
(2013) 02 JH CK 0129
In the Jharkhand High Court
Case No : Writ Petition (C) No. 926 of 2013

Hindustan Copper Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 27-02-2013

Acts Referred:

Air (Prevention and Control of Pollution) Act, 1981 — Section 21

Water (Prevention and Control of Pollution) Act, 1974 — Section 25, 26

Citation : (2013) 3 EFLT 479

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : A.K. Mehta, for the Appellant; Rahul Sahoo, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.—Heard learned Counsel for the parties. The petitioner has been threatened by notice dated 27.12.2012 served upon the petitioner on 4.2.2013 by directing it to operate the mines only after obtaining Environmental Clearance from the Ministry of Environmental and Forests, Government of India, New Delhi under the E.I.A. Notification 1994. The said notice is under challenge. The petitioner has also come before this Court for directing the State Pollution Control Board to issue appropriate consent to operate order during the subsistence of the renewed mining lease which is valid up till 15.6.2014. Learned Counsel for the petitioner submits that the petitioner is a public sector unit operating copper mines in East Singhbhum since 1939. Its mining lease has been renewed with effect from 16.6.2004 by the Competent Authority and the State Pollution Control Board has been granting it permission with consent to operate from time to time vide Annexure-4 dated 13.12.2010 and Annexure-5 dated 15.6.2012. It is further submitted on behalf of the petitioner that the petitioner has already applied for renewal of the consent before expiry of the consent to operate granted vide Annexure-10 before the State Pollution Control Board by making an application dated 12.10.2012 which is, however, still pending without

any positive action by the respondents. It is, however, submitted that the petitioner has also approached the expert appraisal committee for environmental clearance under E.I.A. Notification, 2006 where the case of the petitioner was deliberated in the meeting held on 20-22.6:2012. It is submitted that terms of reference have been granted by the expert appraisal committee in the said meeting and the entire process to obtain the environmental clearance is to be completed within a period of two years as the mining lease is to expire in June, 2014. Learned Counsel for the petitioner submits by reference to Annexure-1 chart of the annual production under the Copper Mines that it operates below threshold capacity of 4,00,000 MT of Ores even in the year 2011-12 as it would be evident from the said chart. The consent to operate granted by the State Pollution Control Board on 15.6.2012 vide Annexure-5 has also permitted it to operate for the highest production capacity upto 4,00,000 MT per year. It is submitted that the petitioner under the notification of Ministry of Environmental and Forest dated 14.9.2006 is only required to obtain prior environmental clearance for any expansion and modernization or change of product mix in existing projects. Learned Counsel for the petitioner by referring to Clause 2 read with 7 (ii) of the said notification submits that in case where the mining projects are going to indulge in modernization of existing unit with increase in total production capacity beyond the threshold limit prescribed in the Schedule to this notification through change in process and/or technology or involving a change in the product, the prior environmental clearance is required from the competent authority. In the present case, learned Counsel for the petitioner submits that as of now no change in technology or in process or in production have been resorted to and there is no increase in threshold capacity of the production, which is permitted under the consent to operate by the State Pollution Control Board. It is reiterated that the petitioner has already approached the expert appraisal committee for environmental appraisal of mining projects for grant of terms of reference as indicated herein above which has granted the said T.O.R. to obtain environmental clearance from the competent authority within a period of two years. Learned Counsel for the petitioner submits that the respondents are not justified in relying upon the notification dated 27.1.1994 to direct the petitioner to obtain environmental clearance in respect of existing mining operating going on in the mines in question as the same stands superseded by the notification dated 14.9.2006 as it would also be evident by Clause-12 of the said notification. It is further submitted on behalf of the petitioner that even the notification dated 28.10.2004, Annexure-A to the counter affidavit is not applicable as such, since renewal of mining lease has been granted to the petitioner on 16.6.2004 itself. The petitioner is a P.S.U. where directly or indirectly 10 thousands persons are affected by the mining operation including several workmen who operate in the underground mines. It is, therefore/ submitted that the respondent board is not justified in threatening the petitioner to close the running mines unless it seeks environmental clearance from the Ministry of environment and Forest, Government of India for the mining operation. As a matter of fact, the mines are still in operation and the respondent

Board takes some time to grant consent, which is pending before them.

2. Learned Counsel for the respondents Board has appeared and filed their counter affidavit. The stand of the respondents is that vide notification dated 22.1.1994, for Mining projects of major mineral with more than 5 hectares lease area, environmental clearance is required at the time of renewal of the petitioner's lease, which was granted in the June, 2004. However, the petitioner has not obtained the said environmental clearance and the continued with the mining operation by the impugned notice, they have asked the petitioner to seek environmental clearance in accordance with law. Learned Counsel for the respondents has relied upon the judgment rendered in the case of M.C. Mehta Vs. Union of India (UOI) and Others,

3. I have heard learned Counsel for the parties at length and have gone through the relevant materials on record including the letter dated 27.12.2012. The petitioner is a P.S.U. of the Government of India operating Copper mines since the year 1939. The mining lease has been renewed on 16.6.2004, which is going to expire in June, 2014. The petitioner has approached appraisal committee seeking environmental clearance also in respect of the expansion of mining operation in the mines in question under which, terms of reference has been granted. The entire exercise under the T.O.R. which is said to have started ought to be completed under the terms of reference within a period of two years. It, however, appears that the State Pollution Control Board has granted consent to operate to the petitioner-company from time to time and even in the year 2012 by order dated 15.6.2012. Annexure-5, it has granted permission for consent under sections 25/26 of the Water (Prevention and Control of Pollution) Act, 1974 and also u/s 21 of the Air (Prevention & Control of Pollution) Act, 1981. The petitioner has made an application for renewal of consent to operate within period on 12.10.2012, Annexure-10, which is, however, still pending for consideration before the respondent. However, from perusal of the 2006 notification, it also appears that the earlier notification of 27.1.1994 same are not in vogue. The petitioner has taken steps in terms of the said notification to obtain environmental clearance which would come to an end on two years before expiry of the present lease to ensure environmental clearance at the time of renewal of its lease. The respondents, are insisting upon the notification of 1994 in question as per their stand but the respondent-Board have themselves granted consent to operate. Even the renewal application is still pending before them. The mines employees considerably large number of workmen. In the said background and in the aforesaid facts and circumstances of the case, which are discussed herein-above, it appears that the impugned notice is not sustainable as the respondent Board has not taken into account the aforesaid factors while directing the petitioner to seek environmental clearance as of now for operating mines in question.

4. In the view of the matter, the case is remanded to the respondent-Board to take a informed decision upon the aforesaid matter after giving opportunity to

petitioner to present its case. It shall also take a decision on the application for renewal of consent to operate mining, which is pending before the respondents. Let the aforesaid exercise be completed within a period of four weeks from the date of receipt of a copy of this order. In that view of the matter, which are discussed herein above, notice/order dated 27.12.2012, Annexure 12 is hereby quashed. It is, however, made clear that the respondent-Board shall proceed to take its decision upon hearing the petitioner without being influenced by any observation that have been made hereinabove.

5. If the petitioner is operating the mines in question in the meantime, the respondent No. 2, the District Mining Officer, Jamshedpur shall issue transport challan in Form D as and when applied in proper format.

6. LA. No. 807 of 2012 stands disposed of. Accordingly, this writ petition is allowed in aforesaid terms.