

(2009) 04 DEL CK 0613
In the Delhi High Court
Case No : Writ Petition (C) 7240 of 2009

Tata Steel Ltd.

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 27-04-2009

Acts Referred:

Citation : (2009) 04 DEL CK 0613

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : Soli J. Sorabjee and Ravindra Shrivastava, Nandini Gore, Seema, Gopal Jain, Debmalya Bannerjee, Sonia Nigam, Kartik Bhatnagar, Rajan Karanjawala, Supriya, K. Krishan Kumar, A.K. Prasad, Kunal Verma and Chhavi Batra, Devashish Bharuka and Anjani Kumar Singh, for the Appellant;

Judgement

S. Ravindra Bhat, J.—The petitioner challenges an order of the Mines Tribunal u/s 30 of the Mines and Minerals (Development & Regulations) Act, 1957 (hereafter called "the Act") and Rule 54 the Minerals Concession Rules, 1960, rejecting its application for condoning the delay in filing an appeal and consequently dismissing the appeal.

2. The brief facts necessary for deciding the case are that the petitioner had entered into a Memorandum of Understanding (MOU) with the respondent No. 2 i.e. State of Chattisgarh on 4.5.2005 for establishing a steel plant. It is claimed that the State assured the petitioner that rights would be granted in respect of Rowghat and Bailedila Deposits. The petitioner applied for grant of mining lease in respect of Deposits A to E of Rowghat Reserves in Chattisgarh in two blocks. It is contended that these applications overlapped with approximately 1600 Hectares of area for which Jayswal Neco Ltd. - the intervener, (hereafter called "JNL") applied for mining lease on 16.5.2000. It is submitted that the petitioner, by another application dated 26.4.2006 also sought prospecting license over 5186.78 Hectares, in respect of same area. It is alleged that the Mines Resource Department of the state of Chattisgarh issued notice to the petitioner fixing the

date of hearing of its mining lease application over an area of 4140.17 Hectares.

3. By the order dated 31.1.2007, the State rejected the petitioner's application for grant of mining lease; the order was received by the latter on 6.2.2007. The grounds mentioned briefly were that no prospecting license had been granted over the area applied by it and that there were no details of any prospecting done by a state agency over the concerned area. The State determined that such application was pre-mature as the areas, for which mining leases were sought were earlier held under prospecting license by JNL and that till it was notified as "available for re-grant", applications for mineral concessions could not be entertained due to Rules 59 & 60. Other grounds made were that the areas for which mining leases were sought needed detailed prospecting and systematic and scientific mining. Such prospecting had to be carried out by specialized State agencies. It was lastly stated by the second respondent that in view of rich bio-diversity of the area, the Union Ministry of Environment and Forests had decided to permit only cluster mining in the area. The petitioner also contends that by another order dated 31.1.2007, JNL's application too was rejected. On 23.2.2007, the State Government by another order rejected the petitioner's application for prospecting license on the ground that area had been reserved in favour of Steel Authority of India Ltd. (SAIL). On 17.4.2007, the state, by a notification reserved Deposits A to E for prospecting by the Directorate of Mines and Geology, Government of Chattisgarh.

3. It is contended that in the meanwhile JNL challenged the Tribunal's order of rejection of its application - dated 31.1.2007 - through a Revision Petition before the Tribunal which was allowed on 28.9.2007. The petitioner at that stage moved this Court by filing WP(C)-9260/2007 contending that the Tribunal wrongly granted preferential rights to JNL, and that it had a direct bearing on its rights. It is contended that in that writ petition (filed on 11.12.2007 by the present petitioner), the order rejecting its mining lease application by the State Government was also challenged by way of abundant caution. Later on 9.1.2008 it filed a Revision Petition before the Mines Tribunal, challenging the order dated 31.1.2007. The order in that Revision Petition is a subject matter of this proceeding.

4. The Mines Tribunal on 29.5.2008 admitted the petitioner's revision proceedings; it relied upon its previous order dated 28.9.2007 in favour of JNL stating that in the said previous order, the area had overlapped with the area under challenge in the petitioner's revision proceedings. It, therefore, expressed helplessness and stated that it (the Tribunal) had become functus officio in respect of that area. Therefore, it admitted the Revision Petition subject to exclusion of the area covered in the Revision Petition of JNL disposed of by the earlier order dated 28.9.2007. The petitioner challenged the limited admission of its revision petition; this High Court by an order dated 11.8.2008 (passed in WP(C)-5780/2008) disposed of the matter stating as follows:

Issue notice to show cause as to why the petition be not admitted. Mr. A. Sen

and Mr. Atul Jha have entered appearance on behalf of respondents Nos. 1&2. Learned Counsel for M/s. Jaiswal Neco Ltd. has also entered appearance, although they are not party to the writ petition. Leaned counsel for the petitioner contends that Mines Tribunal has no jurisdiction to pass a conditional order at the time of admission.

After some preliminary hearing in the matter, taking into consideration the submission of the parties, it is directed that the portion of the order by virtue of which the subject matter (the exclusion of the area covered under R.A. filed by M/s. Jaiswal Neco Ltd. has been excluded), is set aside with directions to the Mines Tribunal to hear all the parties on this aspect of the matter on a date to be fixed by the Tribunal after issuing notice to all the parties concerned.

With these limited directions, the writ petition is disposed of.

5. The JNL too had filed a Writ Petition i.e. WP(C)-6298/2008 in respect of the very same order by the Tribunal dated 29.5.2008, by which it (the Tribunal) had admitted and issued limited notice in the present writ petitioner's revision proceedings. Its (JNL's) contention was that it had applied for impleadment before the Tribunal which did not make any orders on the application but issued the order admitting the petitioner's revision on 29.5.2008. JNL's Writ Petition (WP(C)-6298/2008) disposed of on 29.8.2008, inter alia, in the following terms:

The grievance of the petitioner is that while the application filed by the present petitioner for impleadment was pending before the Tribunal and before the application could be considered, the impugned order dated 29th May, 2008 was passed.

The second grievance of the petitioner is that without hearing the parties on the application for condonation of delay filed by the respondent No. 3 herein, the appeal has been admitted without making any specific observation that the delay stands condoned.

Without going into the merits of the matter, this matter is remanded back to the Tribunal with a direction that the application for impleadment of the petitioner as well as the application for condonation of delay filed by the respondent No. 3 shall be heard by the Tribunal after giving notice to all the concerned parties. Impugned order 29th May, 2008 is consequently quashed.

With these directions, the writ petition, as also the application for stay, stand disposed of

6. In the meanwhile, the petitioner's writ proceedings being No. 9260/2007 which, inter alia, challenged the order of the State Government, rejecting its mining lease application, was considered on 13.1.2009 when a Division Bench of the Court noticing that the previous order of the Mines Tribunal dated 28.9.2007 - whereby the JNL's application had been allowed - stood set aside, permitted the writ petitioner to move an application for impleadment before the Mines Tribunal. As noticed earlier WP(C)-9260/2007 had challenged the order of

28.9.2007 whereby the Tribunal allowed the JNL's revision. The Mines Tribunal on 23.1.2009 heard the parties including the petitioner in its revision proceedings along with an application for condonation of delay. It refused to condone the delay and rejected the application stating as follows:

8. We have carefully applied our mind to the rival submissions of the parties and gone through the records of the case. We entirely agree with the counsel for the Applicant that the principle of each day's delay in filing the application for condonation of delay is to be liberally construed and that each case has to be judged from its facts. The delay may be condoned if serious questions of law arise in the case and that an impugned order is likely to affect not only the parties but hundreds of other persons. But it cannot be denied that to establish sufficient cause, it must be shown that the Applicant has been vigilant and not guilty of any negligence or inaction or want of bona fide on his part. We are also in agreement with the Counsel for the JNL that the law of limitation is founded on public policy and for general welfare of the public.

9. In the case before us we find force in the arguments that an order passed in a revision application under the MMDR Act by a third party would not amount to sufficient cause for condonation of delay and that the Applicant is required to show what steps were taken from the date of receiving the copy of impugned order till date of filing. We find that the Applicant has not been vigilant as he has not been able to show that effective steps were taken to challenge the order dated 31.01.2007 from the date of its receipt on 06.02.2007 till 09.01.2008 when the R.A. was filed. We fail to understand how an order passed in a revision petition by a third party would amount to sufficient cause for condonation of delay.

10. Even if we give some consideration to the fact of approaching the Hon'ble High Court by the Applicant through a Writ Petition in December 2007 and exclude the time from the date of its filing and the filing of the instant R.A., there remains unexplained delay in approaching the legal forum provided under the MMDR Act and MCR governing the grant or otherwise of Mineral concession. The Applicant, in our view did not take appropriate steps to protect his interest if any, affected by the Impugned order. There is lack of bona fide on the part of the Applicant. The benefits of the principles laid down in the judgments strongly relied upon by the Applicant may not be available to him, as the facts of the case before us are clear that no effective steps for filing of the R.A. were taken after the receipt of the Impugned order. The reasons/ facts placed before us by the Applicant, in our view do not constitute, sufficient cause for the purpose of condoning the delay.

11. In view of the above discussion, we do not find merit in the arguments put forth by the Applicant for condoning the delay of about 244 days in filing the instant R.A. The R.A. therefore, is not admitted for further consideration on merit. In the circumstances, the application for impleadment of Jayaswals Neco Limited does not deserve to be considered.

7. The petitioner contends that Tribunal fell into an error in declining to condone the delay occasioned in the filing of the Revision Petition. It is claimed that in such cases the approach of the Tribunal has to be a broad and liberal one, although the jurisdiction to condone or not condone is a matter of discretion. It is contended that the expression "sufficient cause" is of widest amplitude and that even though in every case of delay, there may be some lapse on the litigant's part, that alone would not warrant rejection of his plea to shut the door against him. Reliance is placed on the judgment reported as N. Balakrishnan Vs. M. Krishnamurthy, to say that so long the explanation (for the delay) does not smack of mala fides or is not put forth as a dilatory strategy, the Court should show utmost consideration to a litigant. However, if the Court concludes that delay was occasioned by the party deliberately to gain time, it should refuse to condone the delay. The petitioner also relies on the decision reported as Collector, Land Acquisition, Anantnag and Another Vs. Mst. Katiji and Others, and submits that while deciding applications for condonation of delay, Courts must adopt a justice oriented approach and leaning in favour of substantial justice as against technical considerations. It was submitted that Katigi's case has also established that there is no presumption that delay is occasioned deliberately and that there is no rule requiring every day's delay to be explained.

8. JNL which has sought for impleadment was permitted to intervene in this proceeding and address submissions. It is contended that the delay in filing a revision by the petitioner was correctly not condoned by the Mines Tribunal. Reliance was placed on the judgment reported as The General Manager, Southern Railway Vs. Rangachari, , to say that if sufficient cause is not disclosed, the only result has to be dismissal of the appeal or revision. It was further contended that delay may be occasioned, despite absence of gross negligence; G. Ramegowda, Major and Ors Vs. Special Land Acquisition Officer, Bangalore, . It was emphasized that while considering the question of whether to condone or not condone the delay, the Courts cannot be unmindful that delay in exercising an appellate remedy might result in clothing the opponent or rival party with a valuable right.

9. It is contended that the application seeking condonation of delay filed with the Tribunal did not disclose a single cause why the Revision Petition could not be filed within the prescribed period of limitation. It is submitted that the application makes vague statements such as "consideration of implications of impugned order at various levels" and the fact of the petitioner having filed another writ proceedings before the Court; nothing was disclosed to measure up to the standard of "sufficient cause" which alone would entitle the petitioner for condonation of delay. It was lastly contended that the petitioners were acutely aware that JNL was competing for a part of the same block; it had even applied earlier and in these circumstances, any lapse on its part in approaching the Mines Tribunal, as being aggrieved by the State Government's order, would inevitably result in creation of such third party rights.

10. Before a discussion about rival merits of the case, it would be relevant to extract some averments in the application filed by the petitioner, seeking condonation of delay in preferring its revision proceedings before the Tribunal; they are as follows:

5. The Mineral Resources Department, Govt. of Chattisgarh, vide Notice No. F 2-10/2007/12 dated 11.01.07 intimated the Petitioner about hearing on 19.01.07 with respect to its mining lease application over the area of 4140.17 Ha.

6. The Joint Secretary, Government of Chhattisgarh, Mineral Resources Department vide Order No. F 2-10/2007/12(2) dated 31.01.07 rejected Petitioner's application over the area 4140.17 Ha. for grant of mining lease. At the same time, the State Government vide an order on the same day and date, rejected mining application of one M/s. Jayaswal Neco on grounds common to each other and none was decided to be granted mining lease by the State Government. However, the legal Implication of the order impugned was being seriously considered by the Petitioner at its various levels.

7. That the Petitioner was informed that hearing of its mining lease application over 4140.76 Ha is on 19.01.2007. However, there was no intimation with respect to the hearing of its Mining Lease application over 5186.76 Ha."

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10. That by Order dated 20.09.2007, the Hon"ble Mines Tribunal had upheld the preferential right of Jayaswals Neco Ltd. without giving an opportunity of hearing to the Petitioner which is against the principles of natural justice and highly prejudicial to the rights of the Petitioner. Hence, it was but natural for the Petitioner to immediately thereafter, file a Writ Petition. The Petitioner has filed Writ Petition No. 9260/2007 before Hon"ble Delhi High Court on 11.12.2007 challenging the abovesaid order dated 28.09.2007 on grounds of violation of principles of natural justice.

11. That the Hon"ble High Court has stayed the order dated 28.09.2007 vide its order dated 12.12.2007 in favor of the Petitioner.

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14. That in light of the above stated circumstances, it is submitted that all the interested parties have initiated litigation before the Hon"ble High Court against the order dated 28.09.2007 whereby the preferential right was granted to Jayaswals Neco Ltd. Also, the application for Mining Lease over 5186.76 Ha. is yet to be disposed of by the State Government.

15. That the Petitioner has taken a ground in its Writ Petition against its Mining Lease rejection filed before the Hon"ble High Court that Petitioner will be availing the first opportunity to file revision application before the Mines Tribunal in order to avoid any unintentional and further delay which may have been caused on part of the Petitioner in filing of the said revision application.

16. That it is submitted that the Petitioner has undertaken to establish a 5 mtpa steel plant in the scheduled area of Bastar in the State of Chhattisgarh. For this purpose, the Petitioner has been genuinely pursuing with the Respondent for various grants/ permissions/ allocations, etc. as required for a Greenfield project. In such persuasion, the Petitioner being one of the largest and most experience business houses of the country understands that only litigation with the State Government cannot help fulfil its pursuits. Therefore, the Petitioner consciously takes its decisions to litigate only when it is inevitable. Before taking the final decision to litigate, the matters are also discussed at various levels within the Petitioner Company.

17. That in the instant case, the Respondent has been giving repeated assurances to the Petitioner for facilitating establishment of the Greenfield steel plant. Much to the surprise of the Petitioner, the impugned order dated 31.01.2007 read with the order dated 28.09.2007 of the Hon''ble Tribunal wipes out significant legal rights of the Petitioner.

12. Ruling on the correct approach regarding interpretation of norms prescribing limitation, the Supreme Court stated, in N. Balakrishnan's case (supra):

11. Rules of limitation are not meant to destroy the right of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. Law of limitation fixes a life-span for such legal remedy for the redress of the legal injury so suffered. Time is precious and the wasted time would never revisit. During efflux of time newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a life span must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. Law of limitation is thus founded on public policy. It is enshrined in the maxim *Interest reipublicae ut sit finis litium* (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the right of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12. A Court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words "sufficient cause" u/s 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide *Shakuntala Devi Jain Vs. Kuntal Kumari and Others*, and *The State of West Bengal Vs. The Administrator, Howrah Municipality and Others*, .

13. It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala

fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss

13. In *Vedabai @ Vijayanatabai Baburao Pateil Vs. Shantaram Baburao Patil and Others*, , similarly, the Supreme Court observed that:

4. In exercising discretion u/s 5 of the Limitation Act the courts should adopt a pragmatic approach. A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case the consideration of prejudice to the other side will be a relevant factor so the case calls for a more cautious approach but in the latter case no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression "sufficient cause", the principle of advancing substantial justice is of prime importance. In our view in this case, the approach of the learned Civil Judge is wholly erroneous and his order is unsustainable. It is evident that the discretion u/s 5 of the Limitation Act is exercised by the Civil Judge in contravention of the law laid down by this Court, that the expression "sufficient cause" should receive liberal construction, in catena of decisions (see *State of West Bengal v. The Administrator, Howrah Municipality and Ors.* [1972] 1 SCC and *Smt. Sandhya Rani Sarkar Vs. Smt. Sudha Rani Debi and Others*, . The High Court in exercising its jurisdiction u/s 115 C.P.C. failed to correct the jurisdictional error of the Appellant Court.

14. The factual discussion, in the preceding part of the judgment shows that both, JNL and the petitioner had been approaching this Court; the first time, JNL filed a writ petition, challenging the order by which its mining lease was rejected. The petitioner approached this Court, when JNL's appeal to the tribunal was allowed. Later, when the tribunal issued limited notice on its (the petitioner's) appeal, another writ petition was filed; similarly, JNL filed another writ petition, whereby its complaint was non-consideration of its application for impleadment in the petitioner's appeal before the Mines tribunal. That petition, as well as the present petitioner's writ proceedings, were disposed off. Later, the Mines Tribunal's order, allowing JNL's revision petition, was set aside by the court, in another writ petition.

15. JNL is no doubt correct in saying that the petitioner could have approached this Court much earlier, than it did, since a copy of the impugned order was made available to it, in February, 2007. However, it does not deny that in the writ

petition filed before this Court, the impugned order was indeed challenged. Later, of course, the petitioner permitted the challenge to that order, in an appeal. The tribunal's appreciation of what the approach should be, in such cases, is apparent from the following extract:

We entirely agree with the counsel for the Applicant that the principle of each day's delay in filing the application for condonation of delay is to be liberally construed and that each case has to be judged from its facts. The delay may be condoned if serious questions of law arise in the case and that an impugned order is likely to affect not only the parties but hundreds of other persons."

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We find that the Applicant has not been vigilant as he has not been able to show that effective steps were taken to challenge the order dated 31.01.2007 from the date of its receipt on 06.02.2007 till 09.01.2008 when the R.A. was filed. We fail to understand how an order passed in a revision petition by a third party would amount to sufficient cause for condonation of delay.

10. Even if we give some consideration to the fact of approaching the Hon'ble High Court by the Applicant through a Writ Petition in December 2007 and exclude the time from the date of its filing and the filing of the instant R.A., there remains unexplained delay in approaching the legal forum provided under the MMDR Act and MCR governing the grant or otherwise of Mineral concession. The Applicant, in our view did not take appropriate steps to protect his interest if any, affected by the Impugned order. There is lack of bona fide on the part of the Applicant. The benefits of the principles laid down in the judgments strongly relied upon by the Applicant may not be available to him, as the facts of the case before us are clear that no effective steps for filing of the R.A. were taken after the receipt of the Impugned order.

15. JNL's argument about it being affected, in the event the petitioner's application for condoning the delay though attractive, is unfeasible. Each applicant's right to approach the Mines Tribunal against the State's order, rejecting an application for prospecting or mining, are based on its merits. In case its applications concern another party's areas, or overlap with the latter's request for some concession, the Act and Rules provide guidance. Yet, each application is to be considered on its merits; the further proceedings, to the Mines Tribunal, likewise have to proceed in that channel. Therefore, whatever be its merits, the claim of either party for the concession it seeks will have to ultimately be adjudged on the basis of the application and supporting materials. That will have to be an objective, independent and official consideration, having regard to the objectives of the Act. Seen from this perspective, there is no absolute "third party" right as in the case of civil litigation.

16. So far as the petitioner's application is concerned, undoubtedly there is an element of generality and vagueness in its pleading why it filed a belated revision; yet the fact remains that a writ petition was filed in this Court, which

was eventually disposed off. The explanation (for delay) though not fully satisfactory, yet, cannot be termed as "lacking in bona fides" as the tribunal has concluded. Having regard to the nature of the proceeding, where applicants seek concessions, based on their technical claims, the tribunal should have adopted a liberal approach, indicated by the Supreme Court, in the decisions discussed previously, in this judgment.

17. In view of the above discussion, the petition deserves to succeed. However, since the petitioner did file a belated appeal, this Court is of opinion that it would be appropriate that it is put to terms; accordingly, it shall deposit Rs. 50,000/- with the Prime Minister's relief fund, within four weeks. Subject to compliance with this direction, its appeal shall be heard and disposed off on its merits, also after considering JNL's application for impleadment, on its merits. The writ petition is therefore, disposed of in these terms.