(2003) 06 OHC CK 0008

In the Orissa High Court

Case No : Original Jurisdiction Case No. 2236 of 2002

G.M.R. Technologies and Industries Limited and Another APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 17-06-2003

Acts Referred:

Citation : (2003) 06 OHC CK 0008

Hon'ble Judges : R.K. Patra, J;L. Mohapatra, J

Bench : Division Bench

Advocate : B.A. Mahanti, B. Rath, J. Rath, S.K. Jethy, K.K. Panda, P.S. Samantara, M.K. Singhdeo, S.B. Mohanty, P.R. Sahoo and S. Patnaik, for the Appellant; Advocate General and D. Das, Additional Government Advocate for opp. parties 1 and 3, A. Deo and Sovesh Roy, for the Respondent

Final Decision : Allowed

Judgement

R.K. Patra, J.—The point involved in this writ petition is plain and simple, but an account of past events and developments making his story cannot be lost sight of. The sum and substance of the relief claimed in this writ petition is that the State Government (opposite party No. 1) should be directed to accept the recommendations of the Chahar Committee in its report dated 11.7.2001 at Annexure-2 for grant of mining lease (Chrome Ore) for an area of 43.579 hectares in favour of the Petitioners. Above recommendations adverse to the Petitioners and in favour of Orissa Mining Corporation Limited (opposite party No. 3), the Petitioners have sought for quashing of the relevant orders.

2. At the outset, it may be noted that this writ petition was earlier disposed of as infructious by this Court by order dated 2.8.2002. It was so ordered because the State Government''s recommendation to reserve the area in question in favour of the Orissa Mining Corporation Limited was turned down by the Government of India in the Ministry of Coal and Mines (Department of Mines). Later, an application was filed on behalf of the Petitioners (vide Misc. Case No. 7683 of 2002) contending that the prayer made in the writ petition (vide paragraphs-II)

(a) and (b) still survives for consideration and, as such, the entire writ petition could not have been dismissed as infructuous. Upon hearing counsel for parties, this Court found that there was substance in the above contention of the Petitioners and by order dated 25.11.2002, restored the entire writ petition for further hearing.

3. Petitioner No. 1 is a public limited company which is situated in the district of Srikakulam in the State of Andhra Pradesh. Petitioner No. 2 is one of the Directors of Petitioner No. 1. For the sake of convenience, they are hereinafter referred to as the Petitioner.

Case of the Petitioner is that it is engaged inter alia in manufacture of high carbon ferro-chrome and is one of the export-oriented industries in the field. It needs chrome ore as the basic raw material for manufacture of high carbon ferro-chrome. It does not possess any mining lease of chrome ore. Its present production capacity is 25,000 M. Ts. whereas the total consumption of chrome ore is 62,500 A. Ts. On 5.9.1995, the Petitioner applied to the State Government of Orissa for of mining lease over an area of 259.00 hectares in the Sukinda Valley in the district of Jajpur.

4. In order to appreciate the contentions of parties it would be relevant to look back at the history leading to the recommendation of grant of mining lease in favour of the Petitioner.

Sukinda Valley bordering the districts of Jajpur and Dhenkanal in the State of Orissa is known for its rich chromite resources in India. Almost 80% of chromite production of the country is from this area. The grants/refusals of chromite mining leases have been the subject matter of continuous litigations between the State of Orissa on one hand and different leases on the other. In the year 1991, the litigation took a different turn when TISCO applied for renewal of its mining lease over an area of 1261.476 hectares to the State Government. Renewal was however granted to it over an area of 406.00 hectares only. From the balance area of 855.476 hectares, 419.181 hectares were leased out to four other applicants. As TISCO was not given lease in respect of the entire area applied for, it filled writ petitions bearing OJC Nos. 7729 of 1993 and 4701 of 1994 in this Court. The other applicants also filed separate writ petitions challenging the grant of lease in favour of TISCO. A Bench of this Court by a common judgment dated 4.4.1995, to which one of us (R.K. Patra, J.) was a party, disposed of the writ petitions (vide 82 (1996) C.L.T. 797) by directing the Central Government to reconsider afresh all the applications after giving an opportunity of hearing to them. Against the said judgment, the TISCO and four other applicants filed Civil ''Appeal No. 9454 of 1996 and other connected appeals. In the meantime, pursuant to the judgment and order dated 4.4.1995 the Ministry of Mines, Government of India constituted an expert Committee under the Chairmanship of S.D. Sharma, Joint Secretary, Ministry of Mines, for re-hearing and reconsidering the issues with regard to renewal of mining leases. The said Sharma Committee after hearing the parties concerned submitted its report to Central Government on 16.8.1995 which assessed the requirement of chrome ore of TISCO and four other applicants. The Central Government after due consideration of the report accepted the same in its order dated 17.8.1995. The Central Government accordingly in the light of the report of the Sharma Committee in its order dated 17.8.1995 requested the State Government of Orissa to take necessary steps to issue orders granting subsequent renewal of mining lease for chrome ore in favour of TISCO for reduced are of 406 hectares for a period of twenty years. The Central Government also directed the State Government to take further steps for grant of mining lease to other four applicants (other than TISCO) as per law in respect of balance area of 855.476 hectares to be released by TISCO on the basis of proportionate requirement of the chrome ore for those applicants as recommended by the Sharma Committee in fair and just manner. It is relevant to note here that the Supreme Court by judgment dated 23.7.1996 dismissed the aforementioned appeals filled against the decision dated 4.4.1995 of this Court (vide 82 (1996) C.L.T. 875(S.C.)). M/s. FACOR, one of the four applicants being dissatisfied with the above order dated 17.8.1995 made a representation to the State Government alleging that its own requirement of chrome ore was not properly assessed by the Sharma Committee. The State Government recommended to the Central Government for grant of lease to four applicants including M/s. FACOR over 50% of the retrieved area of 855.476 hectares on the basis of the requirements assessed by the Sharma Committee. The remaining 50% of the balance area of 855.476 hectares was retained by the State Government for consideration of claims of other claimants for such mining leases along with the aforesaid four applicants. Being aggrieved by the aforesaid order of the State Government, M/s. FACOR filed a writ petition (OJC No. 12032 of 1997) in this Court. The said writ petition was dismissed as not maintainable on the ground of res judicata by the judgment dated 31.8.1998. Against the said judgment of this Court, M/s. FACOR filed Civil Appeal No. 1626 of 1999 in the Supreme Court. The said appeal was dismissed by judgment dated 22.3.1999. The Supreme Court observed as follows:

As a consequence the appeal filed by M/s. FACOR fails and will stand dismissed. However, it is clarified that the State of Orissa will carry out the remaining exercise pursuant to its order dt. 29.6.1997 at the earliest and will see to it that Sri J.P. Dash Committee constituted by it also completes its exercise in connection with remaining area of 436.295 hects. out of 1261.476 hects. after in the first instance granting the leases as per its order dt. 29.6.1997 in the reserved area of 419.18 hects. out of 1261.476 hects. for mining or chromite in favour of the four parties i.e. the Appellant and other Respondents in Sukinda Valley of Jajpur district.

It is obvious that the grant of mining lease to the extent of 50% to M/s. FACOR and other three Respondents as per the order of State Government dt. 29.6.1997 will remain binding between parties. However, any additional leases granted by the State of Orissa pursuant to the report of Sri J.P. Dash Committee or even otherwise to M/s. FACOR and other Respondents to meet wholly or partially there remaining 50% of assessed needs as per the Central Government''s order dt. 17.8.1995 will be subject to the revisions, if any, by the other aggrieved parties before the Central Government in accordance with law.

It may be noted that the Dash Committee was constituted by the State Government vide notification dated 21.9.1999 to consider all the applications made for P.L./M.L. each of the applicant for captive use after giving reasonable opportunity of hearing.

Following the transfer/retirement of Chairman and some of the members of the Committee, the State Government reconstituted the committee (hereinafter referred to as ''the Chahar Committee''). The State Government filed I.A. in Civil Appeal No. 1626 of 1999 (supra) indicating the reconstitution of the committee for distribution of 351.414 hectares of the chromite mines and allotment of 84.881 hectares of chromite mines to M/s. Nava Bharat Ferro-alloys Ltd. The Supreme Court confirmed the reconstitution of the Committee made by the State Government by observing in its order dated 10.8.2000 as follows:

Having heard all of them all that we can say is that our observations in paragraph 50 of the judgment in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, regarding the availability of 436.295 hectares out of 1261.476 hectares will not in any way be construed to be preempting any decision of the High Court of Orissa in the pending writ petition i.e. O.J.C. No. 1830 of 1999. Our observation as above, are without prejudice to the rights and contention of the parties before the High Court in the aforesaid pending writ petition.

Without going into the further details, we may shorten the narration of history by stating that in the meantime the Petitioner filed writ petition bearing OJC No. 6773 of 1995 in this Court questioning the validity of renewal of mining lease for chrome ore granted in favour of one M/s. Misrilal Mines Private Limited. A Bench of this Court by order dated 7.4.2000 disposed of this said writ petition by passing the following order:

This O.J.C. relates to the renewal of mining lease for Chrome Ores granted in favour of the opp. party No. 3. The State of Orissa has filed a counter. In paragraph 6 of the said counter it has been stated:

Apex Court had settled the position. Hence, the grievances of the Petitioner no longer subsist. As per the direction of the Apex Court, the Petitioner if interested can pursue his claim by placing his requirement before the Committee constituted by State Government as per the direction of the Hon''ble Supreme Court.

2. In view of the said undisputed position Mr. Rath, learned Advocate for the Petitioner states that the Petitioner may be given liberty to file appropriate representation for consideration by the J.P. Das Committee constituted by the State Government for the purpose. Accordingly, we dispose of this writ petition by giving the Petitioner liberty submit its representation within three weeks from

to-day and if such representation is submitted the aforesaid Committee constituted by the State Government will consider the same in accordance with the direction of the Supreme Court in the decision reported in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, and take appropriate decision.

The Chahar Committee had several sittings to consider the grant of mining leases to all the applicants. As is evident from its report (vide para 3.2), the Chahar Committee decided to consider the applications on the following consideration:

(1) While considering the pending applications priority will be given by the Committee in the following order:

(a) .. .. ..

(b) Applicants having industries for end-use of the mineral outside the State.

(c) .. .. ..

The Committee in its report (vide Chapter-6 para 6.1) considered the case of the Petitioner and observed as follows:

6.1. Assessment of captive requirement of chrome ore:

The State Government have granted/decided for grant of mining leases in favour of four parties namely M/s. IMFA/ICCL. M/s. Jindal Strips Ltd., M/s. Ispat Alloys Ltd. and M/s. FACOR Ltd. on the basis of 50% of the requirement as assessed by Sharma Committee, and affirmed by Hon''ble Supreme Court of India in their judgment dated 22.3.1999 in Civil Appeal No. 1626 of 1999. The State Government have also recommended for grant of mining lease in the area retrieved from TISCO lease in favour of M/s. Nava Bharat Ferro Alloys Ltd. satisfying 50% of captive requirement assessed in same manner as followed in the case of above mentioned four parties. Among all the applicants other than these five parties, only ''GMR'' Technologies and Industries Ltd. having captive chrome ore requirement of 62.500 MT per annum fulfils the criteria for consideration of a mining lease. The Committee assessed the chrome ore requirement of M/s. GMR Technologies and Industries Ltd. and others in the following manner in conformity with the procedure followed by Sharma Committee.

6.1.1. GMR Technologies and Industries Ltd.

(i) Annual requirement of chrome ore at the rate of 100% capacity utilisation. 62,500 MT

(ii) Annual requirement of chrome ore at 90% of installed capacity 56,250 MT

(iii) Requirement of chrome ore for 20 years with annual growth rate of 4% 1.675 MillionTones.

(iv) Requirement of chrome ore for next 30 years with steady production after 20th year. 3.555 Million Tonnes.

(v) Total requirement of chrome ore for captive consumption for 50 years. 5.230 Million Tonnes.

(vi) Available reserves of chrome ore with the applicant company Nil

(vii) Net requirement of chrome ore for 50 years. 5.230 Millie Tonnes.

In para 6.2 the Committee further observed as follows:

6.2. Assessment of Area for Consideration of Grant of K.L. Proportionate to Chrome Ore Requirement.

The Committee took a decision that the available area of 78.629 hects. in the Eastern Block, being adjacent to the area of 84.881 hects. already recommended for grant of M.L. in favour of M/s. Nava Bharat Ferro-Alloys Ltd., the additional area to be considered in favour of the company shall be continguous to the recommended area in view of scientific mining. Further it was of the opinion that the balance area in the Eastern Block shall be retained with the State Government for future exploitation. The Committee decided to first consider the case of M/s. GMR Technologies and Industries Ltd. and assess and recommend an are at 50% requirement in favour of the company like above mentioned five parties in the available area of 233.118 hects in the Western Block and thereafter shall consider additional area in favour of M/s. IMFA/ICCL, M/s. Jindal Strips Ltd., M/s. Nava Bharat Ferro-Alloys Ltd. and M/s. FACOR proportionate to their requirement in an equitable manner.

6.2.1. Assessment of area in favour of M/s. GMR Technologies and Industries at 50% Requirement:

Available area in Western Block 2333.118 hect

Reserves available in the Block 18.570 Million Tonnes

Proportionate area per million tonne of reserve 12.5535 hects

Requirement of chrome ore of the company for 50 years at 50% requirement. 2.615 Million Tonnes

Proportionate area for 2.615 Million Tonnes 32.826 hects

After exclusion of this area for consideration for additional leases in favour of five parties comes to 200.292 hects. containing 15.955 million tonnes of chrome ore reserves. The distribution of the available reserves and allocation of the areas has been made proportionately on the basis of requirements reflected in Sharma Committee Report.

Name of the Company. Additional Reserves Recommended for Allotment in Western Block (Million Tonnes) Additional Area Recommended (Hects.)

IMFA/ICCL 7.018 88.098

FACOR 1.397 17.537

Ispat Alloys Ltd. 3.518 44.162

Jindal Strips Ltd. 3.166 39.742

GMR Technologies

and Industries Ltd. 0.856 10.753

In its recommendation contained in Chapter-7 of the report, the Committee (vide para 7.3) noted as follows:

The State Government may consider grant of an area of 43.579 hects. (i.e. 32.826 hects. Plus 10.753 hects.) in favour of M/s. GMR Technologies and Industries Ltd., in the Eastern Block. The area contains the reserves proportionate to its requirement as considered for other five parties.

It is relevant to state here that the Orissa Mining Corporation Limited (opp.party No. 3) purforth its case before the Committee that it being a public sector undertaking should be granted the entire balance area of 436 hectares. The Committee duly considered its case and in paragraph 5.2.2.1 of the report noted as follows:

5.2.2.1. Orissa Mining Corporation Ltd. (OMC Ltd.):

The Corporation Ltd. is holding 11-mining leases for chromite in the State covering a total area of 5810.768 hects. with a total reserve of 28.223 million tonnes out of which 5- leases have been kept non-working. The Corporation has put up a chrome ore beneficiation plant in its Sought-Kaliapani leasehold and it requires 1,50,000 MT of feed grade chrome ore containing 33% Cr 203 annually. The Corporation does not have any industry for end-use of the mineral and disposes the entire chrome ore produced for the domestic and export market in form of one and concentrates. The Corporation also does not satisfy the criteria fixed by the Committee for recommending grant of further lease for chromite.

In the concluding part of the report, which deals with recommendations (vide Chapter-7) the Committee in para 7.5 observed with regard to Orissa Mining Corporation Ltd. as follows:

7.5. The balance mineralised area of 34.169 hects. containing 3.855 million tonnes of chrome ore as available in Eastern Block adjacent to South-Kaliapani leasehold of M/s. IMC Ltd., may be retained by the State Government for future exploitation.

5. It is contended by Shri Mohanty, learned Counsel for the Petitioner that pursuant to and in obedience to the direction of the Supreme Court, the Chahar Committee came to be appointed by the State Government to consider the applications of different parties for grant of mining leases and the said Committee duly considered the case of the Petitioner vis-a-vis the Orissa Mining Corporation Limited (opposite party No. 3) and for valid and good reasons has recommended grant of mining lease in favour of the Petitioner for an area of

43.579 hectares and the State Government, therefore, should have accepted the recommendation. According to Shri Mohanty, there is no question of reservation of any area by the State Government in public interest. So far as the Petitioner is concerned, the entire exercise by the Chahar Committee was undertaken because of the direction of the Supreme Court as well as order of this Court dated 7.4.2000 in the writ petition bearing O.J.C. No. 6773 of 1995.

On due consideration of the submissions of the counsel for parties, we find sufficient force in the submission of Shri Mohanty.

6. From the narration of the previous history, we have no hesitation to hold that the present exercise of consideration of applications by Chahar Committee is in continuation of the exercise held by the erstwhile Sharma Committee and Dash Committee. The appointments of Committee mentioned above had the approval of the Supreme Court. Therefore, at this stage the State Government cannot thwart the recommendation of the Chahar Committee by taking shelter behind the shadow of ''public interest''. The plea of reservation of the area for exploitation by State itself or through any of its undertakings in public interest is not at all available. As noted above, the Chahar Committee considered the case of the Orissa Mining Corporation Limited (opposite party No. 3) and found that it does not satisfy the criteria fixed by it for recommendating grant of further lease for chromite. It also found that the Orissa Mining Corporation Limited is holding 11 mining lease out of which five have been kept non-working.

For the reasons aforesaid, we hereby reject the plea of the State Government and direct it (State Government) to accept the recommendation of the Chahar Committee and grant mining leases to the Petitioner in accordance with law for an area of 43.579 hectares within a period of two months of receipt of this order.

The writ petition is accordingly allowed. No costs.

L. Mohapatra, J.

7. I agree.

