
(2019) 06 KAR CK 0020

In the Karnataka High Court

Case No : Writ Petition No. 6447 Of 2019 (GM-MMS)

MSPL Limited

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 18-06-2019

Acts Referred:

Mines And Minerals (Development And Regulation) Act, 1957 — Section 5(1), 10A, 10A(1), 10(2), 11, 11A
Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 06 KAR CK 0020

Hon'ble Judges : Abhay S. Oka, J;H. T. Narendra Prasad, J

Bench : Division Bench

Advocate : M. M. Swamy, K. A. Ariga, Bhanuprakash V. G.

Final Decision : Dismissed

Judgement

1. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent and the learned Additional

Government Advocate for second respondent.

2. The constitutional validity of Section 10A and Section 11 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, the said

Act) as amended by Mines and Minerals (Development and Regulation) Amendment Act, 2015 (for short, the Amendment Act), has been

questioned in this petition.

3. By amending Section 11, a provision was introduced for auction of grant of prospecting licences cum mining leases. The challenge to amended

Section 11 is only to the extent to which a provision for auction has been introduced. The challenge as far as Section 10A is concerned, it is essentially

to Sub-section (1) which provides for all applications received prior to the date of

commencement of the Amendment Act shall become ineligible.

4. The learned Additional Government Advocate has a preliminary objection. His submission is that without seeking any substantive relief for itself, the

petitioner has only questioned the constitutional validity of the two sections and it is a settled law that such academic questions need not be dealt with

in exercise of powers under Article 226 of the Constitution of India.

5. The learned counsel appearing for the petitioner fairly invited our attention to the judgment and order dated 11th September 2015 of the Division

Bench of Andhra Pradesh High Court in W.P.No.10364/2015 in the case of COROMANDEL MINING & EXPORTS PVT. LTD., HYDERABAD

& OTHERS VS. UNION OF INDIA & OTHERS, by which the validity of the same provisions has been upheld. He pointed out that Special Leave

Petitions have been filed before the Apex Court challenging the view taken by the said High Court. His submission is that the provision of Sub-section

(1) of Section 10A of making all pending applications ineligible, is arbitrary and is in violation of Article 14 of the Constitution of India. His submission

is that lawful and eligible applications pending on the date of commencement of the Amendment Act are made ineligible and therefore, the rights

vested in the applicants have been taken away. His contention is that the legislature is trying to overrule the decision of the Apex Court in the case of

UNION OF INDIA VS SANDUR MANGANESE & IRON ORES LTD. & ORS., (2013) 8 SC, Cby 3b3r7ing about the impugned amendments,

which is impermissible as consistently held by the Apex Court.

6. We have considered the submissions. We have carefully perused the view taken by the Andhra Pradesh High Court in the case of

COROMANDEL MINING & EXPORTS PVT. LTD., HYDERABAD & OTHERS VS. UNION OF INDIA & OTHERS (supra). While we

concur with the view taken therein, we must add our own reasons.

7. It is very well settled that constitutional validity of a legislation can be questioned only on limited grounds. The first ground is of the lack of

legislative competence and the second ground is that the amendment infringes the fundamental rights and other rights conferred by the Constitution.

As far as the violation of Article 14 is concerned, the ground is available only in case of manifest arbitrariness.

8. Now coming to Section 10A, Sub-section (2) is material which carves out

exceptions to Sub-section (1). For the sake of convenience, we extract Section 10A which reads thus:

10A. Rights of existing concession holders and applicants.?

(1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015,

shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals

(Development and Regulation) Amendment Act, 2015:?

(a) applications received under section 11A of this Act;

(b) where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 a reconnaissance permit or

prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a

prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is

satisfied that the permit holder or the licensee, as the case may be,?

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land

in accordance with such parameters as may be prescribed by the Central Government;

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of

reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the

State Government;

(c) where the Central Government has communicated previous approval as required under sub-section (1) of section 5 for grant of a mining lease, or

if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before commencement of the Mines

and Minerals (Development and Regulation) Amendment Act, 2015, the mining

lease shall be granted subject to fulfilment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act:

PROVIDED that in respect of any mineral specified in the First Schedule, no prospecting licence or mining lease shall be granted under clause (b) of

this subsection except with the previous approval of the Central Government.â??

9. ThereforeÂ allÂ pendingÂ applicationsÂ areÂ notÂ made per se ineligible.Â Sub-sectionÂ (2)Â makesÂ severalÂ categoryÂ of pending

applications eligible. In fact, clause (c) of Sub-section (2) indicates that where prior approval is already granted or a letter of intent is already issued,

the application does become ineligible. Thus, clause (c) indicates that the applications, which were pending on the date on which Amendment Act

came in to force which were processed and where either there is an approval or grant of letter of intent, can be considered in accordance with law.

10. As observed by the Andhra Pradesh High Court, effect was given by the legislature to the decision of the Apex Court in 2G scam case by

bringing into existence the auction regime for grant of prospecting licence or mining lease.

11. Mining leases are granted in respect of public properties vesting in the State. All minerals vest in the State. As can be seen from the statement of

objects and reasons of the Amendment Act, the provisions of Section 11 regarding auction were introduced for eliminating discretion and for bringing

in transparency and fairness in allocation of mineral resources. The object seems to be to ensure that mining leases are granted by adopting a fair and

transparent process.

Thus, after the amendment came into force, the applicants who apply for prospecting licences and mining leases will have to compete with others by

participating in the process of auction, which certainly improves the transparency of the process of allocation of mineral resources. We do not see

how the said provisions of Section 10A and Section 11 as amended by the Amendment Act are manifestly arbitrary. In fact, the amendments have

brought about to reduce arbitrariness in the process and to make it more transparent. Moreover, in case of pending applications, restrictions have been

imposed which are reasonable in as much as the applications covered by sub-section (2) of Section 10A have been protected.

12. We do not see violation of any fundamental right guaranteed by the Constitution of India due to the impugned amendments. Section 10A has been enacted to give way to auction regime. However, the legislature has protected various categories of applications filed prior to the date of which

Amendment Act came into force as provided in Sub-section (2) of Section 10A.

13. The basis of judicial pronouncement can be always taken away by making a legislation.

14. We see no merit in the challenge raised to the constitutional validity of the aforesaid provisions. Therefore, there is no merit in the petition and the same is rejected.