

(2009) 09 JH CK 0003
In the Jharkhand High Court

Pawanjay Steel and Power Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 14-09-2009

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(3)

Citation : (2009) 09 JH CK 0003

Hon'ble Judges : Gyan Sudha Misra, C.J;D.K. Sinha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the judgment and order dated 4.2.2009 passed by the learned Single Judge in W.P.(C) No. 7640 of 2006, whereby the writ petition challenging the grant of mining lease in favour of the respondent No. 7- M/s Balmukund Sponge & Iron Ltd. by order of the Government of India, Ministry of Mines, New Delhi dated 24th August, 2006 was upheld and the writ petition was dismissed.

2. Learned Counsel for the petitioner-appellant was heard at length and in substance he had submitted before the learned Single and also before this Court that the grant of mining lease in favour of the respondent No. 7 was fit to be quashed and set aside as the Central Government had passed the order without assessing the comparative merits and demerits of the petitioner-appellant and respondent No. 7. The Counsel also stated that a Memorandum of Understanding has initially been signed with the petitioner-appellant on 1.6.2004 and yet the Central Government ignored the Memorandum of Understanding and granted the lease in favour of the respondent No. 7 which gave a cause to the petitioner-appellant to assail the grant of lease.

3. The learned Single Judge was pleased to meticulously examine the contesting claim of the parties in the light of the submission of the State Government and was finally pleased to hold that the respondent No. 7 had applied for the grant of

mining lease earlier in point of time than the petitioner-appellant and as per the provisions of Section 11(3) of the Mines & Minerals (Development & Regulation) Act, 1957 any applicant who applies first for the grant of mining lease, he would be eligible to secure the lease deed in his favour. Admittedly, the respondent No. 7 had applied earlier than the petitioner-appellant and thus fulfilled the provisions of Section 11(3) of the Act.

4. A counter affidavit was filed on behalf of the respondent-State also wherein the respondent-State supported the case of the respondent No. 7 and has stated that the State of Jharkhand notified its mining policy in tune with the Industrial Policy of the State Government with special reference to grant of mining lease etc. by the Department of Mines & Geology Notification dated 29.12.2001, which gives preference to person who establishes mineral based Industry within the State of Jharkhand. It was stated that in terms of the said policy, respondent No. 7 stands on a much better footing as they have already an existing Plant in the State of Jharkhand and the investment proposed to be made by the respondent No. 7 is rupees five hundred Crores which is much in excess of the proposed investment by the petitioner-appellant which had offered rupees two hundred Crores only.

5. Learned Counsel for the petitioner-appellant however assailed the averments of the respondent-State and also the view taken by the learned Single Judge and submitted that the Rules of Executive Business had to be followed by the State of Jharkhand and the State of Jharkhand having entered into a Memorandum of Understanding with the petitioner-appellant should not have been ignored by the Central Government while granting lease in favour of the respondent No. 7.

6. In so far as the question that the appellant was a subsequent applicant and hence was not eligible to get a lease deed ignoring the first applicant i.e. respondent No. 7, the Counsel relied upon the authority of the Supreme Court reported in *Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others*, and (2006) 12 S.C.C. 331 (*Indian Charge Chrome Ltd. and Anr. v. Union of India and Ors.*) and stated that merely because the respondent No. 7 had applied first, would not be a reason to grant him the lease deed ignoring the claim of the petitioner-appellant.

7. Learned Counsel for the respondent No. 7 on his part has explained the position and submitted that the ratio of the decision of the Supreme Court would not be applicable in this matter as the judgment merely held that if the authority decides to grant a lease deed in favour of the subsequent applicant, the reason will have to be assigned by the authority while granting the lease deed in favour of the subsequent applicant ignoring the claim of the first applicant. It was further submitted that the respondent No. 7 was the first applicant and his claim was also superior to the petitioner-appellant and, therefore, there was no reason for the authority to ignore the claim of the first applicant, so as to grant lease deed in favour of the appellant.

8. While meeting with the contention of the Counsel for the petitioner-appellant regarding the Memorandum of Understanding, it was explained by Learned Counsel for the respondent No. 7 that the Memorandum of Understanding was entered into between the appellant and the respondent -State after the respondent No. 7 filed an application for grant of a mining lease merely to supercede his claim and, therefore, the signing of the Memorandum of Understanding will not have the effect of superceding the claim of the respondent No. 7.

9. The learned Single Judge after scrutinizing the contesting claim of the appellant and respondent No. 7 was pleased to hold that the respondent No. 7 had a much superior claim than the petitioner-appellant as the respondent No. 7 had fulfilled all criteria laid down under Rule 11 of the Mines & Minerals (Development & Regulation) Act, 1957 and also filed the application earlier in point of time. Besides this, the Jharkhand Industrial Policy also favoured the respondent No. 7 and, therefore, the learned Single Judge was pleased to dismiss the writ petition against which this appeal has been preferred.

10. Learned Counsel for the appellant endeavored hard to impress upon this Court that the action of the respondent-State was fit to be quashed and set aside but inspite of his submission he has not been able to establish as to how the claim of the petitioner-appellant is superior to respondent No. 7, even if we were to ignore the statutory provision that the claim of respondent No. 7 in so far as its application that it was first in point of time, was fit to be ignored on account of the fact that the petitioner-appellant had a superior claim over the respondent No. 7.

11. We have already indicated hereinbefore that as per the averments of the respondent-State of Jharkhand and the order passed by the Central Government, the respondent No. 7 not only had filed an application earlier in point of time but had also proposed to invest an amount of rupees five hundred Crores whereas the appellant had offered only rupees two hundred Crores and had no experience of mining operation in the State of Jharkhand whereas the respondent No. 7 is already having the experience of mining operation and already have a Sponge Iron manufacturing unit in the State of Jharkhand. Thus, the appellant has not been able to establish a case in his favour so as to assail the order passed by the Central Government.

12. It is well established that in a dispute for grant of mining lease as also in a dispute in regard to award of contract, the Courts are expected to be slow in interfering with the process unless the action of the authority in awarding contract or grant of mining lease is malicious or illegal. We have not been able to gather any ground to that effect nor there is violation of Section 11 of the Act and, therefore, we see no ground or any basis for the appellant to assail the judgment of the learned Single Judge and the Central Government.

13. We, thus, find no merit in this appeal. Consequently, it is dismissed.