
(2017) 03 OHC CK 0022
In the Orissa High Court
Case No : W.P.(C) No. 5826 of 2015

Essel Mining & Industries Ltd.

APPELLANT

Vs

State of Odisha

RESPONDENT

Date of Decision : 02-03-2017

Acts Referred:

Constitution of India, 1950 — Article 14
Forest (Conservation) Act, 1980 — Section 2, Section 3
Mines And Minerals (Development And Regulation) Act, 1957 — Section 13

Citation : (2017) AIR(Orissa) 74 : (2017) 123 CutLT 1048 : (2017) 1 OJR 538

Hon'ble Judges : Mr. Vineet Saran and B.R. Sarangi, JJ.

Bench : Division Bench

Advocate : Mr. Gopal Jain, Sr. Counsel along with M/s. G. Subramaniam, Alok Sankar, A. Sethy and Mr. R.R. Swain, Advocates, for the Petitioners; Mr. Bibekananda Nayak Central Government Counsel, for the Opposite Party No. 6; Mr. B.P. Pradhan, Additional Government Advocate, for the Opposite Party Nos. 1 to 5

Final Decision : Allowed

Judgement

Vineet Saran, C.J.—An original mining lease for extraction of iron ore was granted on 14.09.1955 for a period of 30 years over an area of 297.444 hectares. Prior to one year of expiry of the lease period, i.e., on 25.07.1984, an application for first renewal of lease for a further period of 20 years was made, which was for a reduced compact area of 194.196 hectares. Thereafter, an application for second renewal was made by the petitioner on 02.09.2004, which was also for a further period of 20 years, over an area of 194.196 hectares. The relevant paragraph 2(viii)(b) of the application (Annexure-26 series) giving details of previous renewal granted, is extracted below:

"Original lease was granted over an area of 735 Acres or 297.444 hectares w.e.f. from 14.09.1955 for 30 years. Subsequent application for 1st renewal was submitted for 20 years over an area of 479.860 Acres or 194.196 Hectares. Renewal is not been granted yet."

2. The said application of the petitioner for second renewal was forwarded by the Deputy Director of Mines, Choda to the Collector, Keonjhar on 17.08.2006. In turn, the Collector, Keonjhar forwarded the said application to the Director of Mines, Odisha on 27.11.2007. The Director of Mines, thereafter, forward the said second renewal application to the State Government on 27.02.2009.

3. Admittedly, out of the total area of 194.196 hectares, about 21 hectares of land was non-forest land, and 173.039 hectares was forest land. The Stage-I approval, with regard to forest land of 173.039 hectares, was granted under Section 2 of the Forest (Conservation) Act, 1980 on 04.11.2010. Then, on 18.11.2011, the Central Government, by a detailed reasoned order, granted Stage-II clearance for the entire 173.039 hectares of forest land, out of total area of 194.196 hectares. Pursuant to such clearance, having been granted by the Central Government, the petitioner commenced its mining activities over the area for which clearance had been granted, but continued to mine only till 22.11.2012, when the Divisional Forest officer directed the petitioner to stop the mining activities. The said order of the Divisional Forest officer is not the matter of concern in this writ petition, as the same is under challenge in another Writ Petition (C) No. 4953 of 2014, which is pending.

4. Then, on 25.01.2014, the Special Secretary to Government of Odisha wrote to the Assistant Inspector General of Forests, Government of India, Ministry of Environment and Forest requesting the Government of India "to take steps for revocation of the forest clearance order granted to user agency for 173.039ha. vide Stage-II order dated 18.11.2011 in the total mining lease area of 194.196ha. and to advise the user agency to apply for forest area falling within the reduced approved lease area of 134.733ha. for which terms and conditions had been issued by the State Government in Steel & Mines Department during 1st RML." On the basis of such communication made by the State Government to the Ministry of Environment and Forest, Government of India, the latter has passed the impugned order dated 08.01.2015 revoking Stage-II approval granted on 18.11.2011 for diversion of forest land of 173.039 hectares of mining area granted in favour of the petitioner. Being aggrieved by the said order, this writ petition has been filed with the prayer for quashing the same and also to declare that the petitioner company is entitled to carry on mining operation over 134.733 hectares and thus allow the petitioner to carry on mining operation over the said area.

5. We have heard Mr. Gopal Jain, learned Senior Counsel appearing along with M/s Girija Subramaniam, Alok Sankar, Ansuman Sethy and P.R. Swain, learned counsel for the petitioner, as well Mr. Bibekananda Nayak, learned Central Government Counsel appearing for contesting opposite party no.6, and Mr. B.P. Pradhan, learned Addl. Government Advocate appearing for the State opposite parties. Pleadings between the parties having been exchanged, with the consent of learned counsel for the parties this writ petition is disposed of at the admission stage.

6. The submission Mr. Gopal Jain, learned Senior Counsel appearing for the petitioner primarily is that once a valuable right by way of grant of forest clearance under Section 2 of the Forest (Conservation) Act, 1980 had been granted in favour of the petitioner by order dated 18.11.2011, the same could not have been withdrawn without issuing show cause notice and giving opportunity of hearing to the petitioner. It has also been submitted that the impugned order does not contain any reason whatsoever and has been passed without application of mind and in a mechanical manner by merely following the request of the State Government. It has further been contended that by order dated 25.01.2014, on the basis of which the impugned order dated 08.01.2015 has been passed, the State Government had itself permitted the petitioner to make a fresh application for reduced area of 134.733 hectares instead of 173.039 hectares and, as such, according to learned counsel for the petitioner, revoking the approval granted for the entire area cannot be justified in law and is hit by the doctrine of proportionality. It has also been submitted by learned counsel for the petitioner that the procedure provided under Sections 2 and 3 of the Forest (Conservation) Act, 1980 had been duly followed by the Central Government prior to the grant of approval by order dated 18.11.2011, but, while passing the revocation order dated 08.01.2015, the said procedure of seeking advice of the Forest Advisory Committee provided under Section 3 of the said Act had not been complied with and, as such, the impugned order has been passed without complying with the provisions of law.

7. Per contra, Mr. B. Nayak, learned Central Government Counsel appearing for the contesting opposite party no.6 has submitted that by mere grant of approval vide order dated 18.11.2011 no right had accrued in favour of the petitioner till the mining lease was granted and, since no mining lease had been granted in favour of the petitioner, consequently no substantive right had accrued in favour of the petitioner, and as such the withdrawal or revocation of the approval granted on 18.11.2011 could be made without issuing of show cause notice or giving opportunity of hearing to the petitioner.

8. Mr. B.P. Pradhan, learned Addl. Government Advocate appearing for the State opposite parties has submitted that the petitioner has an alternative remedy of approaching the National Green Tribunal under Section 2-A of the Forest (Conservation) Act, 1980, and thus, this writ petition is liable to be dismissed on the ground of availability of alternative remedy.

9. We have heard learned counsel for the parties at length and carefully perused the records. In our view, in the facts of the present case, it cannot be said that by grant of approval vide order dated 18.11.2011 no right had accrued in favour of the petitioner. From the perusal of the order dated 22.11.2012 by the Divisional Forest officer, whereby the mining operation of the petitioner had been stopped, it is very clear that after grant of approval on 10.11.2011, the petitioner had commenced mining operation, and once the right of commencement of mining operation had accrued in favour of the petitioner after passing of the

approval order dated 18.11.2011, it cannot be said that the grant of approval was mere formality by which the petitioner had acquired no right. As such, we are of the opinion that by passing of the order of approval dated 18.11.2011, a substantive right had accrued in favour of the petitioner, and for revocation of the said order, the authority ought to have complied with the principles of natural justice.

10. In the present case, from the mere reading of the impugned order dated 08.01.2015, it is clear that the same has been passed on the basis of the communication of the State Government dated 25.01.2014, and no reason whatsoever has been assigned in the order dated 08.01.2015 for revoking the approval granted on 18.11.2011. A perusal of the communication dated 25.01.2014 would also make it clear that though the request was made by the State Government for revoking the forest clearance granted on 18.11.2011 for the use of forest land for an area of 173.039 hectares, in the said letter it was mentioned that the petitioner may be advised to apply for approval of reduced approved lease area of 134.733 hectares, meaning thereby that the objection of the State Government was for an area beyond 134.733 hectares and not for the entire area. The said order also does not assign any reason why the approval already granted was being revoked. Admittedly, no show cause notice of opportunity of hearing was afforded to the petitioner prior to passing of the impugned order. It is well settled law that once a right has accrued in favour of a party, the same can be withdrawn only after complying the principles of natural justice, which has not been done in the present case.

A bare reading of the impugned order dated 18.01.2015 would show that, while revoking the approval granted on 18.01.2015, no reason has been assigned.

11. Franz Schubert said-

"Reason is nothing but analysis of belief"

In Black's Law Dictionary, reason has been defined as a -

"faculty of the mind by which it distinguishes truth from falsehood, good from evil, and which enables the possessor to deduce inferences from facts or from propositions."

It means the faculty of rational thought rather than some abstract relationship between propositions and by this faculty, it is meant the capacity to make correct inferences from propositions, to size up facts for what they are and what they imply, and to identify the best means to some end, and, in general, to distinguish what we should believe from what we merely do believe.

12. In *Union of India v. Mohan Lal Capoor*, AIR 1974 SC 87 it has been held that reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions

reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.

Similar view has also been taken in *Uma Charan v. State of Madhya Pradesh*, AIR 1981 SC 1915.

13. Reasons being a necessary concomitant to passing an order, the appellate authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original authority.

14. Since we are of the firm opinion that in the present case, neither the principle of natural justice has been complied, nor any reason whatsoever has been assigned in the impugned order for revocation of the earlier approval granted on 18.11.2011, we hold that the said order of revocation deserves to be quashed.

15. In view of the fact that the impugned order has been passed in violation of the principles of natural justice, we are of the view that alternative remedy, even if available, would not come in the way of this Court entertaining this writ petition.

16. Accordingly, the writ petition stands allowed to the extent that the order dated 18.01.2015 passed by the Director of Environment, Forests and Climate Change, Government of India is quashed. No order to cost.