

(2009) 02 JH CK 0121
In the Jharkhand High Court

Surendra Mohan Sarda

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 18-02-2009

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11

Citation : AIR 2009 Jhar 147

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred mainly on the ground that the concerned respondent authorities have not properly understood the order dated 27th of February, 2007 delivered by this Court in WP(C) No. 747 of 2007. Initially, the writ petition was preferred by the present petitioner because, no decision was taken by the respondents upon an application preferred much before two and half decades for getting mining lease. Therefore, to expedite the hearing of an application of the petitioner the aforesaid WP(C) No. 747 of 2007 was instituted. It was decided vide order dated 27th of February, 2007 whereby a direction was given to the concerned respondent authorities to decide the claim of the present petitioner within a period of three months.

2. It is also submitted by the counsel for the petitioner that there is already a vested right in the petitioner as per Section 11(2) of the Mines and Minerals (Development & Regulation) Act, 1957 and, therefore, the claim of the present petitioner cannot be brushed aside, without passing a reasoned order as directed by this Court vide order dated 27th of February, 2007. Despite direction given in the earlier writ petition, no order has been passed by the concerned respondent authorities and, therefore, suffice it will be for the disposal of the present writ petition, if a further direction is given to the concerned respondent authority to comply with an order dated 27th of February, 2007 passed by this Court in WP(C) No. 747 of 2007 otherwise there are several other grounds raising objection about the notification issued by the respondent authority by the 1st

March, 2007 which is in gross violation of the Section 11(2) of the Act, 1957 as well as Rule 59 of the Mineral Concessions Rules, 1960 but keeping these other issues open suffice it will be if the direction is given, again, to the respondents authority to decide an application of the present petitioner as per order of this Court dated 27th February, 2007 passed in W.P.(C) No. 747 of 2007.

3. I have heard learned Counsel appearing on behalf of the respondents who have submitted that it is true that No. order has been passed by the concerned respondent authorities after the earlier writ petition decided by this Court and despite there is a direction by this Court.

4. In view of the aforesaid submissions, it appears that though there was a direction given by this Court vide order dated 27th of February, 2007 in WP(C) No. 747 of 2007 that a decision may be taken by the respondents within a period of three months upon an application preferred by the petitioner for grant of mining lease. Affidavit-in-reply or counter- affidavit, is not a decision. There ought to have been a separate independent decision when there is a clear direction given by this Court. The respondent authorities cannot presume that now there is new notification therefore there is no need of taking a decision and passing of an order, despite, there is clear direction by this Court. The concerned respondent authorities cannot flout the order of this Court by presuming certain facts about the issuance of the new notification. Modification of the order cannot be presumed by the concerned respondent authorities. In no unequivocal terms and in no ambiguous words, a direction was given vide order dated 27th of February. 2007 in WP(C) No. 747 of 2007 that concerned respondent authorities in that writ petition shall decide the case of the petitioner for grant of mining lease. For no justifiable reasons, the respondents have failed to comply with the order and, therefore, I hereby direct the concerned respondent authorities to comply with the order dated 27th of February. 2007 passed in WP(C) No. 747 of 2007 within a period of three weeks from the date of receipt of the copy of the order, keeping in mind the provisions of the Mines and Minerals (Development & Regulations) Act, 1957 especially Section 11(2) of the Act thereto and also keeping in mind Rule 59 of the Mineral Concessions Rules, 1960 and such other relevant evidences and arguments which may be canvassed by the petitioner during the hearing before the concerned respondents authorities. It is hoped and expected that now the order shall be passed by the concerned respondent authorities without committing any further breach.

5. Rest of the issues raised in the present petition about the legality and validity of the notification dated 1st March, 2007 and such other arguments are left open and are not hereby concluded at all. Liberty is reserved with the petitioner to prefer a fresh writ petition in case of difficulty.

6. In view of the aforesaid directions, this writ petition is disposed of, consequently LA. is also disposed of.