

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

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Date of decision: 9th December, 2014

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W.P.(C) No.7745/2014

**FEDERATION OF INDIAN MINERAL
INDUSTRIES (FIMI)**

.... Petitioner

Through: Dr. Abhishek Manu Singhvi, Sr. Adv.
with Mr. Anand Varma & Mr. Tarun
Patnaik, Advs.

Versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Akshay Makhija, CGSC with Mr.
Rohitendra Deb, Adv. for R-1.
Mr. Joseph Aristotle, Sr. Adv. with
Mr. M.B. Elakkumanan, Adv. for R-
3/State of Karnataka.
Mr. Kapil Dutta, Adv. for MCD.

AND

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W.P.(C) No.7746/2014

M/S ORISSA MANGANESE & MINERALS LTD. **Petitioner**

Through: Mr. Parag Tripathi, Sr. Adv. with Mr.
Anand Varma & Mr. Tarun Patnaik,
Adv.

Versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Akshay Makhija, CGSC with Mr.
Waize Ali Noor and Mr. Kirtiman
Singh, CGSC for R-1/UOI.

CORAM:-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. These petitions under Article 226 of the Constitution of India have been filed seeking a declaration, that the amendments to Rule 24A(6) of the Mineral Concession Rules, 1960, brought about by the Notification dated 18th July, 2014 issued by the Ministry of Mines, Government of India and whereby Sub-rule (6) has been substituted, are prospective in nature and effect.

2. It is the case of the petitioners that:

- (i) The grant and renewal of mining leases by State Governments, including the period thereof, is governed by Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) and under Sub-section (1) thereof, the maximum period for which a mining lease will be granted shall not exceed 30 years and the minimum period shall not be less than 20 years; under Sub-section (2) thereof, mining lease is renewable for a period not exceeding 20 years; under Sub-section (3)

thereof, if the State Government is of the opinion that in the interest of mineral development, it is necessary so to do, it may, for reasons to be recorded, authorize the renewal of mining lease in respect of minerals not specified in Part A and Part B of the First Schedule for a further period or periods not exceeding 20 years in each case; and, further vide Sub-section (4), no mining lease granted in respect of minerals specified in Part A and Part B of the First Schedule is to be renewed except with the previous approval of the Central Government.

- (ii) Vide Rule 24A(6) of the Rules (supra) as it existed prior to its amendment (supra) w.e.f. 18th July, 2014, if an application for renewal of mining lease is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.
- (iii) The Supreme Court in *Goa Foundation Vs. Union of India* (2014) 6 SCC 590 pronounced on 21st April, 2014 held that Rule 24A (6) applies only to the first renewal under Section

8(2) of the MMDR Act and is not applicable to subsequent renewals of mining lease under Section 8(3) of the MMDR Act, as had been the practice earlier.

(iv) The Supreme Court subsequently in order dated 16th May, 2014 in W.P.(C) No.114/2014 titled ***Common Cause Vs. Union of India*** further held that notwithstanding the State Government having not taken a decision on the applications filed for second or further renewal of mining lease, the lessee, after the expiry of the term of the first renewal cannot operate the mining lease till the State Government forms an opinion in exercise of powers under Section 8(3) of the MMDR Act for further renewal of the mining lease.

(v) The Government of India vide Notification dated 18th July, 2014 substituted Rule 24A(6) till then existing as under:

“(6) If an application for renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period till the State Government passes order thereon.”

WITH

“(6) *If an application for first renewal of a mining lease made within the time referred to in sub-rule (1) is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by a further period of two years or till the State Government passes order thereon, whichever is earlier:*

Provided that the leases where applications for first renewal of mining lease have been made to the State Government and which have not been disposed of by the State Government before the date of expiry of lease and are pending for disposal as on the date of the notification of this amendment, shall be deemed to have been extended by a further period of two years from the date of coming into force of this amendment or till the State Government passes order thereon or the date of expiry of the maximum period allowed for first renewal, whichever is the earliest:

Provided further that the provisions of this sub-rule shall not apply to renewal under sub-section (3) of Section 8 of the Mines and Minerals (Development and Regulation) Act, 1957 (67 of 1957).”

- (vi) that the petitioner Federation of Indian Mineral Industries (FIMI) in W.P.(C) No.7745/2014 was formed as an all India body to promote the interest of mining, mineral processing, metal making and other mineral based industries; applications for renewal of mining leases (first, second as well as subsequent) filed by mining leaseholders, members of the said

Federation to various State Governments are kept pending for long periods of time and not disposed of despite compliance of conditions precedent by the leaseholders; the mining leaseholders have therefore continued the mining activities in accordance with law and after obtaining all statutory clearances for the continuance of mining operations.

- (vii) Rule 24A(6) prior to its amendment provided for deemed extension of the period of the lease to enable the leaseholders to legally continue mining operations.
- (viii) Continuance of mining operations without interruption is vital for mineral conservation, development and scientific mining; mining cannot be stopped or started without complicated cumbersome procedures.
- (ix) The delays in consideration and disposal of applications for the first and subsequent renewals of mining leases is not on account of mining leaseholders but on the part of the State Governments.

- (x) However as per amended Rule 24A(6), there is no extension of the lease period in case of applications for second and subsequent renewals under Section 8(3) of the MMDR Act and extension of lease by two years only in case of applications for first renewal under Section 8(2) of the MMDR Act.
- (xi) The amended Rule 24A(6), insofar as it does not provide for extension of lease till disposal of renewal application, is unreasonable and arbitrary.
- (xii) Though the rules provide for a time frame for disposal of applications for grant of fresh mining leases, they do not provide any time frame for disposal of applications for renewal.
- (xiii) The amendment vide Notification dated 18th July, 2014 to Rule 24A(6) is prospective in nature and effect and has no bearing or operation upon applications for renewal made prior to its promulgation.

The petitions accordingly seek the reliefs of:

- (a) Declaration that the amendment vide Notification dated 18th July, 2014 of Rule 24A(6) is prospective in effect and operation.
- (b) Alternatively, if the said amendment is held to be retrospective in effect i.e. applicable also to applications for renewal pending as on 18th July, 2014 then, quashing thereof as arbitrary, unreasonable and violative of Article 20(1) of the Constitution of India.
- (c) “Appropriate writ, order or direction directing that the Notification dated 18th July, 2014 provides for resumption of mining operations during the pendency of applications under Section 8(3) of the MMDR Act, 1957 upon the State Government forming its opinion that the renewal of the leases is in the interest of mineral development.”
- (d) Directing the Ministry of Mines, Government of India to frame / issue appropriate guidelines for disposal of applications for renewal of mining leases within a stipulated time period.

3. The contents of W.P.(C) No.7746/2014 though preferred by a holder of lease for six Manganese Mines in the State of Orissa, who is also a

member of the Federation which has preferred W.P.(C) No.7745/2014, are identical.

4. Just like no cause of action for filing the petition has been pleaded in W.P.(C) No.7745/2014 filed by the Federation, as indeed it could not have been pleaded, no cause of action for filing W.P.(C) No.7746/2014 also has been pleaded though by an individual mining leaseholder.

5. As far back as in *Harishankar Bagla Vs. The State of Madhya Pradesh* AIR 1954 SC 465, a five Judge Bench of the Supreme Court, dealing with the contention that the Textile Commissioner under Section 3 of the Cotton Textiles (Control of Movement) Order, 1948 had been given unregulated and arbitrary discretion to refuse or to grant a permit, held that the appellants having never applied for a permit and having made no efforts to obtain one, could not be said to have been hurt in any way by any act of the Textile Commissioner, to be entitled to challenge the same.

6. Another Five Judge Bench of the Supreme Court in *Central Bank of India Vs. Workmen* AIR 1960 SC 12 also held that it is not necessary for the Courts to decide hypothetical questions which may arise in any future reference (under the Industrial Disputes Act) that may be made under the

amended section and that the Courts do not give speculative opinions on hypothetical questions - it would be contrary to principle, inconvenient and inexpedient that opinion should be given on such questions - if and when, they arise, they must arise in concrete cases - it would be extremely unwise for the Courts to attempt beforehand to exhaust all possible cases and facts which might occur to qualify, cut down, and override the operation of the particular words when the concrete case is not before it.

7. Similarly, in *State of Uttar Pradesh Vs. Kartar Singh* 1964 AIR SC 1135, it was held that “if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any *a priori* reasoning but only as a result of material placed before the Court by way of scientific analysis this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations—that where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rule offends Article 14, the burden is on him to plead and prove the infirmity is too well established to need elaboration.”

8. The Supreme Court in *State of Andhra Pradesh Vs. K. Jayaraman* (1974) 2 SCC 738 held that to contend that a rule is invalid for violating Articles 14 and 16 of the Constitution, relevant facts showing how it was discriminatory ought to have been set out.

9. Yet again in *Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited* (1983) 1 SCC 147, it was expressed that it is not open to a Court to answer academic or hypothetical questions, particularly so when serious constitutional issues are involved, as Judges are not authorised to make disembodied pronouncements on serious and cloudy issues of constitutional policy without battle lines being properly drawn. It was further held that judicial pronouncements cannot be immaculate legal conceptions and that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords.

10. The said sentiment holds good till date. In *Kusum Ingots and Alloys Ltd. Vs. Union of India* (2004) 6 SCC 254, it was reiterated that vires of a statutory provision cannot be challenged in vacuum and without any cause of action.

11. Similarly, in *State of Haryana Vs. State of Punjab* (2004) 12 SCC 673, it was held that merely saying that a particular provision is legislatively incompetent will not do; at least *prima facie* acceptable grounds in support have to be pleaded to sustain the challenge; in the absence of any such pleading, the challenge to the constitutional validity of a statute or statutory provision is liable to be rejected.

12. We may sum up using the language of Hidayatullah, J., though in minority in *Sheoshankar Vs. State Govt. of Madhya Pradesh* AIR 1951 Nagpur 68, that though it is possible to bring an action for declaration that a particular statute or action under it is *ultra vires* or unconstitutional, it depends on the fundamental fact that the declaration must not be sought on a hypothetical state of facts and that the cause of action must disclose a real injury already occasioned or about to be occasioned. A declaratory judgment has been held to be neither an advisory opinion nor a decision of a moot question because it must involve a real controversy in which the result would be *res judicata* between the parties. It is not the exercise of judicial power to write legal essays or to give advisory legal opinions. A Judge never gives a decision until the facts necessary for that decision have arisen because the imagination of Judges, like that of other persons, is limited and

they are not able to put before their minds all the complex circumstances which they ought to have in their minds when giving a decision. The Courts will not in abstract determine the constitutionality of a statute. Mandamus cannot issue unless there is a demand and a refusal or some act or omission is to be ordered. It is not to be expected that the Court will sit and examine the constitutionality of a statute or the rules and notifications with a view to finding out what is constitutional or what is not.

13. Of course, the well established rule regarding *locus standi*, that rights under Article 226 of the Constitution of India can be enforced only by an aggrieved person (except in the case of a writ for *habeas corpus* or *quo warranto*) has undergone a sea change in the context of writ petitions filed in public interest as also noticed in ***Ghulam Qadir Vs. Special Tribunal*** (2002) 1 SCC 33.

14. However, these petitions have not been filed, as indeed could not have been filed, in public interest.

15. We, in these circumstances, on 12th November, 2014 when these petitions came up first, enquired so from the senior counsels appearing for

the petitioners. On request, the matters were adjourned to 21st November, 2014, giving liberty to the petitioners to file better affidavits.

16. We may also record that a reading of the petitions and the reliefs claimed therein showed that the petitioners were also claiming that pending decision of the State Government on applications for second and subsequent renewals under Section 8(3) of the MMDR Act filed prior to the amendment with effect from 18th July, 2014 of Rule 24A(6), the said mining leaseholders should be allowed to operate their respective mining leases. However upon our enquiring from the senior counsels for the petitioners on 12th November, 2014, whether not such a claim was contrary to the dicta of the Supreme Court in *Goa Foundation* and in *Common Cause* (supra), the senior counsels stated that they were confining / limiting the claim in the petitions to applications under Section 8(2) of the MMDR Act for renewal pending as on the date of amendment of Rule 24A(6) of the MMDR Act and to cases where the applications under Section 8(3) of the MMDR Act for renewal had been allowed and permission granted. On further enquiry, it was informed that such permission had been granted only in three cases and none of which related to the minerals specified in Part A and Part B of the

First Schedule to the MMDR Act and thus the previous approval of the Central Government was not required.

17. The petitioners thereafter filed additional affidavits. The petitioner Federation in W.P.(C) No.7745/2014 in its additional affidavit pleaded that it has the *locus standi* to initiate and maintain the petition as in the past its suggestions and representations have been accepted by the Supreme Court as well as this Court in numerous proceedings regarding mining activities and as it was also heard by the Supreme Court before cancelling the allocations of Coal Blocks. It is further pleaded, that the State Governments are implementing the amendment to Rule 24A(6) vide Notification dated 18th July, 2014 retrospectively and arbitrarily; the State of Jharkhand has vide order dated 3rd September, 2014 suspended mining operations in all mining leases within the State; that though renewal of mining lease has been given by the said State to Tata Steel Ltd., a member of the petitioner Federation, but the mining operations carried out during the pendency of the renewal application have been declared as unlawful and it has been directed to deposit Rs.3568.32 crores, even though the said operations were continued as per the practice / interpretation then in vogue; that the State Governments

are also not allowing mining operations to be resumed inspite of having taken a decision to grant renewal under Section 8(3) of the MMDR Act.

18. The petitioner in W.P.(C) No.7746/2014, instead of pleading any facts qua its own mining lease, has made the same averments as made in the additional affidavit of the Federation.

19. When the matter was taken up next on 21st November, 2014, we enquired whether not the additional affidavit filed reinforced that the petitioner in W.P.(C) No.7746/2014 has no cause of action whatsoever and whether not the cause of action even if any as disclosed in the additional affidavit of the Federation was of the three mining leaseholders and against the State Government alone.

20. The senior counsels for the petitioners contended that the Notification dated 18th July, 2014 impugning Rule 24A(6) had been issued at Delhi and thus this Court would have jurisdiction. Attention was also invited to the letter dated 20th October, 2014 of the Government of Jharkhand to Tata Steel Ltd.

21. We are unimpressed. Firstly, there is no basis whatsoever in the pleadings vis-a-vis the mining lease in favour of Tata Steel Ltd. Secondly,

the grievance if any with respect to the action of the Government of the State of Jharkhand claiming Rs.3568.32 crores from Tata Steel Ltd. for unauthorized mining pending application for their renewal of mining lease, is personal and only to Tata Steel Ltd. and only against the State of Jharkhand. This Court would not have territorial jurisdiction. We may add that as disclosed by the petitioners themselves, the grievance is of only three out of over 320 members of the petitioner Federation. The grievance cited is against the State of Jharkhand only. It is thus also not as if a large number of members of the Federation spread out over several States have a similar grievance against each of their respective State Governments, for it to be said that it is just and convenient that the matter be taken up by one High Court only. Moreover, the three causes of action cited (and of which particulars of only one are given) are against the State Government only and which have nothing to do with the amendment to the Rule 24A(6), notification whereof was issued at Delhi. If the person aggrieved is of the opinion that the action of the State Government is violative of the Act and the Rules, it is open to the said person / member of the petitioner Federation to raise the issue in the concerned State High Court. Moreover, as already observed hereinabove by us, there are no pleadings of any cause of action in

favour of the Federation, as indeed there cannot be and as far as petitioner in W.P.(C) No.7746/2014 is concerned, it has inspite of opportunity not disclosed any cause of action to have accrued to it.

22. Recently, in ***K.B. Nagur, M.D. (Ayurvedic) Vs. UOI*** (2012) 4 SCC 483 also it was held that it is a settled and deeply rooted canon of constitutional jurisprudence, that in the powers of constitutional adjudication, the Courts ought not to pass decisions on questions of constitutionality unless such adjudication is unavoidable and that in this sense the Courts have followed a policy of strict necessity in disposing of a constitutional issue. It was further held that the Courts should confine their decision as far as may be reasonably practicable, within the narrow limits required on the facts of the case.

23. We are therefore of the opinion that no case for entertaining the petitions particularly in this Court is made out.

24. For the sake of completeness, we may record that during the hearing on 21st November, 2014 a compilation containing copies of following judgments were handed over:

(i) ***Goa Foundation Vs. Union of India*** (2014) 6 SCC 590

- (ii) *Common Cause Vs. Union of India*, Interim Order dated 16.05.2014 in W.P.(C) No.114/2014.
- (iii) *M/s Lithoferro Vs. State of Goa*, judgment dated 13.08.2014 in W.P.(C) No.210/2014
- (iv) *ITO Vs. M.C. Ponnose* (1969) 2 SCC 531.
- (v) *Sri Vijayalakshmi Rice Mills Vs. State of A.P.* (1976) 3 SCC 37.
- (vi) *Soni Devrajibhai Babubhai Vs. State of Gujarat* (1991) 4 SCC 298.
- (vii) *Chairman, Railway Board Vs. C.R. Rangadhamaiah* (1997) 6 SCC 623.
- (viii) *Kalp Nath Rai Vs. State* (1997) 8 SCC 732.
- (ix) *Shyam Sunder Vs. Ram Kumar* (2001) 8 SCC 24.
- (x) *State of A.P. Vs. Ch. Gandhi* (2013) 5 SCC 111.
- (xi) *Commissioner of Income Tax Vs. Vatika Township Pvt. Ltd.* CA No.8750/2014.

but save for referring to paragraph Nos.27 and 28 of *Goa Foundation* (supra) and paragraph No.10 of the *Common Cause* (supra) and which we do not find having any applicability to the queries raised by us, relevance of any other judgments has not even been argued.

25. The petitions are accordingly dismissed with costs of Rs.15,000/- each payable to the respondent Union of India. This would however not come in the way of the challenge as raised herein being raised in a properly constituted lis before an appropriate Court / fora.

RAJIV SAHAI ENDLAW, J.

CHIEF JUSTICE

DECEMBER 09, 2014

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