
(2012) 02 DEL CK 0549
In the Delhi High Court
Case No : LPA 741 of 2010

M/s Steel Authority India Ltd.

APPELLANT

Vs

M/s Electro Steel Castings Ltd. and Others

RESPONDENT

Date of Decision : 28-02-2012

Acts Referred:

Mineral Concession Act — Section 11, 11(2), 11(4), 59(2)

Mineral Concession Rules, 1960 — Rule 21(2), 22(1)(3), 22(3), 24A, 26(1)

Citation : (2012) 02 DEL CK 0549

Hon'ble Judges : A.K. Sikri, Acting C.J.;Rajiv Sahai Endlaw, J

Bench : Division Bench

Advocate : Dhruv Mehta, with Ms. Kirti Mishra, for the Appellant; Sanjay Jain with Mr. Sanjay Abbot, Advocate for R. 1 and Ms. Maneesha Dhir, Ms. Geeta Sharma, Ms. Mithu Jain and Ms. Priya Singh, Advocates for R. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A.K. Sikri, Acting Chief Justice

1. The appellant herein, which is Public Sector Undertaking held a mining lease for limestone and Dolomite which was initially granted to the appellant by the State of Orissa (hereinafter referred to as the State Government) for a period of 20 years w.e.f. 6.1.1960. This was an area of 569.64 acres (230.55 hectares) in village Purnapani, District Sundergarh, Orissa. The lease was further renewed for another period of 20 years i.e. upto 5th January, 2000. Before the extended period of the lease expired, the appellant submitted another application dated 30.12.1998 to the State Government for renewal of the mining lease. On this application, the State Government issued notice as required under Rule 26 (1) of the Mineral Concession Rules, 1960 (MCR) to the appellant calling upon the appellant to appear before the Addl. Secretary, Department of Steel and Mines, Govt. of Orissa on 3.6.2006 and thereafter on 11.8.2006 for a personal hearing.

2. While the request for extension was pending, on 28.9.2006 the Collector,

Sundergarh recommended to the Department of Steel and Mines for rejection of second application for renewal, inter alia, on the ground that the appellant had stopped mining operations w.e.f. 1.3.2003 and there was no production or dispatch of limestone during the said period. Acting on this recommendation, the State Government passed orders dated 23.10.2006 rejecting the renewal application of the appellant giving the following reasons:-

the applicant is deficient of Mining Dues Clearance Certificate and it is assumed that the party is no more in the area applied for.

The appellant challenged this order before the appellate authority i.e. Central Government (Mines Tribunal) by filing revision petition on 19.1.2007 along with the application for stay.

3. The respondent no.1 who is one of the aspirants for the lease over the same area submitted its application dated 28.2.2008 to the State Government for grant of mining lease. Further, in order to object to and contest the appellants' revision petition pending before the Mines Tribunal, the respondent no.1 also moved an application for impleadment in the said revision petition on 4.3.2008. Vide order dated 10.6.2008 the respondent no.1 was permitted to intervene but rejected the request for impleadment by the Mines Tribunal repelling the objections of the appellant to its maintainability. The appellant challenged the impleadment order by filing Writ petition No. 81/2009. In this writ petition order dated 9.1.2009 were passed by this Court directing the respondent to consider the entire matter afresh including the respondent's application for impleadment and pass a comprehensive order and dispose of the revision petition within three months. The Mines Tribunal heard the parties. Insofar as impleadment application of the respondent no.1 is concerned, it was dismissed on 30.1.2009 holding that it has no locus standi to be impleaded as party. This order was challenged by the respondent no.1 by filing writ petition in this Court. However, before this writ petition could be heard on merits, the revision petition of the appellant was itself decided by the Tribunal vide order dated 16.10.2009 vide which the order of rejection by the State Government was set aside and the matter was remanded back to the State Government for fresh consideration. On this basis, writ petition of the respondent no.1 was dismissed challenging non-impleadment as infructuous. However, thereafter, the respondent no.1 preferred review petition submitting that it had not become infructuous as the respondent no.1 had interest in the matter. It appears that on this review petition, matter was heard and the learned single Judge heard the writ petition on merits also. We are saying so because vide impugned judgment dated 18.8.2010 not only review petition is allowed, thereafter writ petition is also taken up on merits and order is passed permitting the respondent no.1 to be heard on the issue i.e. request for renewal by the appellant.

4. We may state at the outset that the appellant has not challenged the order passed by the learned Single Judge on the review petition. Challenge is only to the orders passed in the writ petition. Therefore, the entire dispute is as to

whether respondent no.1 has any right to be heard in the application for renewal of lease which is to be decided by the State Government on remand of the matter by the Tribunal. The argument of the appellant is that at this stage the respondent no.1 has no locus standi to participate in the proceedings for renewal of lease filed by the appellant on the purported ground that respondent no.1 is a prospective applicant. It is submitted that the learned Single Judge has failed to consider the true implication of Rule 59(1) of the MCR and the notification issued under the said Rules.

5. Mr. Dhruv Mehta, learned Senior Counsel appearing for the appellant submitted that Rule 59 of the MCR provides for issuance of notification in the event prayer of the appellant for renewal is ultimately rejected. It is even accepted by the learned Single Judge. However, according to him, what the learned Single Judge has failed to appreciate is that when such a notification would be issued, many other applicants may apply and the respondent no.1 would only be one of such applicants. It was argued that respondent no.1 had deliberately made an application to the State Government even before any such notification is contemplated to make a backdoor entry and claim supremacy over any other applicant who may come in pursuance of notification issued under Rule 59 of the MCR as and when such notification is issued.

6. It is further argued that the entire reasoning of the learned Single Judge was on the presumption that the application of the appellant for renewal would be rejected and the Central Government will then definitely relax rule 59(1) of the MCR exercising its power u/s 59(2) of the MCR in favour of respondent no.1. Such a presumptuous order giving locus to the respondent no.1 was not legally justifiable, was the submission.

7. Mr. Sanjay Jain, learned Senior Counsel appearing for the respondent no.1 submitted that in the facts and circumstances of this case, the learned Single Judge has rightly adopted the aforesaid course of action. He also argued that the Court below relied upon the judgment of the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., hereinafter referred to "the TISCO") and, therefore, the appeal should be dismissed.

8. In order to appreciate the respective contentions, we take note of the relevant rules which are required to be considered. These are Rule 22(3) (i) (d), 24 A, 59 and 60 of the MCR.

9. As is clear from the submissions of the respective parties, the appellant proceeds on the basis that its application for renewal is pending and at the stage of consideration of this application, the respondent no.1 cannot be heard. It is argued that if the appellant's application is rejected for renewal, the State Government will have to issue Notification under Rule 59 in pursuance whereof all the eligible persons can apply and the respondent no.1 would not only be the person. Merely because respondent no.1 has filed the application for grant of

lease which is premature as no notification has been issued, would not mean that he gets any right to be heard when the issue of grant of renewal of appellants license is to be considered. The case of the respondent no.1 on the other hand proceeds on the basis that the application filed by the appellant on 30.12.1998 for second renewal was not valid renewal application in the eyes of law which could be adjudicated upon in view of rule 22(1)(3)(d) and particularly having regard to the 4th proviso to the said Rule which makes it clear that the appellant ought to have filed Mining Dues Clearance Certificate alongwith the application for renewal, within 10 days thereof i.e. by 10.1.1999. Therefore, when the application of the appellant is not valid in law, the respondent no.1 becomes "prospective applicant" as it had already submitted application on 28.2.2008 for grant of mining lease as the respondent no.1 required the limestone and dolomite for use in blast furnace for manufacture of pig iron, which is used as raw material for manufacture of ductile iron pipes, ductile iron fittings and cast iron spun pipes.

10. On this premise, the respondent no.1 submits that since it is a prospective applicant, the respondent no.1 has contingent interest pending consideration of renewal of the incumbent lease alongwith the appellant, therefore, the judgment of the Supreme Court in TISCO(supra) was rightly applied by the learned Single Judge.

11. It is also stated by the respondent no.1 that as per the stand of the respondent no.1, who is another interested party for getting the mining lease over the same area, on 8.10.2007 it came across an advertisement inserted by the appellant in Economics Times, (Delhi Edition) inviting "expression of interest" from the public at large to set up the joint venture for manufacture of cement by using the slag generated by the appellant and the limestone available at Purnapani mines. According to the respondent no.1, this invitation by the appellant did not require the limestone or dolomite from the said mine for steel making since it had already large reserves of limestone and dolomite of blast furnace grade which was lying idle in various leasehold areas already granted to it. On the other hand, the respondent no.1 required limestone and dolomite for use in blast furnace for manufacture of pig iron, which was used as raw material for manufacture of ductile iron pipes, ductile iron fittings and cast iron spun pipes. The respondent no.1 also proposed to expand its manufacturing capacity for which it required uninterrupted supply of limestone and dolomite for its captive consumption.

12. In TISCO (supra), the application of TISCO for renewal was pending when certain persons wanted to intervene and be heard at the time of consideration of application of TISCO for renewal. Their locus standi was challenged by the TISCO on the ground that they were not the prospective applicant. After reproducing Rule 59 and 60 of the MCR, the Court held that they were the proper parties if not necessary parties. The Court held as under:-

We are of the view that the High Court had taken the correct step in allowing the

prospective applicants to put forth their points of view with regard to the renewal of TISCO's lease. As we have already pointed out, these issues involve considerably high stakes, both in term of commercial value and the effect that such a decision will have on the concept of mineral development and the consequent national interest. To that extent, those likely to be affected and indeed, those who can legitimately have a stake in the proper formulation of such a vital policy, can be heard. No exception can be taken to the High Court treating them as proper parties and directing the Committee to hear them.

13. The Court noted Rule 59 and 60 to the following effect:-

59. Availability of area for re-grant to be notified (1) No area

(a) which was previously held or which is being held under a prospecting licence or a mining lease; or

(b).

(c).

(d).

(e).

shall be available for grant unless-

(i) an entry to the effect that the area is available for grant is made in the register referred to in Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40, as the case may be, in ink; and

(ii) the availability of the area for grant is notified in the official Gazette and specifying a date (being a date not earlier than 30 days from the date of the publication of such notification in the official Gazette) from which such area shall be available for grant:

Provided that

Provided further.

(2) The Central Government may, for reasons to be recorded in writing relax the provisions of Sub-rule (1) in any special case.

60. Premature applications. - Applications for the grant of prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under Rule 59 shall, if,-

(a) no notification has been issued under that rule;

or

(b) where any such notification has been issued, the period specified in the notification has not expired;

be deemed to be premature and shall not be entertained, and the application fee thereon, if any paid, shall be refunded.

14. There is an important fact which had clinched the issue namely the Central Government had, in exercise of power conferred on it by Rule 59 (2) of the MCR had relaxed the requirement of Rule 59 (1) of the MCR to enable other parties to be granted leases. It was in this context that the Supreme Court held that other applicants were prospective applicants. As is clear from the reading of para 46 and 47 which reads as under:-

46. It must also be noted that in its order dated August 17, 1995, the Central Government had, in exercise of powers conferred on it by Rule 59(2) relaxed the requirement of Rule 59(1) to enable the other parties to be granted leases.

47. We are of the view that the High Court had taken the correct step in allowing the prospective applicants to put forth their points of view with regard to the renewal of TISCO's lease. As we have already pointed out, these issues involve considerably high stakes, both in term of commercial value and the effect that such a decision will have on the concept of mineral development and the consequent national interest. To that extent, those likely to be affected and indeed, those who can legitimately have a stake in the proper formulation of such a vital policy, can be heard. No exception can be taken to the High Court treating them as proper parties and directing the Committee to hear them.

15. In the present case, no power is exercised by the Central Government under Rule 59 (2) of the MCR therefore, no such application as moved by the respondent no.1 is to be treated as premature application having regard to the provisions of Rule 60 of the MCR. This issue has been conclusively determined by the Supreme Court in a recent judgment in Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, . In that case, the Court in the first instance held that a provision in a statute must not be so interpreted so as to reduce another provision to a "useless lumber" or a "dead letter" which is clear from para 60 of the said judgment. We reproduce the same hereunder:-

In The J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. The State of Uttar Pradesh and Others, and O.P. Singla and Another Vs. Union of India (UOI) and Others, , this Court held that a provision in a statute must not be so interpreted as to reduce another provision to a "useless lumber" or a "dead letter". If we accept the said position, it would result in anomalous consequences of rendering Rule 60 ultra vires the first proviso to Section 11(2). In fact, this has been highlighted by the Central Government in their affidavit filed before the High Court.

16. In that case also the application was made prior to the issuance of notification under Rule 59(1). It was treated as premature application because of the provisions of Rule 60. An interesting argument was raised that once notification is issued, in Rule 59(1) such premature application would get revived. Even this argument was specifically repelled and the judgment of the

High Court on this aspect was set aside in the following manner:-

64. The Division Bench has clearly erred in concluding that applications made prior to the notification under Rule 59(1) which are premature and cannot be entertained under Rule 60 would revive upon issuance of the Notification. This conclusion goes against basic principles of statutory interpretation. We have already pointed out the effect of Rule 60 which is couched in negative language that is mandatory in nature. Further, if that was the intention of the Legislature, there was no reason for the Legislature to take pains to state in Rule 60(b) that an application made during the black-out period of 30 days specified in the Notification also would be premature and could not be entertained. Accordingly, the interpretation placed by the Division Bench on Rule 60 would result in reading in a proviso at the end of Rule 60 to the effect that once the 30-days black-out period specified in the Notification contemplated by Rule 59(1)(ii) is over, premature applications would revive. After taking such pains to make it clear that the applications would not be entertained until the end of the 30-days period, surely the Legislature itself would have inserted such a proviso at the end of Rule 60 if that were its intention.

65. In *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, , this Court observed as follows:

7...Rule 60 provides that an application for the grant of a prospecting licence or a mining lease in respect of an area for which no such notification has been issued, inter alia, under Rule 59, for making the area available for grant of a licence or a lease, would be premature, and "shall not be entertained and the fee, if any, paid in respect of any such application shall be refunded." It would therefore follow that as the areas which are the subject-matter of the present appeals had been reserved by the State Government for the purpose stated in its notification, and as those lands did not become available for the grant of a prospecting licence or a mining lease, the State Government was well within its rights in rejecting the applications of the appellants under Rule 60 as premature. The Central Government was thus justified in rejecting the revision applications which were filed against the orders of rejection passed by the State Government.

17. The Court also considered that the submission of the respondent in that case predicated on *TISCO* judgment but held that the same had no application. We reproduce para 67 and 68 containing this part:-

67. The Division Bench did not advert to these aspects as analyzed by the learned single Judge. On the other hand, the Division Bench accepted Jindal's contention that if Rule 60 is interpreted to render applications made prior to Rule 59(1) Notification non est, it would make Rule 59(2) unworkable because persons normally apply for mining lease areas along with an application for relaxation under Rule 59(2). This conclusion is clearly misplaced. It is only the request under Rule 59(2) of any person for relaxation in respect of an area that is considered and not the application for grant. Only after the relaxation under

Rule 59(2) by the Central Government of the requirement of Notification under Rule 59(1) that applications could be considered for grant of mining lease.

68. The decision relied on by the learned senior counsel for Jindal in TISCO (supra), (paras 42, 44 and 47), that applications made by certain parties were considered after a relaxation under Rule 59(2) cannot be taken as laying down any law. It is also seen that consideration of the applications made by various parties in the TISCO's case was pursuant to the directions issued by this Court and not independently by the State Government u/s 11 of the Act. As a matter of fact, the issue whether premature applications revived for consideration after the relaxation under Rule 59(2) was neither expressly raised nor decided in the TISCO's case. In the light of the above discussion about Section 11(2) alongwith Rules 59 and 60, it should be interpreted that Section 11(2) is to cover virgin areas alone. In view of the same, the Jindal's application made prior to the Notification cannot be entertained along with the applications made pursuant to the Notification dated 15.03.2003 because it is Section 11(4) which covers the said Notification along with Rule 59(1) and not the first proviso to Section 11(2) as contended by the respondents.

18. We are, thus, of the opinion that in the present case judgment of TISCO has no application. It is at par with the position explained in Sandur Manganese (supra). Since application of the respondent is premature, it is not a prospective applicant and, therefore, has no locus standi to be impleaded as a party when the application of the appellant for renewal is to be considered. No doubt, it would be the endeavour of the respondent no.1 that the application of the appellant for renewal is rejected because only then the area in question becomes available for mining by others. However, whether the application of the appellant for renewal is proper or not or whether the appellant is entitled to renewal or not are the aspects which can always be considered by the State Government as well. We have to decide the present case in the light of the provisions contained in MCR and when we find that respondent no.1 cannot be treated as the prospective applicant at this stage, we cannot hold that it has any locus standi when the matter is at the stage when the application of the appellant for renewal is considered.

19. We allow this appeal and set aside the impugned judgment of the learned single Judge as a result the writ petition filed by the respondent no.1 is dismissed.