
(2018) 07 MP CK 0287
In the Madhya Pradesh High Court
Case No : Writ Appeal No.7300 of 2017

Pacific Exports

APPELLANT

Vs

Union Of India And Others

RESPONDENT

Date of Decision : 30-07-2018

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 30

Citation : (2018) 07 MP CK 0287

Hon'ble Judges : Hemant Gupta, CJ;Vijay Kumar Shukla, J

Bench : Division Bench

Advocate : K. C. Ghildiyal, Sandeep K. Shukla, Amit Seth

Final Decision : Dismissed

Judgement

The challenge in the present petition is to an order passed by the Central Government in a petition under Section 30 of the Mines and Minerals

(Development and Regulation) Act, 1957 (for short "the Act") dismissing the revision filed by the petitioner herein.

2. The brief facts leading to the present petition are that M/s Jakhodia Minerals filed an application for grant of prospecting licence on 01.10.2010. The

petitioner applied for reconnaissance permit on 22.04.2010 which was granted on 28.01.2011 on an area of 1080 Sq. Kms. for Titanium, Vanadium,

Nickel, Lead, Zinc, Copper, Cadmium, Arsenic, Antimony, Bismuth, Cobalt, Molybdenum, Gold, Silver, Pyrite, Platinum, Palladium and other

associated minerals. An agreement in Form F-1 was executed on 17.02.2011.

3. The petitioner also submitted an application for prospecting licence on 09.02.2011 for minerals Titanium, Vanadium, Nickel, Lead, Zinc, Copper,

Cadmium, Arsenic, Antimony, Bismuth, Cobalt, Molybdenum, Gold, Silver, Pyrite, Palladium & other associated minerals in respect of an area 30.510

hectares in Khasra No.396. The writ petitioner claims that it has a preferential right to obtain prospecting licence as it has been granted

reconnaissance permit in terms of Section 10A(2)(b) of the Act as inserted by Central Act No.10 of 2015 (for short "the Amending Act") with

effect from 12.01.2015. Therefore, petitioner has a right to get prospecting licence on an area for which it was granted reconnaissance permit earlier.

4. The stand of the respondents is that after insertion of Section 10A by the Amending Act, all licenses for extracting of minerals has to be granted by

auction. It is also pointed out that since M/s Jakhodia Minerals has applied for prospecting licence on 01.10.2010 before an application for prospecting

licence was submitted by petitioner on 09.02.2011, therefore, the petitioner is not entitled to prospecting licence for the reason that it was granted

reconnaissance permit earlier. It is argued that in terms of unamended Section 11 of the Act, the petitioner may have a preferential right but such

preferential right has been nullified by the Amending Act.

5. The request of the petitioner for grant of prospecting licence was declined by the State Government on 16.04.2013. The revision against the said

order stands dismissed by the Central Government by the order impugned in the present petition.

6. The relevant provisions of the Act dealing with the grant of prospecting licence and the reconnaissance permit reads as under:-

3. Definitions.- In this Act, unless the context otherwise requires:-

(g) "prospecting licence" means a licence granted for the purpose of undertaking prospecting operations;

(h) "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;

(ha) "reconnaissance operations" means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical

or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of bore holes on a grid specified from

time to time by the Central Government) or sub-surface excavation;

(hb) "reconnaissance permit" means a permit granted for the purpose of undertaking reconnaissance operations;

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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 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 the commencement of the Mines

and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment 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

sub-section except with the previous approval of the Central Government.â??

7. The argument of the petitioner is based upon provisions of Section 10A(2)(b) of the Act which protects the right of a licensee to obtain a

prospecting licence where a reconnaissance permit has been granted provided that State Government is satisfied that the permit holder has undertaken

reconnaissance operations or prospecting operations as the case may be to establish the existence of mineral contents and has not committed the

breach of terms and conditions of reconnaissance permit or prospecting licence and has not become ineligible under the provisions of this Act.

8. The State Government in its order dated 16.04.2013 has inter-alia found that reconnaissance permit operations has not been undertaken by the

petitioner in the area in question which alone will confer preferential right to obtain prospecting licence after amendment of the Act.

9. A perusal of the said order shows that the petitioner applied for prospecting licence on 09.02.2011 in respect of Khasra No.396 as against an

application submitted by M/s Jakhodia Minerals on 01.10.2010 in respect of the same Khasra number. Still further, as per the petitioner, Khasra

No.396 is part of 1080 Sq. Kms. of area for which it was granted reconnaissance permit. The State Government considered the un-amended

provisions of Section 11 of the Act that the petitioner was granted reconnaissance permit on 17.02.2011 but it applied earlier for prospecting licence on

09.02.2011. The petitioner has not undertaken any reconnaissance operations as it applied for prospecting licence even before the grant of

reconnaissance permit. Therefore, the petitioner cannot be granted priority on the basis of reconnaissance permit over M/s Jakhodia Minerals who

have applied for prospecting licence on 01.10.2010. Therefore, it found that M/s Jakhodia Minerals is entitled to prospecting licence.

10. The prospecting licence on the basis of reconnaissance permit is not automatic. It depends upon the satisfaction of the State Government in

respect of various measures which find mention in sub-clause (b) of Section 10A(2) of the Amending Act.

11. The reconnaissance permit is for undertaking reconnaissance operations i.e. preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping whereas the prospecting licence is to carry out prospecting operations undertaken for the purpose of exploring, locating or proving mineral deposits. The reconnaissance operations are preliminary survey whereas prospecting licence is a detailed survey to find out minerals. Since the petitioner applied for prospecting licence even before the grant of reconnaissance permit, therefore, the petitioner cannot get any preference on the basis of reconnaissance permit.

12. The State Government has recorded cogent and sufficient reasons not to grant preference to the petitioner. The State Government was considering the un-amended provisions but the satisfaction of the State Government is substantially on the same basis even in terms of the Amending Act. We do not find that the satisfaction of the State Government not to grant preference warrants interference in the present writ petition when the Central Government has dismissed the revision for the reason that now the licenses have to be granted in terms of the Amending Act. In fact, petitioner wants to seek protection of Section 10A(2)(b) of the amended Act and Section 11 of the un-amended Act to seek preferential prospecting licence.

The petitioner wants to sail in two boats at the same time.

13. In view of the said fact, we do not find any error in the orders impugned in the writ petition which may warrant interference in the present writ petition. Dismissed.