(2014) 11 JH CK 0046

In the Jharkhand High Court

Case No : W.P. (C) No. 4991 of 2014

Hindustan Copper Limited APPELLANT

Vs

State of Jharkhand and Others RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Copper Corporation (Taking Over of Management) Act, 1972 — Section 3(1)
Forest (Conservation) Act, 1980 — Section 2
Mines and Minerals (Development and Regulation) Act, 1957 — Section 8(3)

Citation : (2015) 1 AJR 365 : (2015) 5 FLT 120 : (2015) 1 JLJR 449

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : R. Venkatramani, Sr. Advocate, A.K. Mehta and Alok Kumar, Advocates for the Appellant; Ajit Kumar, A.A.G, Advocates for the Respondent

Judgement

S. Chandrashekhar, J.—Challenging orders dated 03.09.2014 and 06.09.2014 and seeking a direction upon the respondents to immediately and forthwith grant extension allowing the petitioner to work the mines for a period of atleast 1 year or any lesser period within which the renewal of mining lease be executed in favour of the petitioner, the present writ petition has been filed.

2. The petitioner is engaged in the business of raising Copper ore from Surda Copper Mines, in respect of which the predecessor in interest of the petitioner was granted a mining lease at Mosabani on 16.6.1939. Under Section 3(1) of the Indian Copper Corporation (Taking Over of Management)Act, 1972 the management and undertaking of the Indian Copper Corporation Limited was taken over and stood transferred to and vested in the Central Government with effect from 21.09.1972. Vide Gazette Notification dated 25.09.1972 all the properties, assets/liabilities and obligations stood vested in the Hindustan Copper Limited. The first renewal of Surda Copper Mine was with effect from 16.06.1984 for a period of 20 years. On 05.06.2004, the petitioner submitted application for 2nd renewal of the mining lease which was granted by executing a formal lease dated 22.02.2007 w.e.f 16.06.2004 for a period of 10 years. The petitioner

submitted application under the Water (Prevention & Control of Pollution) Act, 1974 and under the Air (Prevention & Control of Pollution) Act, 1981 for "consent to operate" which were duly granted. Two years before the 3rd renewal for the Surda Copper Mine became due on 16.06.2014, the petitioner submitted its application on 18.03.2013. Before that, on 21.06.2012, the petitioner submitted its revised Form-I before the Expert Appraisal Committee for capacity expansion and lease renewal and, the proposal was taken up for consideration in 28th meeting of the Expert Appraisal Committee. The minutes of the 28th meeting of the Expert Appraisal Committee dated 21.06.2012 was uploaded on the official website of the Ministry of Environment and Forest on 21.07.2012. A draft Environment Impact Assessment Report was got prepared by the petitioner from MECON. The Jharkhand State Pollution Control Board directed the petitioner to make its technical presentation on 30.04.2013 and accordingly, the petitioner made technical presentation for Environment Impact Assessment plan for Surda Mining Lease. The petitioner-company also again approached the Ministry of Environment and Forests, Government of India vide letter dated 02.01.2014 and 12.03.2014 for prescribing T.O.R. for environmental clearance for capacity expansion of Surda Copper Mines.

3. A counter-affidavit has been filed on behalf of respondent Nos. 1-3 stating that the application for 3rd renewal of the mining lease for Surda Copper Mines was submitted on 18.03.2013, which is under consideration of the State Government. In view of the amendment in Rule 24 A (6) of the Mineral Concession Rules, 1960, a direction was issued to the petitioner to stop mining operations. The application submitted by the petitioner was not accompanied with copies of permission under Forest Conservation Act, 1980 and "consent to operate" from Jharkhand State Pollution Control Board, Ranchi. In the supplementary counter-affidavit, the respondent-State of Jharkhand has pointed out that the project of the petitioner has been de-listed by MoEF and the Jharkhand State Pollution Control Board has refused to renew "consent to operate" order.

4. Heard the learned counsel for the parties.

5. Mr. R. Venkatramani, the learned Senior counsel appearing for the petitioner submitted that, though the petitioner applied for 3rd renewal of the mining lease well within time and in the meantime, a favourable report from Indian Bureau of Mines has also been received by the State Government, an order in terms of Section 8(3) of the Mines and Mineral (Development and Regulation) Act, 1957 has not been issued by the respondent-State of Jharkhand. It is submitted that the requirement under any other enactment including the Forest Conservation Act, 1980 cannot be made a pre-condition for taking a decision on the application under Section 8(3) of the M.M.D.R., Act 1957.

6. Mr. Ajit Kumar, the learned Additional Advocate-General submitted that in view of the judgment in M.C. Mehta Vs. Union of India (UOI) and Others, , before renewal of a mining lease is granted, a lessee is required to seek prior

environment clearance. The application submitted by the petitioner-company is not accompanied with the environmental clearances and therefore, no decision on the application seeking 3rd renewal of Surda Copper Mines can be taken by the State Government.

7. In reply, the learned Senior counsel for the petitioner submitted that, once a favourable report from Indian Bureau of Mines is received indicating that it would be in the interest of mineral development to grant renewal of the mining lease in favour of the petitioner, all that is required to do is that, the State Government would issue an express order authorising grant of renewal of the mining lease. Since the scheme of M.M.D.R. Act and the Rules made thereunder do not postulate any condition-precedent except, as contained in the Act and the Rules, the insistence of the respondent-State of Jharkhand for producing environmental clearances and "consent to operate" order from the Jharkhand State Pollution Control Board, is beyond the power conferred upon the State Government under the M.M.D.R. Act or the Rules made thereunder.

8. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

9. Before adverting to the rival contentions, the order passed in W.P.(C) No. 5368 of 2014 titled "Steel Authority of India Limited v. the State of Jharkhand and Others" in which the scheme of M.M.D.R. Act and M.C. Rules have been discussed, may usefully be noticed. It has been held in the said case;

"10........A conjoint reading of Section 8(3), Rule 24A and the legislative intent running through the scheme of the MMDR Act, 1957, leaves no manner of doubt that once the State Government forms an opinion that it is in the interest of mineral development that an existing mining lease should be renewed, the State Government would be under a statutory duty to pass an express order under Section 8(3) of the MMDR Act, 1957........."

10. The petitioner submitted its application seeking 3rd renewal of the Surda Copper Mines and in terms of Rule 26(3) of the Mineral Concession Rule, 1960, the State government was required to issue notice to the applicant/lessee directing the applicant to supply the omission or furnish the document which was required for consideration of the renewal application however, no notice as contemplated under Rule 26(3) was issued to the petitioner. For the first time, in the counter-affidavit filed in the present proceeding, the respondent-State of Jharkhand has raised a plea that the application for 3rd renewal of the mining lease is incomplete. Faced with this situation, the learned counsel for the respondent-State of Jharkhand relied on paragraph Nos. 76 and 77 of the M.C. Mehta case, which are reproduced below:

"76. In Rural Litigation and Entitlement Kendra v. State of U.P. agreeing with views expressed in Ambica Quarry Works it was held that the FC Act applies to renewals as well and even if there was a provision for renewal in the lease agreement on exercise of the lessee''s option, the requirement of the Act had to be satisfied before such renewal could be granted. In State of M.P. v. Krishnadas Tikaram these two decisions were relied upon and it was held that even the renewal of lease cannot be granted without the prior concurrence of the Central Government. It is settled law that the grant of renewal is afresh grant and must be consistent with law.

77. We are unable to accept the contention that the notification dated 27-1-1994 would not apply to leases which come up for consideration for renewal after issue of the notification. The notification mandates that the mining operation shall not be undertaken in any part of India unless environmental clearance by the Central Government has been accorded. The clearance under the notification is valid for a period of five years. In none of the leases the requirements of the notification were complied with either at the stage of initial grant of the mining lease or at the stage of renewal. Some of the leases were fresh leases granted after issue of the notification. Some were cases of renewal. No mining operation can commence without obtaining environmental impact assessment in terms of the notification."

11. A reading of paragraph No. 11 makes it clear that, "no mining operation can commence" without obtaining environmental impact assessment in terms of the Notification dated 27.01.1994 which was superseded by 2006 Notification. The Notification dated 14.09.2006 provides that the construction of new projects or activities or the expansion or modernization of existing projects or activities shall be "undertaken" in any part of India, only after the prior environmental clearance from the Central Government or the State Level Environment Impact Assessment Authority, is obtained. The requirement under the notification dated 14.09.2006 appears to be in consonance with the direction issued by the Hon''ble Supreme Court in M.C. Mehta Case. Though, it cannot be denied that requirement of seeking environmental clearance is applicable in cases of renewal of mining lease however, from a reading of the judgment of the Hon''ble Supreme Court and from the language of 2006 Notification it appears that a lessee is required to obtain necessary environmental clearances, before it "commences its operation". No doubt, there is no express requirement under the M.M.D.R. Act or the Rules made thereunder for seeking "prior" environmental clearance for grant of renewal of the mining lease, it is an admitted position that no mining operation can be permitted without obtaining "prior" environmental clearance. An order in terms of Section 8(3) of M.M.D.R. Act, 1957 is a pre-condition for grant of renewal of mining lease and there is a live connection between the two stages. Technically, at the stage of issuing an order under Section 8(3) of M.M.D.R. Act, the requirement of seeking prior environmental clearance may not be insisted upon however, an express order in terms of Section 8(3) of M.M.D.R. Act is required to be issued by the State Government for authorising renewal of mining lease and a mining lease cannot be renewed without prior approval of the environment clearance. The natural corollary of this would be that no order under Section 8(3) of M.M.D.R. Act can be passed without prior environment clearance. Since, the mining lease cannot be renewed in the absence of environment

clearance granted to the lessee, an order under Section 8(3) of M.M.D.R. Act cannot be issued in vacuum or in anticipation of grant of environment clearance. As noticed above, in M.C. Mehta case the Hon''ble Supreme Court has held that at the time of renewal of lease, the prior concurrence of the Central Government is mandatory. In Ambica Quarry Works Vs. State of Gujarat and Others, , the renewal of the lease was refused on the ground that after coming into force of the Forest Conservation Act, 1980, the same cannot be granted without approval of the Central Government. The Hon''ble Supreme Court has observed thus;

"Where the State Govt. rejected the application made after coming into force of the Act, for renewal of mining lease, rejection being in conformity with the purpose of the Act, was not open to challenge notwithstanding the fact that R. 18(b)(i) of the Gujarat Minor Mineral Rules, 1966, provided for renewal of lease."

12. In Divisional Forest Officer and Others Vs. S. Nageswaramma, , it has been held that Section 2 of Forest Conservation Act, 1980 prohibits the mining operation if the mines are situated within the forest area. There is no dispute that the renewal of mining lease for Surda Copper Mines is sought for non-forest purpose. The leased area falls within the reserved forest is an admitted position. Thus, grant of mining lease without prior environment clearance is totally prohibited.

13. Further, I find that though a favourable report from IBM has been received by the State Government however, as noticed hereinabove, the State Government is required to form an opinion that, it is in the interest of the mineral development and it is necessary to do so, then only, the State Government can authorise the second and subsequent renewal of the mining lease. There is no prayer in the writ petition seeking a direction upon the respondent-State of Jharkhand for taking a decision in terms of Section 8(3) of M.M.D.R. Act, 1957 on the application filed by the petitioner seeking 3rd renewal of the mining lease for Surda Copper Mines.

14. In view of the aforesaid discussion, prayer of the petitioner cannot be granted at this stage. The petitioner has claimed that it holds all existing mining leases for Copper ore reserves in India and it is the only Copper mining company in India. It is a "zero debt" Public Sector Company in which the holding of the Central Government is 90%. The Sudra mines is an underground mine and mining is done for captive consumption. It is asserted that stoppage of work in Sudra mines will cause stoppage of concentrator plant and effect the functioning of smelter plant. In so far as, the mining by the petitioner in Surda Copper Mines is concerned, it stands on entirety different footing in as much as, it is the only vertically integrated Mine in India. The mining operation is conducted about 470 metres under the ground, below the surface area. An abrupt and sudden closure of mines may turn out to be catastrophic, once the underground mine is inundated with water.

15. In view of the peculiar facts of the case, I am of the opinion that it would

serve the ends of justice if, a direction is issued that once the petitioner produces necessary environmental clearances, a decision in terms of Section 8(3) of the M.M.D.R., Act 1957 would be taken by the State Government, within a period of 2 weeks.

16. The writ petition is disposed of in the aforesaid terms.