
(2009) 11 DEL CK 0128

In the Delhi High Court

Case No : Writ Petition (Civil) No. 17320 of 2006

Ispat Industries Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 04-11-2009

Acts Referred:

Mineral Concession Rules, 1960 — Rule 37, 54, 55

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(4), 30, 5(1)

Citation : (2009) 11 DEL CK 0128

Hon'ble Judges : Sanjiv Khanna, J

Bench : Single Bench

Advocate : Amit Sibal, Gautam Mitra and Gaurav Mitra, for the Appellant;
Maneesha Dhir and A.S. Chandhiok, ASG, C.A. Sundaram R.K. Sanghi, Babli and
Shivani Sanghi, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—The petitioner, Ispat Ltd., Industries is the manufacturer of steel having integrated steel plant at Talabi, Raigarh District, Maharastra. The petitioner has filed the present writ petition, which was allowed to be amended vide order dated 28th July, 2008, praying for following relief's against Union of India, State of Maharastra, Maharashtra State Mining Corporation Ltd. and M/s. Lloyds Metal and Engineering Ltd., respondent Nos. 1 to 4, respectively:

(a) Call for the records pertaining to the revision application 17(9)2004-RCII, and quash the order dated 6.10.2006 passed by the 1st respondent;

(b) Direct the 2nd Respondent to consider the matter afresh and grant mining lease to the petitioner in accordance with the MMDR act and MCR 1960; and

(c) Quash all the action taken consequent thereto including all approvals and clearance granted in pursuance thereof under the Mines and Minerals (Development and Regulation Act, 1957 and the rules made there under and under the Forest Conservation Act, 1980 and the lease executed on 3rd May,

2007 pursuant thereto;

(d) Pass such other order or orders which this Honb"le Court may deem fit and proper in the facts and circumstances of the case.

2. The predecessor of the petitioner on 3rd March, 1993, had applied for grant of prospecting licence for iron ore for 400 hectares in Taluk Etapalli, Tehsil Surajgarh, District Gadchiroli. On the other hand, the fourth respondent had applied for grant of mining lease for 449.42 hectares overlapping the same area vide application dated 30th March, 1993. The State Government i.e. the Government of Maharastra by their letter dated 10th November, 1994, sought approval of the Central Government for grant of mining lease for 449.42 hectares to the fourth respondent u/s 11(4) of the Mines and Minerals Development Act, 1957 (hereinafter referred to as the MMDR Act, for short). On 30th December, 1994, the Central Government granted permission and approval u/s 5(1) of MMDR Act. Thereafter, the letter dated 11th January, 1995, was issued in favour of the fourth respondent. This area was subsequently reduced to 348.09 hectares vide letter dated 11th September, 2003 in view of the objections raised by the Ministry of Environment and Forests.

3. It is admitted case of the parties that letter of intent dated 11th January, 1995 issued to the fourth respondent was not challenged by the petitioner by filing a revision petition under the MMDR Act or by filing a writ petition. The petitioner accepted the said decision/allotment.

4. On 8th November, 2001, the petitioner was formally informed that their application for prospecting license stood rejected. This order was not challenged by the petitioner by filing a revision petition or by way of writ petition. The said order has attained finality.

5. The petitioner in September/October, 2003 applied for grant of mining lease for 449.42 hectares in Surajgarh, Taluka Bande, Distt. Gadchiroli, Maharastra. The said application was considered after excluding the area of 348.09 hectares for which already a letter of Intent had been granted to the fourth respondent. The application for balance area was rejected vide order dated 27th December, 2005. The Government of Maharastra while rejecting the application had observed that they had granted mining lease/letter of intent in respect of 153.9 hectares to M/s. Gopani Iron Ore (I) Pvt. Ltd. As noticed above, M/s. Gopani Iron Ore (I) Pvt. Ltd. is not a party to the present writ petition and we are not concerned in the present writ petition with grant of mining lease/letter of intent in respect of 153.9 hectares to M/s. Gopani Iron Ore (I) Pvt. Ltd. It may, however, be noted that the petitioner had filed a revision petition before the Central Government u/s 30 of the MMDR Act read with Rule 54 of the Mineral Concession Rules, 1960 (hereinafter referred to as MC Rules, for short). The fourth respondent, however, was not impleaded as a party to the revision petition and the letter of intent in their favour was not questioned. The said revision petition was disposed of vide order dated 5th Jan.,2006 passed by the

revisionary authority. This order was challenged by the petitioner by way of a writ petition being W.P.(C) 16512/2006. This writ petition was dismissed as withdrawn after some arguments on 6th November, 2006.

6. On 28th June, 2004, the fourth respondent made an application with the State of Maharastra for permission of change of name in the letter of intent or transfer in favour of its subsidiary M/s Gadchiroli Minerals and Metals Ltd. (hereinafter referred to as GMML, for short). By their letter dated 19th August, 2004, the State Government accepted the fourth respondents request to transfer the letter of intent in favour of GMML, subject to terms and conditions mentioned in the said letter, which included the conditions mentioned in the letter dated 11th September, 2003; and stipulated that all assets raised by the fourth respondent in respect of the mineral belt and the liabilities would be transferred to GMML.

7. The petitioner did not challenge and question this transfer dated 19th August, 2004, in favour of GMML. A third company, namely, M/s. Jayswal Neco Ltd. questioned the said transfer u/s 30 of the MMDR Act and Rules 54/55 of MC Rules before the revisionary authority. The said revision petition was disposed of vide order dated 6th October, 2006, accepting the contention of M/s. Jayswal Neco Ltd. that the letter of intent cannot be transferred by the State Government. It was held that as per the MC Rules, only mining lease can be transferred, therefore, the order dated 19th August, 2004, transferring letter of intent in favour of GMML, was illegal and set aside. It may be relevant to quote operative portion of the order passed by the revisionary authority, which reads as under:

11. We have heard the parties and have also gone through the material on record. The main point for consideration is about the correctness or otherwise of the issuance of the revised LOI in favour of the impleaded party vide the State Governments communication dated 19.8.2004, which initially was granted in favour of LMEL. The impleaded party is stated to be 100% subsidiary of LMEL and the same was created for looking after the mining activates (sic) of company. From the material on record it is clear that the LMEL and the impleaded party are two different and distinct companies and cannot validly be treated as one company for the purpose of the Act. The words letter of intent(LOI) have not been defined either under the Act or the rules. During the course of hearing it was submitted by all the parties that a communication to an application for ML conveying the decision of the State Government to grant ML subject to requisite conditions is understood to be a LOPI for the purposes of the Act and the rules. We do not find and provisions in the Act or the rules which may permit the transfer of LOI issued in the name of one company to another company. Nor do we find any provision in the Act or the rules which may justify such transfer by implication. Under the scheme of the Act and the rules only the transfer of mining lease is permitted (see Rule 37) which is not the case before us. Therefore, we find absolutely no merit or legal justification in the decision of the State Government to transfer the LOI (issued to LMEL) in the name of the

impleaded party. Hence the impugned order dated 19.8.2004 being illegal and unjust is hereby set aside.

12. Ordinarily, we would not have proceeded further after declaring as illegal and setting aside the transfer of LOI in the name of the impleaded party. However, we note that subsequent to issuance of the revised LOI, the impleaded party has obtained clearance under the Forest Conservation Act, 1980 and that it has also made substantial investment for diversion of forest land for non-forest purpose. A period of 11 years has already passed after the decision of grant ML in the area was taken and the area is still lying idle. In view of the above, and keeping in mind the mineral development in the area, we are of the opinion that no useful purpose would be served if the entire exercise i.e. obtaining clearance under the Forest Conservation Act. etc done till date, is put to naught. Moreover, during the course of hearing the impleaded party offered to withdraw their claim for the transfer of LOI and the State Govt. also offered to withdraw the impugned order. Since the transfer of the LOI in the name of the impleaded party has been set aside we are of the view that the LOI issued on 1.1.1995 in favour of LMEL after obtaining approval u/s 5(1) of the Act should revert to it. The approval/clearance obtained by the impleaded party from the Central Government under the Forest Conservation Act may be considered to have been obtained by LMEL subject to clear argument (sic) of the Ministry of Environment and Forests.

(Note:- LMEL in the above quote is the fourth respondent herein).

8. The petitioner is aggrieved by the findings recorded by the revisionary authority in paragraph 12 of the order dated 6th October, 2006 holding that the letter of intent in favour of the fourth respondent continues to subsist and stands reverted. It is a contention of the petitioner that the revisionary authority should not have issued the said direction, which has resulted in revival of the letter of intent issued by the State Government in favour of the fourth respondent, dated 11th January, 1995 as modified on 11th September, 2003. It is submitted that once the transfer was affected by the State Government in favour of GMML by their letter dated 19th August, 2004, the earlier letters of intent in favour of the fourth respondent were cancelled/terminated.

9. It is not possible to accept the contention of the petitioner. The fourth respondent wanted to transfer or assign rights under the said letter of intent to its subsidiary GMML. Subsequently, when it was found that it is not possible to assign and transfer the said rights, the parties i.e. the fourth respondent, GMML and the State Government agreed that the original position as it exists, shall continue. The revisionary authority in their order dated 6th October, 2006 has held that under the MMDR Act and MC Rules, a letter of intent cannot be transferred. The fourth respondent had made an application for transfer of the letter of intent in favour of GMML, to the State Government. They did not want to surrender the letter of intent or give up their rights there under. GMML was/is a subsidiary of the fourth respondent.

10. It was not the intention of the fourth respondent to surrender their rights under the letter of intent to the State Government in case transfer was not possible. The request made by the fourth respondent was for transfer of or assignment of the letter of intent to their subsidiary GMML. The State Government initially accepted the said request but later on both GMML as well as the State Government decided to withdraw their request and order. Therefore, the status quo as it existed continues as the request for transfer stands rejected. The State Government accepted the request for transfer of name without even referring the matter to the Central Government. The parties including the State Government did not intend to obliterate or cancel the aforesaid letters of intent when the transfer request was made to the GMML, a subsidiary of the petitioner. The letter of transfer dated 19th August, 2004, states that all conditions mentioned in the letter of intent would be applicable and all assets raised by the fourth respondent in respect of the said mineral belt and the liabilities would be transferred to GMML. These pre conditions were to be satisfied for the said assignment/transfer. To hold that the rights of the fourth respondent in the letter of intent dated 11th January, 1995 as modified by letter dated 11th September, 2003, had come to an end and became dead, would be unjust and inequitable to the fourth respondent. It may be noted that the petitioner, the Central Government and the State Government are supporting the stand of the fourth respondent in this regard. The order dated 6th October, 2006, passed by the revisionary authority did not quash or set aside the letter of intent. The revisionary authority has rightly held that all the conditions under the letter of intent will continue to apply and will be binding. The said finding of the revisionary authority does not merit any interference by this Court.

11. The fourth respondent and GMML during the course of hearing before the revisionary authority had made statements that the request for transfer of the letter of intent stands withdrawn and the Government of Maharashtra had offered to withdraw the impugned order. This is specifically recorded in paragraph 12 of the order dated 6th October, 2006, passed by the revisionary authority. The petitioner herein has not challenged and questioned the said statements. The petitioner cannot factually dispute or challenge the said statements on the basis of personal knowledge of their officers as they were not party to the said revision petition and had not objected to the transfer of the letter of intent in the name of the fourth respondent to GMML.

12. It is, therefore, clear that the intention of the parties i.e. the fourth respondent and the State Government was never to novate or cancel the original letter of intent. GMML was to be substituted and assigned the rights under the original letter of intent. The original letter of intent was not extinguished or rescinded. It was not the intention of the parties that in case transfer application is not accepted or assignment in favour of GMML is not possible or permissible, still the letter of intent issued in favour of the fourth respondents, would be treated as cancelled and void. Whether there was complete novation and substitution by letter of intent dated 19th August, 2004, annulling the earlier

letter of intent dated 11th January, 1995/11th September, 2005, is an issue, which requires ascertainment of intention of the parties. The intention of parties in the present case was not to cancel and terminated the original letter of intent. Keeping in view the facts stated above, the stand of the fourth respondent and the State Government, it has to be held that there was no novation or cancellation of the original letter of intent dated 11th January, 1995 read with modification dated 11th September, 2003.

13. In view of the aforesaid discussion, I do not find any error or mistake in the order dated 6th October, 2006 passed by the revisionary authority. Counsel for the fourth respondent had relied upon the decisions of the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, and *Suvarna Cements Ltd. Vs. The Govt. of A.P. and Others*, and submitted that the petitioner herein is not an aggrieved person and, therefore, writ of certiorari as prayed for is not maintainable. I am not deciding the said contention in view of the reasoning given above. The other contentions raised by the fourth respondent relying upon doctrine of waiver are also not examined. However, it is noticed that the petitioner has secured a letter of intent dated 6th October, 2006, issued by the State Government covering an area of 2050 hectares. This fact, however, is not mentioned in the writ petition, which was filed on 1st November, 2006.

14. The writ petition has no merit and the same is accordingly dismissed. In the facts and circumstances of the present case, there will be no order as to cost.