

(2014) 11 JH CK 0024

In the Jharkhand High Court

Case No : Writ Petition (Civil) No. 2364 of 2014

Hindustan Copper Limited

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 28-11-2014

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21
Constitution of India, 1950 — Article 20(3), 226
Copper Corporation (Taking Over of Management) Act, 1972 — Section 3(1)
Environment (Protection) Act, 1986 — Section 15, 16, 19
Evidence Act, 1872 — Section 119
Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26

Citation : (2015) 3 AJR 145 : (2015) 5 FLT 126 : (2015) 1 JLJR 508

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : R. Venkatramani, Senior Advocate, Alok Kumar, Anoop Kumar Mehta and Sharad Kaushal, Advocate for the Appellant; Rajiv Sinha, A.S.G.I. and Rohit Sinha, Advocate for the Respondent

Judgement

S. Chandrashekhar, J.—The writ petition was filed on 01.05.2014 and it was listed for hearing on 13.06.2014. On 13.06.2014, the learned Assistant Solicitor General of India representing the Union of India appeared and at the request of the counsel for the petitioner, the matter was fixed for 16.06.2014. When the matter came up for hearing, the counsel for the Union of India took two weeks" time for filing counter-affidavit. On 30.06.2014, further two weeks" time was allowed to the Union of India for filing counter-affidavit and it was made clear that if the Union of India fails to file counter-affidavit the matter shall be decided on the basis of materials available on record. It was also indicated in order dated 30.06.2014 that, "pendency of this writ application would not stand in the way of Union of India for grant of Terms of Reference for environment clearance in favour of the petitioner". The matter was listed on 14.07.2014, when two weeks" time was again granted to the Union of India for filing counter-affidavit however, no counter-affidavit has been filed on behalf of the Union of India. In the above

circumstance, on 20.11.2014 the matter was thus heard on the basis of the materials available on record. On 21.11.2014, the counsel appearing for the parties concluded their argument and the matter was reserved for orders.

2. Aggrieved by order contained in letter dated 07.04.2014 whereby, the petitioner-Hindustan Copper Limited has been informed by the Ministry of Environment and Forests, IA Division, Government of India, that further action on the proposal of the petitioner would be taken after the response from the petitioner and the State Government are received and in the meantime, the proposal of the petitioner-company has been de-listed from the pending list, the present writ petition has been filed.

3. 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 Mines was granted 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 with effect from 16.06.2004 for a period of 10 years. The petitioner submitted application under Section 25/ 26 of the Water (Prevention & Control of Pollution) Act, 1974 and under Section 21 of 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 Mines became due on 16.06.2014, the petitioner submitted its application in Form-I and draft Terms of Reference (T.O.R.) on 14.03.2012. On 21.06.2012, the petitioner submitted its revised Form-I before the Expert Appraisal Committee for capacity expansion and lease renewal and the said 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. For the first time, on 08.05.2013 the respondent No. 4 communicated the petitioner that, since the petitioner continued mining operation without prior environment clearance, it has been put under the category of "violation case". Vide letter dated 13.05.2013 and 15.05.2013, the petitioner represented to the Ministry of Environment and Forests that the lease for Surda Mines was renewed with effect from 16.06.2004 that is, prior to MoEF Circular dated 28.10.2004 and thus, it was; not required to

obtain prior environment clearance at the time of renewal of the mining lease. The Secretary, Ministry of Mines, Government of India vide letter dated 02.08.2013 requested the Secretary, Ministry of Environment and Forests, Government of India for his intervention in resolving the matter to facilitate issuance of T.O.R. by MoEF for expansion of Surda Mines. The Minister of Mines, Government of India also wrote a letter on 05.09.2013 to the Minister of State for Environment and Forests, Government of India for her intervention for resolving the issue. The petitioner-company also again approached the Ministry of Environment and Forests, Government of India vide letters dated 02.01.2014 and 12.03.2014 for prescribing T.O.R. for environment clearance for capacity expansion of Surda Copper Mines however, vide letter dated 07.04.2014, the petitioner-company was informed by the Ministry of Environment and Forests that the Ministry has decided to de-list its project from the pending list.

4. Heard the learned counsel for the parties.

5. Mr. R. Venkatramani, the learned Senior counsel appearing for the petitioner has submitted that the order contained in the impugned letter dated 07.04.2014 is arbitrary and illegal. The procedure adopted by the Ministry of Environment and Forests, Government of India has no sanction in law in as much as, relying on its own Circular/Guideline/Office Memorandum, the respondent-Union of India has unilaterally concluded that the petitioner-company has violated the provisions of the Environment (Protection) Act, 1986. It is submitted that for the first time, vide letter dated 08.05.2013, the Ministry of Environment of Forests informed the petitioner-company that it was required to seek environment clearance at the time of 2nd renewal of the mining lease and, since it continued its mining operations without valid environment clearance, its case is a "violation case." Though, at the time when the petitioner-company applied for 2nd renewal of its mining lease for Surda Mines, the only Circular which was in operation was the MoEF Circular dated 12.02.2002 which specifically provided that, "environment clearance is not required at the time of renewal of mining lease if there is no increase in the original sanctioned lease area and/or production", and the petitioner vide letters dated 13.05.2013 and 15.05.2013 as well as vide letters dated 02.01.2014 and 12.03.2014 represented to the Ministry of Environment and Forests that it was not required to obtain environment clearance as the application for 2nd renewal of Surda mining lease was submitted prior to 28.10.2004, that is, when in view of decision of the Hon'ble Supreme Court in M.C. Mehta case the Ministry of Environment and Forests issued the Circular dated 28.10.2004 mandating prior environment clearance at the time of renewal of mining lease, nonetheless vide letter dated 07.04.2014, the project of the petitioner was arbitrarily de-listed from the pending list. It is further contended that the insistence of the Ministry of Environment and Forests that the project proponent should give a Board Resolution that violation will not be "repeated", is an illegal condition whereby, the project proponent is compelled to admit an alleged "violation". The learned Senior Counsel submitted that the consideration of the application of the petitioner-company by the Ministry of

Environment and Forests for issuing Terms of Reference cannot await the initiation of an action by the State Government for the alleged "violation" under the Environment (Protection) Act, 1986.

6. As against above, Mr. Rajiv Sinha, the learned counsel appearing for the respondent-Union of India has submitted that under the notification dated 14.09.2006 which superseded the notification dated 27.01.1994, the petitioner-company was required to take prior environment clearance from the Central Government which, admittedly, it has failed to obtain and therefore, no further enquiry was necessary in the matter for ascertaining violation by the petitioner. Even though, the proposal of the industry was not for expansion or modernization of existing project, the expression "activities" occurring in notification dated 14.09.2006 would cover all cases of renewal of mining lease and the petitioner-company was also required to take prior environment clearance from the Central Government. Referring to Rule 5(4) of the Environment (Protection) Rules, 1986, it is submitted that the requirement of notice under Clause (a) sub-Rule 3 of Rule 5 of the Environment (Protection) Rules, 1986 has been dispensed with in "public interest". Vide letter dated 08.05.2013, the petitioner was informed that it has violated the Environment (Protection) Act, 1986 and therefore, it cannot complain of violation of rules of natural justice. Prior to 14.09.2006, the existing industry was not required to take prior environment clearance however, after 14.09.2006, prior environment clearance has been made mandatory for carrying on even the existing operations. The consent to operate dated 15.06.2012 issued by the Jharkhand State Pollution Control Board is an order subject to the condition that the petitioner would abide by the applicable provisions of the Environment (Protection) Rules, 1986 and other Rules. Referring to the Minutes of meeting dated 21.06.2012 of the Expert Appraisal Committee, the learned counsel for the respondent-Union of India has submitted that the petitioner-industry is estimated to produce 50,000 tonnes of waste materials and thus, it was mandatory for the petitioner to seek environment clearance for continuing its operations. It is thus, submitted that the "consent to operate" order cannot be seen de-hors the statutory Rules which are binding on the petitioner.

7. I have considered the rival submissions made on behalf of the parties and perused the documents on record.

8. It is not in dispute that the second renewal for the mining lease for the Sudra Mines became due from 16.06.2004 and in the meantime, the EIA Notification dated 27.01.1994 was issued by the Ministry of Environment and Forest. Under the 1994 EIA Notification, the requirement for seeking environment clearance was confined to new projects or the expansion or modernisation of any existing industry or project listed in Schedule-I. On 18.03.2004, the judgment in M.C. Mehta Vs. Union of India (UOI) and Others, was delivered by the Hon"ble Supreme Court whereunder, it has been held that requirement for seeking environment clearance would be applicable in cases of renewal of the mining

leases also. By Circular dated 28.10.2004, the EIA Notification, 1994 was made applicable to (i) Mining projects of major mineral with more than 5ha lease area, which have started production or increased their production and/or lease area on or after 27.10.1994 and, it was further provided that (ii) all mining projects of major minerals of more than 5 ha lease area which have so far not obtained an environment clearance under the EIA Notification, 1994 shall do so at the time of renewal of their lease in the context of the SC Judgment dated 18.03.2004 in W.P. 4677/1985 - "M.C. Mehta v. UOI & Ors".

9. The EIA Notification dated 17.01.1994 was superseded by Notification dated 14.09.2006 which provided that, construction of new projects or activities or the expansion or modernisation of the existing projects which may entail capacity addition or change in the process and/or technology shall be undertaken only after prior environment clearances from the Central Government. Thereafter, the Ministry of Environment and Forest issued Office Memorandum dated 16.11.2010 which provided that all cases of "violation" would be referred to the respective Expert Appraisal Committee (EAC/SEAC) for consideration on the merit of the proposal and after the approval of the Competent Authority is received for grant of environment clearances, MoEF/SEIAA would send communication, requiring project proponent to put up the matter referring to violation to its Board of Directors or the Managing Committee/CEO of the Society, Trust, Partnership/ Individually owned concern and a written commitment in a form of formal Resolution to ensure that the violation of the Environment (Protection) Act will not be "repeated". Another Office Memorandum was issued by the Ministry of Environment and Forest on 12.12.2012 which superseded Office Memorandum dated 16.11.2010. The Office Memorandum dated 12.12.2012 mandates that as soon as cases of violation comes to the notice of the Ministry/EAC, the veracity of the complaint through the concerned regional office of MoEF/State Government would be first verified and once the Ministry/EAC is satisfied that it is a violation case, the cases of grant of TORs/Environmental Clearances/CRZ Clearances etc. would be taken up by the Ministry however, subject to the condition that;

"(i) A written commitment in the form of formal Resolution of the Board of Directors/Managing Committee/CEO etc. to ensure that violation will not be repeated, is submitted to the MoEF, and

(ii) The State Government initiates credible action on the violation and evidence in this regard is provided to MoEF."

10. From the above, I gather that there is considerable ambiguity in so far as, the applicability of the Notification/OM/Circular of MoEF and the procedure for dealing with the "violation" cases, are concerned. Neither the notification dated 14.09.2006 nor OMs issued by MoEF provide a procedure for deciding what exactly would constitute a "violation" case. It has rightly been contended that, even if the Office Memorandums dated 12.12.2012 and 27.06.2013 referred to in the impugned communication dated 07.04.2014 and the Office Memorandum dated 16.11.2010 are said to have legal effect, the Respondent No. 3 has not

acted strictly in terms thereof. The Projects which have been treated as "violation cases" must be considered on their respective merits and the proposal for environment clearance must be processed, regardless of the alleged violation, for which independent action can be initiated. Though the mining lease for Surda Copper Mines was executed on 22.02.2007, it was renewed with effect from 16.06.2004 and at the time when the application was submitted on 05.06.2004, there was no requirement to seek prior environment clearance and therefore, it cannot be assumed that even after submitting its application, in view of any subsequent development, the petitioner was still required to seek prior environment clearance.

11. Mr. R. Venkatramani, the learned Senior Counsel appearing for the petitioner submitted that the procedure adopted by the MoEF is illegal, arbitrary and shrouded in mystery. The Office Memorandums issued by the MoEF are intended at regulating official business of the Ministry and by issuing Office Memorandum, the right/liability of the applicant cannot be determined by MoEF. It is contended that Office Memorandum being non-statutory administrative orders cannot provide for penal consequences. It is further submitted that the Office Memorandums dated 12.12.2012 and 27.06.2013, with reference to which impugned letter dated 07.04.2014 has been issued, has remained in the domain of the Ministry and the public at large has no access to the same. The applicant has no knowledge of the procedure, which would be followed while processing its application seeking grant of environment clearance. The learned Senior Counsel has relied on the decision of the Hon"ble Supreme Court in *Harla Vs. The State of Rajasthan*, wherein the Hon"ble Supreme Court has observed as under:--

8. ".....we are of opinion that it would be against the principles of natural justice to permit the subjects of a State to be punished or penalised by laws of which they had no knowledge and of which they could not even with the exercise of reasonable diligence have acquired any knowledge. Natural justice requires that before the law can become operative it must be promulgated or published. It must be broadcast in some recognisable way so that all men may know what it is; or at the very least, there must be some special rule or regulation or customary channel by or through which such knowledge can be acquired with the exercise of due and reasonable diligence. The thought that a decision reached in the secret recesses of a chamber to which the public have no access and to which even their accredited representatives have no access and of which they can normally know nothing, can nevertheless affect their lives, liberty and property by the mere passing of a Resolution without anything more is abhorrent to civilised man....."

12. Per contra, Mr. Rajiv Sinha, the learned counsel appearing for the MoEF has submitted that all the Circulars/Guidelines/OMs are put on the website of the Ministry and thus, it cannot be contended that the applicant has no knowledge of the procedure to be followed while its application for grant of environment clearances is processed.

13. For the present, it is not necessary to probe the dispute whether the procedure adopted by MoEF is known to the applicant or not. I find that the petitioner submitted its application for second renewal of mining lease on 05.06.2004 and after the decision in "M.C. Mehta v. Union of India" case, the MoEF issued circular dated 28.10.2004 whereunder, requirement of seeking prior environment clearance for renewal of mining lease was made mandatory. It is also not in dispute that the petitioner submitted its application for 3rd renewal of the mining lease on 14.03.2012 i.e. much prior to OM dated 12.12.2012 and thus, whether the Circular dated 28.10.2004 which was issued after the 2nd renewal application and OM dated 12.12.2012 are attracted in the case of "the petitioner or not, is a debatable and disputed issue. It is to be noticed that after the letter dated 08.05.2013 of the MoEF, informing the petitioner that its case is of "violation case" was issued, the petitioner vide letters dated 13.5.2013 and 15.05.2013 clarified its stand stating that at the time when it submitted its application for second renewal of mining lease on 05.06.2004, the Circular dated 12.02.2002 of MoEF was in operation, under which the petitioner was not required to seek prior environment clearances.

14. The learned counsel appearing for the respondent-MoEF has contended that the expression "activities" occurring in EIA Notification dated 14.09.2006 covers all existing mining operations. I am unable to accept the contention for the reason that, had the 2006 Notification intended to include all existing activities, there was no need to make it specific that the prior environment clearances would be required in cases of new projects or expansion or modernisation of the existing projects. The expression "activities" has to be read in the context of "new projects" and "expansion or modernisation of existing projects". It is a cardinal rule governing the interpretation of statutes that the Court should not adopt the construction which lead to an absurdity. In Bihar State Council of Ayurvedic and Unani Medicine Vs. State of Bihar and Others, , the Hon''ble Supreme Court has held thus:

52. "The court must always lean to the interpretation which is a reasonable one, and discard the literal interpretation which does not fit in with the scheme of the Act under consideration."

15. If the contention of the learned counsel appearing for the respondent-MoEF is accepted, the later part of the paragraph No. 1 of the Notification dated 14.09.2006 is rendered wholly unnecessary. The Notification would have simply provided that prior environment clearance is required for "all new projects as well as existing projects". Moreover, the application for 2nd renewal of mining lease was submitted by the petitioner on 05.06.2004 and it has been granted w.e.f. 16.06.2004 and thus, applicability of 2006 Notification in case of the petitioner remains a disputed issue. On a plain reading, if Acts/Notifications/Circulars postulate the prospective operation, it cannot be applied retrospectively unless, expressly specified. In Janardan Reddy and Others Vs. The State, , it has been held that, "prima-facie every legislation is perspective". It is nobody's case that

the petitioner's unit is a polluting unit or that it has caused any environmental degradation or damage. The petitioner has claimed that it has taken all necessary and adequate precautions for preventing any environmental degradation or harmful effect in the vicinity.

16. The order contained in the impugned letter dated 07.04.2014 refers to Office Memorandum dated 12.12.2012. It is indicated that further action on the proposal of the petitioner would be taken after the response from the project proponent and the State Government in terms of OM dated 12.12.2012 are received by MoEE OM dated 12.12.2012 also provides that before insisting on the requirement detailed in para-5, MoEF/EAC will proceed to verify the veracity of the complaint through the concerned regional office of MoEF/State Government/CZMA. The letter dated 08.05.2013 of MoEF indicates that the Expert Appraisal Committee while apprising the project of the petitioner for Terms of Reference observed that this is a case of "violation" of Environment (Protection) Act, 1986.

17. I am of the opinion that MoEF has not followed its own OM dated 12.12.2012 under which it was required to first ascertain through its Regional Office or the State Government whether it was a case of violation of environmental laws or not. Before concluding that the petitioner-company has continued mining operation in violation of the Environment (Protection) Act, 1986, no notice was issued to the petitioner. Before insisting upon compliance of paragraph No. 5 of OM dated 12.12.2012, the Ministry has unilaterally concluded that it is a "violation case". The Ministry claiming itself the prosecutor donned the role of adjudicator and it delivered its verdict without even hearing the alleged accused. The provision under Rule 5(4) of the Environment (Protection) Rules, 1986 is not attracted in the present case. I am of the opinion that the procedure adopted by the MoEF cannot be sanctioned in law. The decision taken by MoEF entails serious consequences to the petitioner-company. It is well settled that even in the cases where the statute does not provide a right of hearing, before an order which would adversely affect a person is passed, a notice is required to be given to the affected person. The letter dated 08.05.2013 of MoEF cannot be construed a notice, rather it is a decision communicated through the said letter.

18. As noticed above, under OM dated 12.12.2012 the petitioner-company is required to submit a resolution of the Board of the Company undertaking that violation would not be "repeated". Section 15 of the Environment (Protection) Act, 1986 makes the contravention of any of the provisions of the Act, Rules, orders, directions issued thereunder, punishable. Section 16 relates to offences by companies and Section 19 provides that no court shall take cognizance of any offence under the Environment (Protection) Act, 1986 except on a complaint made by the Central Government or any Authority or Officer authorised in this behalf. The offence under the Act is punishable with imprisonment which may extend to 5 years or with a fine which may extend to one lacs rupees or with both. Since, a complaint is to be filed in the Court, it is apparent that the Code of Criminal Procedure would be applicable in the proceeding before the Magistrate

and the proceeding initiated under the Environment (Protection) Act, 1986 for contravention of the provisions of the Act, Rules etc. would be a criminal proceeding. In terms of OM dated 12.12.2012 in a "violation case", a written commitment in the form of formal Resolution to ensure that violation will not be "repeated", has to be submitted to MoEF. I find considerable force in the submission of the learned Senior Counsel appearing for the petitioner that the expression "to ensure that violation will not be repeated" would mean an admission, on the part of Board of Directors of the Company/Managing Director of the Company that the company violated provision of environmental laws. I am of the opinion that the requirement under paragraph 5(i) of the OM dated 12.12.2012 is illegal and unconstitutional.

19. Article 20(3) of the Constitution embodies the principle against compulsion of self-incrimination. This principle is recognised substantially under various statutory provisions. In *Kartar Singh Vs. State of Punjab*, the Hon'ble Supreme Court has explained that, the word "compelled" ordinarily means by force. This may take place positively and negatively. It has been held that, "when one forces one to act in a manner desired by him it is compelling him to do that thing. Same may take place when one is prevented from doing a particular thing unless he agrees to do as desired. In either case it is compulsion". A 8-Judges Constitution Bench of the Hon'ble Supreme Court in *M.P. Sharma and Others Vs. Satish Chandra, District Magistrate, Delhi and Others*, has held as under:

10. ".....We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Art. 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (see S. 119, Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes.....Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the Court room.

The phrase used in Art. 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an accused in so far as it is related to the phrase "to be a witness" is not merely in respect testimonial compulsion in the Court room but may well extend to compelled testimony previously obtained from him....."

20. Though prosecution for contravention of the provisions of the Environment (Protection) Act, 1986 or the Rules made thereunder has yet not been initiated,

the effect of the direction to the Board of Director/Managing Director of the company, to submit an affidavit as indicated under para 5 (i) of OM dated 12.12.2012, is to compel the Board of Director/Managing Director to give self-incriminating evidence against themselves. No prosecution under Section 15 of the Environment (Protection) Act, 1986 has yet been launched and there is no verdict of "guilty" by the Court and therefore, I am of the opinion that under OM dated 12.12.2012 MoEF cannot insist for submitting an undertaking in terms of Para 5(i).

21. The OM dated 12.12.2012 further provides that, only after the response of the State Government providing initiation of credible action taken against the violation is received, the proposal for giving TORs of environment clearance would be considered by the Ministry. I find that the condition stipulated under Para 5 (ii) violates the basic principle of rule of law. There is no procedure under the Environment (Protection) Act, 1986 or the Rules made thereunder which stipulates that the proposal for environment clearance would be considered only after the State Government provides evidence of the credible action taken against the alleged "violation". In the first place, MoEF cannot compel the State Government to take action for alleged violation and secondly, action for alleged violation would be an independent and separate proceeding and therefore, consideration of proposal for environment clearance cannot await initiation of action against the project proponent. In *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , the Hon"ble Supreme Court has held that, "the judicial control over the fast expanding maze of bodies: affecting the rights of the people should not be put into water-tight compartment. It should remain flexible to meet the requirements of variable circumstances. Mandamus is a very wide remedy which must be easily available to reach injustice whenever it is found. Technicalities should not come in the way of granting that relief under Article 226". Though, OM dated 12.12.2012 is not under challenge, I am of the considered opinion that the conditions under paragraph No. 5(i) and 5 (ii) of OM dated 12.12.2012 are illegal and unconstitutional and therefore, cannot be enforced against the petitioner-company.

22. 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 has been accorded the status of "Miniratna". 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 entirely different footing in as much as, the petitioner is the only vertically integrated public sector 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. In view of the judgment in "M.C. Mehta v. Union of India" case, before the petitioner commences its mining activity after the renewal of its mining lease, it must possess environment clearances. The decision to de-list the project of the petitioner from the pending list would thus, follow evil consequences for the petitioner-company. I am of the view that the proposal of the petitioner-company for environmental clearance must be examined on its merits, independent of any proposed action for the alleged violation of the environmental laws.

23. In view of the above discussion, I am of the opinion that impugned order dated 07.04.2014 is liable to be quashed and it is hereby quashed. The writ petition is allowed and the respondent No. 1 is directed to prescribe the Terms of Reference (TOR) for environment clearance for capacity expansion and renewal of mining lease of Surda Copper Mines, forthwith.