
(2014) 12 OHC CK 0076
In the Orissa High Court
Case No : W.P. (C). No. 25211 of 2013

MGM Minerals Ltd.

APPELLANT

Vs

State Environment Impact Assessment Authority (SEIAA)

RESPONDENT

Date of Decision : 24-12-2014

Acts Referred:

Citation : (2015) 5 FLT 393 : (2015) 1 ILR 499

Hon'ble Judges : I. Mahanty, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

1. Mahanty, J.—In the present writ application the petitioner (MGM Minerals Ltd.) have sought to challenge the order/letter dated 11.12.2009 issued by the State Environment Impact Assessment Authority (hereinafter referred to as "SEIAA"), Odisha (Opposite Party No. 1) whereby, the Environmental Clearance in respect of the petitioner (mining project) have granted for a period of five years only, which it is alleged is not in consonance with the provisions of Environmental Impact Assessment Notification, 2006.

2. Mr. Y. Das, learned Senior Advocate appearing for the petitioners asserted that the SEIAA have granted the petitioner-company "Environmental Clearance" for a period of 5 years for its mining project at village Patabeda vide letter dated 11.12.2009 even though the Union of India in the Ministry of Environment and Forest (Opposite Party No. 2) grants Environmental Clearances in respect of the mining projects for the "entire project life subject to a maximum period of 30 years" under the self-same notification of 2006.

3. Shorn of unnecessary details, suffice it is to note herein that the petitioner-company has been granted with a mining lease over an area of 28.397 hectare at village-Patabeda in the district of Sundergarh for a period of 20 years w.e.f. 8th March 2006 for mining of iron ore by the Government of Odisha vide lease-deed dated 8.3.2006. In terms of the Environment Impact Assessment Authority Notification, 1994 framed by the Union of India under the Environment Protection Act, 1986, the petitioner-company was mandatorily required to obtain

"Environmental Clearance" before starting operation of new mines and/or subsequent increase in production. The petitioner-company had applied for "Environmental Clearance" for the mining lease for the purpose of production of iron ore of 0.16 Million Ton Per Annum (MTPA). The Union of India, Ministry of Environment and Forest (O.P.2) vide his letter dated 21.7.2005 granted "Environmental Clearance" in respect of the leased area basing upon the mining plan duly approved by the Indian Bureau of Mines (hereinafter referred to as "IBM") on 8.11.2002. In terms of such mining plan, the life of the mine was conceptualized for a period of 20 years basing on the projected quantum of production and date available regarding the quantum of iron ore reserve.

4. On the basis of such "Environmental Clearance" obtained from Opposite Party No. 2 (Union of India), the petitioner-company commenced its mining operation on its lease hold and thereafter sought to enhance its production capacity of iron ore from 0.16 MTPA to 0.8 MTPA. Prior to giving effect to such enhancement, "Environmental Clearance" once again was required and in the interregnum, the Central Government had issued a Notification dated 14.9.2006 creating a "State Level Environment Impact Assessment Authority" (SEIAA)-Opposite Party No. 1 in exercise of its power vested under the Environment Protection Act, 1986 and in terms of such Notification, persons desirous for expansion of their existing mining projects, (below 50 hectare of land area) were required to approach the SEIAA (O.P.1) instead of the Union of India (O.P.2). In other words, all mining projects which were for less than 50 hectares fell under Category "B" and they could seek approvals from the State-SEIAA and the projects which came under Category "A" i.e. above 50 hectares of land, would have to approach the Union of India (Ministry of Environment and Forest and the Expert Appraisal Committee) thereof constituted by the Central Government. Since the petitioners' lease area was below 50 hectares of land and since the petitioners sought to enhance its production from 0.16 MTPA to 0.8 MTPA, in view of Notification dated 14.9.2006, it filed an application for Environmental Clearance for seeking enhancement of production through the State (SEIAA).

5. The application filed by the petitioner-company to the SEIAA (Odisha) for grant of "Environmental Clearance" for enhancement of production from 0.16 MTPA to 0.8 MTPA at Patabeda was granted on 11.12.2009 for a period of 5 years. It appears that the petitioner-company thereafter had sent representation to the SEIAA objecting to limiting the Environmental Clearance for 5 years and in response to the representation of the petitioner-company, the SEIAA vide letter dated 2.3.2010 informed the petitioner-company that its request for extension of validity period of Environmental Clearance was not considered by the authority, on the ground that, the mining scheme submitted by the petitioner-company was valid for a period of 5 years and the petitioner had not furnished any Environmental Management Plan beyond 5 years.

6. The petitioner-company once again sought for a fresh mining approval from the IBM and such approval was obtained from the IBM on 1.4.2011 and in terms

of such mining plan, the average rate of production of 5.84,008 MT as planned in the scheme period, the deposit would last for 19 years and consequently, once again the petitioner made a representation to the SEIAA for extension of the period of "Environmental Clearance" to cover the "entire project life". Since in terms of the Environment Impact Assessment Notification, 2006 and Clause-9 thereof, "that prior Environmental Clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects [item 1(c) of the Schedule], project life has been estimated by the Expert Appraisal Committee (EAC) or State Level Expert Appraisal Committee subject to a maximum of 30 years for mining projects and 5 years in the case of all other projects and activities."

Although the petitioner-company submitted the mining plan dated 1.4.2011 signifying life of the mines for atleast 19 years to the Opposite Party No. 1 and send reminder on 18.3.2013 seeking extension of the "Environmental Clearance", no response thereto was received. Consequently, the present writ application came to be filed.

7. When notices were issued by this Court to the opposite parties, Opposite Party No. 2-Union of India (MOEF) filed its affidavit and in Para-5 thereto is quoted hereunder:

"That in respect of the issue raised by the petitioner Respondent No. 2 submits that the issue or grievances is caused of the decision of the SEIAA i.e. Respondent No. 1 as mentioned by the petitioner. The answering Respondent No. 2 has no comments to offer on the decision of SEIAA, Odisha. Para-9 of the EIA notification 2006 deals with the validity of EC which is annexed at annexure-2 of the petition. The Para reads as follows: The "Validity of Environmental Clearance" is meant the period from which a prior environmental clearance is granted by the regulatory authority, or may be presumed by the applicant to have been granted under sub-paragraph (iv) of paragraph 7 above, to the start of production operations by the project or activity, or completion of all construction operations in case of construction projects (item 8 of the Schedule), to which the application for prior environmental clearance refers. The prior environmental clearance granted for a project or activity shall be valid for a period of ten years in the case of River Valley projects (item 1(c) of the Schedule), project life as estimated by Expert Appraisal Committee or State Level Expert Appraisal Committee subject to a maximum of thirty years for mining projects and five years in the case of all other projects and activities." Since the EC has been granted by SEIAA Odisha and the subject matter is project specific, Respondent 1 may state the position with regard to validity of EC granted."

The SEIAA (Opposite Party No. 1) also filed its counter affidavit through its Member Secretary and sought to justify the issue of Environmental Clearance and limiting the same to 5 years in the following manner:

"6. That, the EC issued for a period of 5 years is in consonance with the provision

and spirit of the EIA Notification, 2006 because EC granted for longer period gives rise to the possibility of unscientific mining and excess extraction of minerals over and above the limit prescribed.

That, the validity period of EC for mining projects can have a maximum validity period of 30 years but cannot have a uniform applicability as the decision of the Authority is based on the recommendation of the State Expert Appraisal Committee, which is composed of technical experts who undertake screening and appraisal of the project and after necessary scientific deliberation recommends the period for which the EC is to be granted."

8. Mr. A.K. Bose, learned Asst. Solicitor General representing both the opposite parties placed reliance on Para-6 of the affidavit of SEIAA as quoted hereinabove. The Court asked the Asst. Solicitor General to peruse the terms and conditions under which the SEIAA had granted "Environmental Clearance" to the petitioner-company dated 11.12.2009 and further enquired as to whether the terms and conditions stipulated therein were inadequate for the purpose of seeking effective control over the mining operation of the petitioner-company.

In his usual fairness, the learned Asst. Solicitor General considered that the terms were extremely rigorous in nature and the SEIAA continued to possess pervasive control over the operation of mine even though the "Environmental Clearance" had been granted to it.

9. Mr. Y. Das, learned Sr. Advocate for the petitioners submitted that the Union of India for Category "A" cases where mining leases were much more than 50 hectares, have consistently granted Environmental Clearances either for the project life or 30 years whichever was lesser. He also asserted that after SEIAAs were constituted in various States of the country, all such SEIAAs have been granting mining projects with Environmental Clearances either for the project life or for 30 years whichever was lesser and it was only in Odisha that the State (SEIAA) have limited grant of "Environmental Clearance" to 5 years. The justification sought to be made by the SEIAA for limiting such clearances to 5 years of mining projects as explained from Para-6 of the counter affidavit, quoted hereinabove, clearly shows an ambivalent response and the Union of India as well as various other State-SEIAAs have been following the Government of India Notification both in letter and spirit. The period of 5 years as mentioned in the Ministry of Environment Notification, 2006 was clearly meant for non-mining projects and vis-?-vis mining projects, the Notification is clear and categorical, indicating that the said "Environmental Clearance" ought to be granted for the project life as estimated by the State Level Expert Appraisal Committee subject to a maximum of 30 years and 5 years in the case of all other projects and activities.

10. In view of the aforesaid facts situation that has arisen, we are of the considered view that the State Level Expert Appraisal Committee has not acted in compliance of the direction issued by the MOEF in its Notification, 2006.

Therefore, we are of the view that as far as the mining projects are concerned, the State Level Expert Appraisal Committee ought to have considered the "project life" of the mines upto maximum 30 years and not limited the same for 5 years only. Limiting the same to 5 years only appears to us to be wholly arbitrary and not in consonance with the direction issued by the MOEF. In the present case, we find that the petitioners had submitted the mining plan duly approved by the IBM on 1.4.2011 to Opposite Party No. 1 (SEIAA) and the said mining plan ought to have been acted upon by the SEIAA for the purpose of suitably extending the Environmental Clearance granted to the petitioners to cover the period of 19 years mentioned therein.

11. Accordingly, the writ application is allowed directing the Opposite Party No. 1 (SEIAA) to grant extension of "Environmental Clearance" granted to the petitioner-company for a period of 19 years from 1.4.2011 in terms of the approval of mining plan granted by the Indian Bureau of Mines dated 1.4.2011 forthwith.

By interim order dated 10.12.2014, this Court had directed the petitioners that the mining operation shall not be impeded on account of the "Environmental Clearance" till delivery of this judgment and consequently, this Court directs that till the orders in compliance of these directions are issued by Opposite Party No. 1 (SEIAA), within a period of four weeks from today, the aforesaid interim order shall remain in operation.

B.N. Mahapatra, J.

I agree.