
(2014) 05 DEL CK 0042

In the Delhi High Court

Case No : Writ Petition (Civil) Nos. 13938/2009, 189 and 194/2010

Rio Tinto Orissa Mining P. Ltd.

APPELLANT

Vs

Mines Tribunal

RESPONDENT

Date of Decision : 23-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 214 DLT 598 : (2015) 5 FLT 94

Hon'ble Judges : Manmohan, J

Bench : Single Bench

Advocate : Arvind Nigam, Senior Advocate, Chandan Kumar and Shankar Kumar, Advocate for the Appellant; Kirti Mishra, Advocate for the Respondent

Judgement

Manmohan, J.—Petitioners" challenge orders rejecting impleadment applications by the Government of India, Ministry of Mines dated 30th November, 2009 on the ground that Rule 54(2) of the Mineral Concessions Rules was not attracted because petitioners were not applicants for provisional licence for the concerned mining areas. This Court is informed that disputes arising under the Agreement dated 24th February, 1995 executed between the Orissa Mining Corporation and Rio Tinto Mineral Development Limited pertaining to Joint Venture Company are pending in the Orissa High Court as well as the Company Law Board.

2. Since the winding up proceedings against the Joint Venture company in which Rio Tinto, NMDC Ltd. as well as Orissa Mining Corporation have a share, this Court is of the view that the Orissa High Court would be the forum conveniens.

3. A Five Judges Bench of this Court in M/s. Sterling Agro Industries Ltd. v. Union of India & Ors., 181 (2011) DLT 658 (FB) : W.P. (C) 6570/2010 has held as under:

"33. In view of the aforesaid analysis, we are inclined to modify the findings and conclusions of the Full Bench in New India Assurance Company Limited (supra) and proceed to state our conclusions in seriatim as follows--

(a) The finding recorded by the Full Bench that the sole cause of action emerges at the place or location where the tribunal/appellate authority/revisional authority is situated and the said High Court (i.e., Delhi High Court) cannot decline to entertain the writ petition as that would amount to failure of the duty of the Court cannot be accepted inasmuch as such a finding is totally based on the situs of the tribunal/appellate authority/revisional authority totally ignoring the concept of forum conveniens.

(b) Even if a miniscule part of cause of action arises within the jurisdiction of this Court, a writ petition would be maintainable before this Court, however, the cause of action has to be understood as per the ratio laid down in the case of Alchemist Ltd. (supra).

(c) An order of the appellate authority constitutes a part of cause of action to make the writ petition maintainable in the High Court within whose jurisdiction the appellate authority is situated. Yet, the same may not be the singular factor to compel the High Court to decide the matter on merits. The High Court may refuse to exercise its discretionary jurisdiction by invoking the doctrine of forum conveniens.

(d) The conclusion that where the appellate or revisional authority is located constitutes the place of forum conveniens as stated in absolute terms by the Full Bench is not correct as it will vary from case to case and depend upon the lis in question.

(e) The finding that the Court may refuse to exercise jurisdiction under Article 226 if only the jurisdiction is invoked in a mala fide manner is too restricted/constricted as the exercise of power under Article 226 being discretionary cannot be limited or restricted to the ground of mala fide alone.

(f) While entertaining a writ petition, the doctrine of forum conveniens and the nature of cause of action are required to be scrutinized by the High Court depending upon the factual matrix of each case in view of what has been stated in Ambica Industries (supra) and Adani Exports Ltd. (supra).

(g) The conclusion of the earlier decision of the Full Bench in New India Assurance Company Limited (supra) "that since the original order merges into the appellate order, the place where the appellate authority is located is also forum conveniens" is not correct.

(h) Any decision of this Court contrary to the conclusions enumerated hereinabove stands overruled."

4. In view thereof, present writ petitions and application are dismissed with liberty to petitioners to file appropriate proceedings in the Orissa High Court.

5. To facilitate filing of such proceedings, the interim order dated 21st December, 2009 shall continue for a period of five weeks. Needless to say, this Court has not expressed any opinion on the merits of the controversy and the rights and

contentions of the parties are left open.