(2013) 10 DEL CK 0130

In the Delhi High Court

Case No : LPA 237 and 243 of 2012

Infrastructure Logistics Pvt. Ltd. APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 03-10-2013

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2), 11(3), 11(4), 30

Citation : (2013) 10 DEL CK 0130

Hon'ble Judges : N.V. Ramana, C.J;Pradeep Nandrajog, J

Bench : Division Bench

Advocate : Dhruv Mehta, in LPA 237/2012, Mr. Saket Sikri, Ms. Ekta Sikri and Mr. Prannoy Dey, in LPA 237 and 243/2012 and Mr. Parag P. Tripathi, in LPA 243/2012, for the Appellant; Sapna Chauhan, Advocate for R-1, Mr. Arvind Kumar Sharma, Advocate for R-4 in LPA 237 and 243/2012, Mr. Mike P.Desai, Advocate for R-2 and Mr. Naveen Kumar, Advocate for R-3 in LPA 243/2012, for the Respondent

Final Decision : Dismissed

Judgement

Nuthalapati Venkata Ramana, C.J.—The issue which arises in the two appeals above captioned is whether in exercise of its revisional power the Central Government has correctly opined that the order passed by the State Government granting mineral concessionaire rights to the appellants suffers from an erroneous approach in law and also ignores relevant facts requiring the matter to be reconsidered by the State Government and whether the view taken by the learned Single Judge upholding the remand is correct. The relevant facts to be noted are that on October 12, 2006 the Government of Maharashtra issued a notification inviting applications from those who were desirous of mineral concessions over the areas mentioned in the notification; and pertaining to District Ratnagiri, two areas ad-measuring 42.35 hectares and 158.871 hectares were listed in Survey numbers Ambivali-Gat No. 13 to 16, 50, 63, 65 and Kante-3, 4, 10 to 15, 18 to 25, 28. It was indicated that the mineral Bauxite Ore was to be mined in the said two areas. Seventeen applicants submitted applications, and since we are primarily concerned with the inter-se dispute between the appellant Infrastructure Logistics Pvt. Ltd. and the two contesting respondents in the two appeals, being Aakash Universal Ltd., the respondent No. 3 in LPA No. 243/2012 and M/s. Ashapura Minechem Ltd., the respondent No. 4 in LPA No. 237/2012, we note that all three, apart from fourteen more, were the applicants desirous of mineral concessions over both areas at Ambivali and Kante.

2. The applications had to be processed and decided by the State Government as per the provisions of ''The Mines and Minerals (Development and Regulation) Act, 1957'' (hereinafter referred to as the MMDR Act), and it being the undisputed positions that notwithstanding the applications having been filed on different dates all applicants had to be treated as if the applications filed by them were deemed to have been received on the same day, the right of the applicants to obtain the necessary license had to be decided as per sub-Section (3) of Section 11 of the said Act, which reads as under:-

11. Preferential right of certain persons-

(1).......

(2).......

(3) The matters referred to in sub-section (2) are the following:-

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) such other matters as may be prescribed.

3. On June 24, 2009, the Government of India issued guidelines pertaining to Mineral Concession proposals to be considered by State Governments, and inter-alia directed the State Governments to process the applications as per para 8.8 of the Guidelines, which paragraph reads as under:-

8.8 Section 11(3) mentions various criteria for selection from amongst applications received on the same day (actual or deemed) but the inter-se weightage of these criteria is not defined. Further, if more than one applicant has the capabilities as mentioned in Section 11(3) the choice of applicant becomes difficult. Since all the eligible applicants are co-equal in terms of chronology, the choice has to be made on objective selection criteria in a transparent manner. Normally, the recommendation of a State Government in this regard is acceptable if a comparative chart (as per proforma attached) of all the applicants on the criteria enumerated in Section 11(3) of MMDR Act is available and the State Government has passed reasoned orders on file for recommending acceptance of case of a particular applicant and for not recommending the acceptance of the remaining applicants. The State Governments should, therefore, while sending the proposal to the Ministry, not only enclose the comparative chart based on the provisions of Section 11(3) of the MMDR Act but should furnish a self-contained speaking order duly signed by the competent authority.

4. Vide order dated August 29, 2009, the competent authority under the MMDR Act i.e. the State Government recommended grant of mining lease for mining the mineral Bauxite Ore to the appellant, recording in the order qua appellant Infrastructure Logistics Pvt. Ltd. and the two respondents, Aakash Universal Ltd. and Ashapura Minechem Ltd. the facts extracted by the competent authority from the applications submitted by the three as under:-

(1). M/s. Ashapura Minechem Ltd., Mumbai has applied for grant of ML over an area of 201.22.10 H/R on 12.09.2003. It is seen from their submissions that:-

(i) It is Private Limited Company engaged in mining, processing of the minerals.

(ii) They do hold ML/PL in Maharashtra and have pretty good experience of mining activities. They are well equipped with technically qualified personnel.

(iii) It is proposed to make invested of Rs. 30 lakhs for mining. Their financial position is sound.

(iv) So far they have made investment of Rs. 641.00 lakhs in the State. It is also proposed to set-up Alumina Refinery/Smelter Plant with investment of Rs. 4232.00 crores and project report is submitted.

(2) to (9)......

(10) M/s. Infrastructure Logistic Pvt. Ltd. Goa has applied for grant of ML over an area of 201.22.10 H/R on 18.01.2007. It is observed from their submissions that:-

(i) It is Private Limited Company and Promoters are engaged in Iron Ore mining and export.

(ii) Appellant has the expertise in Mining, logistic and Value addiction to Mineral Ore. They are expertise to operate across the full value chain and are operating Mines in Karnataka, Maharashtra and Goa and they do have experience of Mining.

(iii) They have qualified technical staff and modern equipment for mining.

(iv) It is proposed to establish a Benefication/value addition Plant with investment upto Rs. 200.00 crore.

(v) Applicant will participate in local area development like construction of roads, plantation, education, health services etc.

(vi) Applicant will take adequate care of Environment Protection.

(11) to (14).......

(15) M/s. Aakash Universal Ltd., Mumbai has applied for grant of ML over an area of 201.22.10 H/R on 24.01.2007. It is revealed from their submissions that:-

(i) It is Limited Company and is engaged in mining business for last 15 years.

(ii) Applicant does not hold any ML/PL. Technical experts will be appointed. However, Group Companies do have experience of mining.

(iii) Their share capital is Rs. 2.00 crores.

(iv) They have submitted Audit Report as on 31.03.2007.

(v) Company will invest Rs. 500.00 crores for mining.

(vi) Applicant intends to set-up Alumina Plant. But project report is not given.

(16-17)

5. Similarly the facts which the competent authority culled out from the applications submitted by the fourteen other applicants stand recorded and thereafter under the caption ''Observations'' the competent authority has recorded reasons to shortlist seven out of the seventeen applicants for further consideration; and we find that Aakash Universal Ltd. stands omitted. We note the reasoning in the part of the order under the caption ''Observations''. It reads as under:-

After going through the records and taking into consideration the oral and written submissions of applicants and going through the provisions of the Act and Rules, I have made the following observations:-

(i) At Mauze Ambivali and Mauze Kante the area available to be recommended for grant of M.L. is 192, 28.10H/R only.

(ii) In all 17 applicants have made 213 applications for grant of mining lease.

2. The said area has been notified u/s. 11(2) and (4) of the Act. Hence selection of applicant/s to be recommended for grant of P.L. will be governed as per relevant Rules and Regulations.

3. The Inter-se Merit Chart is enclosed herewith as Exhibit A'', it may be noted that it is a vital part of this Order. It also indicates reasons for acceptance/ rejection of the application.

4. This order is restricted to the compartment number and area thereof already notified only. However, some of the applicants have applied over other areas also. It may be noted that such area is not the subject matter of this order.

5. Applicants who do have experience of mining operations, well equipped with technical expertise and are financially sound are as follows:-

(i) M/s. Ashapura Minechem Ltd., Mumbai.

(ii) M/s. Ramgad Minerals and Mining Pvt. Ltd., Hospet

(iii) M/s. P.Z. Gawde, Venguria

(iv) M/s. Gimpex Metal Ltd., Chennai

(v) M/s. Core Minerals, Chennai

(vi) Maharashtra State Mining Corporation Ltd., Nagpur

(vii) M/s. Infrastructure Logistic Pvt. Ltd., Goa.

6. Rest of the applicants either intends to set-up minerals based industry or utilize the mineral for trading.

6. Thereafter, the order, under the caption ''Conclusion'' proceeds to discuss as to why appellant M/s. Infrastructure Logistics Pvt. Ltd. was opined to be the applicant entitled for mining leases over the two areas; and the reasoning is as under:-

Conclusion

Bauxite Ore reserves in Maharashtra are limited and that too concentrated in Kolhapur district and two coastal districts viz Ratnagiri and Sindhudurg. It is also pertinent to note that the available Bauxite reserves are meagre and it is not sufficient to establish a major industry like Alumina Refinery. Further the Bauxite Ore available in the area is in the form of boulders and is or rioat type.

2. In the light of the prevailing circumstances, it is evident that the applicant''s mentioned in para 5 under caption "Observations" prevails over all other applicants. This means that there are number of eligible applicants. Therefore, it has become difficult to choose one of them. In such case I have taken into consideration the contentions made in para 8.8 of Guidelines issued by the Government of India, Ministry of Mines vide their letter No. 7/60/2006-MIV, dated 24.06.2009. Wherein it also stated that Section 11(3) mentions various criteria for section from amongst applications received on same day (actual or deemed) but the inter-se weightage of these criteria is not defined. Thus, applicants having adequate technical support and financial capacity to implement the mining operations (RP/PL/ML) and who comply the other parameters laid down in Guidelines, dt. 24.06.2009 issued by Govt. of India do come in consideration zone for to be recommended for mineral concession:

3. In view of above, the eligible applicant''s are analysed as follows:-

(a) As regards applicants mentioned in Para-5 of the "Observation" of this Order following applicants have been granted/recommended for grant of mineral concession so far. Thus their case has been considered to the extent possible on the basis of their merits. Further they can procure mineral from other sources. Therefore, I do not recommend them for grant of ML over the area under consideration.

(i) Ms. Ashapura Minechem Ltd.

(ii) M/s. P.Z. Gawade

(iii) Ms. Gimpex Metal Ltd.

(iv) Ms. Core Mineral

(v) Maharashtra State Mining Corporation Ltd.

(b) As regards Ms. Ramgad Minerals and Mining Pvt. Ltd., it seems that they will utilize the mineral for trading However, State prefer captive use of mineral. Hence I reject their application.

(c) As regards Ms. Infrastructure Logistic Pvt. Ltd., Goa, they are eligible in all respects as per Rules and Regulations. Qualified Technical Staff is available. They will execute Mining in scientific manner utilizing modern techniques and equipments. Their financial position is strong. They will take adequate care of Environment Protection. Applicant will also participate in socio-economic development of local area. In view of this, I am satisfied that they are most eligible applicant to be recommended for grant of M.L. for Bauxite Ore over the area applied by them.

(d) Rest of the applicants are also otherwise eligible. But since better option is available as mentioned above hence I reject their application.

4. In view of above I pass the following order in the matter:

U/s. 11(2) and 11(4) of the Act I recommend to grant Mining Lease for Bauxite Ore over an area of 192.28 H/R situated at Mauze Ambivali Kante, Tal. Mandangad, District Ratnagiri to M/s. Infrastructure Logistic Pvt. Ltd. Goa, as per MAP (Annexure ''B'') appended herewith. All NOC''s from the Central Government, State Government and Local Authorities be obtained by the applicant.

7. As noted from paragraph 3 of the reasoning under the caption ''Observations'', an inter-se-merit-chart forms a part of the order, which has been annexed as Exhibit ''A'' to the order; and as per said paragraph 3 the said chart is stated to be a vital part of the order. Pertaining to the appellant and the two respondents, the particulars filled up in the chart are as under:-

8. From the reasons for accepting or rejecting the applications, recorded in the chart Exhibit ''A'', it is apparent that M/s. Ashapura Minechem Ltd. has not been recommended for grant of license on account of reasons in para 3(a) of the order under the caption ''Conclusion'' and M/s. Akash Universal Ltd. has not been recommended for grant of license on account of reasons mentioned in para 3(d)

of the order under the caption ''Conclusion''.

9. As per the law, the recommendations of the State Governments i.e. the order passed by the State Government had to be approved by the Central Government, and therefore, a reference was made to the Central Government and when the reference was pending, M/s. Ashapura Minechem Ltd. and Aakash Universal Ltd. filed revision petitions before the Central Government.

10. The revision petition filed by M/s. Ashapura Minechem Ltd. was allowed vide order dated November 18, 2011 by the Central Government; and after discussing the facts, giving reasons as under:-

On examination to inter-se merit chart enclosed with the impugned order, it is seen that the revisionist has shown the financial resources as more than Rs. 6 crores, proposed investment of Rs. 4232 crores towards setting up of alumina refinery/smelter plan and submitted project report. In comparison the impleaded party has shown the financial resources as Rs. 1 crore share capital and a proposed investment of Rs. 10 crores. Though in the applicant-wise details, the proposed investment by the impleaded party is indicated as Rs. 200 crores yet it is not meritorious in comparison to the revisionist. The petitioner company has stronger credentials and score over the impleaded party on the basis of the parameters of Section 11(3) of the MMDR Act, 1957 namely, special knowledge and experience, financial resources, availability of technical staff and proposed investment. The contention of the State Govt. that the petitioner has been considered to the extent possible and it can procure minerals from other resources does not stand in the face of the facts of the case. It is evident that the State Government has not made proper analysis of the case with reference to the provisions of Section 11(3) of the MMDR Act, 1957 in the impugned order.

8. In view of the above, the impugned order is set aside and the case is remanded back to the State Government to decide the applications on merits.

11. The revision petition filed by M/s. Aakash Universal Ltd. was also disposed of by a separate order of even date i.e. November 18, 2011, and after discussing the facts, giving reasons as under:-

8. It is seen from the contentions above that State Government had notified the area for grant of mining lease (ML) u/s 11(2). It is seen from the impugned order that the State Government has given opportunity of hearing and make written submission to all the applicants under the provisions of Rule 12(1) of Mineral Concession Rules, 1960 (hereinafter referred to as ''the Rules''). On examination of inter-se merit chart enclosed with the impugned order, it is seen that the revisionist has shown the proposed investment of Rs. 50 crores however, in the applicant-wise details it is mentioned as Rs. 500 crores. In comparison the impleaded party has shown proposed investment of Rs. 10 crores however, in the applicant-wise details, the proposed investment by the impleaded by is indicated as Rs. 200 crores yet it is not meritorious in comparison to the revisionist. Further it is also seen that some other applicants have proposed more

investment than both the revisionist and the impleaded party towards setting up of alumina refinery/smelter. There are other applicants for the subject area who have stronger credentials and score over the impleaded party on the basis of the parameters of Section 11(3) of the MMDR Act, 1957 namely, special knowledge and experience, financial resources, availability of technical staff and proposed investment. The contention of the State Govt. that such better applicants have been considered to the extent possible and they can procure minerals from other resources does not stand in the face of the facts of the case. It is evident that the State Government has not made proper analysis of the case with reference to the provisions of Section 11(3) of the MMDR Act, 1957 in the impugned order.

12. Writ petitions filed by the appellants challenging the orders dated November 18, 2011 passed u/s 30 of the MMDR Act, 1957 i.e. the revisional power of the Central Government, have been dismissed by the learned Single Judge vide a composite order dated February 15, 2012.

13. Challenge in the appeals is to the order dated February 15, 2012 passed by the learned Single Judge dismissing WP(C) No. 520/2012 and WP(C) 521/2012. The learned Single Judge has noted the merit-chart Exhibit ''A'' appended to the order dated August 29, 2009 passed by the competent authority, i.e. the State Government; relevant contents whereof have been noted by us in paragraph 7 above. The learned Single Judge has also noted the relevant part of the order dated August 29, 2009 under the caption ''Observations'', contents whereof have been noted by us in paragraph 5 above. The learned Single Judge has thereafter noted the part of the order dated August 29, 2009 under the caption ''Conclusion'', contents whereof have been noted by us in paragraph 6 above. Thereafter the learned Single Judge has adverted to the respective stands of the competing parties in the two revisions filed before the Central Government as also the reasons by the Central Government disposing of the two revision petitions vide orders dated November 18, 2011. The learned Single Judge has noted that the principle of equitable distribution of mineral resources as per law declared by the Supreme Court in the decision reported as Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., was not applicable in the facts of the instant case; holding that the same were rendered in completely different circumstances and that the law declared by the Supreme Court in the decision reported as Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, s. was applicable. The learned Single Judge has refused to assess the comparative merit of the various applicants, observing that the appellant, i.e. the writ petitioner before the learned Single Judge, had not been able to show as to in what manner the observations of the Central Government pertaining to Aakash Universal Ltd. and M/s. Aashapura Minechem Ltd. being on a stronger wicket were ex facie erroneous. The learned Single Judge has noted that although in its order dated August 29, 2009, the State Government had referred to the guidelines issued on June 24, 2009, and in particular para 8.8 thereof, contents whereof have been noted by us in paragraph 3 above, but has held that the State Government had

rendered lip service thereto.

14. Learned counsel for the parties in the appeal did not dispute the proposition of law that when a field is occupied by legislation, be it a statutory act or a statutory rule, the same field cannot be occupied by a policy instruction or a guideline and that the power or a discretion conferred by a statute has strictly to be exercised within the confines of the statute. Learned counsel for either side conceded that in view of Section 11(3) of the MMDR Act, 1957 and the Mineral Concession Rules, 1960, framed in exercise of the Rule making power conferred by the parent Act, the applications for grant of mining licences had strictly to be processed as per sub-Section (3) of Section 11 of MMDR Act, 1957 and the Mineral Concession Rules, 1960. A proposition of law declared by the Supreme Court in Sindur Maganese''s case (supra). Thus, we need not discuss the facts noted or the law declared by the Supreme Court in Sindur Maganese''s case (supra).

15. Conceding to the point that there were errors in the figures noted in Exhibit ''A'' of the order passed by the State Government on August 29, 2009, which discrepant figures were opined by the Central Government to be indicative of a non-application of mind, learned Senior Counsels for the appellants would urge that the order passed by the State Government had not to be read as a Judicial Order. Counsel urged that as long as reasons could be deciphered in support of the order the same had to be sustained.

16. We have perused the applications submitted by the appellant for the mining licences for the twin areas of Ambivali and Kante. We find therefrom that the appellant had disclosed that it would be exporting the Bauxite Ore and had indicated that it had no existing mining lease or prospecting licence area. It had clearly disclosed that it would not be using the Ore for captive use. Admittedly, no project report was filed before the State Government, either with the application or thereafter till the State Government passed the order on August 29, 2009, disclosing as to in what manner the appellant would participate in the socio-economic development of the local area. Having disclosed that the appellant was not engaged in any mining activity with respect to mining licences obtained by it, in what manner the appellant was having special knowledge of or experience in reconnaissance operations or mining operations, was conveyed in the form of a balance-sheet accompanied by the profit and loss account statement which would show that for certain job operations the appellant had been incurring expenditure. The schedule to the balance sheet disclosed that the appellant was an associate company of five other companies, and we find that the claim of the appellant is that its sister companies are engaged in mining operations and for which the appellant works as a contractor and thus possesses special knowledge of and has experience in reconnaissance operations or mining operations.

17. It may be true that under clause (a) of sub-Section (3) of Section 11 of MMDR Act, 1957 the requirement is of having special knowledge of or experience

in reconnaissance operations or mining operations and not that one should be owning mines; the special knowledge or experience may be gained or acquired working for others as a contractor. But we wonder as to wherefrom the State Government opined that the appellant satisfied the requirement of clause (a) of sub-Section (3) of Section 11 of MMDR Act, 1957?

18. The balance sheet and its accompanying annexures do not bring out so. We may hasten to add that before the revisional authority the relevant documents were filed along with the reply, but our concern is with respect to the material available before the State Government when it passed the order, for the simple reason the order passed by the State Government had to stand scrutiny with reference to the material placed before the State Government.

19. Having found M/s. Aashapura Minechem Ltd. eligible for a mining lease licence and four other companies: M/s. P.Z. Gawade, M/s. Gimpex Metal Ltd., M/s. Core Minerals and Maharashtra State Mining Corporation Ltd. we find no reasons recorded as to why the appellant was found to be more deserving and what were the ''better option available''; the reasons recorded in paragraph 3(d) of the order passed by the State Government. We further find a contradiction in the order passed by the State Government, which in para 3(b) has held against M/s. Ramgad Minerals & Mining Pvt. Ltd. on the ground that it will utilize the mineral for trading but the State prefers captive use of the mineral. Now, even the appellant had indicated that it would be trading in the mineral. Thus, ex-facie, reasons to reject the application of M/s. Ramgad Minerals & Mining Pvt. Ltd. are illusory. We hasten to add that said company has not raised a grievance of its application being rejected, but we illustratively refer to the manner in which the application of said company has been rejected to bring home the point of there being a non-application of mind writ large.

20. Whether or not the equitable distribution principle laid down by the Supreme Court in Tata Iron & Steel Company''s case (supra) is diluted by the law declared by the Supreme Court in Sindur Maganese & Iron Ores case (supra), is also a matter which needs to be re-considered in light of the fact that in Sindur Maganese & Iron Ores case (supra), the Supreme Court has categorically held, while interpreting Section 11 of the MMDR Act, 1957, that the discretion has to be exercised applying clauses (a) to (d) of sub-Section (3) thereof and under clause (e): such other matters as may be prescribed-meaning thereby, the Rules framed under the Act.

21. As has been noted by the learned Single Judge the order passed by the State Government on August 29, 2009 has referred to the fact that on June 24, 2009 the Government of India had issued guidelines, but had not applied the same, much less noted the applicable relevant paragraph 8.8 of the guidelines. The matter needs a re-consideration for the reason para 8.8 guides that clauses (a) to (d) of sub-Section (3) of Section 11 of MMDR Act, 1957 indicate the criteria on which competing claims have to be adjudicated, without defining the inter-se weightage of the criteria contained therein, and thus if more than one applicant

meets the criteria, the choice has to be made on objective selection criteria in a transparent manner; meaning thereby, the weightage with respect to the criteria would determine as to on which side does the weight of the law lie.

22. The impugned order passed by the State Government does not bring out an application of mind on the aforesaid reasoning which has to be followed keeping in view the guidelines issued by the Government of India on June 24, 2009.

23. Inclined to uphold an order of remand, a Writ Court as also a Writ appeal Court faces the usual dilemma of not conclusively opining on the issues of law and fact for the reason this may foreclose the rights of the parties at the remanded stage before the State Government.

24. Lest either party be prejudiced before the State Government at the remanded stage, we think that judicial restraint should be exercised by us to refer to the facts illustratively to bring home the point that indeed the matter needs a reconsideration; simultaneously clarifying that the facts which we have noted above are limited for the purpose of finding out whether the order of remand was justified or not. Nothing stated by us or by the learned Single Judge or by the Central Government shall be treated by the State Government as conclusive finding and the matter would be re-decided un-influenced by any observations made either by us or the learned Single Judge or the Central Government.

25. The appeals are dismissed. No costs.

