days from the expiry of 30 days of publication of the Notification.

(iv) In response to the Notification, the Respondent No. 8, applied for the mining lease within the prescribed time. Some more applications were also received in the context.

(v) The petitioner's third application, purportedly in response to the State Government's Notification dated 02.04.2007, was issued under Rule 59 of the Rules, was received on 10.01.2008, which was much beyond the period, prescribed in the Notification and was therefore, liable to be rejected outrightly.

(vi) Nevertheless, considering the fact that the area applied for by the petitioner for the purposes of mining lease also overlapped with the various other applications, as such, all the applications which were received for prospecting license and mining lease were considered and the individual applicants were given opportunity of hearing under the provisions of Rule 12/26 of the Mineral Concession Rules, 1960 by a Committee duly constituted by the State Government under the chairmanship of the Secretary (Mines) and comprising of the Director (Mines), Director (Geology) and the Deputy Secretary (Mines & Geology) as its other members. The Committee conducted the hearing on 18.01.2008 and heard each of the applicants, including the petitioner on its merits vis-à-vis the prescribed parameters as laid down under the Act and the corresponding Rules and upon assessing the superior merit of the Respondent No. 8, the Committee made its recommendation in favour of the Respondent No. 8 under the provisions of Section 5(1) of the M.M.D.R. Act, 1957 for grant of

lease. The proceeding of the Committee, the details of which were recorded in Annexure-11, filed by the petitioner, was accepted by the State Government. Learned Counsel submits that in the light of the above facts, the petitioner having been found to be less meritorious, as per the parameters of Section 11(3) a, b, c, d of the Mines & Minerals (Development & Regulation) Act, 1937, and as indicated in the comparative statements of merits (Annexure-B to the counter affidavit), it would be manifest that the Rules of procedure were scrupulously adhered to in taking the decision in favour of the Respondent No. 8. Furthermore, the petitioner was given sufficient opportunity of hearing. Learned Counsel submits that the petitioner was not discriminated in any manner on the ground of pending litigation for cheating and forgery etc. On the contrary, the petitioner has been provided with sufficient opportunity of hearing by the State Government though the petitioner could not compete on merits with the Respondent No. 8.

Learned Advocate General would explain further, that the arguments of the learned Counsel for the petitioner by referring to the first and the second comparative merit statements, appears to be misconceived and misleading. Even though in the remarks column, a reference was made to the pending litigation, as a ground for non-recommendation of the petitioner's case, but it was only one of the grounds. In response to the queries made by the Central Government, the more complete information was furnished vide the second comparative chart wherein, the ground as explained, was that the recommendation in favour of the petitioner could not be made as per the provisions of Section 11(3) of the Act. The decision in this regard was taken by the Committee after co-meeting on 18.01.2008 at which the petitioner was also invited and had participated. Learned Counsel explains that even otherwise, the earlier remarks as stated in the first comparative statements, stood rectified in the later comparative statement, whereafter the State Government had sent its final recommendation strictly as per the provisions of Section 11(3) a, b, c, d of the M.M.D.R. Act, 1957.

Learned Counsel argues further, that the State Government is not bound to dispose of the applications only on the ground of "first come first serve". It is within the discretion of the State Government to select the best suited applicant and upon its satisfaction that it can exploit the minerals most efficiently.

Submitting the last leg of his argument, learned Advocate General, would argue that the instant writ application is not maintainable at all, as because the petitioner has the remedy of statutory revision as laid down by the procedures under Rule 44 of the Mineral Concessions Rules, 1960 and the petitioner ought to have availed such alternative statutory remedy instead of filing this writ application.

15. In its counter affidavit, the Respondent No. 8 has more or less adopted the same arguments as advanced by the learned Advocate General for the Respondent-State.

16. Mr. Anil Sinha, learned senior Advocate for the Respondent No. 8 submits at the outset that it needs to be noted that all the provisions leading up to the approval granted in favour of the Respondent No. 8 by the Central Government on 05.06.2008, have taken place much before the filing of the writ application and yet, in spite of being informed of the facts, the petitioner did not place the same on record and therefore, cannot be permitted to take advantage of its wrongs. Learned Counsel adds further that there are strong and compelling equities in favour of the Respondent No. 8 and this fact has not been disputed on the petitioner's behalf by its lawyer at the time of hearing of this writ application.

Learned Counsel explains further, that the first application for grant of mining lease filed by the petitioner on 20.05.2005, was premature under Rule 60 of the 1960 Rules in as much as, the Notification dated 02.04.2007 was issued much after the said application. The second application filed by the petitioner on 20.03.2008 was for grant of a prospecting license, which has no relevance to the controversy, raised in the present writ application. The petitioner's third application, as already explained by the Advocate General, was beyond the time, stipulated in the Notification dated 02.04.2007 and was liable to be rejected outrightly.

Learned Counsel explains further, that in the revised comparative statement, on all the prescribed parameters, such as, technical competence, financial competence, mining experience and investment proposal, it was declared that the Respondent No. 8 was found best suited and the petitioner was therefore not recommended as per Section 11(3) a, b, c, d of the M.M.D.R. Act, 1957.

Referring to the petitioner's claim that it being the first applicant, it ought to have been given a preferential treatment and preferential right, learned Counsel explains that the aforesaid claim of the petitioner is misconceived and not applicable in the facts of the present case.

Referring to the provisions of Section 11(2) of the M.M.D.R. Act, learned Counsel explains that the aforesaid provisions would only be attracted in case where an area was available for grant of reconnaissance permit, prospecting license or mining lease, whereas admittedly, in the present case, the area of 500 acres, being the subject matter of the Government Notification dated 02.04.2007 was earlier allowed to one M/s. Mishrilal Mines Private Ltd.

17. As observed from the rival submissions, the grievance of the petitioner in the instant writ application, is basically against the recommendation of the 500 acres of mining area, made in favour of the Respondent No. 8, and also the inaction of the State Government on the petitioner's application for grant of the mining lease/prospecting license pertaining to the balance area.

18. Dealing with the controversy on the first issue, which concerns the 500 acres of mining area, admittedly, the 500 acres of the mining area was earlier allotted to one M/s. Mishrilal Mines Pvt. Ltd. and thereafter, the said area was notified by the State Government under Rule 59 of the 1960 Rules, on 02.04.2007. The

petitioner's application filed in May, 2005 appears to have included the aforementioned 500 acres of mining, area.

Considering the fact that the 500 acres of mining area was held under mining lease, by one M/s. Mishrilal Mines Pvt. Ltd., the petitioner's application filed in May, 2005, for a larger area but also covering the aforementioned 500 acres, has to be deemed as premature as explained under the provisions of Rule 60 of the 1960 Rules and was not liable to be considered. Even if, as stated by the petitioner, the hearing on his application was conducted in May, 2005, by the concerned authorities of the Mines Department, such hearing in itself does not give any right, preferential or otherwise to the petitioner for being considered.

19. As it would appear from the admitted facts, the petitioner's subsequent applications alongwith the applications received from Respondent No. 8 and other applicants, were considered by the appropriate authority of the State Government and hearing was conducted on 18.01.2008. Though the petitioner had sought to explain that the petitioner had furnished all the requisite informations, annexing the relevant documents alongwith a covering letter, addressed to the Deputy Secretary, Mines Department of the State Government on 17.01.2008, but there is no denial in the pleadings of the petitioner to the claim of the Respondents that on the scheduled date i.e. on 18.01.2008, the petitioner had availed the opportunity of presenting itself through its representatives and had availed the opportunity of being heard. The petitioner, cannot therefore, claim that it was not given sufficient opportunity of being heard.

20. Referring now to the controversy raised by the petitioner on the basis of the first and second comparative statements, it appears that the first statement was submitted by the State Government alongwith its recommendation in favour of the Respondent No. 8, to the Central Government in February, 2008, a subsequent comparative statement, appears to have been forwarded by State Government supporting the same recommendation in favour of the Respondent No. 8, to the Central Government by its forwarding letter dated 17.04.2008. As observed, both the recommendations relate to the 500 acres of mining area in Meghahatuburu (Karampada Reserve Forests) within the district of West Singhbhum in the State of Jharkhand.

In the first comparative statement, as it appears in the remarks column, at Column 55 of the chart, a statement has been noted, referring to the litigation pending before the Jharkhand High Court for cheating and forgery etc., and on such grounds, the petitioner's case was not considered. However, the remaining columns of the comparative chart have not been left blank. Rather, it specifies the informations offered by the petitioner on each of the queries, pertaining to the respective columns.

In the second comparative chart, while maintaining the same information in respect of the various columns, concerning the petitioner, it has been stated that the petitioner's case was not recommended as per the provisions of Section

11(3) a, b, c, d of the M.M.D.R. Act, 1957.

It is apparent therefore that though in the first comparative chart, the remarks suggest that the petitioner's application was not considered on account of the pending litigation, but the petitioner's credentials, nevertheless, was considered and the informations relating to the particular items as per the parameters laid down u/s 11(3), were entered in the chart. It was on the basis of the same particulars of information which the petitioner had supplied, that the petitioner's case appears to have been considered and a revised comparative statement was furnished. The emphasis, as it would appear from the second comparative statement, is on the fact that the petitioner's case was duly considered on the basis of the information, which the petitioner had already supplied and a comparative examination was made vis-?-vis, the other applicants. This would only emphasize that in the decision-making process, the concerned authorities of the State Government did adhere to the provisions of law as contained both in the M.M.D.R. Act and the corresponding Rules. The petitioner cannot dispute the authority of the Respondents in correcting its "own mistakes, if any" and merely because of the rectification of the mistake carried out subsequently, the petitioner cannot claim that its case was not considered on merits at the time of rectifying the mistake. The informations, already submitted by the petitioner were available on record and the presence of the petitioner at the time of rectification was not required.

21. In view of the above facts and circumstances, I do not find any illegality or impropriety in the decision-making process of the Respondent-State Government, in respect of its decision to recommend the Respondent No. 8 for the grant of the mining lease pertaining to the 500 acres of the mining area within the Karampada Reserve Forests.

22. As regards the relief claimed by the petitioner, for the balance area of 1468 hectares of mining lease and 3393.93 hectares of prospecting license on the basis of its applications, filed on 20.05.2005, and 23.03.2007, it is well-settled that in the matter of grant of mining lease/license of the property of the State, the State Government has a discretion to grant or refuse a prospective license or mining lease to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place in the State. It follows therefore that merely because the applicant had applied for, the State Government was not enjoined with any duty to grant the mining lease.

23. It appears from the facts stated that the petitioner's application dated 20.05.2005, has not been disposed of by the State Government as yet. With reference to the areas other than the 500 acres, the petitioner is at liberty to pursue the same with the concerned authorities of the Respondent State by filing fresh applications, which, the Respondent-State Government may consider in its discretion appropriately in accordance with law.

24. In the light of the above discussions and finding no merit in this writ

application, the same is hereby dismissed.