

(2012) 04 JH CK 0010

In the Jharkhand High Court

Case No : Writ Petition (C) No. 5449 of 2010

Surendra Mohan Sarda

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 30-04-2012

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 5(2), 5(2)(a), 5(2)(b)

Citation : AIR 2012 Jhar 120 : (2012) 2 EFLT 864

Hon'ble Judges : Prakash Tatia, C.J.;Aparesh Kumar Singh, J

Bench : Division Bench

Advocate : Indrajit Sinha, for the Appellant; Md. M. Khan, ASGI, Y.N. Mishra, CGC, M/s. A.K. Sinha, AG and R. Shankar, G.A., for the Respondent

Final Decision : Dismissed

Judgement

1. Heard learned Counsel for the parties. By this writ petition, the petitioner has challenged the guidelines as contained in letter dated 24.06.2009 issued by the Government of India, Ministry of Mines, under the signature of the Deputy Secretary to the Government of India, on the ground of the same being ultra vires to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. The petitioner sought the relief because of the reason that the petitioner was the applicant for allotment of lease of the mine situated at Badajamda, Dist. West Singhbhum, measuring 106.230 hectare, which mine was earlier leased out to M/s. General Produce Company Limited, whose lease expired on 19.05.1965. After 19.05.1965, this mine was initially notified only on 3.1.1979 and then again it was notified on 26.2.2007. The petitioner's said prayer was rejected by the order dated 1.9.2010 passed by the Deputy Secretary, Mines and Geology Department, Government of Jharkhand. It will be worthwhile to mention here that along with the petitioner, there were 63 more applicants and therefore, by the order dated 1.9.2010, the claim of all such applicants has been rejected. The petitioner's and others claim for the said mine was rejected on the ground of coming into force of the National Mineral Policy,

2008, which required more scientific details and data with respect to the minerals in the mining area which can be gathered by undertaking certain exercises and that exercise yet has not been completed.

2. According to the learned Counsel for the petitioner, mine in question was already leased out to the earlier lessee which is evident from the notification itself wherein that fact has been mentioned and the mine became available because of the expiry of the earlier lease of the lessee and in view of the above reason, there was full compliance of section 5(2) of the Mines and Minerals (Development and Regulation) Act, 1957, which provides that where there is already evidence of lease of mine and evidence of earlier prospected the area which is sought to be offered, then in that situation there is no other requirement of obtaining any further evidence. It is submitted that as per rule 22(3)(g) of the Mineral Concession Rules, 1960, the applicant is required to submit an affidavit showing particulars of area mineral-wise in the State which the applicant or any person jointly with him is holding or has already held or has applied for and certain other information are also required to be given by the applicant. It is submitted that refusal could have been done only under rule 26 of the Rules of 1960. This refusal is permissible only if certain particulars in the application in the Form "I" or Form "J" are not supplied in spite of a notice under sub-rule (3) of rule 26. Learned Counsel for the petitioner drew our attention to the contents of the application form, which is required to be given under rule 22(1) of the Rule of 1960 and according to the learned Counsel for the petitioner, in this form also, the applicant is required to disclose under column (xvi)(e) whether the area is virgin and if not, the extent to which it has already been worked; therefore, the applicant is also required to disclose reserves assessed with their grade (chemical analysis reports of representative samples are to be attached), which are also to be assessed. Therefore, the applicant himself is required to complete the requirements of section 5(2)(a) of the Act of 1957 and is required to furnish the evidence to show that the area for which lease has been applied has been prospected and there is existence of mineral contents in the area.

3. It is submitted that if the State or the Union of India wanted to implement any National Policy for mining operation, then that policy may require the amendment of the rules which are already occupying the field but merely because of framing of policy, the rules cannot stand amended by virtue of any notification issued in the name of giving effect to the policy for the subject for which Central Government itself has enacted the law and also framed rules thereunder. Therefore, according to the learned Counsel for the petitioner, the guidelines issued by the Central Government dated 24.6.2009 are contrary to the rules as well as putting more restriction than the restrictions which have already been put by the Act and the Rules. In view of the above, the notification dated 24.6.2009 cannot be given effect against the rules and the notification dated 24.6.2009 to the extent it encroaches upon the field already occupied by the Act of 1957 and the rules framed thereunder may be declared ultra vires to the Rules and the Act of 1957.

4. Learned Counsel for the petitioner further submitted that the Central Government itself was knowing it well that no guidelines can be given effect to and, therefore, issued another notification F No. 10/75/2008-MV dated 23.12.2010 imposing conditions under rule 27(3) of the Mineral Concession Rules, 1960 and by that notification it has been provided that for every mining lease, in the lease deed certain conditions as enumerated in clause 3 of the said notification shall be inserted. It is submitted that by virtue of this notification, a mining lease can be granted to any applicant who is found eligible for allotment and while executing lease, the conditions mentioned in clause 3 of the said notification dated 23.12.2010 can be incorporated. These conditions, which have been prescribed by the subsequent notification dated 23.12.2010, clearly indicate that the lease cannot be refused but conditions can be incorporated in the lease that the lessee shall undertake certain works of collecting data and furnishing it to the appropriate authority. In view of the above reasons also, in the name of implementation of the National Policy and giving effect to the notification of the Government of India dated 24.6.2009, the respondents could not have rejected the application of the writ petitioner.

5. It is also submitted that the petitioner was an applicant for the area in question since 1985 and the matter has not been finalized and it is also submitted that if there was any policy and guidelines, then the petitioner's matter could have been and should have been considered according to the then existing rules and guidelines and not according to the subsequently issued guidelines.

6. Learned Counsel appearing for the Union of India vehemently submitted that the guidelines issued is known as "Guidelines Under MCDR for United Nations Framework Classification of Mineral Reserves/Resources" and National Mineral Policy, 2008 was framed in view of the fact that minerals are valuable natural resource being the vital raw material for infrastructure, capital goods and basic industries. After considering the relevant facts, in clause 7 of the National Mineral Policy, 2008, strategy of mineral development has been given out and as per clause 7.3, scientific method of collecting data for mining is required to be adopted. Not only this but a complete data base is required for maximum utilization of the minerals reducing wastage of minerals to zero and keeping a complete database for future planning of mining development. Keeping in view para 6.1 of the National Mineral Policy, 2008, reserve of inventory is required to be prepared showing the reserve, remaining reserve and probable and proven reserves and it casts duty upon all the State Governments and Central Government who insists on establishment of mineral development for the area. It is submitted that details of the reasons have already been given in the counter affidavit filed by the Union of India and section 5(2)(a) itself requires complete information with respect to the availability of mineral under the earth. It is further submitted that these guidelines are only clarifying the nature of and quality of evidence required in line of section 5(2) and these guidelines themselves have not prescribed any restriction, nor these guidelines restrict the

activities of trade and commerce.

7. Learned Advocate General appearing for the State also submitted that the guidelines are clarificatory in nature and data base and other details are prepared.

8. We have considered the submissions of the learned Counsel for the parties and perused the records.

9. It will be worthwhile to mention here that the mine in question was initially leased out in the year 1965 and the area of the mine was 106 hectare and admittedly that lease expired in the year 1975. There is no evidence that mine in question spread in 106 hectares was operated or not and according to learned Counsel for the State, it was not operated nor entire mine of 106 hectare could have been operated to its full area in a short period of 10 years, that too about 45 years ago. According to the learned Counsel for the State, in fact, such a huge area was leased out to the then company, M/s. General Produce Company Limited and that company did not undertake any mining operation and thereafter that company's lease stood expired in the year 1975. Be that as it may, another fact is that this mine was notified on 3.1.1979 and thereafter on 26.2.2007, on the basis of which learned Counsel for the petitioner submitted that availability of the mineral under the land of this mine now cannot be disputed by the respondents--either by the State Government or by the Central Government. It is also submitted that in view of this fact situation, there is full compliance of section 5(2) of the Act of 1957.

10. Core issue is not whether mineral was, in fact, under beneath of the mine in question. The core question is also not that there was mining operation in the past in the mine in question or not. These are the questions of fact which can be examined when the land is available for leasing out for mining operation. It is also not in dispute that every applicant is to follow the procedure for submitting application for obtaining prospective license or lease as prescribed under the Act of 1957 or Rules of 1960. It is also not in dispute that certain information which may include any information of availability of the mineral under the soil is also required to be furnished by the applicant for obtaining the mining lease. However, the question is with respect to the validity of the guidelines which have been issued by the Central Government. Section 5(2)(a) clearly provides that no mining lease shall be granted by the State Government unless it is satisfied that there is evidence to show that the area for which lease is applied had been prospected earlier or existence of mineral contents therein has been established otherwise than by means of prospecting such area and it requires as per clause (b) of section 5(2) that mining plan should be approved by the Central Government or by the State Government in respect of such category of mines as specified by the Central Government for development of mineral deposits of the area concerned. Therefore, for grant of any prospective license or even for mining lease, there must be evidence to show that there exist mineral in the area and this can be proved by showing that the area has already been

prospected earlier or by showing the existence of mineral otherwise than by means of prospecting of such area. In the Form prescribed and referred above as well as Rules referred above also, details of the mineral and about the area is required to be given. In the Act or Rules what may be details of evidence about the quality and quantity of mineral to the extent and standard as has been prescribed and required under new National Policy have not been given which details, at that point of time may not have been prescribed for the obvious reason that the method of collection of data in more scientific way for future planning may not be there of the standard which scientific way and standard is available now, therefore, requirement of specific type of evidence of availability of mineral under the land was not provided. With the development and with more learning, if conditions have been given in consultation with all the State Governments to frame a National Policy wherein scientific ways have been prescribed for not only collecting of the information for a particular mine and mineral but for creating total database for larger interest of exploration of minerals and its maximum utilization, then it cannot be said that prescribing some guidelines is contrary to section 5(2)(a) or Rules of 1960 or the guideline is encroaching upon occupied field. In fact, the guidelines only help in guiding the authorities in the matter of collection of evidence and in creating a database to prepare a plan of minerals and mines area development and its utilization for which plan is also required u/s 5(2)(b) and neither section 5(2), nor Rules of 1960 have expressly or impliedly excluded the better method of collection of data and had been so in the Rules of 1960, then it would have been contrary to section 5(2) of the Act, as the Act enacted and require planned development of mining area and mining apparatus. The requirement is of having evidence and what is the quality of evidence required, if prescribed, by issuing guidelines, that is not in violation of the Act, if read even literally, nor it can be against the intention of the Legislation so as to hold that the quality of evidence of existence or non-existence of mineral cannot be improved in future so as to have planned development of the mining area as well as it will deprive the State from getting database of development of mining area for future planning for this very subject.

11. So far as subsequent notification issued by the Central Government under rule 27(3) of the Rules of 1960 dated 23.12.2010 is concerned, it is only for the purpose of giving effect to the National Mineral Policy, 2008 and the guidelines issued under that policy is not in supersession of the guidelines dated 24.6.2009. If the guidelines dated 24.6.2009 is declared ultra vires, then also the requirement of conditions as contained in the notification dated 23.12.2010 will survive. Conditions in the notification dated 23.12.2010 are not restrictive and imposing any condition but only is making the things clear with respect to furnishing, obtaining and maintaining details of the fact in relation to the mines and minerals for taking future action also.

12. It will be worthwhile to mention here that according to the fact of the case, it is clear that mining lease was granted to a company in the year 1965 and the lease expired and after expiry of ten years, in the year 1975 and if there was

some mining operation during this period, admittedly since 1975 there was no mining activities in the mine in question and therefore, even if there was prospecting before 1965, that cannot be relevant in the year 2010, when the petitioner's case along with other applicants' case for allotment was considered by the authority. If earlier prospecting had been there, even then if the respondents decided to undertake a fresh exercise in consonance with the guidelines for betterment of the interest, then also this exercise was done bona fide. There is no allegation of arbitrariness or mala fide as the applications of other 63 applicants were also rejected for the same mine. In view of the above reasons we do not find any illegality in the impugned order. Thus, we are of the considered opinion that the guidelines issued by the notification dated 24.6.2009 are not in contravention of the Rules or section 5(2)(a) of the Act of 1957. The writ petition is dismissed.