

8\$~37-42

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

%

Judgment delivered on: 16.08.2012

+

W.P.(C) Nos. 8621/2011, 8622/2011, 8623/2011,
8624/2011, 8625/2011 & 8626/2011

METAL MINING INDIA PVT LTD

..... Petitioner

versus

UOI AND ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr R.P. Dave, Mr R.R. David, Mr C.A. Sinha & Mr Febin Mathew, Advs.

For the Respondents: Mr Jatan Singh, CGSC for Resp/UOI.
Dr Manish Singhvi, Adv. for State of Rajasthan/R-2.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J (ORAL)

WP(C) No. 8621/2011 & CM No. 19495/2011 (Stay)

WP(C) No. 8622/2011 & CM No. 19497/2011 (Stay)

WP(C) No. 8623/2011 & CM No. 19499/2011 (Stay)

WP(C) No. 8624/2011 & CM No. 19501/2011 (Stay)

WP(C) No. 8625/2011 & CM No. 19503/2011 (Stay)

WP(C) No. 8626/2011 & CM No. 19505/2011 (Stay)

1. By virtue of the captioned writ petitions challenge is laid by the petitioner to an interim order dated 15.09.2011 passed by respondent no. 1. The challenge is laid in the background of the following facts:

2. The petitioner had applied for a Reconnaissance Permit (in short RP) with respondent no. 2 for establishing gold, copper, lead, zinc, nickel and associated minerals. The application was made; pursuant thereto on 03.09.2004 the petitioner was granted a RP in respect of the aforementioned minerals for an

area admeasuring 207 sq. kms. in the Dungarpur and Banswara Districts in the State of Rajasthan as well as for an area admeasuring 654.7 sq. kms., in the North Jagpura, in the district of Udaipur. It is the say of the petitioner that, after literature survey was carried out qua the said area, as a matter of fact, the petitioner engaged with Hindustan Zinc Limited and procured an exploration report generated by the said company. This report was submitted to the concerned authorities. Thereupon, the petitioner executed a Reconnaissance Deed with respondent no. 2, on 19.01.2005.

3. It is the case of the petitioner that, in the meanwhile, i.e., on 15.09.2004, respondent no. 2 had thrown open the area for grant of Prospecting License (in short PL), over an area admeasuring 7.35 sq. kms. in the village Bhikia/ Bhakari, Tehsil Ghatol, District Banswara, Rajasthan.

4. The petitioner, who had applied for PL had its application rejected by respondent no. 2, which was communicated to it vide orders dated 3/20.04.2007 on the ground that it had not, purportedly, obtained the requisite approvals. It appears that respondent no. 2 in the interregnum had issued, in the year 2000 (i.e., on 05.09.2000, 12.09.2000 and 18.12.2000), orders reserving the area, in respect of which the PL was sought by the petitioner, which tended to favour departmental prospecting.

5. Against the rejection of the petitioner's application for a PL, a revision petition was filed. This revision petition bearing no. 25/87/2007-RC-1, was filed on 29.06.2007.

6. On 16.11.2007, respondent no. 2 apparently took out a notification reserving three blocks in the village Bhukia and Bamanpura having a total area of 158.26 sq. kms. in district Banswara for departmental prospecting and exploration for a period of three years. The said notification is said to have

been published by respondent no. 2 on 22.11.2007.

7. Evidently, on 29.03.2011, the petitioner's revision petition challenging the rejection of its PL application vide order dated 03/20.04.2007, was also dismissed.

8. In the meanwhile, a writ petition was filed in the High Court of Rajasthan at Jodhpur being: CWP No. 1864/2008 to assail notification dated 16.11.2007. It is not disputed that in this writ petition an interim order has been passed by the court, on 29.04.2008. The operative part of the said interim orders reads as follows:

“.....In the meanwhile, operation of the notification dated 16.11.2007 shall remain stayed, so far as it relates to the area of 207 sq. kms. covered by the reconnaissance permit earlier existed in favour of the petitioner, till the next date of hearing....”

8.1 The effect of the interim order dated 29.04.2008 was that, notification dated 16.11.2007, in so far as it related to the area covered under the RP issued to the petitioner, was stayed. Only to be noticed, as indicated above, the area admeasured 207 sq. kms.

9. Apparently respondent no. 2 issued another notification on 05.02.2008. By virtue of this notification, respondent no. 2 evidently withdrew the ban on mining in scheduled tribal areas, and called for, fresh applications. The net effect of the said notification was that all pending applications for grant of PL/ Mining Lease (in short ML) were required, to be rejected.

9.1 This propelled the petitioner to file a second writ petition, i.e., CWP No. 1481/2008, once again, in the High Court of Rajasthan at Jodhpur. The grievance broadly raised in the said writ petition was that applications for grant of PL/ML had been invited, in respect of areas in which RP had already been issued to the petitioner and/or were already a subject matter of applications for

grant of PL/ML to the petitioner.

10. It may be important to note that in the interregnum, the petitioner had, filed an application with respondent no. 2 for grant of PL. This application was evidently made pursuant to the issuance of notification dated 05.02.2008, lifting the ban. This application was also rejected on 11.04.2008.

11. The writ petitioner thereafter, apparently, filed yet another application on 17.04.2008, for grant of PL qua an area admeasuring 8.5 sq. kms. in the village Dagucha Amlawa, Tehsil Aaspur, Distt. Dungarpur. This application had been apparently preferred without prejudice to the fact that, its earlier application had been rejected on 11.04.2008 or its contention vis-à-vis the validity, scope and effect of the notification dated 05.02.2008.

12. In so far as the rejection of petitioner's application for PL vide order dated 11.04.2008 was concerned, a revision petition was filed under Section 30 of the Mines and Minerals. (Development and Regulation) Act, 1957 (in short MMDR Act) read with Rule 54 of the Mines Concessions Rules, 1960 (in short MCR).

13. The High court of Rajasthan, on 12.09.2008, passed an interim order in CWP No. 1481/2008, wherein a challenge had been laid to the notification dated 05.02.2008, as indicated above. By virtue of the said interim order dated 12.09.2008, the court, after noticing the earlier interim order passed by a Co-ordinate Bench of the same court, on 29.04.2008, in the other writ petition, i.e., CWP no. 1864/2008 observed, in the operative part, as follows:

“....After perusing the order dated 29th April, 2008 passed by the Co-ordinate Bench of this court, it is ordered that for the area of 207 square kms. in respect of which, stay is already operating, no third party right or interest shall be created by the respondents....”

13.1 The effect of the aforesaid order was that no third party interest could be

created by respondent no. 2 vis-à-vis the area in respect of which RP had been granted to the petitioner, i.e., area admeasuring 207 sq. kms., in District Bhanwara.

14. Respondent no. 2, apparently issued an order on 03.07.2009, wherein it stated that the ban on grant of ML/PL in the scheduled tribal areas would continue till further orders and that no action could be taken for the time being on the applications received. The order, in sum and substance, superseded the notification dated 05.02.2008, whereby the ban was lifted. In other words, the ban on mining was re-imposed.

15. Respondent no. 2, followed the order dated 03.07.2009, with yet another order dated 10.03.2010, whereby it declared that in the scheduled tribal areas, RP/PL/ML for major minerals, would be granted only to an enterprise of the State, i.e., the Rajasthan State Mines and Minerals Limited (in short RSMML). The said order went on to state that, RSMML could, however, enter into a joint venture with a private investor, subject to RSMML having a minimum of 51% share in such a joint venture. A further condition was put that, at least 20% of the profits from the mining in the notified scheduled tribal areas would be spent for welfare of the local tribals, and that, the said amount would be in addition to dead rent and royalty. Conditions pertaining to engagement of persons from the area to the extent of 50%, was also inserted in the said order. More significantly, the order indicated that, all pending applications for major minerals in the notified scheduled areas were liable to be rejected leaving out those in respect of which the court stay orders were in operation.

16. In the meanwhile, it appears that respondent no. 1 had the occasion to deal with an order dated 09.04.2008, passed by respondent no. 2, whereby the petitioner's application dated 16.01.2008, for grant of PL for minerals such as

led, zinc, gold, copper, over an area admeasuring 1.5 sq. kms., in the village Bharkundi, Tehsil Aaspur, Distt. Dungarpur, Rajasthan. By a detailed order the respondent no. 1 set aside the impugned order dated 09.04.2008.

16.1 What is important for our purposes, and on which, great reliance has been placed by the petitioner are, the observations in paragraph 14 of the order of respondent no. 1. For the sake of convenience the same are extracted hereinbelow:

“.....14. The submissions made in the RA, comments of the **State Government thereon, rejoinder and other documents filed by the revisionist and submissions made at the time of hearing have been gone through and it is held that the ground of rejection given in the impugned order is not tenable as the preferential right occurring to the revisionist under Section 11(1) of the Act could not be taken away by an executive order of the State Government dated 5-2-2008.** The application of the revisionist could not have been put in the category of deemed rejection cases on the ground that same had been filed before the date of lifting of ban on grant of ML/PLs in scheduled area. **Further, no notice under rule 12(1) of MCR, 1960 had been given to the revisionist which is clear violation of the provisions of the rules and principles of natural justice.** Other grounds and contentions taken by the State Government in their reply are of no consequence and cannot be taken into consideration as they occurred after the issue of impugned order. A decision to reserve the entire land in the tribal area of the State for State PSU taken vide circular dated 10-3-2010 cannot have any bearing, whatsoever, on the outcome of application dated 16-1-2008 which was rejected by the State Government vide impugned order dated 09-04-2008. Similarly, the fresh argument in the sur-rejoinder, which has been objected by the revisionist, pertaining to part of the area falling under forest and in Aravali hill range cannot be taken as ground for issue of impugned order which was supposed to be issued by the State Government keeping in view the conditions/ circumstances/ orders in force at that point of time. Further if there was any deficiency in the RP data generated by the revisionist or the same was not received by

the State Government, they should have issued notice to the revisionist before rejecting its application. **It is thus held that of the grounds relied upon by the State Government for rejection of the application of the revisionist for grant of PL are legally not tenable and the impugned order has been issued in clear violation of the provisions of the MMDR Act, 1957, MCR, 1960 and principles of natural justice. The case is accordingly remanded back to the State Government with the direction that a speaking order be passed in the matter by taking into account only such of the instructions/ orders which were existing on the date of issue of impugned order after issuing a show cause notice pointing out the deficiencies, if any, in the application and also providing an opportunity of hearing to the revisionist. The impugned order dated 09-04-2008 is accordingly set aside.”**

(emphasis supplied)

16.2. A reading of the aforesaid observations of respondent no. 1 would show that it set aside the impugned order and remanded the case, on the ground that there had been failure on the part of respondent no. 2 to comply with the principles of natural justice, in as much as, no notice under Rule 12(1) of the MCR had been given to the petitioner, which according to respondent no. 1, violated the provisions of principles of natural justice. Observation is also made to the effect the preferential right of petitioner under section 11(1) of the MMDR Act could not be whittled down by notification dated 05.02.2008, which was termed as, an executive act.

17. It appears that in the meanwhile respondent no. 2 had also rejected the petitioner's application dated 17.04.2008, to which I have made a reference above, for grant of PL, vide order dated 03.03.2011 ostensibly based on the policy which respondent no. 2 had adopted vide its order dated 10.03.2010. Against the order dated 03.03.2011, the petitioner filed a revision petition on 11.05.2011 alongwith an application for stay under Rule 55(5) of the MCR.

17.1 It is this petition, which evidently came up for hearing before respondent

no. 1, on 14.09.2011. It is the case of the petitioner that on that date, counsels for respondent no. 2 had entered appearance and as a matter of fact sought time to file a reply. It is not disputed that a week's time was granted to respondent no. 2 to file a reply. The petitioner states that on 19.09.2011 it received the impugned order dated 15.09.2011, rejecting its application for grant of interim stay.

17.2 What according to the petitioner is curious, is that in the impugned order dated 15.09.2011, there is a reference to the fact that a reply had been furnished by respondents, based on which, on hearing arguments of both sides, respondent no. 1 evidently came to the conclusion that petitioner was unable to make out a prima facie case and/or had failed to furnish evidence of having suffered irreparable loss, and hence, stay could not be granted.

18. Mr Dave, who appears for the petitioner, says that at the stage of hearing of the interim application various arguments were raised including the fact that the order dated 10.03.2010, based on which respondent no. 2 had rejected its application for PL, would not apply to the petitioner, as the order itself said that, it would not be applicable in those cases in which, courts had granted a stay. That apart, Mr Dave says that arguments had been raised qua breach of principles of natural justice, in as much as, there was no adherence to Rule 12(1) of the MCR. Mr Dave submits that, as a matter of fact, it is not disputed by respondent no. 1 that no notice was issued prior to issuance of order dated 03.03.2011 by respondent no. 2. For this purpose he has referred to the counter affidavit of respondent no. 2 filed in this court.

19. Faced with the aforesaid, Dr Singhvi, who appears for respondent no. 2, candidly, and I must say most fairly, admitted that even though respondent no. 2, had been accorded time on 14.09.2011, for filing a reply to the interim

application moved by the petitioner, it had not filed a reply and, therefore, that observation in the impugned order was factually incorrect. In so far as, Mr Dave's submission with regard to breach of principle of natural justice was concerned, Dr Singhvi submitted that he would like to rely upon the principle of "empty formality" to contest that point. As regards the effect of the order dated 10.03.2010 was concerned, his submission was that this could only be determined in a final proceedings and not at an interim stage.

19.1 Apart from the above, Dr Singhvi had also raised a preliminary issue with regard to the territorial jurisdiction of this court in view of the judgment delivered by five Judges of this court, in the case of M/s Sterling Agro Industries Ltd. vs UOI & Ors., passed in WP(C) No. 6570/2010, dated 01.08.2011.

20. Having heard the learned counsels for the parties, I had put to Dr Singhvi that in the captioned cases it may be perhaps appropriate that the objection with regard to territorial jurisdiction be kept open, in view of the admitted position that the impugned order did not reflect the correct position in so far as it observes that respondent no. 2 had filed a reply. Having regard to the above, it is, therefore, felt appropriate that the impugned order dated 15.09.2011 be set aside and respondent no. 1 be directed to pass a detailed order with respect to the contentions raised by the petitioner. This is more so, in view of the fact that, the person who passed the impugned order is the same person, who had passed the order dated 29.03.2011, in an earlier revision petition, wherein, he has taken a diametrically opposite view. Therefore, in my opinion respondent no.1 would have to reconsider the matter and pass an appropriate order delineating therein, how in the given facts it came to a completely contrary conclusion.

21. At this stage, Dr Singhvi says that instead of direction respondent no. 1 to decide the interim application afresh, a direction be issued to respondent no. 1,

to dispose of the revision petition finally. Mr Dave says that this suggestion is fair and merits acceptance.

22. Accordingly, the impugned order dated 15.09.2011 is set aside. Respondent no. 1 is directed to hear the revision petition finally. Respondent no. 1 is also directed to dispose of the revision petition as expeditiously as possible, preferably within three weeks from today. With the aforesaid observations, the writ petitions and the applications are disposed of.

RAJIV SHAKDHER, J

AUGUST 16, 2012
kk