

(2012) 11 DEL CK 0139

In the Delhi High Court

Case No : Writ Petition (C.) No. 9033 of 2008 and C.M. No. 17353 of 2008

Lloyds Steel Industries Ltd.

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 06-11-2012

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11

Citation : (2012) 11 DEL CK 0139

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Sandeep Sethi, with Mr. Ankur S. Kulkarni, Mr. Nirnimesh Dube and Ms. Jyoti Gupta, for the Appellant; S.K. Dubey, Vivek Pipersenia and Mr. Vibhor Gupta, Advocates for the respondent/UOI, Mr. T.K. Ganju with Mr. Gaurav Juneja, Advocate for the respondent No. 5, Mr. C.V. Singh with Ms. Surekha Raman and Mr. Varun Singh, Advocates for respondent nos. 7 and 9 and Mr. Rakesh Tikku with Mr. Devashish Mishra and Mr. Atul Pandey, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Vipin Sanghi, J.—By the present writ petition, the petitioner impugns the recommendation of the Screening committee appointed by the

Respondent No. 1/Union of India through the Secretary, Ministry of Coal, dated 03.07.2008. The said recommendation provided for the

allocation of coal block to various parties, viz. M/s Ispat Industries Ltd.(Ispat)/respondent no. 5, M/s ESSAR Steel Ltd.(Essar)/respondent no. 6,

M/s Mukund Ltd. (Mukund)/respondent no. 7, M/s IND Synergy Ltd.(IND Synergy)/respondent no. 8, M/s Prakash Industries Ltd. (Prakash),

M/s MESCO Steel Ltd. (Mesco), M/s Jindal Steel Ltd. (Jindal), M/s Bhushan Steel & Strips Ltd. (Bhushan) and M/s Monnet Ispat Ltd

(Monnet). The Petitioner herein also challenges the consequential order of

Central Government dated 07.10.2008, making the allotment partly at variance with the recommendation of the Screening Committee including to M/s Kalyani Steels Ltd. (Kalyani)/respondent No. 9. The Petitioner

also prays for a direction to the Respondents not to take any action pursuant to the impugned recommendation of the Screening Committee and

the allocation letter issued by Coal Ministry/Respondent no. 1 herein.

2. Respondent No. 1 (Govt. of India, Ministry of Coal) had advertised for the allocation of 38 coal blocks on 06.11.2006 to the companies

engaged in the generation of power, production of iron, steel or cement. A Screening Committee was also appointed by the Cabinet of Ministers

to scrutinize the applications for allocation of coal blocks. The Screening Committee prescribed a ceiling on projected capacity at 2 Million Tones

Per Annum (MTPA). The Screening Committee formulated a set of guidelines and rules for the allocation of coal blocks. The said guidelines

provided the basis on which priority was to be accorded for allocation of coal blocks. The guidelines formulated were as follows:

½ Status (stage) level of progress and state of preparedness of projects;

½ Networth of the applicant company (or in the case of a new SP/JV, the networth of their principals);

½ Production capacity as proposed in the application;

½ Maximum recoverable reserve as proposed in the application;

½ Date of commissioning of captive mine as proposed in the application;

½ Date of completion of detailed exploration (in respect of unexplored blocks only) as proposed in the application;

½ Technical experience (in terms of existing capacities in coal/lignite mining and specified end use);

½ Recommendation of the Administrative Ministry concerned;

½ Recommendation of the State Government concerned (i.e. where the captive block is located);

½ Track record and financial strength of the company.

½ Preference will be accorded to the power and the steel sectors. Within the power sector also, priority shall be accorded to projects with more

than 500 MW capacity. Similarly, in steel sector, priority shall be given to steel plants with more than 1 million tonne per annum capacity.

(Emphasis supplied)

The aforesaid guidelines were modified to a limited extent, i.e., the capacity of steel plants to be given priority was reduced from 1 MTPA to 0.5

MTPA.

3. The petitioner claims to be engaged in the manufacturing of iron and steel and for that purpose claims to have established an integrated steel

plant at Wardha, Maharashtra. The petitioner made an application on 10.01.2007 for the allocation of a captive coal block in Behraband North,

Madhya Pradesh. The petitioner submits that its application was scrutinized by the ministries of Coal and Steel as well as by the State Govt. of

Maharashtra. The petitioner submits that the Govt. of Maharashtra on 15.06.2007 recommended the name of the petitioner company for the

allocation of coal block in Khapa and Khapa Extension, Gond Khairi and Dahe Gaon Makardhokra-IV. However, the application of the

petitioner was rejected by the Screening Committee. The petitioner claims that the names of ineligible and undeserving applicants were

recommended by the Committee vide the impugned order dated 03.07.2008.

4. The petitioner challenges the aforesaid allocation on a number of grounds, which are as follows:

a) The primary ground of the petitioner is that the allocation is arbitrary and illegal per-se. The petitioner herein relies upon the order of the Central

Government dated 07.10.2008 wherein the allocation was changed, and Kalyani was included whose case was not even recommended by the

Screening Committee.

b) It is also the petitioner's case that the Screening Committee's action is not in conformity with the rules of fair play and natural justice as no

reasons are given either for rejecting the petitioner's application or for allocation to the allottees. It is submitted that the records produced by the

respondents also do not contain any reasons whatsoever for the impugned actions. As per the petitioner, the recommendation of the Screening

Committee merely states that it has assessed the applications having regard to certain matters, but there is no mention as to how the petitioner and

other applicants scored on these parameters. The petitioner relies on the judgment of the Supreme Court in Sandur Manganese and Iron Ores Ltd.

Vs. State of Karnataka and Others, , wherein it was observed that ""Although the

summary of applications were made, the Government gave no clear reasons to show as to why certain applicants were preferred over the other and that there is no plausible reason as to why the application of the Petitioner was not considered favourably." The Supreme Court in that case quashed the order passed by the Central Government.

The Petitioner also relies on the decision rendered in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and*

Others, wherein it was observed that when a statutory functionary makes any order based on certain grounds, its validity must be judged by the

reasons so mentioned and cannot be supplemented by fresh reasons in shape of an affidavit or otherwise.

c) The petitioner asserts that the allocations were made in contravention of the guidelines and that the coal blocks were allotted to parties who are

not even eligible. The petitioner herein relies on the minutes of the 36th meeting of the Screening Committee. As per the petitioner, the coal blocks

have been allotted to the undeserving, ineligible and non-applicant companies, as the projected capacity of ISPAT and ESSAR is 3.6 and 3.9

MTPA respectively which is more than the capacity prescribed in the guidelines, i.e., 2.00 MTPA. Hence both the parties were ineligible as per

the norms prescribed by the Ministry. Moreover, the 2 companies viz. Kalyani and Mukund have been clubbed together as one, but they will be

allotted individual shares. The petitioner contends that the modified guidelines followed for the allocation were in variance with the advertisement

for allocation of coal blocks, and these modified guidelines were not even disclosed to the applicants.

(d) The petitioner also contends that the Hospet Steels Ltd. (Hospet) which is a joint venture of Mukund & Kalyani is a non-applicant, whereas,

as per the guidelines, if any group of companies or consortium whose individual existing capacities are ineligible, they should make a viable joint

venture to attain the eligible capacity, and the application is to be submitted in the name of joint venture. This has not been done.

(e) The petitioner also claims that the Coal Ministry has acted arbitrarily and has by-passed the Screening Committee by changing the allotment

and the procedure criteria. The application of IND. Synergy was favourably considered in ignorance of the fact that the company does not fulfil the

requirements. The Coal Ministry in order to allot coal block to Kalyani changed the criteria completely, and by-passed the recommendation of the

Screening Committee. The grievance of the petitioner is that Kalyani-which was not even considered by the Screening Committee, has been

granted 9.7 million tonnes of coal.

5. On the other hand, the collective submission of the Respondents is that the eligibility criteria fixed was at 0.3 MTPA for the production of

sponge iron through an existing blast furnace route, and 0.5 MTPA for the production of pig iron. But the petitioner's plant was not operating

through Blast furnace route. It was operating through direct reduced iron route, which makes the petitioner ineligible. The proposed capacity of the

petitioner is 0.4 MTPA, which makes it ineligible to be allotted any coal mine. The information provided by the petitioner is false because, as per

the petitioner, it has an existing capacity of 0.6 MTPA and proposed capacity of 0.4 MTPA. But he did not disclose that the existing capacity of

0.6 MTPA is for non-cooking coal, which cannot be considered under the eligibility criteria. The petitioner qualifies neither on the original policy

guidelines nor on the revised policy guidelines because, as per the original guidelines, in steel sector, priority was required to be given to steel plants

with more than 1 MTPA capacity and after revision of the criteria, the same was reduced to 0.5 MTPA. However, the proposed capacity

disclosed by the petitioner in the application for blast furnace is only 0.4 MTPA. It was also the contention of the respondents that the petitioner

has no locus standi to challenge the allocation of coal block to the respondents as the petitioner has not been able to set up the steel plant, nor

utilize it till date. Since the petitioner has itself not fulfilled the eligibility criteria, it cannot have any legitimate expectation for a favourable

consideration.

6. It was also the contention of the respondents that the petitioner has been declared as a sick company and is, therefore, not eligible for applying

for any mining leases. Rather it is admitted by the petitioner that it is a sick industry and has outstanding liabilities and dues of more than Rs.

1427.97 crores. It also has an interest liability of about Rs. 383 crores till 2008 and its reference is also pending before the BIFR. A bare perusal

of the application made by the petitioner clearly shows that they have

deliberately not disclosed the profits for the years 2003-2004 and 2005-

2006 and have also not disclosed their net worth as on 31st March, 2006. The petitioner has also failed to disclose before this Court the declining

financial net worth of the petitioner company. Moreover, it is evident from the guidelines for allotment that sound financial condition of the company

was one of the primary requirements for the allotment of coal block as the entire process requires about Rs. 100 crores worth of investment.

7. It is submitted that Mukund and Kalyani have been clubbed together as they have common manufacturing unit at Hospet and not because of

favouritism. The Respondents also contended that as far as the case of ISPAT and ESSAR are concerned, Para 12 of the Minutes of 36th

Meeting of the Screening Committee clearly show that even if the existing or proposed capacity is more than 2 MTPA for steel, there will be a

ceiling cap up to 2 MTPA for steel with regard to the allotment of coal to different applicants.

8. The respondents contend that the procedure adopted by the Screening Committee is rational and is based on material reasons, and that the

petitioner herein has failed to prove that he is better placed than any other allottee.

9. As far as the petitioner's contention with regard to Hospet's application is concerned, it is pertinent to note that Hospet has jointly been

promoted by Mukund and Kalyani to manage, supervise and operate the production sharing agreement of the blast furnace at Ginigera. Hospet

neither owns any manufacturing facility nor is the applicant for coal block allocation. In the said composite steel making facility at Ginigera, Mukund

(Respondent No. 7) has investment of 580.62% and Kalyani (Respondent No. 9) has investment of 41.38%. The composite steel making facility

at Ginigera has two 250M3 each Blast Furnaces (BFs) and one 350M3 BF. Thus, the total steel production capacity at Ginigera is 700,000 MT

per annum. Hospet only supports production, planning, administrative needs and delivery of the finished products, i.e., Blooms, Billets and Rounds

to Mukund and Kalyani in their agreed production ratio of 580.62% and 41.38% respectively. Therefore, there is no relation whatsoever, of

Hospet with the application filed by the Respondent No. 7 or 9 for allocation of Coal.

10. After a perusal of the record and having considered the submissions of the parties, I find no merit in this petition and I am inclined to dismiss

the same. It is clear that the petitioner is ineligible for the allotment of any coal block, because priority was to be given to those projects in the steel

sector, whose capacity was more than 1 MTPA. After revision of the said criteria, the preferential criteria were reduced to 0.5 MTPA. This

makes the petitioner ineligible for allotment on the original policy guidelines as well as the revised policy guidelines, as the proposed capacity

disclosed by the petitioner in the application is only 0.4 MTPA. The petitioner has shown an existing capacity of steel plant at 0.6 MTPA and a

proposed capacity of 0.4 MTPA. But it is noteworthy that the petitioner's existing capacity is for non-cooking coal, which cannot be considered

for the purpose of this allotment, as the allotment upon the petitioner's application was to be made for cooking coal. Hence, the proposed capacity

of 0.4 MTPA can only be considered which makes it ineligible for allotment.

11. Secondly, the petitioner is a sick industrial company and has outstanding dues of more than Rs. 1427.97 crores and an interest liability of about

Rs. 383 crores. It seems that the petitioner has deliberately not disclosed the profits for the year 2003-2004 in its application. Since the petitioner

is not eligible for allotment of mining rights, in my view, the petitioner has no locus standi to assail the allotment made to other eligible applicants. At

the petitioner's behest, this Court is not obliged to examine the issue whether the allotment made to the other eligible applicants is good or bad. It

appears, no other eligible applicant has assailed the allotment made by the respondent authorities till date. However, I am not inclined to delve into

the justifiability or legality of the allocations made to the other.

12. There is another basic infirmity in the petitioner's case. The case of the petitioner is that the State of Maharashtra had recommended its case

for allotment of a coal block in Maharashtra. However, the application made by the petitioner was for allotment of a coal block in Madhya

Pradesh at Behraband North. One fails to understand how a recommendation made by the State of Maharashtra in respect of coal blocks at

Khapa and Khapa Extension, Gondkhairi and Dahl Gaon, Makardhokra-IV could be of any avail to the petitioner, when its requirement was for a

coal block at Behraband North in Madhya Pradesh.

13. Yet another aspect that I may take note of is even though the petitioner's challenge adversely affects various entities including Prakash, Jindal

and Monnet, the petitioner has not impleaded them as party respondents. The present petition would also liable to be dismissed on account of non

impleadment of necessary parties.

14. As far as the petitioner's submission of favouritism by the Screening Committee is concerned, it appears that Mukund and Kalyani have been

clubbed together not because of any favouritism but because they have a common manufacturing facility at Hospet.

15. Moreover, it is noteworthy that Para 12 of the Minutes of 36th Meeting of the Screening Committee clearly show that even if the existing or

proposed capacity is more than 2 MTPA for steel, there will be a ceiling cap up to 2 MTPA for steel with regard to the allotment of coal to

different applicants. Hence the fact the ESSAR and ISPAT have an existing or proposed capacity of more than 2 MTPA is of no relevance here.

16. Thus on a consideration of the entire material so placed, I am of the view that there is no merit in this petition for the aforesaid reasons.

17. Assuming that there is some force in the petitioner's submission with regard to failure to observe natural justice, the question arises whether

such failure has resulted in any prejudice being caused to the petitioner.

18. The Supreme Court in S.L. Kapoor Vs. Jagmohan and Others, , has held that although non-observance of the principles of natural justice is

itself prejudicial, but the failure to observe the same does not at all matter, if, the observance of natural justice would have made no difference, the

admitted or indisputable facts speak for themselves; where on the admitted or indisputable facts only one conclusion is possible; and under the law

only one penalty is permissible. The Court may not issue its writ to compel the observance of natural justice, not because it approves the non-

observance of natural justice, but because Courts do not issue futile writs. However, at the same time, it will be a pernicious principle to apply in

other situations where conclusions are controversial, however, slightly, and penalties are discretionary.

19. Similar view was expressed by the Supreme Court in case of Mohd. Sartaj and Another Vs. State of U.P. and Others, , wherein it was held

that no prejudice had been caused to the appellants by not serving a notice of

hearing before issuing the order of termination. The appellant in that case was terminated from employment without compliance of the rule of natural justice. However, it was held that appellant did not possess the required qualifications and hence he did not have any right to hold the post. Hence, no hearing was required. Considering the above views, it is apparent that the petitioner is, in any event, not prejudiced by the non-compliance of rules of natural justice as the petitioner is not qualified for any allotment.

20. As far as the petitioner's reference to Sandur Manganese (supra) is concerned the same, in my view, has no application herein. In the said case, the question before the Supreme Court was not with regard to the allotment to an applicant for mining lease. The only fact involved in this case was whether the recommendation made by the Chief Minister was contrary to the provisions of Section 11 of the Mines and Minerals Act or to Rules 59 and 60 of Mineral Concession Rules. Whereas in the present case, there is no such challenge made by the petitioner. For the aforesaid reasons, I find no merit in the writ petition and the application and dismiss the same leaving the parties to bear their respective costs.