(2018) 01 JH CK 0090

In the Jharkhand High Court

Case No : Writ Petition (C) No. 7286 Of 2017

Hindalco Industries Limited APPELLANT

Vs

State Of Jharkhand and Ors RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 21(5), 30
Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 — Rule 12(10), 35

Citation : (2018) 01 JH CK 0090

Hon'ble Judges : S. Chandrashekhar, J

Bench : Division Bench

Advocate : Abhishek Manu Singhvi, Ashish Prasad, Amit Bhandari, Indrajit Sinha, Avishkar Singhvi, Mukta Dutta, V.K. Dubey, Ajit Kumar, Himanshu Kr. Mehta, Atanu Banerjee, Sharad Kaushal, Sameer Sahay

Judgement

S. Chandrashekhar, J.

1. Notice.

2. Mr. Sharad Kaushal, the learned State counsel appears and waives service of notice.

3. Mr. H.K. Mehta, the learned Additional Advocate-General tenders a copy of a chart which would disclose payment made by some of the lessees, in purported compliance of demand letters issued by the competent authority of the Government of Jharkhand.

4. Taken on record.

5. This writ petition has been listed before this Bench by the order of the Hon'ble the Acting Chief Justice, after Hon'ble Mr. Justice Rajesh Shankar declined to hear the matter when it was listed before him on 15.12.2017. It appears that, thereafter the matter was mentioned on 19.12.2017 before the Bench notified for mentioning the matters of Court No. 14, when the Hon'ble Judge directed the

matter to be posted before the appropriate Bench. This appears from the mentioning slip attached with the case records.

6. The matter was heard on 03.01.2018, when at the instance of the learned Additional Advocate-General it was adjourned for today, to be listed at 3.30 p.m. Some of the grounds raised by the petitioner-M/s. Hindalco Industries Limited for challenging the impugned demand contained in letter dated 05.10.2017 have been recorded in order dated 03.01.2018. It needs to be recorded here that on 03.01.2018 Dr. Abhishek Manu Singhvi, the learned Senior counsel for the petitioner had concluded his arguments on grant of interim relief and today he has supplemented and reiterated his arguments.

7. In the writ petition there is a prayer in the nature of interim relief which reads as under:

"For further issuance of an appropriate writ/order/direction restraining the respondents from giving effect to or acting pursuant to the demand notice as contained in letter No. 1112/M dated 05.10.2017 (Annexure-4) issued by the District Mining Office, Lohardaga"

8. Primarily, the contention raised on behalf of the petitioner challenging the legality of the impugned demand is centered around jurisdiction of the State of Jharkhand, in particular, on the basis of the decision in "Common Cause v. Union of India and Ors." reported in (2017) 9 SCC 499, to raise a demand seeking compensation for the alleged illegal mining by the petitioner-company. It is contended that without adhering to the rules of natural justice, in the garb of the decision in Common Cause case the impugned demand cannot be raised. There was no determination of the liability of the petitioner-company, and the deadline fixed in the Common Cause case for realizing compensation by 31.12.2017, which was the deadline fixed for realizing compensation from the mining lease-holders in the State of Odisha, cannot be imported by the State of Jharkhand to direct the petitioner-lessee in the State to make payment on or before 31.12.2017. To fortify his contention that the direction issued by the Supreme Court in Common Cause case is in relation to the mining lessees in the State of Odisha, Dr. Abhishek Manu Singhvi, the learned Senior counsel for the petitioner submits that this intent would appear from the judgment itself wherein one finds that the expression "State of Odisha" has occurred innumerable times and, in fact, after holding that under section 21(5) of the M.M.D.R. Act, 1957 the State of Odisha can realize compensation from the violator mining lessees, the judgment in Common Cause case proceeds to "Calculation on Merits". The petitioner-company or the State of Jharkhand was not a party in the said proceeding before the Supreme Court, and it completely denies liability to pay any compensation.

9. Referring to a report from C.E.C. dated 04.12.2017 and order dated 13.12.2017 passed in W.P.(C) No. 114 of 2014, it is contended that the Bauxite mines are specifically excluded from the judgment rendered in Common Cause

case. The learned Senior counsel for the petitioner has laid reliance on the paragraph in order dated 13.12.2017 by the Supreme Court wherein the report dated 04.12.2017 submitted by Central Empowered Committee has been accepted by the Court. On that basis it is contended that the judgment in Common Cause case, if at all applicable beyond the mining lessees situated in the State of Odisha, it would cover only the mining lessees for Iron ore and Manganese ore and not the Bauxite mines. Giving a sequence of the letters issued by the State Government and response of the petitioner-company, it is contended that the impugned demand has been issued in 'hot-haste' and, infact, letter dated 15.12.2017 issued by the Ministry of Mines has been misconstrued by the State Government, as a direction to raise demand on the basis of the decision in Common Cause case. Last but not the least, referring to the decision in "Kranti Associates Private Limited and Anr. v. Masood Ahmed Khan and Ors." reported in (2010) 9 SCC 496, it is contended that the impugned demand vide letter dated 05.10.2017, which reflects non-application of mind and does not record any reason for issuing the impugned demand, is liable to be quashed on the ground of breach of the rules of natural justice. In the above background, a prayer for interim order is pressed.

10. Seriously opposing the prayer for grant of interim relief, Mr. Ajit Kumar, the learned Advocate-General takes a preliminary objection on the ground that in absence of proper pleadings and specific challenge thrown by the petitioner to the demand raised through the impugned letter dated 05.10.2017, the petitioner-company does not deserve any protection from this Court. It is a violator of law and it has not come with clean hands to this Court, inasmuch as, in March, 2016 on its request details of production by it was supplied to it still, the petitioner-company did not furnish the details as sought by the respondent-authority through letter dated 04.09.2017. The learned Advocate-General has submitted that the demand raised through letter dated 05.10.2017 is not vague rather, it is specific; it is not tentative and if at all it is tentative, it is tentative for the State Government and not for the petitioner-company. Referring to various paragraphs in Common Cause case, it is contended that in view of the declaration of law by the Supreme Court and section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1957, State Government has jurisdiction to realize compensation for illegal mining, for which the State Government has issued letter dated 05.10.2017 to the petitioner-company. It is also contended that once the petitioner-company has submitted its undertaking dated 08.03.2017 to pay all dues raised under section 21(5) of M.M.D.R. Act, it cannot be permitted to resile from its undertaking and dispute the demand raised through letter dated 05.10.2017. Referring to Rule 12(10) of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 which provides for termination of lease, it is contended that at this stage the law does not contemplate hearing to the lessee, and in any event the lessee has an alternative remedy under section 30 of M.M.D.R. Act, 1957 read with Rule 35 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016.

11. At the outset, it needs to be recorded that at this stage when the Court has to take decision on the prayer for interim relief, without going deep into the legal issues raised in the present proceeding; whether the judgment in Common Cause case covers the petitioner-company which has been granted mining lease within the State of Jharkhand and whether the petitioner-company can be held liable for illegal mining and thus liable to compensate the State Government which are the issues on which a final decision cannot be rendered at this stage and these issues can be finally decided at the time of final hearing only, it needs to be indicated that at this stage the Court is required to see whether the petitioner-company has been able to make out a prima-facie case for grant of interim-relief or not.

12. A bare reading of the impugned demand contained in letter dated 05.10.2017 would disclose that the petitioner-company has been directed to pay a sum of Rs. 1,03,00,80,703/-, which appears to have been calculated by the respondent-authority on the basis of the decision in Common Cause case. Reason is the soul of a decision. Except referring to the Common Cause case, no reason for raising the impugned demand has been disclosed in letter dated 05.10.2017. On account of the impugned demand civil and serious consequences would ensue, cannot be denied and, infact, from 01.01.2018 when the respondent-authority has stopped issuing Transit Challans to the petitioner-company, it has suffered consequences on account of the demand raised through letter dated 05.10.2017, has been indicated during the course of hearing.

13. The chronology of events would disclose that a letter was issued to the petitioner on 04.09.2017 directing it to furnish the details in the attached format, in which the date of approval of mining plan, quantity approved under the mining plan, date of approval of environmental clearance (EC), quantity approved under EC and NOC/CTO from JSPCB were required to be supplied by the petitioner-company. This follows the demand through letter dated 05.10.2017. On 10.10.2017, the petitioner-company sought time for furnishing details which was responded by the respondent-authority vide letter dated 25.10.2017. The petitioner again submitted an application on 04.11.2017 and thereafter three more letters were exchanged by the parties. Once letter dated 04.09.2017 is compared with letter dated 25.10.2017, prima-facie, it would disclose non-application of mind by the respondent-authority. The relevant portion of letter dated 04.09.2017 is extracted herein below:

"अन्यथा ये मानते हुए की आपके द्वारा आंकड़ा उपलब्ध नहीं कराया जा रहा है।

एकतरफ़ा मांग निर्गत कर दिया जाएगा, जो आपको मान्य होगा।"

14. The relevant portion of letter dated 25.10.2017 reads as under :

"आपके द्वारा आंकड़ा उपलब्ध नहीं कराने पर ये मानते हुए की आपके पास 27.01.1994 से पूर्व राज्य प्रदुषण नियंत्रण पार्षद से अनापत्ति प्राप्त नहीं था, पुरे उत्पादन को अवैध मानते हुए गणना कर मांग पत्र निर्गत कर दिया जाएगा जो आपको मान्य होगा

15. It is a matter of record that before letter dated 25.10.2017 was issued, the impugned demand was already issued on 05.10.2017 still, the letter dated 25.10.2017 recites that a demand on entire production would be issued to you. Obviously, the respondent-authority was unaware of the impugned demand issued vide letter dated 05.10.2017. The chart on calculation of demand raised appended to this letter contains interesting gaps. The reason why I am recording these facts, is only to indicate that prima-facie it appears that there was no proper application of mind by the respondent-authority while issuing demand to the petitioner-company. Not only that, letter dated 15.12.2017 which reads; "In this regard you are requested to furnish the details relating to demands raised by the State Government against the mining lease-holders in the State in pursuance of the judgment dated 02.08.2017 as per the format enclosed herewith", prima-facie, does not disclose a 'direction' to the State Government to raise demand on the basis of Common Cause case.

16. A judgment cannot be read as a statute. Lord Morris in "British Rlys. Board v. Herrington" reported in (1972) 1 All ER 749 observed; "There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case". Insofar as, the decision in Common Cause case is concerned, it needs to be recorded that the said judgment is culmination of various reports and it was rendered in I.A. Nos. 2746-48 of 2009 and W.P.(C) No. 114 of 2014, whereunder prayers for stopping illegal mining and taking action against the violators in the State of Odisha were made. The proceeding before the Supreme Court in the said case was spread over a period of about 8 years. There was report by C.E.C. and the Hon'ble Shah Commission. The judgment in Common Cause case deliberates in-extenso the reports of C.E.C. and Shah Commission, and it has a reference to the show-cause notices issued by the State Government to the lease-holders (para 225), and finally there is a reference of an Expert Committee for making certain recommendations for all the States. Paragraph No. 229 of the reported judgment reads as under:

"We would also like to hear the learned counsel for all the parties with regard to setting up of an Expert Committee presided over by a retired Judge of this Court to identify the lapses that have occurred over the years that have enabled rampant illegal and unlawful mining in Odisha and to recommend preventive measures not only to State of Odisha but generally to all other States where mining activities are proceeding on a large scale. For the present, we pass no direction with regard to any investigation by CBI."

17. There is a specific direction issued by the Supreme Court under para 227 of the reported judgment to 'compute' and realize compensation from the various mining lease-holders in the State of Odisha who were before the Supreme Court, on or before 31.12.2017. Now, how this deadline of 31.12.2017, in the above back-drop of the above facts, can be fixed by the Jharkhand Government

directing the petitioner-company to pay by the said date, is not understandable.

18. In the above facts, I am of the opinion that the petitioner-company has been able to make out a strong prima-facie case [refer, "Deoraj v. State of Maharashtra & Ors." reported in (2004) 4 SCC 697].

19. On the question of absence of proper pleading, which is refuted by Dr. Abhishek Manu Singhvi, the learned Senior counsel by referring to paragraph No. 41 in the writ petition and paragraph No. 7 in the supplementary-affidavit, suffice would be to record that once the jurisdiction and the legality of the action taken by the respondent-State is challenged, merely on such a technical plea a party cannot be denied interim protection. Some payment by the other mining lease-holders and undertaking dated 08.03.2017 by the petitioner-company, would not amount to acquiescence and waiver of its rights by the petitioner-company [refer, "Associated Hotels of India Ltd. v. S.B. Sardar Ranjit Singh" reported in AIR 1968 SC 933], and apparently the undertaking dated 08.03.2017 was not in the context of the Common Cause judgment of 2017. Insofar as the plea raised on behalf of the respondent-State that the petitioner has not challenged the correctness of the demand raised, at this stage I intend to record that in view of the grounds on which the challenge has been thrown by the petitioner-company to the impugned demand, this objection becomes irrelevant. Whether the quantum of demand is correct or not is not relevant for testing the legality of the impugned demand, on the grounds urged on behalf of the petitioner-company. On the plea of alternative remedy to the petitioner under section 30 of M.M.D.R. Act, 1957 read with Rule 35 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016, suffice would be to indicate that this again is an issue which can be decided at the time of final hearing, and the petitioner-company which has challenged the very foundation of the impugned demand cannot be denied interim protection on such objection.

20. On whether the petitioner has been able to demonstrate that the balance of convenience is in its favour or not, and whether it would suffer irreparable loss or not, Dr. Abhishek Manu Singhvi, the learned Senior counsel for the petitioner has submitted that if the petitioner is not protected by an interim order, it would have an irreversible effect, inasmuch as, it would seriously impede the production at its plants at Renukut and Muri, which would ultimately be shut down. I find substance in this submission by the learned Senior counsel for the petitioner. In the cases of this nature the test applied for issuing interim protection is, what would be the consequence if a party is protected at the initial stage; whether the loss suffered by the other party, if any, can be compensated at a later stage or not.

21. It is not in dispute that the petitioner-company is one of the largest producers of Aluminium and the mining lease granted to the petitioner-company is only for captive consumption at Muri Refinery located in the State of Jharkhand and at Renukut. It is not the allegation against the petitioner-company that today it has indulged into illegal mining. The petitioner-company has asserted

that it has been paying royalty, taxes, etc. and filing statutory returns with the authorities, and it has not sold the ore in the market.

22. In view of the above discussions, I am of the opinion that the petitioner-company deserves interim protection at this stage.

23. No coercive action pursuant to the impugned demand dated 05.10.2017 shall be taken against the petitioner-company. The District Mining Office, Lohardaga shall issue Transit Challans, forthwith. The Secretary, Department of Industry, Mines and Geology, Government of Jharkhand, Ranchi-respondent No. 2 shall ensure compliance of this direction and file its compliance report by Monday, that is, 08.01.2018.

24. Let a copy of the order be given to the conducting counsels for both the parties. Registry shall transmit a copy of the order to the respondent No. 2.

25. Let a counter-affidavit be filed within two weeks. Rejoinder, if any, may be filed one week thereafter.

26. Post the matter on 07.02.2018 under the heading "For Final Disposal".