

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 13697/2009 & CM APPL No. 7545/2010,
CM No. 4029/2010 & CM No. 15417/2009

M/S B.KUMARAGOWDA & SONS Petitioner
Through : Mr. Dhruv Mehta, Senior Advocate with
Mr. Yashraj Singh Deora and
Mr. Rajesh Kumar, Advocates.

versus

UNION OF INDIA & ORS Respondents
Through : Ms. Kimmi Brara Marwaha, Advocate
for R-1 and 5.
Mr. Swapnil Verma, Advocate for
Mr. Nikhil Nayyar, Advocate for R-2.
Mr. C.S. Vaidyanathan, Senior Advocate with
Ms. Kirti Mishra and Mr. Rishi Jain, Advocates
for R-4.

CORAM: JUSTICE S. MURALIDHAR

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| 1. Whether Reporters of local papers may be
allowed to see the judgment? | No |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in Digest? | Yes |

JUDGMENT
28.10.2010

1. By this petition under Article 226 of the Constitution, the Petitioner M/s. B. Kumaragowda & Sons, a partnership firm having its registered office at Sandur, District Bellary in Karnataka challenges the final order No. 107/2009 dated 15th September 2009 passed by the Central Government acting as the Mines Tribunal in Revision Application No. 13/ (10) 2007-RC-I.

2. The Petitioner submitted an application to the State of Karnataka, Respondent No. 2 herein, on 19th February 2004 for grant of a mining lease

(‘ML’) application in respect of iron and manganese ore over an extent of 315.66 hectares of land in Bhavihalli Village, NEB Range, Sandur Taluk, Bellary District. Subsequently, the Petitioner reduced its claim to an extent of 169.52 hectares. Admittedly, the area for which the Petitioner had applied was previously held under an ML by M/s Chowgule & Company. The said ML had been surrendered by M/s Chowgule & Company. However, there was no Notification issued under Rule 59(1) of the Mineral Concession Rules, 1960 (‘MCR’) enabling others to apply for an ML for the said land. On this ground, Respondent No. 2 issued a notice dated 26th April 2007 to the Petitioner asking it to show cause why its application dated 19th February 2004 should not be rejected. In its reply to the said show cause notice, on 26th May 2007, the Petitioner requested the Respondent No.2 to obtain relaxation of Rule 59(1) MCR from the Central Government (Respondent No. 1 herein) in exercise of the latter’s powers under Rule 59(2) MCR. The Petitioner made a further representation on 19th July 2007.

3. It is stated that on 21st January 2007, Respondent No. 4 M/s. Vishveshwaraiah Iron & Steel Plant (‘VISL’) filed an application for grant of ML in respect of iron and manganese ore over an extent of land measuring 140 hectares in NEB Range, Sandur Taluk, Bellary District. According to the Petitioner, the area applied for by it and VISL overlapped completely.

4. On 30th July 2007, Respondent No. 2 wrote to Respondent No.1 referring to VISL’s application for grant of ML and requested for approval under Rule 59(2) MCR to grant exemption from notifying the area and also to reserve an extent of 140 hectares of land in favour of VISL for a period of 30 years

under Section 17-A (2) of the Mines and Minerals (Development and Regulation) Act, 1957 ('MMDR' Act). According to the Petitioner, this decision of the Respondent No. 2 to seek concurrence of Respondent No.1 was an implied rejection of the Petitioner's application for ML over the same area. Accordingly, the Petitioner filed a revision application before the Mines Tribunal under Rule 54 MCR to challenge the said decision dated 30th July 2007.

5. By an order dated 29th August 2007, the Mines Tribunal stayed the operation of the letter dated 30th July 2007 of Respondent No. 2. It is stated that the said revision application was taken up for final hearing on 25th September 2007 before a Bench of two members of the Mines Tribunal comprising the then Director (Mines) Shri A.K. Mehta and the Additional Legal Advisor, Department of Legal Affairs, Shri T.N. Tiwari. At the conclusion of the hearing, orders were reserved by the said Bench on 25th September 2007.

6. While the order was awaited, the Respondent No. 2 wrote to Respondent No.1 on 15th March 2008 referring to its letter dated 30th July 2007. Respondent No.2 stated that it had wrongly mentioned Section 17-A(2) MMDR Act instead of 17-A(1A) MMDR Act in the letter dated 30th July 2007.

7. When the Petitioner received a copy of the final order dated 15th September 2009 passed by the Mines Tribunal dismissing its revision application, it noted that although the revision application had been heard by

a Bench of Shri Mehta and Shri Tiwari, the final order had been passed by the Joint Secretary (Mines), Shri V.K. Thakral. It transpired that there had been a divergence of opinion between Shri Mehta and Shri Tiwari. While Shri Mehta had allowed the revision application filed by the Petitioner, Shri Tiwari had disagreed and passed a separate order dated 24th August 2009 dismissing the revision application with the direction to the Respondent No. 2 to modify in the letter dated 30th July 2007 and change the reference of Section 17-A (2) MMDR Act to that of Section 17-A(1A) MMDR Act.

8. Mr. Dhruv Mehta, learned Senior Counsel appearing for the Petitioner first submits that one of the main grievances of the Petitioner is that the third member Shri Thakral did not give any hearing to either of the parties and proceeded to pass an order concurring with the view of Shri Tiwari and dismissed the Petitioner's revision application. It was submitted that this happened behind the back of the Petitioner and, therefore, was violative of the principles of natural justice. It is submitted that on this short ground the impugned final order dated 15th September 2009 of the Mines Tribunal should be set aside and the Petitioner's revision application restored before the third member for a hearing followed by a reasoned order.

9. Secondly, it is submitted by Mr. Mehta that Section 17-A (1A) MMDR Act is inapplicable in the present case and was wrongly invoked by Respondent no.2 in its letter dated 30th July 2007 addressed to Respondent No. 1. It is pointed out that for Section 17-A (1A) MMDR Act can be invoked by Respondent No.1 when it proposes to seek the concurrence of the state government for reserving an area for a public sector undertaking

provided such area was not already held under any prospecting licence ('PL') or ML. The letter dated 30th July 2007, according to the Petitioner, was not a case where Respondent No.1 was making any proposal to reserve an area in consultation with Respondent No.2. On the other hand, it was Respondent No.2 was seeking approval of Respondent No.1 to reserve the area in question in favour of VISL. It is pointed out that the position is no better if Section 17-A (2) MMDR Act was invoked since VISL was a central government undertaking and in any event since the land was earlier held under an ML, even this provision would not apply.

10. Thirdly, Mr. Mehta drew the attention of this Court to an order passed by the Respondent No. 2 on 6th January 2010 where a hearing was given to all the applicants who applied for the area in question and a recommendation was made to Respondent No.1 for grant of ML in favour of VISL over the area of 140 hectares for iron and manganese ore for a period of 20 years subject to Respondent No.1 exercising its powers under Rule 59(2) MCR and exempting the area from being notified under Rule 59 (1) MCR. It is submitted that the said order dated 6th January 2010 was in the teeth of the order passed by this Court on 21st December 2009 staying the operation of the letter dated 30th July 2007. It is submitted that all the points urged by the Petitioner in this petition could be urged when its revision petition is revived for hearing before the third Member of the Mines Tribunal.

11. Appearing for VISL, Mr. C.S. Vaidyanathan, learned Senior counsel points out that remanding the case back to a third member would be a futile exercise since, in any event, the application made by the Petitioner for grant

of ML over the area in question was premature since the area for which an ML had been applied for by the Petitioner was admittedly earlier held under an ML by M/s Chowgule & Company, a notification under Rule 59(1) MCR had to necessarily be issued before an application of the Petitioner or any other person for grant of an ML over the area in question could be considered. In this case, in fact, Respondent No.2 had written to Respondent No.1 for invoking the latter's powers under Rule 59(2) MCR to dispense with the issuance of the notification under Rule 59(1) MCR and to reserve the area for VISL. No decision had yet been taken as yet by Respondent No.1 on the said request. Till such time no decision was taken by Respondent No.1, there would be no cause of action for the Petitioner to challenge the mere recommendation made by Respondent No.2 to Respondent No.1 for exercising the powers under Rule 59 (2) MCR.

12. Referring to the judgment of the Supreme Court in *Sandur Manganeese & Iron Ores Ltd. v. State of Karnataka 2010(9) SCALE 492*, Mr. Vaidyanathan points out that it is settled law that in respect of an area already held under the ML, unless there is a notification under Rule 59(1) or 59(2) of the MCR, there was no question of considering the application for grant of an ML in respect of such area. Mr. Vaidyanathan submits that since the third member agreed with the other member Shri Mehta on this aspect the majority view of the Mines Tribunal was that the Petitioner's revision application should be dismissed. This was the only conclusion possible in law and therefore remanding the Petitioner's revision application for a fresh hearing by the third Member of the Mines Tribunal would be an empty formality.

13. As regards the order dated 6th January 2010, Mr.Vaidyanathan did not dispute that the applications of VISL and others ought not to have been taken up for consideration by Respondent No. 2 since it was contrary to the law explained by the Supreme Court in *Sandur Manganese*. However, since the order dated 6th January 2010 itself stated that it was subject to Respondent No.1 granting its approval under Rule 59(2) MCR nothing really turned on the said order.

The Petitioner's application for ML is premature

14. This Court would like to first take up for consideration the point concerning the Petitioner's application for grant of an ML over the area in question. Rules 59 MCR reads as under:

“59. Availability of area for re-grant to be notified

(1) No area—

(a) which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease; or

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or

(c) in respect of which the order granting a permit or licence or lease has been revoked under sub-rule (1) or rule 7A or sub-rule (1) of rule 15 or sub-rule (1) of rule 31, as the case may be; or

(d) in respect of which a notification has been issued under sub-section (2) or sub-section (4) of section 17; or

(e) which has been reserved by the State Government or under section 17A of the Act,

shall be available for grant unless—

(i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 7D or sub-rule (2) of rule 21 or sub-rule (2) of rule 40, as

the case may be; and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired.

Provided further that where an area reserved under rule 58 or under section 17A of the Act is proposed to be granted to a Government company, no notification under clause (ii) shall be required to be issued.:

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of sub-section (1) of section 11, no notification under clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of sub-rule (1) in any special case.”

15. After analysing the above provisions as well as Section 11 of the MMDR Act, the Supreme Court in *Sandur Manganese* observed as under (SCALE @ pp. 516-17):

“38. We have already extracted Rules 59 and 60 and analysis of those rules confirms the interpretation of Section 11 above and the conclusion that it is Section 11(4) which would apply to a Notification issued under Rule 59(1). Rule 59(1) provides that the categories of areas listed in it including, inter alia, areas that were

previously held or being under a mining lease or which has been reserved for exploitation by the State Government or under Section 17A of the Act, shall not be available for grant unless (i) an entry is made in the register and (ii) its availability for grant is notified in the Official Gazette specifying a date not earlier than 30 days from the date of notification. **Sub-rule (2) of Rule 59 empowers the Central Government to relax the conditions set out in Rule 59(1) in respect of an area whose availability is required to be notified under Rule 59 if no application is issued or where notification is issued, the 30-days black-out period specified in the notification pursuant to Rule 59(1)(i)(ii) has not expired, shall be deemed to be premature and shall not be entertained.** As discussed earlier, Section 11(4) is consistent with Rules 59 and 60 when it provides for consideration only of applications made pursuant to a Notification. On the other hand, the consideration of applications made prior to the Notification, as required by the first proviso to Section 11(2), is clearly inconsistent with Rules 59 and 60. In such circumstances, a harmonious reading of Section 11 with Rules 59 and 60, therefore, mandates an interpretation under which Notifications would be issued under Section 11(4) in the case of categories of areas covered by Rule 59(1). In those circumstances, we are unable to accept the argument of learned senior counsel for Jindal and Kalyani with reference to those provisions.” (emphasis supplied)

16. Thereafter, the Supreme Court observed that the Division Bench of the High Court of Karnataka had erred “in concluding that applications made prior to the notification under Rule 59(1) which are premature and cannot be entertained under Rule 60 would revive upon issuance of the Notification.”

It was thereafter observed as under (SCALE @ p. 517):

“39. ...This conclusion goes against basic principles of statutory interpretation. We have already pointed out the effect of Rule 60 which is couched in negative language that is mandatory in nature. Further, if that was the intention of the Legislature, there was no reason for the Legislature to take pains to state in Rule 60(b) that an application made during the black-out period of 30 days specified in the Notification also would be premature and could not be entertained. Accordingly, the interpretation placed by the Division Bench on Rule 60 would result in reading in a proviso at the end of Rule 60 to the effect that once the 30-days black-out period specified in the Notification contemplated by Rule 59(1)(ii) is over, premature applications would revive. After taking such pains to make it clear that the applications would not be entertained until the end of the 30-days period, surely the Legislature itself would have inserted such a proviso at the end of Rule 60 if that were its intention.”

17. In view of the above clear explanation of the law declared by the Supreme Court in *Sandur Manganese* it is clear that as far as the present case is concerned, the Petitioner's application for grant of ML cannot simply be considered till such time no notification is issued either under Rule 59(1) MCR or an exemption granted by Respondent No.1 under Rule 59(2) MCR.

Letter dated 30th July 2007 of Respondent No.2 not amenable to challenge

18. It was earnestly pleaded by Mr. Mehta that the decision dated 30th July 2007 of Respondent No.2 recommending to Respondent No.1 that the area should be reserved for VISL and that an exemption should be granted under Rule 59(2) MCR, was a decision which can be challenged by the Petitioner. This Court is unable to accept this submission. The very scope of Rules

59(1) and 59(2) shows that the recommendation by the State Government to the Central Government does not have any meaning till there is concurrence of the Central Government. In this context, reference may be made to the relevant portions of Section 17-A MMDR Act which read as under:

“17-A. Reservation of area for purposes of conservation

(1)***

(1-A) The Central Government may in consultation with the State Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it, and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such area will be reserved.

(2) The State Government may, with the approval of the Central Government, reserve any area not already held under any prospecting licence or mining lease, for undertaking prospecting or mining operations through a Government company or corporation owned or controlled by it and where it proposes to do so, it shall, by notification in the Official Gazette, specify the boundaries of such area and the mineral or minerals in respect of which such areas will be reserved.

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19. Although according to the Respondent No. 2, an error was made in mentioning Section 17-A(2) MMDR Act instead of 17-A(1A) of MMDR Act, the fact remains that as of date no decision has been taken on the question whether the Central Government should invoke its powers under Rule 59(2) MCR. It is only when the Central Government decides not to invoke its powers under Rule 59(2) MCR that the question of issuing a

notification under Rule 59(1) would arise. Without such notification, there is no question of entertaining any application filed by the Petitioner or by any one for grant of ML in respect of the area in question. There is indeed no cause of action as yet for the Petitioner to challenge the letter dated 30th July 2007 addressed by Respondent No.2 to Respondent No.1.

Remand to Third Member an empty formality

20. Since this is the position on a pure question of law, and the third Member has correctly concurred with Shri Tiwari one of the Members of the Mines Tribunal, this Court does not consider it necessary to remand the Petitioner's revision petition to the third Member of the Mines Tribunal for a fresh hearing. It would indeed be an empty formality not serving any purpose.

21. Having held as such, this Court would like to observe that it does not approve the procedure adopted by the Mines Tribunal in the instant case where none of the parties was informed of the difference of opinion among the two members who heard the revision petition finally. Further, without informing either of the parties, the matter was placed before the third member for his view. The third member chose not to issue notice of the application to either of the parties or to give any opportunity of being heard to either of the parties, and proceeded to pass an order in chambers on the basis of which the final order of the Mines Tribunal was issued. This procedure is not consistent with the requirements of the principles of natural justice that the parties should be heard before any order is passed finally determining the proceedings. This is particularly since the revision application was in fact heard by a Bench of two members. The next logical

step in the event of a difference of opinion among the two members who heard it would be to refer the revision petition to a third member with due notice to the parties. Such third member must give each of the parties an opportunity of being heard before passing a final order.

22. Although the above procedure was not followed in the instant case, for the reasons already explained, this Court does not consider it necessary to set aside the impugned final order of the Mines Tribunal only on this ground and to remand the case again to the third member for a fresh hearing.

State Government's decision dated 6th January 2010

23. There can be no doubt that Respondent No. 2 erred in passing the order dated 6th January 2010 after hearing all the applicants for the grant of ML for the area in question and making a recommendation to respondent No.1 from grant of ML in favour of VISL. This was contrary to the law explained by the Supreme Court in *Sandur Manganese* with reference to Rules 59(1) and 59(2) MCR. There was no occasion for Respondent No. 2 to undertake such an exercise of examining comparative merits of the applications of the Petitioner and VISL and the others and make a recommendation for grant of ML to VISL on that basis. Fortunately, the concluding portion of the order dated 6th January 2010 makes it subject to the Central Government exercising its powers under Rule 59(2) MCR. To that extent, therefore, the order dated 6th January 2010 does not create any equity in favour of any party, much less VISL. This should allay the apprehension of the Petitioner.

Conclusion

24. In the considered view of this Court, since the Petitioner's revision petition has been decided correctly on a pure question of law by a majority of the Members of the Mines Tribunal, remanding the matter to the third member would indeed be an empty formality.

25. For the aforementioned reasons, this Court is not inclined to interfere with the impugned final order dated 15th September 2009 of the Mines Tribunal. Accordingly, the writ petition is dismissed but, in the circumstances, with no order as to costs. The interim order stands vacated and the pending applications are disposed of.

S. MURALIDHAR, J

OCTOBER 28, 2010

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