
(2008) 12 OHC CK 0073
In the Orissa High Court

Sri S.N. Dasmohapatra and Another	Vs	APPELLANT
State of Orissa and Others		RESPONDENT

Date of Decision : 24-12-2008

Acts Referred:

Citation : (2009) 107 CLT 95 : (2009) 1 OLR 447

Hon'ble Judges : I.M. Quddusi, J;B.N. Mahapatra, J

Bench : Division Bench

Judgement

B.N. Mahapatra, J.—In the present writ petition, the petitioners have prayed for declaring the action of the Mining Officer, Joda Circle, Keonjhar dated 04.06.2008 in directing seizure of 2109,987 M.Ts. of manganese lump ore and 24491.951 M.Ts. of manganese ore fines lying within the leasehold area of the petitioners, on the basis of allegation that the petitioners have illegally raised the said ore from outside their leasehold area and stacked the same within their leasehold area, as Illegal and directing the opposite parties to grant transit permit in favour of the petitioners for transportation and movement of the said manganese ore from their site by quashing Annexure-6, Annexures-8 series and 9 series which contain physical stack measurement statement dated 28.05.2008 and seizure list dated 04.06.2008.

2. Shorn of unnecessary details, the short fact leading to the present writ petition is that the petitioners were granted manganese ore lease over an area of Ac.90.130 decimals (36.474 hectares) by the State Government at Rudukela Manganese Mines at Rugudi, P.O. Guali, Dist: Keonjhar. The Government of Orissa executed a mining lease in favour of the petitioners as required under Rule 31 of the Minor Minerals Concession Rules, 1960 (hereinafter called "the MMC Rules") on 3rd May, 2002 for the said area for a period of twenty years. The lease land was demarcated as per Rule 33 of the MMC Rules after deposit of the required fees as revealed from Annexure-4. Mining operation started on the leasehold area since 2002. Resolution No. 9926 dated 17.10.1989 of the Government of Orissa, Department of Mining and Geology, contains the function

and duties of the Senior Inspector of Mines to be observed prior to issuance of transit permit at all times. The first transit permit for transit and dispatch of manganese lump ore was granted on 17.01.2003. Subsequent thereto, transit permits were also granted by opposite party No. 3 till 12.04.2008. The lessee has been permitted from time to time to operate and lift the materials after verification and inspection by the field staff of opposite parties. On 5.05.2008 and 12.05.2008, the petitioners made application for fresh transit permit and re-permission. During pendency of the said transit permit application, on 28.05.2008 opposite party No. 3 and its field staff entered the mines of the lessee and conducted a physical verification of the stacked lump ore. Thereafter, the Mining officer, Joda Circle, seized 2109.987 M.Ts. of manganese lump ore and 24491.951 M.Ts. of manganese fines on 04.06.2008 alleging that the same were illegally raised from outside the leasehold area of the petitioners and stacked within their leasehold area. Subsequent thereto show cause notices under Annexures-8 series and 9 series were issued to the petitioners containing physical stack measurement statement dated 28.05.2008 and seizure list dated 04.06.2008. Hence this writ petition

3. Mr. P.K. Ray, Learned Senior Counsel for the petitioners has submitted that on 04.06.2008, manganese lump ore of 2109.987 M.Ts. and manganese ore fines of 24491.951 M.Ts. were illegally and arbitrarily seized by the opposite parties without prior notice to the petitioners, even though the materials seized were raised from their leasehold area. On the said date, stock was verified and checked by the Senior Inspector of Mines without giving remarks in the remark column. On 06.06.2008, the Hon'ble Vacation Judge passed interim order permitting the lessee to carry on mining operation and to transport ore from the leasehold area. On 08.08.2008 and 22.08.2008, this Court appointed Commissionerate comprising senior officers of the Directorate of Mines for verification of mining lease area granted to the lessee and to submit its report to this Court. Pursuant to such direction of this Court, two senior-most officers of the Directorate of Mines and a Senior Surveyor conducted a joint inspection of the "J" pit, "M" pit and "JM" pit of the mining lease area of the lessee. After a detailed joint verification/ inspection of the said leasehold area, they submitted a report on 17.09.2008. The said joint verification/inspection report was filed in the Court on 26.09.2008. Strongly placing reliance on the said report, the Learned Counsel for the petitioners submitted that the said report confirmed that 2109.987 M.Ts. of manganese lump ore seized by opposite parties was raised from "J" pit & "M" pit which are within the leasehold area. According to Mr. Ray, the Deputy Director of Mines has seized 2109.987 M.Ts. of manganese lump ore on surmises with ulterior motive. It is further submitted that earlier, in pursuance of the direction of this Court dated 19.07.2007 given in ARBA No. 11/2007, a joint inspection/verification was also conducted on 21.07.2007 for verification of stock and boundary lines of the mining area of the lessee. As per the verification reports dated 21.07.2007, 04.08.2007 and 05.08.2007, the verification was conducted in presence of the field staff of opposite party No. 3 as well as the

lessee. They verified and identified the boundary line and dumping yard, stockyard site, quarry site and pits with specific remarks and found that the pits were within the mining lease area. After verification of the leasehold area on 27.12.2007, the lessee was granted transit permit by opposite party No. 3 for removal of the manganese lump ore and fines. The said transit permit was granted and continued to operate till 12.04.2008, for transporting and despatch of ores after proper verification and inspection by field staff of opposite party No. 3. The stock register maintained by the petitioners was being verified from time to time. On 14.03.2008 and 04.06.2008, the Senior Inspector of Mines verified the stock register and did not make any adverse remark against the petitioners' activity in the remarks column. He further submitted that the pillars shown in photograph appeared to have been put at different places recently as the earth around them seemed to be fresh. In absence of the concrete demarcating pillars, which seemed to have been displaced just before the joint inspection, the inspecting officers have wrongly reported that major portion of the "JM" pit was outside the leasehold area from which manganese ore fines were raised. According to Learned Counsel, any manganese ore below 10 mm is considered as fines. Generally, the fines are average size of 1 mm to 2 mm at the most.

Mr. Ray strenuously argued that it is unfair on the part of the opposite parties to dispute the findings given by the two Joint Directors belonging to Directorate of Mines and senior surveyor, who is an officer of opposite party No. 3 after field inspection and verification of the leasehold area. He also argued that neither in the returns nor in the analysis report enclosed to the stock verification application dated 15.02.2008 the petitioners had stated that they raised manganese lump ore outside the leasehold area. It is absurd to think that "J" pit and "M" pit cannot produce manganese lump ore but produce manganese fines only. It is also argued that much prior and subsequent to seizure dated 04.06.2008 verifications were made by the designated officer Sri Mangal Charan Hembram, Senior Inspector of Mines, Joda reflecting the stock position as on 13.03.2008, 04.06.2008 and 17.06.2008 without indicating any illegal extraction. The allegation of extraction/theft beyond the leasehold area is totally baseless. Opposite party No. 3 and its field staff at all times from the commencement of the lease have verified, inspected and conducted sampling of stacked materials for transportation and despatch for which due approval had been granted for transit permit till 12.04.2008. Mr. Ray seriously contended that opposite party No. 3 tried his best to justify his action by relying on Annexures- C, D, E, F, G, H and I to the counter dated 17.11.2008. Thereafter, he should not be permitted to justify his action with fresh reason by filing Annexure- H/1 series and H/2 series to additional counter affidavit dated 29.10.2008. He alleged the same as after-thought. In support of his contention, he relied on the decision of Hon'ble Supreme Court in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, .

Concluding his argument Mr. Ray submitted that 2109.987 M.Ts. of manganese lump ore and 24491.951 MTs of manganese ore fines should be released and

necessary transit permit should be issued immediately for transportation and despatch of the same.

4. Mr. Nayak, Learned Senior Counsel appearing on behalf of opposite party Nos. 1 to 3, submitted that pursuant to the direction of this Court, two Joint Directors of Mines and a Senior Surveyor inspected the leasehold area and submitted their report on 17.09.2008. As per the said report, most of the JM" pits are outside the leasehold area. Referring to Annexures- C, D, E, F, G, H & I to the counter affidavit dated 11.07.2008 it was submitted that the petitioners were carrying out mining operation outside the leasehold area. Relying on the monthly returns filed for the months of February and March, 2008 and the application for mineral transit permit and chemical analysis report, transit permit for lessee, etc. enclosed to Annexure- H/1 series, he argued that manganese .ore fines have been produced from "J" pit. Similarly, referring to Annexure-H/2 series, he argued that manganese ore has been despatched from "JM" pit and not fines. Thus, it was argued that in view of the above, the report dated 17.09.2008 submitted by the inspecting officers was not a correct one. It is further contended that Annexures- H/1 series and H/ 2 series to additional affidavit dated 29.10.2008 are the documents on record. Mr. Nayak also submitted that mining operation undertaken by the petitioners is quite haphazard and outside the mining lease surface right area. The seizure list dated 04.06.2008 has not been challenged. Originally, there were pillars and the same were shifted unauthorizedly to places beyond the leasehold area for which it is stated in the report that the leasehold area is required to be surrounded by boundary pillars after fixation of the reference point. The area granted under surface right on lease is also required to be demarcated by erection of pillars.

5. The only dispute involved in this case at hand is whether the manganese lump ore of 2109.987 MTs and manganese ore fines of 24491.951 MTs stacked within the leasehold area, which were seized by the Mining Officer on 4.6.2008, were raised from the leasehold area or from outside. According to the petitioners, this manganese lump ore and manganese fines were raised from their leasehold area and stacked within it. Petitioners" further case is that before the joint inspection the opposite parties themselves displaced the demarcation pillars and shifted it to some other places inside the leasehold area. The case of the opposite parties is that manganese lump ore and manganese ore fines were raised from outside the leasehold area and stacked within the leasehold area of the petitioners. The further allegation of opposite parties is that the petitioners have displaced the original pillars from the original place and shifted the same to some other places beyond the leasehold area. These are matters which require determination of factual controversy as to whether 2109.987 MTs manganese lump ore and 24491. 951 MTs manganese ore fines seized on 04.06.2008 had been raised from the leasehold area or from outside. To resolve this factual dispute, this Court felt that a field/ spot inspection was necessary. As suggested by both the parties, this Court directed that Mr. Ganesh Mohanty, the Joint Director of Mines and Dr. D.K. Mishra, Joint Director of Mines (Geologist) and Sri Haladhar Das, Sr.

Surveyor of the Office of Deputy Director of Mines (hereinafter referred to as "Joint Verification Committee") shall make a joint inspection of "J" pit, "M" pit and "JM" pit and the materials stacked and shall submit their report to this Court within a week. Accordingly, inspection was made and an inspection report was submitted by them on 17.9.2008. The said report was filed before this Court on 26.9.2008.

6. The report submitted by Joint Verification Committee reveals that pursuant to the orders dated 8.8.2008 and 22.8.2008 of this Court, the three officers named above made field inspection of the concerned mining area on 9.9.2008 and 10.9.2008. On inspection, they found that the lessee used to work in three pits. During such inspection, Dy. Director of Mines, Joda and lessee with their staff could not locate the existence of the lease pillars nor the surface right pillars. Surface point which is the village tree junction stone shown in the map appended to the leasehold area was also not in existence. However, a reference was drawn from the permanent feature, i.e., crossing point "Nala" and road, and a line was drawn up to find out the location of the pits with reference to the lease boundary. It was observed that "J" pit is coming completely inside the leasehold area. "M" pit excepting two non-productive benches is also coming within the leasehold area. However, major portion of "JM" pit is found outside the leased area. It is further reported that while "J" pit and "M" pit produce lump grade manganese ore and the "JM" pit produces mostly manganese fines. Since commencement of the mining operation in the area from 10.9.2002, there was regular production and despatch of manganese ore of all grades. The report further reveals, pursuant to the reports submitted by the Senior Inspector in-charge of the Mines on 8.6.2007 to the Deputy Director of Mines, Joda, stating therein that he suspected that the lessee was working outside the leasehold area, the Deputy Director on the same day ordered the Sr. Surveyor of his office to verify the lease boundary. The Sr. Surveyor submitted his verification report on 18.4.2008, which reveals that the mining operation has crossed over the lease boundary by a total area of Ac.5.54 decimals. In another instance, verification was made by Sr. Inspector of Mines, Sr. Surveyor and others on 21.7.2007 for the lump manganese ore and on 4.8.2007 for the waste and manganese fines. The stocks of the waste, fines as well as lump ore were considered to have been raised from the leasehold area without any verification of the lease boundary. This verification was made in connection with Case No. 219/2007 arising out of ARBA No. 11/2007. Thereafter the Sr. Surveyor along with Sr. Inspector of Mines jointly inspected the area and submitted their report on 26.5.2008, wherein the land used outside the leasehold area was reported to be over Ac. 16.70 decimals in addition to Ac.5.54 decimals, which included screening plant, manganese fine stack, over burden dumps, site office and stack of manganese lump ore. On the basis of the said report, the Deputy Director, Mines, Joda, ordered for seizure of the materials and, accordingly, the Mining Officer, Joda Office, seized 2109.987 MTs. of manganese lump ore and 24491.987 MTs. of manganese ore fines on 4.6.2008 after a physical verification made on 28.05.2008 of the stock of lump

ore. It is further reported that out of the stock of 3179.568 MTs. manganese lump ore, 2109.987 MTs. had been seized on 4.6.2008 and the lessee produced a fresh stock of 1068.581 MTs. of lump manganese ore after seizure from the "M" pit and "J" pit within the leasehold area. A balance quantity of 672.894 MTs. from the permitted stock, which was under application for an extension of permission, was lying in the area that includes the seized stock of 2109.987 MTs.

7. After receipt of the joint visit report dated 17.09.2008, both the parties advanced all most the same argument in support of their contention, which they had made prior to referring the matter for joint verification. Annexures-C, D, E., F, G, H & I to the counter affidavit dated 11.07.2008 relied on by opposite parties do not reveal that manganese lump ore seized on 04.06.2008 were excavated from outside the leasehold area. Annexure- H/1 series consists of application for mineral ore permit for lessee in form-J, chemical analysis report in form-K and transit permit for lessee in form-L and returns for the months of February and March, 2008 in Form-A. In all these documents there is no mention of manganese ore fines except in first column of return filed in Form-A for the month of March, 2008. However, nowhere it is mentioned that the manganese ore fine was raised from "J" pit. All these documents are of dated 15.02.2008 except transit permit in favour of lessee in form-L which is dated 16.02.2008. There is nothing on record to show what were raised after 16.02.2008 from different pits up to the date of seizure, which is the period relevant for consideration. Form-J at page 5 of Annexure-H/1 series is an application seeking removal permit of manganese ore from "J" pit, which also does not indicate whether the manganese ore is lump or fines. It only shows the grade of contents at 22.44% and 22.52%. Annexure-H/2 series is a statement showing the date of application for removal permission, quantity applied, name of the pit from which applied etc. It is prepared by the Deputy Director of Mines, Joda which shows removal permission applied for manganese ore by the petitioners from "JM" pit for the period 05.08.2005 to 03.11.2006. Unfortunately, the caption of Annexure H/2 series wrongly shows that it is for the period from 05.08.2005 to 4.10.2008. We fail to appreciate how materials raised and despatched during the year 2005-06 would be relevant for considering the seizure of the materials made on 04.06.2008. The said statement only indicates the grade of manganese raised from "JM" pit. It does not indicate whether the manganese extracted is lump or fine. Moreover, grade is not the indicating factor for lump or fine. The opposite parties are not correct to say that the seizure list dated 04.06.2008 has not been challenged by the petitioners because Annexures-8 series & 9 series are under challenge, which contain seizure list dated 04.06.2008. Moreover, neither the petitioners nor the opposite parties could be able to show any basis in support of their respective contentions that manganese ore below 10 mm or containing less than 25% manganese is considered as fines.

8. Admittedly, opposite party No. 3 in order to justify his action relied on Annexures- C, D, E, F, G, H and I to his counter dated 17.11.2008. Subsequently, he filed Annexure-H/1 series and H/2 series to the additional counter affidavit to

justify his action.

The Hon^{ble} Supreme Court in *Mohinder Singh Gill* (supra) observed as under:

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose J. in *Gordhandas Bhanji* (AIR 1952 SC 16) (at p. 18):

Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.

9. Be that as it may, since the matter required determination of factual controversy, this Court with consent of the petitioners and the opposite parties directed two high level officers working in the office of the Director of Mines and a senior surveyor working in the office of opposite party No. 3 to make field/ spot verification and submit their report. The report dated 17.9.2008 submitted after field verification pursuant to this Court's order clearly reveals that "J" pit producing lump grade manganese ore is completely coming inside the leasehold area and the "M" pit except two non-productive benches producing lump grade manganese ore is also coming within the leasehold area. The said report nowhere speaks that 2109.987 MTs. manganese ore lump stacked in the leasehold area and seized by the mining officer were raised from outside the leasehold area. Rather the said report further reveals that after seizure, the lessee produced a fresh stock of 1068 MTs. of lumps manganese ore from "M" pit and "J" pit within the leasehold area. The inspection report dated 18.4.2008 submitted by the Sr. Surveyor and, in another instance, further verification conducted by Sr. Inspector of Mines, Sr. Surveyor and others on 21.7.2007 for the lump manganese and on 4.8.2007 for waste and manganese fines do not reveal that the seized lump manganese ore and waste manganese fines were raised from outside the leasehold area. On the other hand, the stock of lumps manganese ore and waste manganese were considered as raised from the leasehold area.

10. In the present case, the Court directed constitution of a committee consisting of two joint directors of Director of Mines and a senior surveyor, an officer of Deputy Director of Mines having expertise in the subject under consideration to make a joint inspection of "J" pit, "M" pit and "JM" pit and the materials stacked

in the leasehold area. The Court does not have expertise in all subjects. Therefore, it should have shown due regard to the opinion expressed by expert committee who have acquired special skill on the subject unless there are allegations of mala fide against any of the members of the expert committee.

A Constitution Bench of the Supreme Court, in the *The University of Mysore and Another Vs. C.D. Govinda Rao and Another*, held that in academic matters where the decision under challenge has been taken by the Committee of Experts, "normally the Court should be slow to interfere with the opinion expressed by the experts" unless there are allegations of mala fide against any of the members of the expert committee.

The Hon^{ble} Supreme Court in *University of Mysore and H.H. Anniah Gowda V.C.D. Govinda Rao and Anr.* AIR 1965 BC 491 : V 52 C 80 held as follows:

Boards of Appointments are nominated by the Universities and when recommendations made by them and the appointments following on them, are challenged before Courts, normally the Courts should be slow to interfere with the opinions expressed by the experts. There is no allegation about mala fides against the experts who constituted the present Board; and so, we think, it would normally be wise and safe for the Courts to leave the decisions of academic matters to experts who are more familiar with the problems they face than the Courts generally can be.

11. In the above fact situation, we are of the view that manganese ore lump of 2109.987 MTs. seized by opposite parties was raised from the leasehold area of the petitioners and, therefore, the seizure of manganese lump ore is not legal.

12. The joint verification committee further reported that in the absence of lease pillars and surface right pillars, they referred the permanent feature that crossing point of "Nalla" and road and a line was drawn up to find out the location of the pits with reference to boundary. However, they suggested that leasehold area is required to be pointed out/demarcated by boundary pillars after fixation of reference point. The area granted under surface right within the leasehold area is also required to be demarcated by erection of pillars. With this observation the committee reported that major portion of the "JM" pit is found outside the leasehold area, which produces manganese fines.

13. In view of the report of the joint verification committee, proper demarcation of the leasehold area should be made following the procedure laid down in Rule 33 of the MMC Rules. After demarcation of the leasehold area, it can be ascertained which portion of "JM" pit is coming within the leasehold area and, accordingly, the petitioners should be allowed to lift and transport the manganese fines proportionate to the extent of the area of the "JM" pit coming within the leasehold area. This exercise should be completed within a period of four months from today.

14. For the reasons stated in paragraphs 9, 10 and 11 above, we quash

Annexure-6 and the seizure list dated 04.06.2008 so far as it relates to seizure of manganese lump ore of 2109.987 MTs and direct the opposite parties to issue necessary stack removal permission to the petitioners enabling them to lift and transport the said quantity of manganese lump ore.

15. In view of this, the writ petition is allowed to the extent indicated above. No costs.

I.M. Quddusi, J.

16. I agree.