

(2016) 09 JH CK 0035

In the Jharkhand High Court

Case No : Writ Petition (Cr) No. 218 of 2016

M/s. Balaji Coke Minerals

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 7 FLT 78 : (2016) 4 JCR 717

Hon'ble Judges : Mr. Rongon Mukhopadhyay, J.

Bench : Single Bench

Advocate : Mr. Binod Singh, S.C. (L&C), for the Respondents; Mr. Kalyan Roy, Advocate, for the Petitioner

Final Decision : Allowed

Judgement

Mr. Rongon Mukhopadhyay, J. - I.A. No. 6427 of 2016

This I.A. has been filed by the respondents State for exempting the Superintendent of Police, Bokaro for appearing in person, as was directed vide order dated 16.09.2016.

2. It appears from the averment made in the instant application that the father of the Superintendent of Police, Bokaro is to undergo open heart surgery at Bangalore, which requires the presence of Superintendent of Police, Bokaro.

3. In view of averment made in the instant application and since justifiable explanation has been furnished on behalf of Superintendent of Police, Bokaro, his personal appearance is exempted.

4. This application is allowed.

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5. Heard Mr. Kalyan Roy, learned counsel for the petitioner and Mr. Binod Singh, learned S.C. (L&C) appearing for the respondents.

6. In this writ application, the petitioner has prayed for a direction upon the respondents to remove the seal of the factory premises of M/s. Balaji Coke Minerals which was sealed in connection with Mahuat and P.S. Case No. 72 of 2014 (corresponding to G.R. No. 1287 of 2014) registered for the offences punishable u/s 414, 414 and 34 of the Indian Penal Code and Section 33 of the Indian Forest Act.

7. It has been submitted by learned counsel for the petitioner that the petitioner being a partnership firm is represented through its partner Deepak Kumar Mahto, who is not the accused in this case. Learned counsel submits that after institution of the case, one of the accused persons had preferred A.B.A. No. 535 of 2015 in which liberty was given to the District Administration to seal the factory premises in accordance with law and the Superintendent of Police, Bokaro was also directed to verify the matter personally, but without making such verification, the factory premises has been sealed. Learned counsel further submits that the counter affidavit has been filed by the respondents State in which neither the ownership of the factory has been denied nor anything has been stated with respect to verification made by the Superintendent of Police, Bokaro before or after sealing the factory premises. It has further been submitted that in absence of any proof to the contrary to what has been claimed by the petitioner, the respondents be directed to unseal the factory premises.

8. Learned S.C. (L&C) appearing for the respondents has supported the impugned order and has opposed the prayer made by the petitioner and has submitted that in terms of the direction given in the order dated 29.06.2015 passed in A.B.A. No. 535 of 2015, the factory premises was sealed. It has further been submitted that the actual owners did not ever turn up or represent the Superintendent of Police, Bokaro to show their ownership over the factory premises. Learned State counsel therefore submits that the order passed in A.B.A. No. 535 of 2015 has since been complied with, the prayer of petitioner for unsealing the factory premises is liable to be rejected.

9. It appears that specific statement has been made by the petitioner that M/s. Balaji Coke Minerals is a partnership concern. Further statement has been made that no verification has been carried out pursuant to the order dated 29.06.2015 passed in A.B.A. No. 535 of 2015. In A.B.A. No. 535 of 2015, this Court vide order dated 29.06.2015 had directed the Superintendent of Police, Bokaro to verify the matter personally, as nobody has come forward to make claim over the said factory. In the said order itself liberty was given to the District Administration to seal the aforesaid factory in accordance with law to prevent further illegal activities within that premises. The counter affidavit is silent with respect to the fact as to whether the Superintendent of Police, Bokaro had verified the factory premises. The sealing of the factory premises was done without any basis as no prior enquiry with respect to the ownership of the factory was carried out as was indicated in the order dated 29.06.2015 passed in A.B.A. No. 535 of 2015. The act on the part of the District Administration in sealing the

factory premises is arbitrary and capricious.

10. In such circumstances, therefore while allowing this writ application, the Superintendent of Police, Bokaro is directed to unseal the factory premises after preparing inventory of the articles kept within the factory premises. The said exercise has to be completed within a period of two weeks from the date of receipt/production of a copy of this order.

11. This writ application is allowed.