

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: 27th March, 2012

+ **LPA No. 234/2012**

% **RADHIKA METALS AND MINERALS** **....Petitioners**
Through: Mr. K.G. Raghavan, Sr. Adv. with
Mr. Kamal Budhiraja, Mr. Anirudh
Krishnan, Ms. Simar K. Narula &
Ms. Sanyukta Singh, Adv.

Versus

UNION OF INDIA **..... Respondents**
Through: Ms. Sapna Chauhan, Adv. for R-1.
Mr. Rajiv Nayar, Sr. Adv. with Mr.
Akshay Ringe & Ms. Misha Rohatgi,
Adv. for R-3.

CORAM :-

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

JUDGMENT

RAJIV SAHAI ENDLAW, J.

Caveat No.310/2012.

1. The counsel for the respondent no.3/caveator appears and the caveat stands discharged.

LPA No.234/2012.

2. This Intra-Court appeal impugns the order dated 9th February, 2012 of the learned Single Judge in W.P.(C) No.8793/2011 preferred by the respondent no.3 S.K. Sarawagi & Co. Pvt. Ltd. The said writ petition was preferred impugning the order dated 14th September, 2011 of the Central Government constituted Mines Tribunals/Revision Authority dismissing the

Revision Application preferred by the respondent no.3.

3. An area of 39.655 hectares of Duvvam village, Garividi Mandal, Vizianagaram District in the State of Andhra Pradesh, was previously vide order dated 5th January, 1978, reserved for public sector undertakings for exploration of Manganese Ore. Subsequently, vide orders dated 27th August, 1991 & 13th August, 1993 the same was de-reserved. The appellant on 3rd September, 1991 filed an application for re-grant of mining lease of the said area. Thereafter the State Government vide Notification dated 5th September, 1994 notified the said area for re-grant of mining lease and invited applications therefor.

4. It is not clear from the available records as to why inspite of Notification dated 5th September, 1994 no mining lease with respect to the said area was granted. The respondent no.3, on 19th April, 2007 also applied for mining lease thereof.

5. The Government of the State of Andhra Pradesh (respondent no.2 herein) vide order dated 5th January, 2009, being of the view that the application of the appellant received prior to the Notification also needs to be considered under Section 11(2) of the Mines and Minerals (Development & Regulation) Act, 1957 and has priority under Section 11(2) of the Act called upon the appellant to submit the mining plans for consideration of the mining lease application. The said order further provided that if the appellant fails to submit the mining plans within six months, it will be presumed to have no interest in the mining lease application and further action shall be taken.

6. The respondent no.3 preferred the Revision Application (supra) to the Mines Tribunal. It was the case of the respondent no.3 in its revision petition that mining lease of the said area had earlier been granted to M/s Rai Bahadur Seth Shreeram Durga Prasad and Fatehchand Narsing Das (RBSSD & FND) whose mining lease was cancelled on account of huge default in the payment of royalties; that the area in question was thereafter reserved vide order dated 5th January, 1978 for public sector undertakings; that since RBSSD & FND could not itself apply for re-grant of mining lease of the said area, made the appellant, a partnership concern whose partners are blood relatives of the partners of RBSSD & FND for mining lease vide application dated 3rd September, 1991; that the application of the appellant was premature when the area was not even available for grant and was reserved for public sector undertakings and ought to have been rejected; that the appellant had no special merits as required under Section 11(3) of the Act and the State Government had decided to grant mining lease to it without even calling for any details from it; that the respondent no.3's claim was better and which had not even been considered.

7. The revision petition preferred by the respondent no.3 was dismissed by the Mines Tribunal on 21st June, 2010. The respondent no.3 preferred W.P.(C) No. 6618/2010; vide order dated 4th October, 2010 therein, the order dated 21st June, 2010 of the Mines Tribunal was set aside and the Mines Tribunal directed to decide afresh.

8. The Mines Tribunal vide order dated 14th September, 2011 (supra) has found/observed/held:-

- a. that the respondent no.3 had applied for mining lease nearly 13 years after the area was declared open vide Notification dated 5th September, 1994;
- b. that as per the said Notification the area was available for grant after expiry of 30 days from the publication of the Notification;
- c. that under Section 11(4) of the Act only those applications received during the period specified in the Notification are to be considered simultaneously;
- d. however the Notification dated 5th September, 1994 did not provide any period for making the applications;
- e. that in the absence of any period being specified in the Notification, the period had to be reasonable and could not be stretched to 13 years after which the respondent no.3 had made the application;
- f. that the application of the respondent no.3 was also not with reference to any Notification;
- g. that the respondent no.3 could not thus be said to have applied in pursuance to the Notification dated 5th September, 1994 and also cannot be said to have been intended to be assessed under Section 11(4) of the Act;
- h. that the application of the respondent no.3 was also not complete and thus could not be said to be a mining lease application and was non est;
- i. that the respondent no.3 had in W.P.(C) No.6618/2010 (supra) also misrepresented that it had not been heard; the respondent no.3 had thus not been straight forward neither in filing the

mining lease application nor in the conduct of the Revision Application before the Mines Tribunal nor in preferring the writ petition before the High Court;

- j. that the respondent no.3 had no *locus standi*.

Accordingly the Revision Application of the respondent no.3 was dismissed.

9. The learned Single Judge has in the order dated 9th February, 2012 impugned before us observed/held:-

- i. that the respondent no.3 was not able to assail the findings of the Mines Tribunal of the respondent no.3's application for grant of mining lease being defective;
- ii. that the main contention of the respondent no.3 was that the grant of mining lease to the appellant on a premature application was bad in law and unsustainable in view of the judgment of the Apex Court in ***Sandur Manganese and Iron Ores Ltd. vs. State Of Karnataka*** (2010) 13 SCC 1;
- iii. that the real issue for determination was whether the grant of mining lease to the appellant on de-reservation of the area in exercise of power under Rule 59(1) of the Mineral Concession Rules, 1960 was to be governed by the proviso to Section 11(2) of the Act or the same would fall for consideration under Section 11(4) of the Act.
- iv. that as per the dicta of ***Sandur Manganese & Iron Ores Ltd.*** (supra), Section 11(2) applied only to virgin areas and not to notified areas; that the said area was not a virgin area having

- been de-reserved vide Notification dated 5th September, 1994;
- v. that thus the application dated 3rd September, 1991 of the appellant was premature and could not have been granted priority under Section 11(2) of the Act.

The learned Single Judge thus had held that though the application of the respondent no.3 had been rightly rejected but the decision to recommend grant of mining lease to the appellant was purely on account of priority by relying on Section 11(2) was erroneous. Reference was also made to *Centre for Public Interest Litigation vs. Union of India* (2012) 3 SCC 1 to observe that the principle of first-come-first-served is fundamentally flawed. The learned Single Judge accordingly set aside the order of the Mines Tribunal to the extent of upholding the order dated 5th January, 2009 of the State Government recommending grant of mining lease to the appellant. The State Government was further directed to invite fresh applications in terms of Notification dated 5th September, 1994 for grant of mining lease with respect to the subject area.

10. The senior counsel for the appellant before us has argued that Section 11 was amended w.e.f. 18th December, 1999; that the law applied by the learned Single Judge is as Section 11 existed post amendment. It is contended that since the Notification inviting applications is dated 5th September, 1994 i.e. prior to the amendment, Section 11 as it stood prior to the amendment would apply and as per which the application of the appellant made even prior to the Notification was maintainable and entitled to priority under proviso to Section 11(2).

11. We have enquired from the senior counsel for the appellant as to why the State Government, at the time of taking the decision dated 5th January, 2009, was required to apply Section 11 as it stood prior to the amendment w.e.f. 18th December, 1999 and not Section 11 as it stood at the time the said decision was being taken.

12. The senior counsel for the appellant contends that since as per the Section 11 (as it stood prior to the amendment w.e.f. 18th December, 1999) the appellant on its application being prior in point of time was entitled to priority, a right had accrued to the appellant and it could not have been taken away by amendment.

13. The senior counsel for the respondent no.3 / caveator per contra contends that no such argument was raised, neither before the Mines Tribunal nor before the learned Single Judge and is being raised for the first time in this appeal and which is not permissible. He further argued that the respondent no.3 is also aggrieved from the order of the learned Single Judge in so far as holding the application for mining lease of the respondent no.3 to be defective and if the present appeal is entertained the respondent no.3 would also be filing an appeal against the said part of the judgment of the learned Single Judge.

14. We have given our anxious consideration to the matter. Though, in the face of the provisions of the Act and the Rules we entertain doubts as to the correctness of the observations of the learned Single Judge, of the principle of first come-first-served being not applicable to mining leases also, but what troubles us in the present case is that there was a unusual and

unexplained delay of 15 years between the Notification dated 5th September, 1994 and the decision dated 5th January, 2009 of the State Government. The State Government notwithstanding the Notification and the application of the appellant for mining lease, having not granted the mining lease to the appellant for 15 years and in which the entire context changes, and specially in the face of the amendment in the Act, could not have decided to grant mining lease to the appellant. Though we enquired from the senior counsel for the appellant as to why the application was allowed to so remain pending for 15 years but he states that he had no instructions and it is for the State Government to explain the delay. However what emerges therefrom is that the appellant also did not pursue its application for mining lease for so long. Mere filing of application does not confer any right on the applicant except the right to have his application considered in accordance with law. The State Government itself seems to have been spurred into action only after receipt of the application dated 20th April, 2007 of the respondent no.3. Even if it were to be held that the delay was attributable to the State Government, it was for the appellant who had applied for the mining lease as far back as on 3rd September, 1991, to ensure that the same was considered expeditiously. The appellant by not taking any action in this regard cannot thereafter claim priority on the basis of the law which had ceased to exist 10 years prior to the decision.

15. The Supreme Court as far back as in *State of Tamil Nadu vs. Hind Stone* AIR 1981 SC 711 held that right to have an application for mining lease disposed of in a reasonable time does not clothe an applicant for a lease with a right to have the application disposed of on the basis of the

rules in force at the time of the making of application. It was further held that no one has a vested right to the grant or renewal of lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. It was yet further held that in the absence of any vested rights, an application for a lease has necessarily to be dealt with according to rules in force on the date of disposal of application. We may also notice that the Supreme Court in ***Centre for Public Interest Litigation*** (supra) has held that public trust doctrine enjoins upon the Government to protect the resources for enjoyment of general public rather than to permit their use for private ownership or commercial purpose. It was further held that this doctrine puts an implicit embargo on the right of the State to transfer public property to private party, if such transfer affects public interest and mandates affirmative State action for effective management of natural resources.

16. Even otherwise since the amendment to Section 11 affects the procedure for consideration of application for mining lease, in our opinion, the amendment would apply not only to decision to be taken thereafter but also to pending decision of these applications.

17. It cannot also be lost sight of, that the learned Single Judge has exercised powers under Article 226 of the Constitution of India and which are wide and intended to do justice. For the same reason, the argument of the senior counsel for the appellant that the learned Single Judge exceeded his jurisdiction in considering the validity of the grant in favour of the appellant inspite of upholding the order of the Mines Tribunal of the respondent no.3 having no *locus standi*, cannot be accepted. The mineral

resources belong to the State i.e. to the public at large and grant of leases with respect thereto is in the form of largesse. Even if the appellant was entitled to any priority as per the law prevalent in the year 1994, the appellant by sleeping over its rights lost the said claim and the decision in 2009 ought to have been taken on appraisal of the situation as then prevailing rather than on the basis of stale application.

18. In *M.P. Ram Mohan Raja vs. State of Tamil Nadu* (2007) 9 SCC 78, the High Court in a writ petition filed by the applicant for mining lease had directed the State Government to dispose of the application under Rule 39 of Tamil Nadu Minor Mineral Concession Rules, 1959 within a specified period; however within that period Rule 39 was repealed changing the very basis on which the High Court had issued the directions; the application for mining lease was accordingly dismissed by the State Government; the applicant after waiting for seven years filed the writ petition impugning the decision of State Government on the ground that the said application was entitled to be considered in accordance with Rule 39 as on date of the application. In this factual scenario the Supreme Court held that a person who can sit tight for such a long time for no justifiable reason, cannot be given any benefit. On merits also following *Hind Stone* (supra) it was reiterated that the State Government on an amendment of the Rule could not have decided the application on the basis of the Rule prevailing on date of filing thereof, more so, when no one has a vested right in a mining lease.

19. We find the Division Benches of the Orissa and Karnataka High Court in *Dhananjay Kumar Dagara vs. State of Orissa* MANU/OR/0752/2008 and *Gadigi Mineral Mining Co. v. State of*

Karnataka Commerce and Industry Department, JSW Steel Ltd. AIR 2010 Kant 43 respectively to have also taken a similar view qua the amendment to Section 11 of the Act.

20. We therefore do not find any merit in this appeal and dismiss the same. No order as to costs.

RAJIV SAHAI ENDLAW, J

ACTING CHIEF JUSTICE

MARCH 27, 2012

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