

(2011) 12 DEL CK 0234

In the Delhi High Court

Case No : Writ Petition (C) 8883 of 2011 and C.M. No. 20082 of 2011

Satyanarayan G. Agarwal

APPELLANT

Vs

UOI and Others

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Mineral Concession Rules, 1960 — Rule 54, 55
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(2), 11(3), 11(4), 30, 6

Citation : (2011) 12 DEL CK 0234

Hon'ble Judges : Vipin Sanghi, J

Bench : Single Bench

Advocate : Sandeep Sethi with Ms. Smita Bankoti, for the Appellant; Sapna Chauhan for UOI, for the Respondent

Final Decision : Dismissed

Judgement

Vipin sanghi, J.—The petitioner assails the order dated 23.09.2011 passed by the Mines Tribunal, whereby the said tribunal has allowed the

revision preferred by respondent no.4, Ispat Industries Limited u/s 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (The

Act) and Rule 55 of the Mineral Concession Rules (The Rules), and remanded the case back to the State Government for reconsideration of the

aspect of grant Prospecting License (PL), who had recommended the grant of the PL in favour of the petitioner herein.

2. On 12.10.2006, the State of Maharashtra issued a notification inviting applications for grant of PL over an area of 579 hectares situated in

Mauze Gundurwaymeta, Tehsil Etapalli, Distt. Gadchiroli. Respondent no.4, Ispat Industries Limited filed their application for grant of PL on

20.11.2006 over an area of 2581.12 hectares in village Malermeta, Tehsil

Etapalli, Distt. Gadchiroli. The time limit for inviting the application was extended upto 31.01.2007.

3. On 31.01.2007, the petitioner applied for grant of PL for iron ore over an area of 579 hectares in Mauza Gundurwaymeta, Taluka Etapalli,

Distt. Gadchiroli, Maharashtra. Just one day before the hearing was held before the Chief Minister of Maharashtra for consideration of all the

applications, on 06.05.2009 the petitioner entered into a Memorandum of Understanding with Adhunik Corporation Limited (ACL) for forming a

joint venture company to carry out business of prospecting, mining operation, steel manufacturing etc.

4. On 07.05.2009, the Chief Minister of Maharashtra held the hearing to consider the various applications for grant of PLs. On 28.08.2009, the

Chief Minister passed an order recommending grant of PLs to the petitioner u/s 11(2) and 11(4) of the aforesaid Act, over an area of 579

hectares situated in Mauze Gundurwaymeta, Tehsil Etapalli, Distt. Gadchiroli.

5. The respondent no.4 herein, Ispat Industries Ltd. preferred the aforesaid revision application before the Mines Tribunal being application

no.17(19)2009/RC/II under Rule 54 of the Mineral Concession Rules on 01.12.2009 to challenge the order of the State of Maharashtra dated

31.08.2009.

6. By the impugned order, as aforesaid, the revision has been allowed by the Mines Tribunal. The relevant part of the said order reads as follows:

6. Perused the impugned order dated 31.8.2008 wherein inter-se merits were analysed by the State Government and it was found that Shri

Satyanarayan G Agrawal is an emerging entrepreneur and has entered into MoU with M/s Adhunik Corporation Ltd, which is having experience of

mining. There is no provision u/s 11(3) of MMDR Act for grant of mining lease in favour of emerging entrepreneur. Sub-Section 3 of Section 11 of

the MMDR Act normally mentions (a) special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining

operations (b) financial resources (c) technical staff employed and (d) investment proposed by both parties as criteria for grant of PL. The inter-se

analysis clearly states that Shri Agrawal has no experience in mining, no specified knowledge. His annual income is only Rs.1,25,693/- and he did

not show any proposed investment. Therefore considering his case over and

above other qualified applicants is not as per provisions of Section 11(3) of MMDR Act. The State Government should have taken into consideration the strength of the applicant and compared to the other more qualified applications for grant of PL. Therefore, the State Government impugned order has not properly analysed the inter-se merit as per Section 11(3) of MMDR Act and the impugned order of the State Government is arbitrary. The impugned order dated 7.7.2008 is set aside and the matter is remanded back to the State Government to decide the matter as per MMDR Act.

7. The first submission of learned senior counsel for the petitioner is that the Mines Tribunal has failed to consider the fact that respondent no.4

Ispat Industries Ltd. already held PLs in respect of an area of 24.86 sq. kms. According to the petitioner, respondent No. 4 could not have been

awarded an area in excess of 25 Sq. Kms. for prospecting. Mr. Sethi has placed reliance on Section 6(1)(a) of the Act, which states that no

person shall acquire in respect of any mineral or prescribed group of associated minerals in a State, one or more PL covering a total area of more

than 25 sq. kms.. This objection had been squarely taken by the State Government in their response before the Mines Tribunal. This submission

has also been noted in the impugned order in para-5. However, the same has not been dealt with in the impugned order.

8. The issue raised in the revision application before the Tribunal was with regard to the validity of the recommendation of the State Government

for grant of PL in favour of the petitioner herein. The issue with regard to the grant of any further PL in favour of respondent no.4, even though it

held PL in respect of an area of 24.86 sq. kms., was not an issue before the Tribunal.

9. Moreover, the proviso to section 6 of the Act states that if the Central Government is of the opinion that in the interest of development of any

mineral, it is necessary so to do, it may, for reasons to be recorded by it in writing, permit any person to acquire one or more PLs or mining leases

covering an area in excess of the aforesaid total area.

10. Therefore, even if respondent No. 4 already has PLs to the extent of 24.86 sq. kms., that by itself cannot debar it from being considered and

recommend for grant of PL by the State Government, if it is otherwise found to

be most suitable and meritorious, as the issue, whether or not the proviso to Section 6 should be operated, has to be decided by the Central Government and not by the State Government. If an applicant has PLs to the extent of 25 sq. kms., and the State Government finds that applicant to be most suitable for grant of PLs, the State Government should recommend the name of that applicant, subject to consideration, by the Central Government of the issue whether the grant of further PL is in the interest of development of the mineral in question.

11. It is also pertinent to note that the State Government did not reject the application of respondent No. 4, only on account of the fact that it was already holding PLs over an area of 24.86 sq kms. The application of respondent no.4 and various other eligible applicants were rejected by observing in para 3(a) that these applicants have been recommended/granted mineral concession by the State of Maharashtra and other States on the basis of their merit, and new and other eligible applicants need to be considered.

12. So far as the petitioner's case is concerned, the State Government in its order observed that the applicant "do have experience of mining and is an emerging entrepreneur in the field of mining. He has signed MoU with Adhunik Corporation Ltd., (ACL) a renowned name in the field of Steel, Cement, Power and Ferro Alloys Industry. A best team of technical expert has been appointed who will carry out prospecting in a scientific manner with modern equipments and latest techniques and care will be taken to protect the environment as per prevailing Rules and Regulations. He has submitted Solvency of Rs.1.00 crore and Bank has agreed to finance the P.L. operation and ensuing project of Iron Ore Benefication Plan of 0.5 MTPA with investment of Rs.100.00 crores. The associate Company of the applicant i.e. ACL has signed MoU with Govt. of Maharashtra for setting up of 1.1 MTPA Steel Plant. Positive steps are taken to set-up the Plant by 2011-12. Thus, his planned objective to implement the project within two years corroborates simultaneous completion of P.L. This will lead to captive use of mineral and economical growth of area. He will also participate in development of local area in the field of construction of Roads, Plantation, Health Services, Education etc. In view of all these factors, I am satisfied that he is a most eligible applicant to be recommend

for grant of P.L. for Iron Ore over the applied area by him".

13. A perusal of the impugned order shows that the Tribunal has observed and, in my view, rightly so, that there is no provision in Section 11(3) of

the Act for grant of mining lease in favour of a so-called "emerging entrepreneur". Sub section (3) of Section 11 of the Act lays emphasis on special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, financial resources, technical staff

employed and investment proposed by the applicant as criteria for grant of PL.

14. The petitioner has not been able to show before me, and it appears that even before the Tribunal no material was placed to show that the

applicant, by himself, had any past experience of carrying out any prospecting or of mining operations. The entire merit of the petitioner's

application is dependent upon the experience and expertise, which is claimed to be that of Adhunik Corporation Limited, which was not existing on

the date of the application, but was "acquired" one day before the consideration of the applications by the State Government. This shows that

when the application was made by the petitioner, it was not a serious and genuine applicant, inasmuch, as, the applicant himself had no experience

or expertise to show for.

15. The modus operandi adopted by applicants, of making an application for grant of PL/ML, without having any expertise, experience or

infrastructure, and of entering into joint ventures with other existing players in the field on the eve of consideration of their application for grant of

PL/ML licenses, is a dangerous trend and, if encouraged, would only lead to trading in such licenses and also breed corruption.

16. For the aforesaid reasons, I find no infirmity in the impugned order, and no merit in this petition. The same is accordingly dismissed.