

(2017) 01 JH CK 0040
In the Jharkhand High Court
Case No : Writ Petition (C) No. 55 of 2017

Omiyo Ranjan Jaiswal

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 11-01-2017

Acts Referred:

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 5(1)

Citation : (2017) 2 JCR 291

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Writ Petition (C) Nos. 55 of 17, 56 of 17, 61 of 17 69 of 17 and 147 of 2016; M/s Indrajit Sinha, Krishanu Ray and Arpan Mishra, Advocates, for the Petitioners; W.P.(C) Nos. 38 of 17 and 59 of 2017; M/s Anil Kumar Sinha, Sr. Advocate and Krishanu Ray, Advocate, for the Petitioners; W.P.(C) No. 4643 of 2016; M/s Om Prakash Singh and Vijay Ranjan Sinha, Advocates, for the Petitioners; Mr. Binod Poddar, AG, for the Respondent-State of Jharkhand; M/s S.P. Roy and Ranjit Kumar, Advocates, for the Respondent-State of Bihar

Final Decision : Disposed Off

Judgement

Mr. Aparesh Kumar Singh, J.— Heard learned counsel for the petitioners and learned Advocate General on before of the State.

2. Learned counsel for the parties submits that common issues are involved in all these writ petitions, therefore, they have been heard together.

3. All these petitioners have made a prayer to direct the respondent-State of Jharkhand to issue order for grant of lease of minerals covered under Part-C of Schedule-I in respect of which approval in terms of Section 5(1) of the unamended act of MMDR Act, 1957 have been granted by the Central Government earlier. The individual petitioners, however, relate to different minerals under part-C of schedule-I.

4. Petitioner in W. P. (C) No. 55 of 2017 has prayed for grant of lease of Bauxite

over an area of 272.59 acres in village Kujam and Dokapat, District-Gumla. According to it, Central Government had communicated its approval for grant of mining lease on 10.11.1989 under Section 5(1) of the MMDR Act, 1957, Annexure- 2.

5. Petitioner in W. P. (C) No. 38 of 2017 has prayed for grant of lease of Iron Ore over an area of 177.00 Hectares in Kurta PF of District-West Singhbhum. According to it, he was granted approval on 17.09.2008 by the Central Government under Section 5(1) of the MMDR Act, 1957, Annexure-1.

6. Petitioner in W. P. (C) No. 56 of 2017 has made similar prayer for grant of lease of Lime Stone and Dolomite over an area of 32.96 Hectares in Village - Diliamircha, District-West Singhbhum. According to it, approval under Section 5(1) of the Act of 1957 was granted on 21.05.1988 by the Central Government, as per the statement made at para-7 of the writ petition.

7. Petitioner in W. P. (C) No. 59 of 2017 has prayed for grant of mining lease of Iron Ore over an area of 165.349 Hectares in Village-Ghatkuri, District-West Singhbhum for which approval under Section 5(1) of the Act of 1957 was granted on 14.03.1967 by the Central Government vide Annexure-2.

8. Prayer of the petitioner in W. P. (C) No. 61 of 2017 is in relation to grant of lease of Lime Stone over an area of 91.97 acres in Village-Padampur and Siringsia, District-West Singhbhum for which approval under Section 5(1) of the Act of 1957 was granted on 20.04.1988 by the Central Government vide Annexure-1.

9. Similar prayer has been made by the petitioner in W. P. (C) No. 69 of 2017 in respect of lease of Lime Stone and Quartz Mines over an area of 41.75 acres in Village-Tilaisud, District-West Singhbhum in respect of which approval under Section 5(1) of the Act of 1957 was granted on 31.10.1988, Annexure-1, by the Central Government.

10. Petitioner in W. P. (C) No. 147 of 2017 has also made similar prayer for grant of lease of Bauxite over an area of 210.30 acres in Village-Bahragora, District-Gumla. According to this petitioner, application for grant of mining lease dated 26.07.1985 was not considered by the State Government leading to its deemed rejection upon lapse of 12 months from the date of its application. Order of deemed rejection was, however, set aside by the Revisional Authority (Central Government) Mining Tribunal under Section 30 of the MMDR Act with a direction to the State Government to consider the petitioner's application. Thereafter, State Government vide letter bearing no. 1085 dated 13.02.1989 issued Letter of Intent, addressed to the Deputy Secretary, Ministry of Steel and Mines expressing its intent to grant the lease, vide Annexure-1. It is submitting that vide letter no. 1190 dated 13.12.2016, petitioner has been asked by the Assistant Mining Officer, Gumla to produce the documents indicated therein for consideration of its application.

11. When these matters were taken up yesterday following order was passed:-

"Learned counsel for the petitioners have submitting that in all these writ applications prior approval of the Central Government in terms of Section 5(1) of the MMDR Act, 1957 has been granted earlier. Learned counsel for the petitioners submit that the conditions stipulated in the letter of approval of Central Government have been complied. It is submitted that no further letter of intent has been issued by the State Government consequent to the letter of approval imposed any further conditions requiring compliance. Counsel for the petitioners however submit that there is an apprehension that the cut-off date fixed under Section 10(A)(2)(c) being 11th January, 2017 may come in the way of the respondents to take a final decision on the grant of order of mining lease in favour of the petitioners.

Learned counsel for the petitioners have relied upon the judgment rendered by the Karnataka High Court in the case of Smt. A.V. Shakuntala v. The Union of India and Ors., wherein the provisions of Rule- 8(1)(a) of the Minerals Concession Rules, 2016 have been quashed. They have also referred to the judgment rendered by the Orissa High Court in the case of Ms. Mesco Steel Ltd. and Anr. v. Government of India and Anr. Counsel for the petitioners have also referred to the interim order passed in the case of State of Odisha v. M/s. Mesco Steel Ltd. and Ors. by the Apex Court.

Learned Advocate General seeks a short time to obtain instructions in the matter.

List these cases accordingly tomorrow on 11th January, 2017. "

12. Learned Advocate General for the State, on instruction submits that the writ petition may be disposed of to enable the Competent Authority under the State Government to take a decision in the matter in accordance with law. It is further submitted that State would also keep into account the judgment rendered by the Karnataka High Court in the case of Smt A. V. Shakuntala v. Union of India and Ors. in Writ petition Nos. 36461-36463 of 2016 along with its analogous cases dated 01.12.2016 where the provisions of Rule 8(1)(a) of the Mineral (Other Than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016 have been quashed. He, however, has added caveat that all such applicants would have to show compliance of the statutory clearance required for grant of mining lease.

13. Petitioner in W. P. (C) No. 4643 of 2016 had also approached this Court for a direction upon the respondents to grant mining lease over an area of 14.84 acres situated at Harrup, Bishunpur District-Gumla in respect of which approval under Section 5(1) of the MMDR Act, 1957 was granted on 27.10.1989 vide Annexure-3.

14. Learned Advocate General appearing in the instant matter submits that it can also be disposed of in the light of the stand taken by the State in W. P. (C) No. 55 of 2017 and other cases.

15. Learned counsel for the petitioners submits that the Ministry of Mines,

Government of India has issued a notification dated 04.01.2017 published in the Gazette of India on the same date i.e. Mines and Minerals (Development and Regulation) Removal of Difficulties Order, 2017, which has taken effect from the date of its issuance. Consequent thereto, the Secretary, Ministry of Mines, Government of India has also issued instruction to the Chief Secretaries of all such States including Jharkhand on 05.01.2017 inter alia stating that in the eligible cases, project proponents can be granted lease without waiting for Forest Clearance Stage-(I) and (II) as required under Section 2(ii) of the Forest Conservation Act while mandating that the mining activity could commence only after obtaining forest clearance under Section 2(ii) of the Forest Conservation Act for diversion of the forest land. It is submitted that in respect of the cases pending for environmental clearance also after taking legal opinion with concurrence of Ministry of Law and Justice and Ministry of Environment, Forest and Climate Change, a notification dated 04.01.2017 has been issued by the Ministry of Mines under Section 24(1) of MMDR Amendment Act, 2015 wherein the State Governments have been enabled to grant the lease without necessitating Environmental Clearance at this stage, providing that Environmental Clearance is obtained prior to commencement of the mining activity. These leases so executed, would entail to be treated null and void if the Environmental Clearance is finally rejected. State Governments have been instructed to take immediate steps required in consultation with the departments/ organisations in respect of cases, which are pending for grant of Mining lease under Section 10(A)(2)(c) of the MMDR Act, 2015.

16. Counsel for the petitioner submits that the Competent Authority under the respondent-State may, therefore, consider the application of the petitioners in accordance with law and the notification issued in that regard by the Central Government within a time frame without being inhibited by deadline prescribed under Rule 8(1)(a) of the Minerals (Other Than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016.

17. Having regard to the aforesaid facts, submissions made and the stand taken by the learned Advocate General on before of the State, these writ petitions are disposed of to enable the State Government to take a decision in the matter of respective applicants in accordance with law.