

(2020) 10 SC CK 0022

In the Supreme Court Of India

Case No : Miscellaneous Application No. 1260, 1344, 1345, 1384, 1385, 1387, 1625 Of 2020 In Civil Appeal No. 839, 840, 842, 843, 847, 848 Of 2020

Chowgule And Company Private Limited

APPELLANT

Vs

Goa Foundation & Ors

RESPONDENT

Date of Decision : 13-10-2020

Acts Referred:

Minerals (Other Than Atomic And Hydro Carbons Energy Minerals) Concession Rules, 2016 — Rule 12(1)(gg), 12(1)(hh)

Mines and Minerals (Development And Regulation) Act, 1957 — Section 9, 9(1), 9(2)

Citation : AIR 2020 SC 4870 : (2020) 12 Scale 434

Hon'ble Judges : S.A. Bobde, CJ;A.S. Bopanna, J;V. Ramasubramanian, J

Bench : Full Bench

Advocate : Prashant Bhushan, Yashraj Singh Deora, Sonal Mashankar, Shivangi Sud, Jayant Mohan, Sameer Parekh, Sumit Goel, Ninad Laud, Tanya Chaudhry, Devidas Pangam, Ruchira Gupta, Shishir Deshpande, Anurag Sharma

Judgement

1. While M.A.Nos.1260, 1344, 1345, 1384, 1385, 1386 and 1387 of 2020 are applications filed by the lessees of manganese/iron ore mines, seeking extension of time for the transportation of the mineral alleged to have been mined before 15.03.2018, M.A.No.1625 of 2020 is filed by the Goa Foundation, which was the writ petitioner before the High Court and the first respondent in the Civil Appeals before this Court, praying for certain directions and for a clarification of the judgment delivered by this Court in Civil Appeal No.839 of 2020 dated 30.01.2020.

2. M.A.No.1653 of 2020 is by a person who claims to be one of the lease holders but who was not a party to the Civil Appeals. As the applicant was not a party to the Civil Appeals, he has come up with an application for intervention so as to enable him to seek extension of time for transporting the mineral allegedly extracted on or before 15.03.2018.

3. We have heard learned counsel appearing for the parties.

4. Brief facts essential for the disposal of these applications are as follows:-

(i) In *Goa Foundation vs. Union of India-I* (2014) 6 SCC 590, this Court held that all iron-ore and manganese-ore leases had expired on 22.11.2007 and that any mining operation carried out beyond the said date was illegal. While holding so, this Court also pointed out that for a second renewal of the mining lease, an order is required to be passed by the State;

(ii) The observations regarding second renewal of the mining leases, gave rise to a fresh set of litigations, which culminated in the decision in *Goa Foundation vs. Sesa Sterlite Ltd.-II* (2018) 4 SCC 218. In paragraph 154 of the said decision, this Court recorded 9 conclusions, one of which in para 154.6, reads as follows:-

"...

154.6. The mining leaseholders who have been granted the second renewal in violation of the decision and directions of this Court in *Goa Foundation [Goa Foundation v. Union of India, (2014) 6 SCC 590]* are given time to manage their affairs and may continue their mining operations till 15-3-2018. However, they are directed to stop all mining operations with effect from 16-3-2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted."

(iii) The aforesaid directions led to a fresh bout of litigation, that culminated in the order by this Court on 30.01.2020 in Civil Appeal Nos.839-848 of 2020. The controversy that revolved around paragraph 154.6 *Goa Foundation-II* was as to whether the time given to the lease holders to manage their affairs up to 15.03.2018 would include the time to remove the mined mineral. This controversy was resolved by this Court in the judgment dated 30.01.2020 which we may call *Goa Foundation-III*. This Court held therein:-

(1) that the only prohibition imposed by paragraph 154.6 of *Goa Foundation-II* was for carrying out mining operations and not transportation; and

(2) that the policy decision of the State of Goa dated 21.03.2018, to permit the transportation of mineral mined prior to 15.03.2018 was valid.

(iv) After so interpreting paragraph 154.6 of *Goa Foundation-II*, this Court also took note of Rule 12(1)(gg) of The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, which also allows a period of six months for the lessees to remove the excavated material, on the expiry or sooner termination of the term of lease. Accordingly, this Court, by its order dated 30.01.2020, granted a period of 6 months to all lease holders to transport the mineral already excavated on or before 15.03.2018;

(v) The time granted by this Court to the lease holders, by the order dated 30.01.2020 expired on 30.07.2020. A lock down was clamped on 24.03.2020 due to the pandemic.

Therefore, a few lessees have come up with the aforesaid applications for

extension of time by six months with effect from 01.10.2020 for the transportation of the mineral allegedly extracted by them on or before 15.03.2018;

(vi) Contending that the benefit of extension of time should be granted also to them, a lessee who did not challenge the order of the High Court by way of a civil appeal, has come up with an application for intervention, in the disposed of Civil Appeals;

(vii) Goa Foundation which was the first respondent in the Civil Appeals has come up with an independent application seeking the following reliefs:-

(a) Clarify that the judgment/order, dated 30.1.2020, passed in Civil Appeal No.839 of 2020 only applies to or on which royalty has been paid prior to 15.03.2018;

(b) Direct the Directorate of Mines & Geology of the Government of Goa (Respondent No.4) to recover the amounts involved in transportation and sale of mineral in violation of the order dated 30.01.2020;

(c) Direct the State of Goa (Respondent No.2) to take possession of all active and passive mining leases forthwith in compliance of the aforesaid judgment;

(d) Pass such other or further order(s) as this Hon'ble Court may deem fit in the facts and circumstances of the case in favour of the Applicant.

Intervention application

5. Let us first take up the intervention application, as it is capable of being disposed without much ado. The applicants in M.A. No.1653 of 2020 did not challenge the order of the High Court before this Court. Even if he had benefited by the judgment dated 30.01.2020, by virtue of the policy of the State dated 21.03.2018, which we upheld, the applicant cannot now seek the benefit of extension. Therefore, the application for intervention is dismissed.

Applications for extension of time and application of Goa Foundation for directions

6. Applications for extension of time have been filed by the lessees primarily on two grounds namely:-

(1) the delay on the part of the statutory authorities in issuing transit permits for the transportation of the royalty paid ore; and

(2) the imposition of lockdown within two months of the judgment of this Court dated 30.01.2020.

7. But the applications for extension of time are opposed by Goa Foundation on the grounds inter alia:-

(1) that the ore on which royalty had not already been paid, can never be removed;

(2) that even as per the affidavit of the Chief Secretary of the State, the ore inside the lease-hold area on which advance royalty had already been paid, was only 73,850.26 tonnes;

(3) that in terms of Rule 12(1)(hh) of The Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, the mineral not removed within a period of six calendar months is liable to be confiscated to the Government; and

(4) any extension of time is bound to be misused by the lessees.

8. On the same grounds as aforesaid, Goa Foundation has also sought some directions in M.A.No.1625 of 2020, which we have already extracted above.

9. From the rival contentions raised in the applications for extension of time and in the petition for directions, two issues arise for consideration. They are :-

(1) whether the right to remove the mined minerals is only in respect of "the royalty paid ore" or upon payment of royalty at the time of movement and disposal; and

(2) whether the State Government ought to have invoked Rule 12 (1)(hh) of the Rules or not?

10. For finding an answer to issue no.1, we have to take a look at the statutory provisions. Section 9 of the Mines and Minerals (Development and Regulation) Act, 1957, deals with royalties in respect of mining leases. Sub-section (1) of Section 9 deals with the liability to pay royalty by the holder of a mining lease granted before the commencement of the Act. Sub-section (2) of Section 9 deals with the liability of a holder of a mining lease granted on after commencement of the Act.

11. Obviously, Section 9(2) is what may be applicable to the lessees who are now before us. It reads as follows:-

"9. Royalties in respect of mining leases.-

... ..

(2) The holder of a mining lease granted on or after the commencement of this Act shall pay royalty in respect of any mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area at the rate for the time being specified in the Second Schedule in respect of that mineral.

... .."

12. Therefore, the contention of the lessees that royalty is payable at the time of removal or consumption, cannot be rejected outright. We must keep in mind the fact that we are now dealing with the miscellaneous applications in a disposed of matter. Therefore, a substantial question as to when the royalty is payable,

cannot be decided at this stage.

13. We may also point out one more fact. The question whether royalty had already been paid or not assumed significance in the second round of litigation, in respect of the minerals excavated/mined on or before 15.03.2018 and removed to jetties. The order dated 04.04.2018 in SLP(C)Nos.8483 & 8484 of 2018, and the order dated 11.05.2018 in SLP(C)No.12449 of 2018 used the expression "royalty paid ore", in the context of the mineral removed from the mines and brought to the jetties on or before 15.03.2018. Therefore, the first objection of Goa Foundation cannot be sustained. In any case the acceptance of the said objection would tantamount to reviewing the judgment dated 30.01.2020, without an application for review.

14. Coming to the second contention, the same revolves around Rule 12(1)(hh) of The Minerals (Other than Atomic and Hydro Carbon Energy Minerals) Concession Rules, 2016, which reads as follows:-

"...

(hh) if at the end of six calendar months after the expiry or sooner termination of the lease term there shall remain in or upon the leased land, any ore or mineral, engines, machinery, plant, buildings structures, tramways, railways and other work, erections and conveniences or other property which are not required by the lessee in connection with operations in any other lands held by it under prospecting licence or mining lease, the same shall, if not removed by the lessee within one calendar month of being notified to do so by the State Government, be deemed to become the property of the State Government and may be sold or disposed of in such manner as the State Government shall deem fit without liability to pay any compensation or to account to the lessee in respect thereof.

..."

15. By virtue of the aforesaid Rule, any (i) ore or mineral; (ii) engines; (iii) plant and machinery; (iv) building structures; (v) tramways, railways and other work; (vi) erections and conveniences; and (vii) other property which are not required by the lessee in connection with operations in any other land held by it under a mining lease, shall be deemed to become the property of the Government if two conditions are satisfied, namely:-

(i) that such property remained in or upon the leased land, at the end of six calendar months after the expiry or sooner termination of the lease term; and

(ii) that such property is not removed by the lessee within one calendar month of being notified to do so by the State Government.

16. Therefore, Goa Foundation may be right in contending that the State Government should have invoked Rule 12(1)(hh) to confiscate the mineral allegedly lying at site for the past more than 2½ years. But the difficulty today is that Rule 12(1)(hh) was not pressed into service before this Court, when this

Court rendered its judgment dated 30.01.2020. As a result, the judgment dated 30.01.2020 giving six months' time to the lessees to remove the material, has attained finality. If the lessees had removed the material within the six months' period prescribed in the judgment 30.01.2020, Goa Foundation could not have come up with this contention. In fact, the application for clarification/ direction in M.A.No.1625 of 2020 was filed only in September, 2020, after the expiry of six months' period granted by this Court by the judgment dated 30.01.2020.

17. Having said that, we should also clarify that we should not be understood as saying as though the power under Rule 12(1) (hh) is no more available to the State. Even now there is no impediment for the State to invoke Rule 12(1)(hh).

18. One last contention was with regard to the quantity of mineral allegedly mined on or before 15.03.2018, but lying un- removed from lease-hold area. The learned Advocate General stated that the Government has complete details about the mineral already excavated on or before 15.03.2018 and lying at site. The lessees cannot remove more than what the records of the Government, already maintained in the course of discharge of official duties of the concerned officers, reflect. In the judgment dated 30.01.2020, this Court has proceeded in good faith that all mining activities have been stopped on 15.03.2018 and that the mineral mined until then is what is sought to be removed now. Therefore, this should be made subject to the verification with reference to records.

19. In the light of the above, the applications for extension of time filed by the lessees and the application for clarification/direction filed by Goa Foundation are disposed of to the following effect:-

(1) The lessees are granted time up to end of January, 2021 for the removal of the minerals excavated/mined on or before 15.03.2018 subject to payment of royalties and other charges;

(2) The quantity of mineral to be removed by each of the lessees shall be determined by the concerned officials with reference to the records of the Government maintained at the relevant point of time;

(3) If within the time stipulated above, the lessees could not remove the mineral, the Government shall invoke the power under Rule 12(1)(hh).