
(1986) 12 MP CK 0019

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 2624 of 1986

Hindustan Aluminium Co. Ltd. and another

APPELLANT

Vs

State of Madhya Pradesh and another

RESPONDENT

Date of Decision : 16-12-1986

Acts Referred:

Madhya Pradesh Land Revenue Code, 1959 — Section 247(5)

Citation : (1988) MPLJ 45

Hon'ble Judges : S. Awasthy, J;C.P. Sen, J

Bench : Division Bench

Advocate : Y.S. Dharmadhikari with P.N. Pathak, for the Appellant; S.L. Saxena, Dy. Advocate General, for the Respondent

Final Decision : Dismissed

Judgement

C.P. Sen, J.

In this writ petition the petitioners are seeking quashing of the orders of the State Government dated 3-2-1984 and 1-12-1984 while granting ex-post- facto sanction for carrying on mining operations by the petitioners but limiting the same for the period up to 30-6-1985 and demanding additional amount of Rs. 3,35,763.41 p. for felling trees in the reserved forest and for quashing of the other consequential orders of the respondent No. 2.

The petitioner No. 1 is a company registered under Indian Companies Act, having its registered office at Dr. Annie Besant Road, Bombay. The petitioner No. 2 is the agent of the petitioner No. 1 in respect of its mines in district Shahdol. The petitioner No. 1 is primarily engaged in the business of manufacturing Aluminium at Renukot in district Mirzapur in U.P. Aluminium is manufactured from Bauxite ore by using electrolysis process. For this purpose, the petitioner No. 1 collects bauxite ore from various parts of the country including one at Amarkantak. The petitioner No. 1 was granted mining lease for 30 years on 15-9-1962 beginning from 30-1-1961 over an area of 1236.20 acres situated in villages Amarkantak,

Ramgarh and Jaleshwar in Tahsil Pushparajgarh of district Shahdol. Originally the lease was in favour of Birla Gwalior (Pvt.) Ltd., Gwalior, and by subsequent registered deed of transfer dated 12-6-1986 the mining lease was transferred in favour of the petitioner No. 1. The lease was granted in Form-K by the State Government with the approval of the Central Government under Mines and Minerals (Regulation & Development) Act, 1957, and the Mineral Concession Rules, 1960. In conformity with the provisions of the lease, the petitioner No. 1 applied to the Collector on 23-2-1977 for permission to enter upon 40.285 acres of land in Block "B" of the mining lease for carrying out mining and surface operations. Since the land was a reserved forest, a copy of the application was forwarded to the Divisional Forest Officer, South Shahdol Division, Shahdol respondent No. 2 who directed the petitioner No. 1 to deposit a sum of Rs. 60865.59 p. tentatively as compensation for the forest produce standing on the said land and on depositing the amount the D.F. O. had no objection for mining/surface operations. The Collector in exercise of the powers referred under the provisions of the mining lease and u/s 247(5) of the M.P. Land Revenue Code, 1959, granted permission to the petitioner No. 1 to enter upon and carry out mining/surface operations over 20 acres by his order dated 1-6-1978 and over 20.285 acres by order dated 22-1-1979. It was stipulated in the order that in future no further permission will be granted and the petitioner No. 1 should search out some alternative site for mining bauxite. A deed of Agreement was also executed on 15-2-1963 between the petitioners and the Divisional Forest Officer permitting the petitioner No. 1 to enter upon and carry out mining/surface operations in the mining area falling within the reserved forest. In pursuance of the permission granted, the petitioner No. 1 entered upon and carried out mining/surface operations over 20 acres of land in the reserved forest. Thereafter the respondent No. 2 started demanding a forestation fee at the rate of Rs. 4000/- per hectare from the petitioner No. 1 and the petitioner No. 1 further paid an amount of Rs. 65,160/-. However, the respondent No. 1 i.e. the State Government by order dated 3-2-1984 granted ex-post-facto permission over 40.285 acres of land but limiting the permission up to 30-6-1985 and by order dated 1-12-1984 the petitioner No. 1 was further directed to deposit a sum of Rs. 3,35,763.41 p. as additional compensation for the forest produce standing over the area worked out saying that the earlier amount of Rs. 1,26,245/- deposited by the petitioner No. 1 was only provisional and interim. This amount has also been deposited by the petitioner No. 1. The petitioner No. 1 received a letter dated 18-7-1986 from the respondent No. 2 that it has not stopped its mining operations as was directed by the State Government beyond 30-6-1985 and threatening coercive process in case mining operations were not stopped immediately. By another letter dated 11-8-1986 the respondent No. 2 directed the petitioner No. 1 to stop the mining operations forthwith. Accordingly, the mining operations have been stopped.

The case of the petitioners is that under Mines and Minerals (Regulation & Development) Act, it is only the Union Government which has full control for

regulation of mines and development of minerals and the State Government has no authority to stop the mining operations after lease was granted to the petitioners for a period of 30 years up to 31st January 1991. Besides, the Collector and the D.F. O. having already granted permission to carry out mining operations in the reserved forest, it is not open to the State Government to stop mining operations, more so because the State Government has already recovered Rs. 4,62,008.41 p. as compensation for the forest produce to be destroyed due to the mining operations. As a result of the arbitrary, vindictive and discriminatory action, the production in the petitioner No. 1's aluminum plant at Renukot will be adversely affected and as a result of closure of the mines, about 300 workers have been rendered idle putting the company to suffer irreparable loss. The petitioner No. 1 has a right to continue mining/surface operations over the leased area without any let or hindrance by the respondents so long as the mining lease is not revoked or cancelled. No reasons have been disclosed in the impugned order for stopping the mining operations from 30-6-1985. Bharat Aluminium Company which is a Government of India undertaking is being permitted to carry out mining operations around the leased area of the petitioner No. 1. The amount of compensation recovered over and above Rs. 1,26,245/- was unjustified.

According to the respondents, 40.285 acres of land for which permission was granted by the Collector to carry out mining/surface operations u/s 247(5) of the M.P. Land Revenue Code is without jurisdiction since the Collector has no such power to grant permission under the Code because nothing contained in the Code shall apply to reserved or protected forests as provided u/s 1(2) of the Code. The orders of the Collector are, therefore, nullity. Under Indian Forest Act, 1927, no right of any description shall be acquired over any reserved forest except as provided under the Act and u/s 26 clearing or breaking up of any land for cultivation or for any other purpose, felling of trees shall be punishable with imprisonment. The Forest Act being pre Constitution Act is an existing law. Forest was a State subject till the year 1976 and was brought from List II to List III of Schedule VII of the Constitution. The Government of India, in view of the grave concern over deforestation affecting ecology, issued directions to the State Government on 23-4-1976, 30-8-1976 and 20-12-1976 directing to have prior technical assessment by Inspector General of Forests about the proposals for removal of forest covers and guidelines were issued. Under these orders, the State Government did not have unfettered powers to permit deforestation without the permission of the Central Government. u/s 2(2) of the Forest Act a "Forest Officer" means any person whom the State Government may appoint to carry out all or any of the purposes of this Act. Therefore, it is only the Chief Conservator of Forest who alone can process the application for permission for deforestation and that too with the prior concurrence of the Inspector General of Forests. As such, the Divisional Forest Officer had no power to accord any sanction for deforestation in the reserved forest. The Collector and the D.F. O. were aware of the directions issued by the Government of India as the copies of

those directions were endorsed to them but both of them ignored the directions. In a meeting dated 19-2-1978 of the Divisional Commissioners of Rewa, Jabalpur and Bilaspur in which Collector, Shahdol also participated, it was decided that no mining work should be permitted in areas around Amarkantak and Pathar. It is unfortunate that immediately thereafter a high official like Collector who was fully aware of the directions of the Govt. of India and the decision taken by the Divisional Commissioners, went out of the way in issuing orders for mining/surface operations to the petitioner No. 1 and the D.F. O. had no compunction in giving a no objection certificate. The D.F. O. was not authorised to execute any agreement. The Collector also asked the Conservator of Forests to obtain ex-post-facto sanction of the State Government which alone could have granted permission for mining/surface operations in the reserved forest. The State Government in consultation with the Central Government for the reason that the petitioner No. 1 has already been carrying on mining operations, granted ex-post-facto sanction for mining/surface operations up to 30-6-1985 in respect of the land already broken up. The amount of Rs. 4,62,008.41 p. was much less than the actual value of the forest produce removed by the petitioner No. 1 as he has been charged at the concessional rate and not at the market rate. Original rate of compensation at the rate of Rs. 4000/- per hectare was increased to Rs. 10,000/- per hectare and accordingly the amount has been recovered. The petitioner No.1 by its letter dated 8-11-1963 intimated the respondent No. 2 that their mining operations will be over latest within a period of 12 months. So it is not open to the petitioner No. 1 to say that its mining operation could not be stopped after 30-6-1985 The respondents have further contended that under Forest (Conservation) Act, 1980, it is only the Central Govt. which can give permission for working, for any non-forest purpose, any forest land and it is not within the authority of the State Government to grant any permission hereinafter for mining/surface operation in the reserved forest The Bharat Aluminium Company is carrying on mining operations in the adjoining District of Mandla.

After having heard the parties, we are of the opinion that there is no merit in this petition. The Supreme Court in State of Bihar Vs. Banshi Ram Modi and Others, , held as under:--

Where a mining lease was granted for winning a certain mineral prior to the coming into force of the Act, and the lessee had applied to the State Government after the coming into force of the Act for permission to win and carry any new mineral from any part of a forest area which was already utilised for non-forest purposes by carrying out mining operations before the coming into force of the Act, the prior approval of the Central Government u/s 2 for the purpose of granting such permission not necessary. Before granting permission to start mining operations on a virgin area, Section 2 of the Act has to be complied with, it is not necessary to seek the prior approval of the Central Government for purposes of carrying out mining operations in a forest area which is broken up or cleared before the commencement of the Act.

The Supreme Court observed that as per Statement of Objects and Reasons the Forest Act was passed with a view to checking deforestation which had been taking place in the country on a large scale and which had caused ecological imbalance and thus led to environmental deterioration. It is well known that breaking up of the soil or the clearing of the forest land affects seriously reafforestation or regeneration of forests and therefore such breaking up of the soil can only be permitted after taking into consideration all aspects of the question such as the over-all advantages and disadvantages to the economy of the country, environmental conditions, ecological imbalance that is likely to occur, its effects on the flora and fauna in the area etc. According to the learned counsel for the petitioners, this ruling supports the petitioners' case as the mining lease was granted prior to the coming into force of the Act and same mining/surface operations had already commenced, it is no longer necessary to obtain the sanction of the Central Government. His contention is correct so far as further mining operation is concerned in an area which is already broken up, but if some areas of the lease are yet to be broken up, then sanction of the Central Government is necessary as is evident from the observations in the aforesaid case by the Supreme Court wherein it has been observed as follows:--

Explanation to section 2 of the Act defines "non forest purpose" as breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation. Reading them together, these two parts of the section mean that after the commencement of the Act no fresh breaking up of the forest land or no fresh clearing of the forest on any such land can be permitted by any State Government or any authority without the prior approval of the Central Government. But if such permission has been accorded before the coming into force of the Act and the forest land is broken up or cleared then obviously the section cannot apply. In the instant case it is not disputed that in an area of five acres out of eighty acres covered by the mining lease the forest land had been dug up and mining operations were being carried on even prior to the coming into force of the Act. If the State Government permits the lessee by the amendment of the lease deed to win and remove feldspar and quartz also in addition to mica it cannot be said that the State Government has violated section 2 of the Act because thereby no permission for fresh breaking up of forest land is being given.

We may refer here to the letter of the Conservator of Forest dated 8th May 1959 raising the following objection about mining lease being granted:--

The area applied for lies partly in the plateau Region and partly on the slopes. Some of its part lie in close proximity to Amarkantak which is the source of Narmada river.

As the forest area consists of fairly good and dense, stands (sic) of sal and of salmixed forests, the potential value of these forests from the timber supply point of view is great. From the point of view of Soil Conservation in the hilly regions that forms the source and catchment area of Narmada river and the

importance of maintenance of forests cover is also great.

Under the circumstances we do not agree to this lease being given from, the forest point of view.

We are surprised that in spite of such serious objection, the mining lease was granted to the petitioner No. 1 comprising reserved forest within the source and catchment area of Narmada river.

Here it will be useful to refer to the directions of Government of India dated 20th December 1976 that the Prime Minister has accordingly desired that any proposals for removal of forest cover should be invariably assessed by a competent independent authority like the Inspector General of Forests in the Department of Agriculture before any such conversion of forest area for other purposes is ordered so that irreversible environmental damage is not done. Since instances of destruction of forests have continued to come to the notice of the Prime Minister, it is in this context, therefore, that she has desired that all cases where forest cover on any type of land is sought to be removed, the prior authority with full justification of the Inspector General of Forests will be necessary. However, State Governments/Union Territories may, subject to their own safeguards, divert forest area for other purposes upto a maximum limit of 10 hectares when this is required for public purposes inside or on the periphery of a much larger area of forests, provided no other alternative after close examination is feasible, even though such an alternative may not be the most economical one. A certificate will have to be duly recorded after due verification by the Chief Conservator of Forest, a copy of which will be sent to the Inspector General of Forests. Wherever big projects involving large areas are involved, the Chief Conservator of Forest should invariably be consulted and the Inspector General of Forest always kept informed. In cases where the Chief Conservator of Forest considers the deforestation inadvisable he may bring the matter to the notice the Inspector General of Forests so that in case it is felt that the intervention of the Central Government is needed, it should be possible for the Inspector General of Forests to draw the attention of the Ministry of Agriculture towards the dimensions of the proposed damage. Thereafter the matter can be taken up and pursued with the State Governments. Though the petitioners in their rejoinder tried to deny that 40.285 acres of land regarding which permission was granted by the Collector was not in the reserved forest but in the petition this fact is admitted. The petitioners assert that there are no trees on 12 acres of land and in remaining area of 6.80 acres there are only 296 trees. It is clear that this area is yet to be broken up or mining/surface operations are yet to be carried out. The petitioners have only worked out 21.45 acres and remaining 18.83 acres remain as it is i.e. this area has not been broken up or mining/surface operations are yet to be carried out. This 18.83 acres comprises out of the land referred in the order of the Collector dated 22-1-1979. So the Forest (Conservation) Act applied to this 18.83 acres. According to the respondents, there are valuable sal and other trees over this land and it is a thick forest Oh

the area already worked out, there was sal forest with poor density and that was one of the reasons why State Government granted ex-post-facto sanction as the mining/surface operations had already started. Here we may refer to the letter of the Government of India dated 2/4 July 1983 that it is not proper to seek regularisation from the Central Government in such cases and instead appropriate action should be taken against officials responsible for overlooking the rules and procedures laid down for mining operations in forest area.

The contention of the learned counsel for the petitioners is not correct that the provisions of Mines & Minerals (Regulation & Development) Act will supersede all enactments so far as Regulation of mines and development of minerals are concerned. The Act has to be read along with other enactments. Indian Forest Act is a pre-Constitution enactment and has been enacted to consolidate law relating to forests, the transit of forest produce and the duty leviable on timber and other forest produce. Forest (Conservation) Act was enacted for the conservation of forests and for matters connected therewith. It is the rule of interpretation that every effort should be made to reconcile different enactments and construe them to avoid their being repugnant to each other and care should be taken to see that the different enactments operating in different fields operate without encroachment. Therefore, so far as Indian Forest Act and Forest (Conservation) Act are concerned, they will prevail so far as forests are concerned. Provisions of Mines and Minerals (Regulation & Development) Act should be read subject to the limitations and restrictions provided under the aforesaid two enactments in respect of forests. We also fail to understand the contention of the learned counsel that the guide-lines issued by the Central Government cannot override provisions of law and rules. No provisions of law and rules have been overridden by the guide-lines issued by the Central Government. The Central Government was authorised to issue such directions in view of bringing Forest from State list to concurrent list. These guide-lines are in accordance with the present trend of thought regarding conservation of forests and which necessitated enactment of Forest (Conservation) Act. There can be no denial about the importance of the forest to maintain ecological balance and it is receiving great attention all over the world. Deforestation has severely affected nature's balance and affected flora and fauna to a large extent in our country. It is unfortunate that in spite of serious concern for preservation of forests which is national wealth, the Collector and D.F.O. thought it fit to ignore the directions and guidelines issued by the Central Government instructions of the State Government and the decision taken by the Divisional Commissioners in which the Collector was also present and a few days thereafter in utter disregard to these directions, he granted permission for mining operations in a reserved forest having valuable trees in the catchment area of Narmada river although he had no jurisdiction to accord such permission u/s 247(5) of M.P.L.R. Code which has no application to the reserved forest. It is open to the State government to take appropriate action as has already been told by the Central Government in its letter dated 2/4 July 1983, against the erring officers. The compensation of Rs.

4,62,008.41 p. has been rightly recovered for removal of forest Produce.

With the result, the petition fails and it is dismissed with costs. Counsel's fee Rs. 250/-, if certified.