

(2005) 05 JH CK 0033
In the Jharkhand High Court
Case No : L.P.A. No. 560 of 2004

Hindalco Industries Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-05-2005

Acts Referred:

Citation : (2005) 2 BLJR 1505 : (2005) 3 JCR 263

Hon'ble Judges : Altamas Kabir, C.J;R.K. Merathia, J

Bench : Division Bench

Advocate : S. Pal and Ananda Sen, for the Appellant; A.K. Sinha, AG, I. Sen Choudhuri, S.C. III, P.K. Sinha, J.C. to S.C. III and Saurav Arun, J.C. to AG, for the Respondent

Judgement

1. This appeal is directed against the judgment and order dated 21st June, 2004 passed by the learned single Judge in Writ Petition (C) No. 1032 of 2004 by which the writ petition filed by the appellant-Company M/s. Hindalco Industries Limited has been dismissed.

2. As will appear from the judgment under appeal, the writ petitioner-Company has challenged two orders contained in Letter No. 1494 dated 21st November, 2003 and Letter dated 17th January, 2004, whereby the Divisional Forest Officer, South Forest Division, Daltonganj, Medninagar, Palamau directed the writ petitioner-Company not to carry on mining operations without prior approval of the Central Government under the Forest Conservation Act, 1980 and also not to use and undertake the repair work of the road known as "Hami-Orsa Road".

3. The case as made out in the writ petition is that the appellant Company had applied for two mining leases for extraction of Bauxite in the districts of Latehar, Palamau, Lohardaga and Gumla within the State of Jharkhand. While the first lease was executed on 29th January, 1985 in respect of 411.85 acres of land for a period of 20 years, the other lease was granted on 17th July, 1986 in respect of 764 acres of land in Village Orsa in the district of Palamau also for a period of 20 years. The area was surveyed and demarcated and the possession of the land

was handed over to the petitioner-Company. It is also the case of the writ petitioner that there is only one road, namely, Hami-Orsa Road through which Bauxite can be transported from the leasehold area. It is also the case of the writ petitioner that the writ petitioner-Company could not start mining activity on account of the letter written by the Deputy Commissioner, Daltonganj stopping mining activities.

4. The learned single Judge, upon considering the provision of the Forest Conservation Act, 1980, came to a finding that the State Government or any other authority cannot direct that any forest land or even a portion of the forest land be used for any non-forest purposes without the prior approval of the Central Government in other words, whenever any forest land is required to be put to non-forest use, the State Government or other authority is required to obtain the approval of the Central Government and only thereafter, any order can be given or direction can be issued by the Government for using the forest land for non-forest purposes. It is on the basis of this finding that the learned single Judge was of the view that the petitioner-Company was not entitled to carry on mining activities by using the forest land or any portion thereof for non-forest purposes.

5. As far as the road in question is concerned, the learned single Judge was of the view that repair or construction of Hami-Orsa Road also amounts to mining activities and the same could not be undertaken without prior approval of the Central Government. On the basis of the said findings, the learned single Judge dismissed the writ petition as being without any merit.

6. Appearing in support of the appeal, Mr. S. Pal, learned Senior Counsel, on instructions, submitted that the appellant-Company had no quarrel with the findings regarding the use of the forest land which had formed part of the two leases and that the appellant-Company was willing to have the said lands which had been identified by the State Government as "Forest Land" to be excluded from the two leases. It may not be out of place to mention here that one lease is still subsisting and the other lease has expired and thus the appellant-Company would have to be granted a fresh lease in respect of the lease which has already expired.

7. Having regard to the suggestion made on behalf of the appellant, the learned Advocate General has no objection in the event the appeal is disposed of with a direction that the portions of the subsisting lease which have been identified to be forest land will be deemed to have been excluded from the lease for the purpose of mining operations by the appellant-Company. The learned Advocate General also agrees that the State Government would consider the case of the appellant-Company for grant of a fresh lease in respect of the second lease which has expired, by excluding the areas which have been identified as "Forest Land" in respect of which objection has been taken.

8. Apart from the above, Mr. Pal also submits that the mining operations could

not be commenced on either of the leasehold areas in absence of the Environmental Impact Assessment Clearance in terms of the notification published in 1994 by the Central Government. According to Mr. Pal, such clearance has been applied for from the Central Government and the same is awaited. Mr. Pal also submits that the appellant-Company would commence mining operations as and when such clearance is obtained from the Central Government.

9. Having regard to the above, we dispose of the appeal with a direction upon the State Government to allow the appellant-Company to start mining activities after obtaining clearance under the 1994 Notification in respect of the areas to which no objection has been raised in the subsisting lease, indicated at page 445 of the counter affidavit affirmed by the State and such other notification as may be in existence. The State Government is also directed to consider the grant of fresh lease in respect of the lease which has expired, after excluding the areas in respect of which objection has been taken on behalf of the State Government that the land in question is comprised of "Forest Land". The appellant-Company also undertakes to commence mining activities in the demised land as and when Environmental Impact Assessment Clearance is obtained from the Central Government.

10. There is one more issue which was under challenge before the learned single Judge, namely, repair and construction of Hami-Orsa Road. Mr. Pal submits that he has instructions not to press the said issue and, accordingly, no further observation is made in respect of the same.

11. The appeal is disposed of with the aforesaid observations and directions. There will be no order as to costs. Liberty to apply.