
(2016) 01 DEL CK 0050

In the Delhi High Court

Case No : Rev. Pet. 361/2015, 373/2015 in LPA 202/2011 and CM Nos. 13844/2015, 14176/2015 and Rev. Pet. 374/2015 in LPA 205/2011

Jayaswal Neco Industries Ltd.

APPELLANT

Vs

Sarda Energy and Minerals Ltd. and Others

RESPONDENT

Date of Decision : 04-01-2016

Acts Referred:

Constitution of India, 1950 — Article 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10A, Section 10A(1)

Citation : (2016) 01 DEL CK 0050

Hon'ble Judges : G. Rohini, C.J. and Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : Raju Ramachandran, Sr. Adv., Devashish Bharuka, Anu Tyagi and M. Vijay Kumar, Advocates, for the Appellant; P. Chidambaram, Sr. Adv., J.K. Chaudhary and Jai Pratap, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, C.J.

1. LPA Nos. 202/2011 & 205/2011 were dismissed by this court by common judgment dated 24.02.2015. The said judgment is sought to be reviewed in these Review Petitions.

2. The State of Chhattisgarh/respondent No. 3 in LPA No. 202/2011 preferred Review Petition No. 361/2015 whereas M/s. Jayaswal Neco Industries Ltd./appellant in LPA Nos. 202/2011 & 205/2011 preferred Review Petition Nos. 373/2015 & 374/2015 in LPA Nos. 202/2011 & 205/2011 respectively.

3. We have heard the learned counsel appearing for both the parties.

4. The dispute between M/s. Jayaswal Neco Industries Ltd. and M/s. Sarda Energy and Minerals Ltd. regarding grant of Prospecting Licence (PL) under the provisions of Mines and Minerals (Development & Regulation) Act, 1957 for the

purpose of exploring iron ore deposits in Boria Tibbu area of Rajnandgaon District situated in the State of Madhya Pradesh, which has become part of State of Chhattisgarh w.e.f. 01.11.2000 by virtue of Madhya Pradesh Reorganization Act, 2000 was the subject matter of LPA Nos. 202/2011 & 205/2011.

5. The said appeals arose out of the orders of the learned Single Judge dated 28.01.2011 and 18.02.2011 in W.P.(C) No. 2757/2008 and W.P.(C) No. 1038/2011 respectively.

6. W.P.(C) No. 2757/2008 filed by M/s. Sarda Energy and Minerals Ltd. was allowed by the learned Single Judge by order dated 28.01.2011 upholding its claim for grant of Prospecting Licence on the basis of its application dated 25.04.1995 and directing State of Chhattisgarh and Central Government to issue consequential orders whereas W.P.(C) No. 1038/2011 filed by M/s. Jayaswal Neco Industries Ltd. was dismissed by the learned Single Judge by order dated 18.02.2011 thereby confirming the rejection of its application dated 22.05.1990 for grant of PL by the State of Madhya Pradesh. LPA Nos. 202/2011 & 205/2011 preferred by M/s. Jayaswal Neco Industries Ltd. against the said orders of the learned Single Judge were heard and reserved for judgment on 02.12.2014 and the judgment came to be pronounced on 24.02.2015.

7. The instant Review Petitions seeking review of the said judgment dated 24.02.2015 came to be filed primarily on the ground that Section 10A of the Mines & Minerals (Development & Regulation) Amendment Act, 1957, which has been inserted by Amendment dated 27.03.2015 w.e.f. 12.01.2015 was not taken into consideration while rendering the judgment dated 24.02.2015 and, therefore, the said judgment suffered from an error apparent on the face of the record. It is pleaded that by virtue of the Mines and Minerals (Development & Regulation) Amendment Ordinance, 2015 (for short "the Ordinance") promulgated on 12.01.2015 which has become an Act i.e. Mines & Minerals (Development & Regulation) Amendment Act, 2015 (for short "the Amendment Act") by publication in the Gazette dated 27.03.2015 but has come into force w.e.f. 12.01.2015 thereby inserting Section 10A into the Mines & Minerals (Development & Regulation) Act, 1957 (for short "the Act"), all applications for PL received prior to the date of commencement of the Amendment Act i.e. 12.01.2015 shall become ineligible and that the said change in law which was affected after the judgment was reserved and before the judgment was pronounced could not be brought to the notice of this court and consequently the judgment was rendered without taking into consideration the provisions of Section 10A of the Act as inserted by the Amendment Act.

8. It is pleaded in Review Petition No. 361/2015 filed by the State of Chhattisgarh that in terms of Section 10A(1) of the Act as inserted by the Amendment Act w.e.f. 12.01.2015, the State of Chhattisgarh has taken a decision on 24.02.2015 not to grant Mining Lease or Prospecting Licence on the basis of the applications received prior to 12.01.2015 unless it is covered by sub-Section (2) of Section 10A. It was also decided by the State of Chhattisgarh on

17.04.2015 that in view of Section 10A(1), Prospecting Licence cannot be granted to Sarda Energy & Minerals Ltd. since it did not fulfil the conditions mentioned in sub-Section (2) of Section 10A. In the meanwhile, Sarda Energy & Minerals Ltd. filed Contempt Case No. 318/2015 in which notice was issued by this court. The review petitioner/State of Chhattisgarh filed Special Leave Petition No. 14783/2015 contending that the judgment in LPA Nos. 202/2011 & 205/2011 cannot be implemented in view of the change of law. By order dated 13.07.2015, the Special Leave Petition was dismissed as withdrawn with liberty to file review petition before this court.

9. It is submitted by Shri Raju Ramachandran, the learned Senior Counsel appearing for the petitioners in Review Petition Nos. 373/2015 & 374/2015 i.e. M/s. Jayaswal Neco Industries Ltd. that the Amendment Act, 2015 which came into force w.e.f. 12.01.2015 has a serious impact upon the controversy involved in LPA Nos. 202/2011 & 205/2011 and since the judgment dated 24.02.2015 was rendered without taking into consideration the said amendment, the same suffered from an error apparent on the face of the record. The learned Senior Counsel also submits that the judgment of this court dated 24.02.2015 is incapable of being implemented in terms of the Amendment Act, 2015 and therefore on that ground also the same requires review. In support of the said submission, the learned Senior Counsel has relied upon *United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd. and Others*; , (2000) 7 SCC 357, *M.K. Venkatachalam, ITO and Another v. Bombay Dyeing and Mfg. Co. Ltd.*; , AIR 1958 SC 875 and *Kamlesh Verma v. Mayawati and Others*; , (2013) 8 SCC 320.

10. We have also heard Shri Atul Jha, the learned counsel appearing for the State of Chhattisgarh/the review petitioner in Review Petition No. 361/2015, Shri P. Chidambaram, the learned Senior Counsel appearing for the respondent No. 1/ M/s. Sarda Energy & Minerals Ltd. and the learned Standing Counsel for Central Government appearing for Union of India.

11. It may at the outset be pointed out that M/s. Jayaswal Neco Industries Ltd. filed two applications dated 22.05.1990 and 20.09.1993 for grant of PL. So far as M/s. Sarda Energy & Minerals Ltd. is concerned, its application for grant of PL was made on 25.04.1995. The first application of M/s. Jayaswal Neco Industries Ltd. dated 22.05.1990 was deemed to have been rejected, however, the Revision Petition was allowed by the Mines Tribunal by order dated 22.12.1994 and the matter was remanded to the State Government for consideration afresh. The said revived application was dismissed by the State of M.P. by order dated 12.04.1999 and the Revision Petition preferred by M/s. Jayaswal Neco Industries Ltd. was also dismissed by the Mines Tribunal by order dated 31.12.2001. The said order remained unchallenged for a long time and ultimately on 17.02.2011 M/s. Jayaswal Neco Industries Ltd. filed W.P.(C) No. 1038/2011 which was dismissed by the learned Single Judge by order dated 18.02.2011 on the ground of laches. So far as the second application of M/s. Jayaswal Neco Industries Ltd. dated 20.09.1993 is concerned, the same was considered by the State of M.P.

along with the other pending applications for grant of PL and by order dated 31.12.1997 the said application was dismissed and PL was granted to M/s. Sarda Energy and Minerals Ltd. The Revision Petition preferred by M/s. Jayaswal Neco Industries Ltd. against the order of State of M.P. dated 31.12.1997 was dismissed by the Mines Tribunal by order dated 04.02.1999. However, after formation of the State of Chhattisgarh on 01.11.2000, the issue of grant of PL over the Boria Tibbu area had again been taken up treating the application of M/s. Jayaswal Neco Industries Ltd. dated 22.05.1990 and the application of M/s. Sarda Energy & Minerals Ltd. dated 25.04.1995 as pending and by order dated 01.02.2002 while deciding to grant PL to M/s. Jayaswal Neco Industries Ltd. the application of M/s. Sarda Energy & Minerals Ltd. dated 25.04.1995 was rejected. Pursuant thereto, PL was granted to M/s. Jayaswal Neco Industries Ltd. on 28.02.2003. The Revision Petition filed by M/s. Sarda Energy & Minerals Ltd. against the decision of the State of Chhattisgarh was dismissed by the Mines Tribunal by order dated 05.02.2008. However, W.P.(C) No. 2757/2008 filed by M/s. Sarda Energy & Minerals Ltd. was allowed by the learned Single Judge thereby setting aside the decision of the Mines Tribunal and directing State of Chhattisgarh and the Central Government to issue consequential orders in favour of M/s. Sarda Energy & Minerals Ltd.

12. As is evident from the facts narrated above, the rival claims of M/s. Jayaswal Neco Industries Ltd. and M/s. Sarda Energy & Minerals Ltd. for grant of PL on the basis of their applications dated 22.05.1990 and 25.04.1995 respectively were considered by the State of M.P./State of Chhattisgarh and ultimately the controversy was decided by the Mines Tribunal by order dated 05.02.2008. Thus, the rights of the parties were crystallized on 05.02.2008 i.e. the date on which the Mines Tribunal had decided the controversy on the basis of the provisions of the Act and the Rules existing as on that date.

13. As rightly submitted by Shri P. Chidambaram, the learned Senior Counsel appearing for M/s. Sarda Energy & Minerals Ltd. though there can be no dispute about the well settled principle of law that failure of the court to take notice of the change in law would constitute an error apparent on the face of the record, the said proposition, according to us, has no application to the case on hand since the change in law by way of insertion of Section 10A of the Act has been affected only on the date of the judgment in LPA Nos. 202/2011 & 205/2011 whereas the rights of the parties were crystallized on the date of the order of the Mines Tribunal on 05.02.2008.

14. The law is well settled that the power of this court under Article 226 of the Constitution of India is not an appellate power but it is a power of judicial review of administrative action. This court, therefore, while exercising the power of judicial review, is only concerned with ensuring that the decision taken by the authorities empowered under the statute is arrived at in accordance with the procedure prescribed by law and in accordance with the principles of natural justice wherever applicable. Since the jurisdiction of this court under Article 226

is confined merely to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice, the same under no circumstances can be interpreted as a power akin to adjudication on merit [Vide State of UP v. Nand Kishore Shukla, , (1996) 3 SCC 750 and Tata Cellular v. UOI, , (1994) 6 SCC 651].

15. Therefore, we do not find any substance in the contention of the review petitioners that the change in law that has been brought in after the letters patent appeals were reserved for judgment is required to be taken into consideration by this court while deciding the said appeals.

16. No other ground is urged before us either on behalf of the petitioners in Review Petition No. 361/2015 or on behalf of the petitioner in Review Petition Nos. 373/2015 & 374/2015.

17. We are, therefore, of the considered opinion that the change in law by insertion of Section 10A of the Act w.e.f. 12.01.2015 has in no way affected the judgment under review. Hence, all the Review Petitions as well as all pending applications shall stand dismissed.