

(2020) 01 SC CK 0096
In the Supreme Court Of India
Case No : Civil Appeal No. 850 Of 2020

State Of Odisha & Ors

APPELLANT

Vs

M/S. Jindal Steel And Power Ltd. & Ors

RESPONDENT

Date of Decision : 30-01-2020

Acts Referred:

Mines and Minerals (Development & Regulation) Act, 1957 — Section 3(d)
Mineral Concession Rules, 1960 — Rule 31(1)

Citation : (2020) 2 Scale 735 : (2020) 1 Supreme 764

Hon'ble Judges : S.A. Bobde, CJ;B.R. Gavai, J;Surya Kant, J

Bench : Full Bench

Advocate : Shibashish Misra, Saurabh Ajay Gupta, Prem Prakash, Gurmeet Singh Makker, Kedar Nath Tripathy, Malvika Bhanot, Sanjay Kapur, Tushar Mehta, Megha Karnwal, Harshal Narayan, V.M. Kannan, Shubhra Kapur

Judgement

1. With the consent of learned counsel for the parties, Special Leave to Appeal is taken up for final hearing along with the captioned Interlocutory Applications.

2. Leave Granted. Heard learned counsel for the parties.

This Civil Appeal is directed against the order of a Division Bench of the Orissa High Court which allowed the writ petition filed by Respondent No. 1, Jindal Steel and Power Ltd. (hereinafter "JSPL") seeking a writ of mandamus against the appellant, State of Odisha, for allowing lifting of legally procured, processed, royalty and tax-paid stock of Iron Ore lying at the dispatch point within the lease-area of M/s Sarda Mines Pvt. Ltd. (hereinafter "SMPL") in Thakurani B-Block Mines in Keonjar, Odisha and transporting it to the railway siding at Deojhar for carrying to its Pelletisation Plants and Steel Plants in Odisha and Chhattisgarh.

FACTS

4. JSPL is an industrial entity which runs Steel-production plants across the country and regularly purchases numerous raw materials, including Iron Ore as

part of its commercial activities. It had entered into an arrangement with SMPL to purchase certain Iron Ore, which was to be processed into Lump Ores and Fines and transported to JSPL's plants. The mining activity was conducted by SMPL and possession of the stocks was handed over to JSPL within SMPL's premises. Within SMPL's leasehold area, JSPL would process these Ores and later store them at the dispatch point, pending transportation by trains to the Pellitisation Plant of JSPL located at Deojhar, Odisha as well as its Integrated Steel Plant located in Raigarh, Chhattisgarh. The appellant (State of Odisha) had earlier granted approval to this arrangement for selling Iron Ore, subject to payment of royalty at the "highest rate".

5. This continued uninterruptedly until 31.03.2014, when a letter was issued by the Deputy Director of Mines, Joda (in Keonjhar, Odisha) (Appellant No. 3) which highlighted that SMPL's Environmental Clearance for enhanced production had expired and hence 'transit permit' for transporting the procured and processed Iron Ore (CLO and Fines) from the despatch point to JSPL's plants could not be granted.

6. JSPL approached the State authorities contending that royalty had duly been paid on the Iron Ore, and that the stocks lying at the despatch point were owned by JSPL and not SMPL. Numerous representations were made requesting permission to transport the processed minerals. Appellant No. 3, therefore, recommended to the Director of Mines (Appellant No. 2) that JSPL be granted requisite transport clearances. However, Appellant No. 2 in his communication with the Commissioner-cum-Secretary, Steel & Mines Department drew attention to the fact that the material lay within the leasehold area of SMPL and its transportation would form part of mining operations which could not proceed without appropriate statutory clearances. Accordingly, the appellants through letters dated 23.05.2014 and 26.06.2014 rejected JSPL's prayers.

7. The aggrieved JSPL approached the High Court and sought quashing of appellants' letters refusing transport permits and a writ of mandamus directing the State of Odisha to grant permission for transportation of entire processed ore from dispatch point within SMPL's lease area to JSPL's units in Odisha and Chhattisgarh.

8. JSPL claimed that through a letter dated 15.01.2015, SMPL had obtained clarification from the Ministry of Environment and Forests, Government of India (hereinafter "MOEF") that SMPL could operate its mine and produce up to 4 million tons of Iron Ore (Lumps) for a period of 20 years from 22.09.2004. Given that SMPL had valid environmental clearance, no objection could be raised by appellants against transportation of iron ore by JSPL. This was vehemently contested by the appellants who contended that owing to the Supreme Court's interim directions on 16.05.2014, no "mining activities/operations" could take place which would also include a prohibition on transportation of mined ore.

9. JSPL contended that the afore-stated direction only prohibited SMPL from

resuming mining operations, and not JSPL from transporting the mineral already mined, purchased, processed and royalty paid upon. It placed reliance upon the expression "mining operation" as defined under Section 3(d) of the Mines and Minerals (Development & Regulation) Act, 1957 ("MMRDA"), which did not include transportation of minerals. As soon as the ore was mined and sold by the mining leaseholder, it was contended that the OMPTS Rules would come into force. JSPL being a buyer who possessed necessary license to transport under OMPTS Rules and who also had paid all necessary royalties, could not be stopped from transporting its ore merely because it lay in the leasehold premises of SMPL on the ground that the latter did not have a valid environmental clearance.

10. The High Court noted that this Court's interim directions prohibited "mining operations", which as per Section 3(d) of MMDRA meant "winning" of minerals. Relying upon the Constitutional Bench decision in *The Bihar Mines Ltd. v. Union of India* AIR 1967 SC 887, interpreting "mining operations" to include only processes necessary to raise/extract minerals from mines, the High Court held that the transportation of minerals already raised would not be estopped through this Court's interim directions. Having noticed the fact that SMPL had environmental clearance, it had obtained due permission for selling Iron Ore to JSPL, and that requisite royalties had already been paid, the High Court found no valid reason for the State of Odisha to stop transportation of the iron ore by JSPL. Accordingly, the impugned letters which directed stoppage of transportation were quashed, and instead the State-authorities were directed to grant transport permission to JSPL.

CONTENTIONS OF PARTIES

11. The aggrieved State-authorities initially sought leave to appeal contending that mere sale of the mined ore by SMPL would not mean that MMDRA would cease to operate, and grant of approval under OMPTS Rules, 2007 to JSPL would not obviate the necessity for obtaining clearance/approvals under other statutes. JSPL's title over the goods could not be better than the title owned by SMPL; and mere completion of sale per the Sales of Goods Act would not regularise illegalities or dispense with the necessity of complying with the law. The HC statedly misinterpreted the MOEF's clarificatory letter regarding Environmental Clearance, which was granted only for 4 MPTA, whereas SMPL had extracted minerals far in excess. At least some part of the Ore sold to JSPL came from this unauthorised excess production, and hence JSPL could not be said to have "validly procured" the materials and thus had no right to transport the same. The appellants further claimed that "mining operation" would in fact cover transportation of materials within the leasehold area, and Section 3(d) of MMDRA ought not to be construed restrictively in light of this Court's observations in *Samaj Parivartana Samudaya v. State of Karnataka* (2013) 8 SCC 154, and hence JSPL's prayer was barred by this Court's interim directions dated 16.05.2014.

12. Appellants also underscored the larger implications of upholding the High

Court's finding that sale of minerals would cease application of the MMDRA and instead only the OMPTS Rules would apply, for it would create a loophole to evade application of environmental legislations.

13. JSPL, on the other hand, highlighted how it was not seeking any permission for crushing or processing of the iron ore, but only transportation of the Ore already legally procured, processed and stored at the dispatch point prior to expiry of the environmental clearance of SMPL. Transportation was claimed, per se, not to be a part of mining operations for which environmental clearances were required. It placed reliance on the appellant's failure to raise objections to transportation of minerals in other similar cases. Even otherwise, per Clause 5 of Part-IX of Form K (Model Form of Mining Lease under Rule 31(1) of MC Rules, 1960) lifting and transportation of minerals was claimed as being permissible upto six months after the expiry of the lease, which demonstrated the clear intention of the legislation to protect the right of the lessee who has excavated minerals during the validity of the lease period.

14. During the pendency of this appeal, SMPL filed an application for intervention (I.A. No. 8725 of 2020) and at the time of hearing referred to the order dated 15.01.2020 passed in I.A. No. 186810 of 2019 in WP(C) No. 114 of 2014 (Common Cause v. Union of India) whereby this Court noticing irregularities committed by several mining companies, directed SMPL to deposit dues as assessed by the Central Environment Committee in its report dated 08.05.2019 and asked it to file an undertaking to comply with all rules, regulations and mandatory provisions; post which SMPL could resume its mining operations in the leased-area. SMPL has filed another application (I.A. No. 8734 of 2020) undertaking to comply with this Court's directions dated 15.01.2020 with an oral prayer to extend the time limit till the end of February, for doing the needful.

15. Additionally, ICICI Bank and the State Bank of India have also filed intervention applications (I.A. No. 54052 of 2018 and I.A. No. 4 of 2017), claiming that they (as part of a consortium of seven banks) had granted sums totalling Rs 8400 Crores to JSPL as working capital. Part of these loan amounts had been used by JSPL to buy Iron Ore from SMPL and these stocks were in turn hypothecated with the consortium. The banks hence had exposure of about Rs 434 Crores in the present case, which would adversely be affected in case JSPL was not allowed to transport the said Iron Ore to its plants expeditiously. In addition, they sought that JSPL be directed to undertake that the amount realised by it in pursuance of transporting the Ore, should be credited only to the working capital limit account.

16. JSPL has also filed an application (I.A. No. 187580 of 2019) seeking interim directions to allow it to transport the Iron Ore stock (totalling 29977.818 metric tons of Iron Ore lumps and about 12.2 million tons of Iron Ore fines) and directions to the State of Odisha to grant necessary transit permits. Insisting that the appellants' concerns of recovering compensation dues had been satisfied consequent to SMPL's undertaking, JSPL drew attention to the distress being

faced by the Steel sector in India, and that its own working facility account had been restructured pursuant to RBI directions and how a Trust & Retention Account had been opened under the supervision of the State Bank of India into which the entire proceeds of JSPL were being deposited.

17. It was urged on behalf of JSPL that in light of this Court's directions dated 15.01.2020 in I.A. No. 186810 of 2019, and the consequent undertaking filed by the lessee (SMPL) on 16.01.2020 to comply with the same, no dispute indeed survived between the consequent buyer (JSPL) and the lessor (State of Odisha). Learned Counsel representing the State of Odisha and SMPL also did not controvert this fact-situation.

ANALYSIS

18. As noticed above, although the appellant-State had raised several disputes and questions of law in its written submissions, but at the time of oral hearing both parties have confined themselves to the solitary issue regarding conditional entitlement of JSPL to lift and transport the iron ore from SMPL's lease-area to its plants in Odisha and Chhattisgarh. Thus, no occasion arises for venturing into the numerous legal disputes raised in the main appeal.

19. Counsel for the appellants have expressed no objection to disposing of this petition in light of the subsequent developments which have taken place post the filing of appeal, subject to SMPL filing the aforementioned undertaking.

CONCLUSION

20. In light of parties having restricted their contentions and our consequent analysis to the framework of I.A. No. 187580 of 2019 (moved for directions by JSPL), we dispose of all the I.As. as well as the Civil Appeal with the following directions:

(i) SMPL's prayer for modification of our order dated 15.01.2020 passed in I.A. No. 186810 of 2019 in WP(C) 114 of 2014, wherein one-month time was granted for payment of dues as assessed by the CEC, is accepted. SMPL must pay its dues and give the requisite undertaking by 29 February, 2020 post which alone it shall be at liberty to resume its mining operations as per our order dated 15.01.2020.

(ii) Once SMPL complies with direction no. (i) above, JSPL can lift the already mined, processed and royalty paid Iron Ore lying at the dispatch point within SMPL's premises and transport these stocks to its plants across the country. The proceeds thereof must be deposited with the Trust & Retention Account under the custody of the State Bank of India.

(iii) Failure to comply with these directions shall result in any such sale being deemed legally void.