
(2011) 10 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (C) . No. 6509 of 2007

Brahmi Impex Limited, Kolkata

APPELLANT

Vs

State of Jharkhand and . Ors

RESPONDENT

Date of Decision : 20-10-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2012) 1 JCR 116

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Mrs. Poonam Srivastav, J.—Heard counsel for the petitioner and counsels on behalf of the State and Union of India as well as counsel appearing on behalf of respondent No. 7

2. The grievance of the petitioner in the instant writ petition is that the respondents failed to recommend and consider his application for allotment of coal block for captive use and, therefore, a prayer for specific direction to the Ministry of Coal. Government of India for consideration of the petitioner's claim

3. The petitioner also challenges the respondent's recommendation for grant of mining lease in favour of other persons by means of an I.A. No. 1721 of 2008. This was allowed, vide order dated 1.4.2009. The petitioner made a second prayer in the aforesaid I.A. for quashing the letter dated 07.12.2007 and to implead such parties in whose favour mining lease was granted and array such persons as respondent. The said I.A. was allowed

4. Subsequent thereto, another I.A. No. 1960 of 2009 was preferred with an additional prayer to restrain the respondent from giving effect to the revised recommendation letter dated 16.01.2008 and to stop the respondent from making any allocation pursuant to the aforesaid letter

5. The controversy in the Instant writ petition involves regarding allotment of coal block by the respondent and the grievance is that the petitioner has been deprived of even a recommendation by the respondent for considering his case and thereby he has been subjected to gross discrimination

6. The petitioner is a Public Limited Company registered under the provisions of Company's Act. 1956. The petitioner proposed to setup a 1.1 MT per annum capacity steel plant under Nala Block, district-Jamtara, Jharkhand. In preparation of the setting up of the steel plant, the petitioner signed a memorandum of understanding" with the Government of Jharkhand and has provided a complete description of the project/ activity. The steel plant was to be setup within a period of five years from the handing over of the land possession and necessary availability of raw material linkage for the project. The company also desired to develop Iron Ore, Coal and Manganese mines for captive use. The expected investment for setting up of the steel plant was for more than a thousand crore rupees

7. The Government of India had invited application for allotment of identified coal blocks for captive use and the Government had intended to allocate 38 coal blocks to such companies, who were engaged in generation of power production and Iron and steel as well as production of cement. Out of these 38 coal blocks, 15 were earmarked for power generation and the remaining 23 for other specified users. According to the policy adopted by the Government, preference was to be given to the power sector and steel sector. The prospective applicants were given to understand that priority would be given to such projects which had capacity 500 MW and also to the steel sector. Thus, the consideration zone and preference was for such units which had 1.0 MT per annum capacity. Pursuant to the aforesaid policy of the Government, the petitioner made an application for 9 coal blocks, 3 at Madhya Pradesh, 4 at Jharkhand and 2 for West Bengal. Annexure-4 to the writ petition is the letter applying for grant of allotment of captive coal dated February, 2007. A request was also made to the Secretary, Department of Mines and Geology, Jharkhand for sponsoring his case to the Government of India. Ministry of Coal. A similar representation was also made to the Chief Minister of the State of Jharkhand, vide representation dated 20.03.2007 (Annexure-5 to the writ petition). The Director of Industries wrote to the Secretary of Mines and Geology, Jharkhand, vide letter dated 22.03.2007 (Annexure-6 to the writ petition) to examine the matter and do the needful. A reminder was preferred, vide letter to the Secretary. Department of Mines and Geology, Government of Jharkhand dated 10.04.2007 (Annexure-7 to the writ petition). This letter was sent by speed post and the petitioner had attached receipt of the postal department to substantiate this fact. A number of letters, vide Annexures-7, 8 and 10 are also appended to the writ petition to substantiate that the correspondence between the State Government and the petitioner continued for a considerable length of time

8. Counter-affidavit has been filed on behalf of the respondent

9. Counsel appearing on behalf of the petitioner has demonstrated from Annexure-B of the counter-affidavit, which is a comparative statement (Chart) regarding various coal blocks compiled by the State Government. The emphasis is on the last column of the chart which is the "Remarks Column" and it is emphatically pointed to show that the column is blank. Thus, the argument that this itself denotes that no decision was arrived at till that date. The name of the petitioner figures at Serial No. 22 in the chart and M/s Rungta Project-respondent No. 7 figures at Serial No. 24. It is pointed out that the chart which is a document produced by the respondents along with the counter-affidavit, amounts to an unequivocal admission. Besides, the essential requirement of having a "Memorandum of Understanding was evidently In existence with the petitioner, but a bare perusal of the chart shows that the basic and essential requirement of having a memorandum of understanding was not with respondent No. 7

10. The claim of the petitioner is that his case was not taken in consideration only because the respondents had a preconceived notion against the petitioner and prejudices were weighing heavy in their mind on account of the reason that on a previous occasion, there were certain allegations against the petitioner of making back dated application in matters of iron ore. The petitioner further stressed that counter-affidavit filed in the present writ petition as well as in the previous writ petition relating to iron ore matter is only a reproduction of the same assertion/objection and not a reply to the averments and the ground of challenge raised in the instant writ petition

11. To demonstrate this, learned counsel has tried to attract my attention regarding the mention of a recommendation letter dated 16.01.2008 which the respondent has annexed as Annexure-F, but the petitioner has completely disowned any such letter dated 16.01.2008 to have written by the petitioner's company. The stand taken by the State Government of using common yardstick is far from truth and the petitioner has been deprived of a valuable right and subjected to discrimination and amounts to an unfair and arbitrary practice. The alleged forgery and fraud by the respondent is a story that was cooked up when the petitioner had preferred W.P.(C) No. 5825 of 2007 challenging the arbitrary and high handed action of the respondent. It was only when the petitioner applied under the Right to Information Act, it came to his knowledge on 07.12.2007, which is the date of filing the writ petition that the Department of Mines and Geology has recommended three names for allotment of coal blocks, ignoring the petitioner though he is all along willing to abide by the terms and conditions of memorandum of understanding signed with the Government of Jharkhand yet, the petitioner is deprived of his rightful gain

12. Shri Dhananjay Kumar Dubey appearing on behalf of the State submitted that the petitioner has no claim for consideration of grant of the coal blocks specially on the ground of priority clause contained in the advertisement. While objecting to the arguments on behalf of the petitioner, Counsel for the

respondents has placed paragraph-3 of the advertisement which mentions, "in the steel sector "priority" shall be given to steel plant with more than million tonne per annum capacity." This does not mean that the priority clause amounts to a qualification or eligibility criteria for recommendation of the proposed manufactures and such companies which are not yet operative

13. The assertion made by the petitioner in various paragraphs of the writ petition is specifically denied in the counter-affidavit. The objection of the State is that the petitioner is merely a proposed manufacturer and so far no plant has either been setup or production has commenced. The memorandum of understanding (Annexure-1 to the writ petition) only speaks about the proposed plans and the expected capacities, therefore, it does not qualify for even applying for the coal block in terms of the agreements which specifically reads that the coal blocks for captive coal mining are to be allocated to the companies engaged in generation of power production of iron and steel and also production of cement. The petitioner is "intending to be engaged" which is clearly distinct from "already engaged" and, therefore, his claim for priority is far fetched one. Besides, counsel on behalf of the State has pointed out paragraphs 9, 10, 11, 12 of the counter-affidavit. It is specifically stated that a number of applications were received by the State Government and all of them were processed, but the petitioner was not considered to be fit for recommendation. Recommendations were already made to the Government of India taking into consideration the maximum social welfare and advantage of the State and these recommendations were only in favour of such companies found most suitable. The petitioner has challenged the recommendation by the State Government and the subsequent action of the Central Government discriminatory and has tried to emphasize factual aspects which cannot be considered by this Court

14. The State counsel has cited the decision of TVL Sundaram Granites Vs. Imperial Granities Ltd and Others, . The Apex Court has consistently held that grant of largesse is within the discretion of the Government and it is the Government itself has to form an opinion in the interest of development and also what is necessary in public interest. However, the only embargo is that the "discretion" should be open, fair, honest and completely above board

15. Counsel appearing on behalf of the petitioner has impressed upon an interim order dated 13.01.2010 passed by this Court. It appears that during the course of argument, this Court granted an indulgence to the petitioner while granting time to the State counsel of two weeks" to obtain instructions whether any consideration can be made on the petitioner's prayer for allotment of appropriate and suitable coal blocks. This order was passed only on the basis of the fact that MOU was admittedly signed between the State Government and the petitioner and on the premise that the petitioner claimed that he possessed all the eligible requisites as per the criteria laid down for giant of coal blocks

16. Shri M.S. Mittal, Sr. Advocate, has submitted that since the Court was of the view that the State Government should reconsider recommendation of the

petitioner, therefore, any action on the part of the State amounts to a glaring disobedience of the direction of the Court. However, the State Government had already made the recommendation and the Union of India had taken a decision in favour of the private respondents and the said decision of the Central Government is unchallenged

17. I have taken into consideration all the arguments on behalf of the petitioner. State counsel. Union of India as well as arguments raised on behalf of respondent No. 7. Evidently, petitioner claims to be entitled to be considered for recommendation of the allotment of coal block on a priority basis, as per the advertisement. I have examined the advertisement and also considered the argument in detail. The State counsel emphasized the three paragraphs of the advertisement, which specifically speaks of. "priority" to be given to steel plants with more than 1 MT per annum capacity. It is thus a qualification for such manufacturers who were carrying on the manufacturing work and not who had a proposal to commence manufacturing after allotment of land and thereafter, setting up the manufacturing unit. Thus, I am of the opinion that the petitioner who is merely a proposed manufacturer of a plant with 1.1 MT cannot claim priority only on the basis of a MOU which is again regarding future plans and the capacities of the manufacturing units that is the petitioner, therefore, the State exercised its discretion against the petitioner holding that it does not qualify and fall within the four corners of consideration in terms of the advertisement. The discretion cannot be said to be questionable and unfair specially at the behest of such a party who himself is not fulfilling the qualification, the objection, in my view is not maintainable. Even, in the event the State has not specifically stated this objection in clear words In the counter-affidavit and assuming that certain hesitations were working in the mind of the State Government on account of the past act of the petitioner in the case of grant of iron ore, which is a subject matter of another writ petition, it cannot be said that the State Government was biased or prejudiced and the petitioner has been subjected to any kind of discriminatory treatment. The question whether or not the petitioner indulged in any malpractices is again a disputed question of fact and cannot be termed to be a subject matter of the instant writ petition

18. Grievance of the petitioner in the present petition is only on account of the reason that his name was not recommended for allotment of coal blocks. The State Government was very explicit while giving reasons for non-consideration of the petitioner and while declining to make a recommendation in his favour and can by no means said to be an action on behalf of the State being laced with haste, arbitrariness or being unfair

19. The emphasis by counsel on behalf of the petitioner that for lack of MOU with respondent No. 7 is also something which cannot be taken to be enough to nullify the decision of the State Government or the Central Government specially when it is pointed out by the counsel on behalf of respondent No. 7 that by virtue of a tie up with the end user and the qualifying clause contained in the guidelines

was sufficient to make respondent No. 7 eligible for consideration. All the same, the matter has ultimately put to rest upon the choice of the Government. It is well settled that in the mining matter, nobody has got a vested right. The Apex Court in the case of Dharambir Singh Vs. Union of India (UOI) and Others, held as follows :

4. Thus, it would be seen that while granting a prospecting licence or mining lease, the area of discretion has been circumscribed by several factors enumerated in Section 11. In grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective license or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operation in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law...

20. I am satisfied that the act of the State do not suggest a discrimination or any impression of bias, favouritism or nepotism. It is thus a far fetched imagination on the part of the petitioner and the factual aspects raised in the writ petition is baseless assertion specially on account of the reason that the petitioner's unit is only a proposal to setup its unit in conform with the criteria and the requirements of the advertisement and the MOU in existence with the State Government. This again is only a paper work and not in existence and, therefore, the discretion of the State Government cannot be interfered in exercise of writ jurisdiction under Article 226 of the Constitution of India

21. Having considered all the aspects, arguments on behalf of the petitioner as well as of the respondents, I do not find sufficient reason to interfere in the discretion and the judgment of the State Government while making recommendations in favour of other manufacturers leaving the petitioner out of the zone of consideration for the Central Government for allotment of coal blocks. There is no good ground or merit for Interference. The writ petition is accordingly dismissed.