GAHC010153872024

2024:GAU-AS:9721-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3992/2024

TASSO ALLOYS PVT LTD AND ANR
347 SANTOSH ROY ROAD
BARISHA
SAKHERBAZAR
JAMES LONG SARANI
KOLKATA 700008. THROUGH ITS AUTHORISED REPRESENTATIVE MR.
ABHIJEET ADHIKARI
AGED ABOUT 42 YEARS
SON OF LATE ANINDRA ADHIKARI
RESIDENT OF 21C
MADHAB KANDALI PATH
SANKARPUR
BIRUBARI
GOPINATHNAGAR
GUWAHATI
KAMRUP M ASSAM 781016

2: ABHIJEET ADHIKARI

AGED ABOUT 42 YEARS
SON OF LATE ANINDRA ADHIKARI
RESIDENT OF 21C
MADHAB KANDALI PATH
SANKARPUR
BIRUBARI
GOPINATHNAGAR
GUWAHATI
KAMRUP M ASSAM 781016
VERSUS

THE STATE OF ARUNACHAL PRADESH AND 2 ORS
THROUGH THE SECRETARY OF MINES
DIRECTORATE OF GEOLOGY AND MINING

GOVT. OF ARUNACHAL PRADESH
R.K MISSION COMPOUND
ITANAGAR
791111
ARUNACHAL PRADESH

2:THE UNION OF INDIA
THROUGH THE SECRETARY
MINISTRY OF MINES
GOVT. OF INDIA
SHASTRI BHAWAN
NEW DELHI 110001

3:INDIAN BUREAU OF MINES
THROUGH THE CONTROLLER GENERAL
2ND FLOOR
INDIRA BHAWAN
CIVIL LINES
NAGPUR
MAHARASHTRA 440001.

For the Petitioner(s) : Mr. K. N. Choudhury, Sr. Advocate
: Mr. C. P. Sharma, Sr. Advocate
: Mr. A. Mathews, Advocate
: Mr. G. Kaushik, Advocate

For the Respondent(s) : Mr. N. N. B. Choudhury, Addl. AG, Arunachal Pradesh

Date of Hearing : 26.09.2024
Date of Judgment : 26.09.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. K. N. Choudhury and Mr. C. P. Sarma, the learned Senior counsels assisted by Mr. A. Mathews appearing on behalf of the Petitioners and Mr. N. N. B. Choudhury, the learned Additional Advocate General, Government of Arunachal Pradesh.

2. The instant writ petition has been filed challenging the order dated 14.07.2022 issued by the Secretary, Geology & Mining, Government of Arunachal Pradesh, Itanagar whereby the provisional mining lease issued to the Petitioners in respect of Graphite Deposit over an area of 0.37 sq. Kms. in village Bopi, Kamle District, Arunachal Pradesh was cancelled. Although, the Petitioners have raised various grounds of objections against the impugned order dated 14.07.2022 but this Court, taking into account the order which it proposes to pass, would be dealing as regards the compliance to Section 4A(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the Act of 1957'). The said Sub-Section (3) of Section 4A of the Act of 1957 is quoted herein below.

> "*4A(3) No order making a premature termination of a prospecting licence [or exploration licence] or mining lease shall be, made except after giving the holder of the licence or lease a reasonable opportunity of being heard.*"

3. From a perusal of the above quoted provision, it would be seen that no order making a premature termination of a prospecting licence or mining lease shall be, made except after giving the holder of the licence or lease a reasonable opportunity of being heard.

4. It is the specific case of the Petitioners that the Petitioners never received any notice prior to passing of the impugned order dated 14.07.2022. It is the further case of the Petitioners that it is only in the affidavit filed in WP(C) No.1850/2022, it was informed to the Petitioners that the impugned order dated 14.07.2022 was passed and as such the instant writ petition was filed.

5. This Court vide an order dated 09.08.2024 had issued notice and further directed the respondents to file their affidavits. In addition to that, this Court had also directed that the Respondents more particularly the Respondent No.1 not to create any third party rights in respect to the mining area pertaining to the Graphite Deposit over an area of 0.37 sq. Kms. in village Bopi, Kamle District, Arunachal Pradesh wherein the Petitioners were issued the provisional mining lease.

6. It is seen that pursuant to the order passed by this Court, an affidavit has been filed by the Respondent Nos.1 and 1(A) wherein, it has been categorically mentioned that the notice under Section 4A(3) of the Act of 1957 was issued to the Petitioners vide a letter dated 17.06.2022 sent through ordinary post to the address of the Petitioners as was available in the official records. It was also mentioned that the Department did not receive back the letter sent to the Petitioners as un-served, nor got any response from the Petitioners. It is under such circumstances, the impugned order dated 14.07.2022 was passed.

7. Further to that, in the said affidavit, it was mentioned that the cancellation order dated 14.07.2022 was sent by speed post at the correspondence address of the mineral concession holder as furnished by the Petitioners which were available in the office records. The said cancellation letter dated 14.07.2022 issued to the petitioners was returned back as un-served. Thereafter, another attempt was made vide another communication dated 04.06.2024 and this time also, the letter was again returned back as un-served/unclaimed.

8. It was further mentioned that the address which have been

mentioned by the petitioners in the writ petition is the exact address which is otherwise available in the office records wherein the notice for cancellation dated 17.06.2022 was issued as well as the cancellation order dated 14.07.2022 and the reminder dated 04.06.2024 were sent. It was further mentioned that it is not understood as to how the petitioners did not receive the notice dated 17.06.2022. On merits also, the said Respondents contested the case of the Petitioners.

9. I have heard the learned counsels appearing on behalf of the parties and have also perused the materials and record.

10. This Court taking into account the various contentious issues being raised by the parties and the fact that there was no hearing carried out in terms with Section 4A(3) of the Act of 1957, would not like to deal with the issues on merits. It is relevant to take note of that the notice dated 17.06.2022 was sent by ordinary post. However, the Respondents have sent the cancellation order dated 14.07.2022 and the said reminder dated 04.06.2024 by speed post. The letters sent through speed post admittedly returned as unserved/unclaimed. It is further relevant to mention that from the materials on record, it cannot be ascertained as to whether the notice for cancellation dated 17.06.2022 was at all served upon the Petitioners for the reason that the said Notice was sent by ordinary post. It is also important to note that in terms with Section 27 of the General Clauses Act, 1897, the service shall only be deemed to be effected when the letter containing the document is sent by Registered Post. As in the instant case, the notice of cancellation dated 17.06.2022 was sent through ordinary post, no presumption of deemed service can

be made. Under such circumstances, it has to be deemed that there was no notice of cancellation served upon the Petitioners which infringes upon the rights of the Petitioners under Section 4A(3) of the Act of 1957 as well as Article 21 of the Constitution.

11. In view of the above analysis, this Court is of the opinion that the petitioner herein was not afforded a reasonable opportunity of being heard prior to the impugned decision to cancel the provisional mining lease.

12. Accordingly, this Court sets aside the order dated 14.07.2022 whereby the provisional mining lease issued to the petitioners was cancelled.

13. This Court further takes note of that the notice dated 17.06.2022 which was the notice issued under Section 4A(3) of the Act of 1957 is enclosed as Annexure-1 to the Affidavit-in-Opposition filed by the Respondent No.1 and 1(A). The petitioners have been served a copy of the Affidavit-in-Opposition wherein copy of the said notice dated 17.06.2022 is enclosed. This Court for the ends of justice, grants time to the petitioners to submit a reply to the said notice to the Secretary, Geology and Mining, Government of Arunachal Pradesh, Itanagar on or before 23.10.2024.

14. It is further observed, that upon receipt of the said notice, the Secretary, Geology and Mining, Government of Arunachal Pradesh shall fix a date for hearing as per its convenience on the very date when the reply is submitted and thereupon shall pass appropriate orders by giving the petitioners reasonable opportunity of hearing.

15. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant