

THE HONOURABLE MR JUSTICE A.V.SESHA SAI

WRIT PETITION No.18035 of 2015

ORDER

This writ petition, filed under Article 226 of the Constitution of India, challenges the validity of the letter bearing No.5/9/2014-MIV dated 23.04.2015 of the Under Secretary to the Government of India, Ministry of Mines, first respondent herein.

2. On an application submitted by the petitioner on 07.03.2005 for grant of mining lease for iron ore in respect of the area admeasuring Ac.110.00 in Sy.Nos.725, 822 and 846 of Uyyalawada Village, Orvakal Mandal, Kurnool District, the Assistant Director of Mines and Geology, Kurnool, Kurnool District vide letter

dated 05.02.2007, granted no objection. Subsequently, inspection was carried out on the availability of the iron ore and the Assistant Director of Mines and Geology submitted a report on 29.01.2007 and thereafter, the Assistant Director forwarded the mining lease application along with the report to the Director of Mines and Geology, who in turn sent the same on 08.03.2007 to the State Government with a recommendation for grant. Subsequently, under Rule 22(4) of the Mineral Concession Rules, 1960, the State Government took a decision to grant the mining lease in favour of the petitioner for the applied area for a period of 20 years subject to the approval of the Government of India under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short 'the Act') and the State Government vide letter

dated 28.09.2007, requested the Central Government to convey its approval. Thereafter, the Central Government sent the same to the Chief Controller of Mines, Indian Bureau of Mines, Ministry of Mines, Government of India, Nagapur on 28.11.2007 to furnish a

report about the availability of the iron ore in the applied area and its economic feasibility and the Chief Controller of Mines sent a reply on 07.02.2008 positively.

3. Subsequently, the Central Government on 11.02.2013 addressed a letter to the State Government, requesting for justification reports while enclosing a check list. In response to the same, the State Government vide letter dated 07.03.2014, intimated its approval decision to grant mining lease subject to the satisfaction and prior approval of the Government of India and also requested to convey the approval of the Union of India under Section 5(1) of the Act at the earliest. Subsequently, vide letter dated 05.05.2014, the Union of India requested the State Government with regard to the details of other applicants, if any, and to furnish three sets of maps showing three permanent ground control points. Vide letter dated 15.07.2014, the State Government furnished the required information and requested the Central Government to convey its approval as requested earlier on 07.03.2014. Later, by way of letter dated 29.09.2014, the Union of India sought certain information from the State Government and the State Government vide letter dated 07.01.2015, furnished the same.

4. Thereafter, the petitioner submitted a representation dated 08.02.2015 to the Union of India, requesting for grant of approval. Subsequently, the Union of India addressed a letter dated 23.04.2015 to the State Government and paragraph No.3 of the said letter reads as under;

“As per details available with the Ministry, this proposal for accord or prior approval for grant of mineral concession becomes ineligible as per the provisions of Section 10A (1) of the Amendment Act. However, the State Government is advised to ascertain whether the proposal for grant of mineral concession is saved from ineligibility under the provisions of Section 10A of the Amendment Act, and

take following action in this matter:

(i) if the proposal is ineligible, it may be treated as closed and necessary order may be issued; and

(ii) if the proposal remains eligible, the State Government bring it to the notice of the Ministry so that necessary action as per provisions of the Amendment Act may be taken”.

Calling in question the validity and the legal sustainability of the said letter dated 23.04.2015 of the Union of India, the present writ petition has been filed.

5. Heard Sri E. Manohar, learned senior counsel, representing Sri K. Ashok Reddy, learned counsel for the petitioner on record, Sri B. Narayana Reddy, learned Assistant Solicitor General for the first respondent and learned Government Pleader for Mines and Geology for respondents 2 to 4 apart from perusing the material available before the Court.

6. It is contended by the learned senior counsel that the action of the first respondent Union of India in keeping the petitioner under suspended animation by issuing the impugned letter is highly illegal, arbitrary, unreasonable and violative of Articles 14 and 19(1)(g) of the Constitution of India. It is further submitted that as per the mandatory provisions of the Act also the petitioner is entitled for grant of mining lease. It is further submitted that there is no justification on the part of the Union of India in not granting approval in favour of the petitioner.

7. On the contrary, it is contended by the learned Assistant Solicitor General that there is no illegality nor any procedural infirmity in the impugned action as such, the present writ petition is not maintainable and the petitioner is not entitled for any relief under Article 226 of the Constitution of India.

8. In the above background, now the issue that emerges for

consideration of this Court is-“whether the impugned action on the part of the Union of India is in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957”?

9. There is absolutely no controversy on the submission of the application by the petitioner for grant of mining lease on 07.03.2005 and the decision of the State Government under Rule 22 of the Mineral Concession Rules, 1960 and the letter dated 28.09.2007, addressed by the State Government, wherein the State Government requested the Union of India for necessary approval under Section 5(1) of the Act. The said letter bearing No.3500/M(1)/2004-1

dated 28.09.2007 reads as follows;

“In the reference cited, the Director of Mines and Geology, A.P. Hyderabad has recommended to the State Government for grant of Mining Lease for Iron Ore over an extent of 110.00 Acres (44.534 Hectares) in Sy.No.725 of Uyyalawada Village, Orvakal Mandal, Kurnool District, for a period of 20 years in favour of Sri H.B.Nadipi Lakshmanna subject to the satisfaction and prior approval of the Government of India under Section 5(1) of M.M.(D & R) Act, 1957, as the iron ore mineral is covered under Schedule-I Minerals.

After careful examination of the proposals submitted by the Director of Mines and Geology, Government of Andhra Pradesh have provisionally decided to grant of Mining Lease for Iron Ore over an extent of 110.00 Acres (44.534 Hectares) in Sy.No.725 of Uyyalawada Village, Orvakal Mandal, Kurnool District for a period of 2- years in favour of Sri H.B.Nadipi Lakshmanna, subject to the satisfaction and approval of the Government of India, under Section 5(1) of M.M.(D& R) Act, 1957.

Under the above circumstances, I am directed to request you to convey the approval of Government of India under Section 5(1) of Mines and Minerals (D & R) Act, 1957 for grant of Mining Lease for Iron Ore over an extent of 110.00 Acres (44.534 Hectares) in Sy.No.725 of Uyyalawada Village, Orvakal Mandal, Kurnool District for a period of 20 years in favour of Sri H.N.Nadipi Lakshmanna, at the earliest.

The check list information and sketches of the applied area are sent herewith in triplicate”.

A reading of the above letter, in clear and unequivocal terms, demonstrates that the State Government took a decision to grant mining lease only after undertaking exercise as per the Act and the Rules and sought for approval of the Union of India under Section 5(1) of the Act. The letter dated 07.03.2014 addressed by the State Government also vividly strengthens the said decision of the State Government to grant mining lease in favour of the petitioner.

10. On 12.01.2015, the Union of India promulgated the Mines and Minerals (Development and Regulation) Amendment Act, 2015, subsequently became Act No.10/2015. Section 10A, which has been inserted by virtue of the said Amendment Act 10/2015, is germane and relevant for the purpose of resolving the present issue in the writ petition. The said provision of law reads as under;

10A.(1) All applications received prior to the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 shall become ineligible.

(2) Without prejudice to sub-section (1), the following shall remain eligible on and from the date of commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015:-

(a) Application received under Section 11A of this Act.

(b) Where before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, a reconnaissance permit or prospecting licence has been granted in respect of any land for any mineral, the permit holder or the licensee shall have a right for obtaining a prospecting licence followed by a mining lease, or a mining lease, as the case may be, in respect of that mineral in that land, if the State Government is satisfied that the permit holder or the licensee, as the case may be,--

(i) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish the existence of mineral contents in such land in accordance with such parameters as may be prescribed by the Central Government.

(ii) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting licence;

(iii) has not become ineligible under the provisions of this Act; and

(iv) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within a period of three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period not exceeding six months as may be extended by the State Government.

(c) Where the Central Government has communicated previous approval as required under sub-section (1) of Section 5 for grant of a mining lease, or if a letter of intent (by whatever name called) has been issued by the State Government to grant a mining lease, before the commencement of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, the mining lease shall be granted subject to fulfillment of the conditions of the previous approval or of the letter of intent within a period of two years from the date of commencement of the said Act'.

A reading of the above provision of law makes it very much evident that Section 10A(1) of Mines and Minerals (Development and Regulation) Amendment Act, 2015, renders of the mining lease applications received prior to the date of commencement of the said Act, ineligible. The said contingency has certain exceptions also and one of the exceptions is as stipulated under section 10A(2)(c) of the Act and according to the same, the application on which the Union Government already accorded approval and the State Government already issued a letter of intent by whatever intimation it is called such application for mining lease shall be considered within a period of two years from the date of commencement of the Act.

11. As the State Government in the instant case already intimated its decision to grant mining lease in favour of the petitioner as long as back as on 28.09.2007 and followed by subsequent intimation dated 07.03.2014, it can be undoubtedly and

safely concluded that the application of the petitioner does not suffer from any ineligibility as stipulated under Section 10A(1) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015 and on the other hand, it is saved under the exception as provided under Section 10A(2)(c) of the said Act. Therefore, absolutely there is no justification on the part of the Union of India to conclude by virtue of the impugned letter dated 23.04.2015 that the application of the petitioner has suffered ineligibility. It is also significant to note at this juncture that despite the representation dated 14.05.2015 submitted by the petitioner, requesting the State Government to address a reply to the Union of India in response to the impugned letter

dated 23.04.2015, there is no evidence on record to show that any action has been taken by the State Government and the same is obviously in view of the decision of the Union of India in the impugned letter that the application of the petitioner has suffered ineligibility. The petitioner herein, therefore, cannot be allowed to continue in such an unambiguous situation without there being any action by the authorities. As the claim of the petitioner is saved under Section 10A(2)(c) of the Mines and Minerals (Development and Regulation) Amendment Act, 2015, this Court does not find any justification on the part of the respondent authorities in keeping the petitioner in suspended animation as submitted by the learned senior counsel.

12. For the aforesaid reasons, the Writ Petition is allowed, setting aside the impugned letter No.5/9/2014-MIV dated 23.04.2015, issued by the Union of India and the first respondent is directed to grant approval for the mining lease in favour of the petitioner in respect of the area admeasuring Ac.110.00 situated in Sy.Nos.725,822 and 846 of Uyyalawada Village, Orvakal Mandal,

Kurnool District, as per the letters of the State Government dated 28.09.2007 and 07.03.2014, within a period of three months from the date of receipt of a copy of this order. No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

A.V.SESHA SAI, J

1st September, 2015

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