(2012) 03 DEL CK 0503

In the Delhi High Court

Case No : LPA No. 51 of 2012

Satyanarayan G. Agrawal APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 16-03-2012

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2), 11(3), 11(4), 6(1)

Citation : (2012) 03 DEL CK 0503

Hon'ble Judges : Rajiv Sahai Endlaw, J;A.K. Sikri, J

Bench : Division Bench

Advocate : Parag P. Tripathi with Mr. Dheeraj Malhotra, Ms. Mahima Gupta and Mr. S. Saxena, for the Appellant; Sapna Chauhan, for R-1. Counsel for the respondent (appearance not given), for the Respondent

Judgement

Rajiv Sahai Endlaw, J.—This Intra-Court appeal impugns the judgment dated 21st December, 2011 of the learned Single Judge dismissing W.P. (C) No. 8883/2011 preferred by the appellant. The said writ petition was filed impugning the order dated 23rd September, 2011 of the Mines Tribunal allowing the Revision Petition preferred by the respondent No. 4 M/s. Ispat Industries Ltd. against the order dated 28th August, 2009 of the Government of the State of Maharashtra (made in exercise of powers u/s 11(2) and 11(4) of the Mines and Minerals (Development and Regulation) Act, 1957) recommending grant in favour of/to the appellant of Prospecting License (PL) over an area of 579 Hectares situated at Mauze Gundurwaymeta, Taluka Etapalli, Distt. Gadchiroli.

2. The aforesaid area was notified (for grant of PL) on 12th October, 2006 and applications for being so recommended invited within 30 days thereof. The time limit for submitting the applications was subsequently extended up to 31st January, 2007. Applications were made by the respondent No. 4 as well as the appellant on 20th November, 2006 and 31st January, 2007 respectively. The State Government in its order dated 28th August, 2009 supra, as against the respondent No. 4 noted as under:-

(18) M/s. Ispat Industries Ltd., Mumbai has applied for grant of P.L. over an area of 4423.808 H/R on 04.12.2006. It is observed from their submissions that:-

(i) Applicant is Public Ltd. Co. engaged in Manufacture of steel and it is part of Ispat Group. They have establish Steel Plant at Dolvi Raigad.

(ii) Do hold P.L. and have appointed qualified technical personnel to carry out mining operations.

(iii) The Company has signed MOU with the State Government for expansion and has drawn up its Comprehensive plan to be taken-up during 2007 to 2012 with investment of Rs. 2000.00 crores.

(iv) Applicant do have sound financial position.

and as against the appellant noted as under:-

(38) Shri Satyanarayan G. Agrawal, Nagpur has applied for grant of P.L. over an area of 579.00 H/R on 31.01.2007. It is seen from their submissions that:-

(i) Applicant is Law Graduate and is working as Forests/Mining consultant and he has entered into MoU with M/s. Adhunik Corporation Ltd. Adhunik Group is renowned name in Mining, Iron & Steel, Ferro Alloys Industry, Power and Cement in various States of India including Maharashtra with Manufacturing operations of about 2000.00 crores in F.Y.2007-08. He has experience of Mining. However requisite qualified technical staff is appointed to carry out P.L. operations. He does not hold any ML/PL.

(ii) It is proposed to set-up an Iron Ore Beneficiation Plant of 0.5 MTPA with investment of Rs. 100.00 crores. A Project Report is submitted. Positive steps are taken to implement the project within a span of two years and A.C.L. has also signed a MoU with the Govt. of Maharashtra to set-up 1.1. MTPA Steel Plant.

(iii) A Solvency of Rs. 1.00 crore is annexed along with Solvency of Rs. 75.00 crores by Adhunik Group Ltd., wherein Canara Bank has agreed to provide financial support for their Project.

(iv) They will carry out P.L. in scientific manner and care will be taken to protect the environment as per Rules and Regulations.

(v) They will participate in local area development through construction of Road, Education, Health Service, Drinking Water, etc.

and concluded:-

a. that Iron Ore deposits in Maharashtra were/are limited; therefore the State has to maintain equivalence in the interest of conservation and development of mineral wealth;

b. that the appellant, respondent No. 4 as also 15 other applicants fell in the most eligible category, having adequate technical support and financial capacity to implement the mining operations and also fulfilling the other parameters laid down in the Guidelines dated 24th June, 2009 issued by the Govt. of India - therefore it became difficult to choose one of them; twelve of them had also been recommended/granted mineral concession by the State or by other States on the basis of their merit and were thus competent to procure the mineral from other sources and in the circumstances their cases for grant of PLs were not considered and need arose for considering other eligible candidates; yet another candidate though eligible in all respects but its expansion project preparedness was still at a primary level and hence its case would be considered at an appropriate time;

c. that as far as the appellant is concerned, it was found that he had experience of mining and was an emerging entrepreneur in the field of mining; he had signed MoU with Adhunik Corporation Ltd. (ACL) a renowned name in the field of steel, Cement, Power and Ferro Alloys industry and had appointed the best team of technical experts for carrying out prospecting in a scientific manner with modern equipments and latest technology to protect the environment. The associate company of the appellant namely ACL had also signed MoU with the Govt. of Maharashtra for setting up of a steel plant and positive steps had been taken in that direction; thus the grant of PL to the appellant would corroborate with the said project and will lead to captive use of mineral and economical growth of the area. Accordingly the appellant was recommended;

3. The Mines Tribunal, while setting aside the said recommendation and remanding the matter to the State Government has observed/held;

I. that there was no provision u/s 11(3) of the Act for grant of mining lease in favour of "emerging entrepreneur";

II. that the appellant had no experience in mining, no specified knowledge; his annual income is only Rs. 1,25,693/- and he did not show any proposed investment;

III. therefore considering his case over and above other qualified applicants is/ was not as per the provisions of the Act;

IV. that the State Government should have taken into consideration the strength of the appellant and compared it to the other more qualified applicants;

V. that the State Government had not properly analysed the inter-se merit and its order was arbitrary.

4. The argument of the appellant before the Learned Single Judge was that the respondent No. 4 already held PL in respect of an area of 24.86 sq. kms. and Section 6(1)(a) prohibited award of PL over an area in excess of 25 sq. kms. It was thus contended that the occasion for setting aside of the recommendation of the State Government in favour of the appellant, at the instance of the respondent No. 4 who could not in any case have been granted the said PL, did not arise. The Learned Single Judge has in the judgment impugned before us

held that grant of PL over an area in excess of 25 sq. kms. could be awarded, if in interest of development of mineral, with the permission of the Central Government; that thus if the State Government had properly analysed the matter and had found the respondent No. 4 more suitable, could have made the recommendation subject to approval of the Central Government in this regard also. It was further observed by the learned Single Judge that the entire merit of the appellant''s application was dependent on ACL with whom also the appellant had no agreement as on the date of making the application for grant of PL and which agreement was "acquired" one day before the consideration of the applications by the State Government. It was thus inferred that the appellant was "not a serious and genuine applicant" and grant of PL in favour of the appellant was found to be a dangerous trend which if encouraged would lead to trading in such licenses and breed corruption.

5. The senior counsel for the appellant has argued that the learned Single Judge has held the appellant to be having no experience ignoring the documents on record. Attention is invited to the certificates issued by M/s. Lloyds Metals & Engineers Ltd. & M/s. Gopani Iron & Power (India) Pvt. Ltd. certifying that the appellant had worked with them as a Project Coordinator (Mining) from 1993 to 2001 and 2004 to 2009 respectively. Attention is also invited to the documents showing receipt of fee by the appellant as consultancy charges from others engaged in the said field. It is further highlighted that the requirement of the respondent No. 4 of iron ore already stood met from other sources. It is yet further highlighted that the appellant proposed to set up iron ore manufacturing plant with investment of Rs. 100 crores.

6. We may notice that the appellant is a Law Graduate; though the documents aforesaid do show his employment as aforesaid but show the appellant to have done the work of procuring various clearances for his employer. Each and every person employed in an organization engaged in mining cannot claim experience or expertise required u/s 11 of the Act. Section 11 requires experience of having undertaken prospecting/reconnaissance operations and in establishment of mineral resources. A Law Graduate even if involved in all the legal aspects of mining can still not claim himself to have gained experience in mining operations. Though the State Government has described the appellant as an "emerging entrepreneur" but the appellant has no enterprise to his credit as of date except for having entered into an agreement with ACL barely a few hours before the hearing held by the State Government. The State Government also, except for using high sounding adjectives in favour of the appellant, has not delved in detail into the reasons for selecting the appellant for grant of largesse from amongst the large number of applicants. The State Government in the matter of recommending the appellant appears to have been guided more by face value than the values enshrined in the Act and the Rules. We may notice that a Division Bench of the Bombay High Court recently in M/s.Veet Rag Homes Private Limited Vs. Union of India, State of Maharashtra and M/s. Akash Universal (P) Ltd., Akash Marble House, Santacruz, Airport Side, Western Express Highway,

Vile Parle (East), Mumbai, has also rejected the contention that it is not necessary for an applicant to actually have any such knowledge or experience in reconnaissance or prospective operations and held that such contention if accepted would render the provisions of the Act meaningless; the criteria of "emerging entrepreneur" was held to be extraneous to the Act. The counsel for the respondent has also referred us to Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, also laying down that it is not open to the State Government to justify grant on criteria that are de hors the Act and the Rules.

7. Since the matter has been remanded back to the State Government, we refrain from making any further observations lest by doing so we foreclose the right of the appellant in such reconsideration and suffice it is to observe that we agree in toto with the findings /observations of the Mines Tribunal and the learned Single Judge.

8. Before parting with the case we may also mention that after the close of hearing, the appellant has filed an application informing that Smt. Kalpana S. Agarwal wife of the appellant was also similarly recommended for grant of PL and which order of the State of Maharashtra had also been set aside by the Mines Tribunal; the said Smt. Kalpana S. Agarwal had filed W.P. (C) No. 8219/2011 in this Court impugning the said order of Mines Tribunal; finding the said Smt. Kalpana S. Agarwal to have been not granted an opportunity of hearing by the Mines Tribunal, the Learned Single Judge has vide order dated 24th February, 2012 remanded that matter to the Mines Tribunal. The appellant by this application contends that since the appellant also was not fully heard by the Mines Tribunal, the present case be also remanded for fresh consideration to the Mines Tribunal.

9. We are unable to appreciate the said contention. The Mines Tribunal, in the case of Smt. Kalpana S. Agarwal, has been directed to consider the matter afresh owing to the finding therein of the said Smt. Kalpana S. Agarwal having not been heard. However that is not the position here. The arguments of the appellant before the Mines Tribunal have been duly considered and dealt with and the appellant cannot be allowed a second round before the Mines Tribunal. We therefore reject the said request.

10. The appeal is accordingly dismissed. No order as to costs.

