

(2008) 05 OHC CK 0047

In the Orissa High Court

Case No : Writ Petition (C) No. 12704 of 2007

Orissa Minerals Development Company Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 24A(6), 33(2), 37(1), 55, 55(5)
Mineral Conservation and Development Rules, 1988 — Rule 33(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (2008) CLT 354 Supp : (2008) 2 OLR 609 Supp : (2008) OLR 354 Supp

Hon'ble Judges : Sanju Panda, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : Bisweswar Mishra, R. Mishra, S. Mishra, D. Sahu, P.K. Sahu, R.K. Sahu and B. Mishra, for the Appellant; A.G.A., S.K. Nayak (1), D. Nayak, A.C. Baral, S. Biswal and R. Mohanty for O.P. No. 2, for the Respondent

Final Decision : Dismissed

Judgement

I.M. Quddusi, J.—By means of this writ petition, the Petitioner has sought the quashing of the order dated 16.11.2006 passed by the State Government in the Department of Steel and Mines rejecting the application for renewal of mining lease filed by M/s. B.P.M.E. Ltd., the consequential order dated 30.11.2006 passed by the Deputy Director of Mines, Joda, Keonjhar requesting M/s. B.P.M.E. Ltd. to handover possession of the area to the Sr. Inspector of Mines and the letter dated 10.7.2007 issued by the Deputy Director of Mines, Joda to the Deputy General Manager of the Petitioner Company to furnish the present status of M/s. B.P.M.E. Ltd.

2. The case of the Petitioner is that it was a part of Bird Group of Companies which was taken over by the Government of India in the year 1980. One Bharat Process and Mechanical Engineers Limited, in short "BPMEL" was a sister concern of the company. The company was operating mining operation over an area of 254.952 hectares at Kolha Roida under Champua Sub-division in the district of

Keonjhar. BP MEL was also operating some mining lease in Orissa earlier. The said company was subsequently liquidated and the Petitioner-company which was operating the mining lease on behalf of BP MEL took over charge of mining operation. Thus the Petitioner was operating the mines and extension of permit was twice granted by the State Government to operate the mines both for its own as well as on behalf of its sister concern BP MEL. It is alleged that the State Government vide order dated 16.1.2006 (Annexure-1) cancelled the lease and vide letter dated 30.11.2006 (Annexure-2) communicated the same to M/s. BP MEL with a request to handover the possession of the area in question to the Sr. Inspector of Mines and take necessary action under Clause 5 Part IX of M.L. deed.

3. Against the aforesaid order dated 30.11.2006, the Petitioner-company revision which was numbered as 22 (93)/2006-RC-1 before the revisional authority, i.e., the Secretary, Ministry of Mines, Government of India u/s 30 of the Mines and Mines (Development and Regulation) Act, 1957 read with Rule 55 of the Mineral Concession Rules, 1960 and notice was issued. For immediate and expeditious relief, the Petitioner Company filed W.P.(C) No. 16270 of 2006 before this Court and on 21.12.2006, as quoted in the writ petition, this Court passed the following order:

We accordingly direct that the order Annexure-8 dated 30th November, 2006 directing the Petitioner to hand over the possession of lease area to the senior Inspector of Mines shall be kept in abeyance till the revisional authority considers and disposes of the interim application pending before him. The revisional authority, i.e. the opposite party No. 3 may take immediate steps for hearing of the interim application filed by the leasee, if possible, the same may be disposed of within a period of two months from the date of communication of this order.

On 26.3.2007, the interim application was considered by the Revisional Authority. It is the case of the Petitioner that in spite of notice, there was no appearance on behalf of the State before the revisional authority and the revisional authority after hearing the representative of the Petitioner-company, as quoted in the writ petition, passed the following order:

Having heard the contention of the Petitioner and going through materials on record, I am of the view that there is merit in the stay application and if the State Government is not restrained from taking further action in the matter, the purpose of filing R.A. will be frustrated. Therefore, the stay application is accepted and the operation of the impugned order dated 16.11.2006 passed by the State Government is hereby stayed till disposal of the R.A.

It is the case of the Petitioner that it continued to operate the mines as usual as per the direction issued by this Court in W.P.(C) No. 16270 of 2006 as well as the revisional authority. However, the opposite party No. 3, the Director of Mines rejected the removal application of the Petitioner-company and directed it to close the lease operation and not to transport materials outside the leasehold

area. It is also averred by the Petitioner that BPMEL is a sister concern of the Petitioner company and on their behalf the Petitioner company was not only conducting the mining operation in the lease hold area but also was twice permitted by the State Government to do so. It is further stated that the Petitioner company is a Government of India owned company working for a fairly long time. It is employed large number of employees who are living out of the income derived from the Petitioner. If the Petitioner company is not allowed to operate the lease during the pendency of the revision, the employees would be subjected to starvation. It is also alleged that though the Law Officer of the Department as well as the Law Department of the Government have opined that when in a revision the operation of the impugned order of refusal of renewal is stayed, as an interim measure, the question of renewal is to be deemed to be further pending for consideration as the very refusal or renewal may be set aside and a contrary interpretation will frustrate the object behind the provision of Rule 55(5) empowering the revisional authority to stay execution of the impugned order. Therefore, status quo ante as it was on 15.11.2006 is to continue till disposal of the revision since the order of refusal of renewal is under suspension till then being subjected to the final order to be passed in the revision. Even then, the matter has been referred to the Advocate General for opinion. It is alleged by the Petitioner that with a view to granting lease of the area in question to some private party, the opposite parties disobeying the order of the High Court as well as the revisional authority have taken the decision to direct the Petitioner to close the mining operation and handover the leasehold area.

4. Counter affidavit has been filed on behalf of the opposite parties. It is stated therein that BPMEL was granted the mining lease in question for the period from 15.8.1976 to 14.8.1996 and applied for renewal of the same on 14.7.1995. The State Government after careful consideration, rejected the renewal application vide order dated 16.11.2006 under intimation to the Petitioner. Therefore, the Petitioner has no right to extract the minerals from the leasehold area from 16.11.2006 as specified under Clause 5 of Part IX of the Mining lease deed executed in Form K. But as per the said clause, it was allowed to remove the materials specified therein from the leasehold within 6 months from 16.11.2006. It is further stated that as admitted by the Petitioner, the original lessee BPMEL was liquidated and it was the operating agent of the original lessee. Neither the Petitioner company nor the original lessee obtained the approval of the State Government under Rule 37(1) of the Mineral Concession Rules, 1960 for such transfer of mining lease to the Petitioner-company. The contention of the Petitioner that this Court directed the parties to maintain status quo of the lease or allow the Petitioner to undertake mining operation has been denied in the counter affidavit. The contention of the Petitioner that the company went on operating the mines as usual as per the direction and order of this Court as well as the order of the revisional authority has also been denied. It is averred in the counter affidavit that this Court had not passed any order to operate the mines. It only directed that the order of opposite party No. 4 dated 30.11.2006 directing

the Petitioner to handover the possession of the lease area to the Senior Inspector of Mines be kept in abeyance till the revisional authority considered and disposed of the interim application pending before him. As regards the claim of the Petitioner for proper mining operation, it has been alleged by the opposite parties in their counter affidavit that the Petitioner company has not taken proper care for protection of environment and scientific development of the mines. The Indian Bureau of Mines vide letter dated 30.8.2006 intimated the Petitioner about violation of provisions of Rule 33(2) of Mineral Conservation and development Rules, 1988 with copy to the Director of Mines, Orissa. Copy of the said letter has been annexed as Annexure-G to the writ petition. It is further stated in the counter affidavit that the revisional authority has only stayed the operation of the impugned order dated 16.11.2006 refusing renewal and has not allowed the operation of mines in spite of specific prayer by the Petitioner. Since the application for renewal of mining lease has already been disposed of by rejection of the same by the State Government, the deemed extension provision of Rule 24A(6) of the Mineral Concession Rules, 1960 cannot be applied to the instant mining lease. Therefore, the Petitioner has no liberty to undertake mining operation after 16.11.2006. All other allegations made in the writ petition have been denied. It is further stated that since disputed questions of facts are involved and since the Petitioner has already availed the statutory alternative remedy of revision and the revision is pending disposal, the writ petition is not maintainable and is liable to be dismissed.

5. In view of the above mentioned facts and circumstances and specifically neither the Petitioner-company nor the original lessee obtained the approval of the State Government under Rule 37(1) of the Mineral Concession Rules, 1960 for transfer of the mining lease in question to the Petitioner-company and the Indian Bureau of Mines vide letter dated 30.8.2006 have pointed out the violation of the provisions of Rule 33(2) of the Mineral Conservation and Development Rules, 1998 and also that the application for renewal of mining lease has already been rejected by the State Government and the deemed extension provision of Rule 24-A(6) of Mineral Concession Rules, 1960 cannot be applied to the instant mining lease and keeping in view the fact that the statutory appeal is still pending, we are not inclined to interfere in the matter in exercise of our jurisdiction conferred to this Court under Article 226 of the Constitution of India at this stage.

The writ petition is therefore, dismissed and the interim order passed earlier stands discharged.

Sanju Panda, J.

6. I agree.