

\$~14

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

+ **W.P.(C) 4154/2013**

**IDHA IRON AND STEEL COMPANY LTD
AND ANR**

..... Petitioners

Through: Mr. Naveen Kumar and Mr. Sudeep
Dey, Advocates

versus

UNION OF INDIA & ANR.

..... Respondents

Through: Mr. Abhay Prakash Sahay, CGSC with
Mr. Deepak Gupta, Advocate for R-1
Mr. Apoorv Kurup, Mr. A.P. Mayee and Mr. Rohit
Rathi, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

06.02.2015

%

1. This is a writ petition which challenges the order dated 17.02.2012 passed by the Central Government.

2. The grievance of the petitioners arises in the background of the following brief facts :-

2.1 On 10.08.2006, the State Government of Chhattisgarh had notified an area admeasuring 1000 sq. kms. in District North Bastar, Kanker, Chhattisgarh, as an area vacant for grant of Reconnaissance Permit (in short RP) for diamond, gold, copper, nickel and other base metals as also platinum group of minerals.

2.2 Consequent thereto, on 25.08.2006, in the Gazette of the State Government of Chhattisgarh, the said notification was published, whereby

applications were invited for grant of RP, in respect of the aforementioned area.

2.3 The petitioner applied for grant of RP for diamond, gold, copper, nickel and other base metals, as well as, platinum group of minerals qua an area admeasuring 920 sq. mtrs.

2.4 It appears on the very same day, other applications were also filed with the State Government.

2.5 Consequently, the State Government was called upon, to decide the inter-se priority of the applicants. It appears, there were four (4) applicants in the fray.

2.6 The State Government after hearing the applicants finally, based on a comparative analysis made by it, found the petitioner, the most suitable, applicant.

2.7 As a logical consequence on 25.09.2008, a recommendation was made by the State Government to the Government of India for grant of prior approval, under Section 5(1) of the Mines and Minerals (Development and Regulation) Act, 1957 (in short the MMDR Act).

2.8 It appears that respondent no.1 vide a communication dated 29.07.2009 raised certain queries with regard to the petitioner, which were responded to by the State Government vide its reply dated 06.10.2010.

2.9 Respondent no.1, not being satisfied, set out the deficiencies found qua the petitioner's proposal vide its communication dated 16.06.2011.

3. According to the petitioner, a fact which is not disputed by the learned counsel for respondent no.2 before me, information sought vis-a-vis the deficiencies pointed out were supplied by respondent no.2, vide communication dated 22.12.2011 and 24.01.2012.

3.1 I may only note that the learned counsel for respondent no.1 has drawn my attention to the counter affidavit filed on behalf of the said respondent , wherein a stand has been taken that communication dated 24.01.2012 was not received.

4. Be that as it may, respondent no.1, proceeded to pass the impugned order dated 17.02.2012.

4.1 By virtue of the said order, respondent no.1 rejected the proposal of the petitioner for grant of a RP as, according to it, the same did not meet the requirements as stipulated under Section 11 (3) of the MMDR Act, and the guidelines dated 24.6.2009 framed thereunder.

4.2 To be noted, the said order of the Central Government was communicated to the petitioner by the State Government i.e., respondent no.2 vide communication dated 24.09.2012.

4.3 Although, there is a reference in the petition that representations were made to the Central Government vis-a-vis the impugned order, the learned counsel for the petitioners has not been able to bring to my notice any such representation.

4.4 Suffice it to say, that the petitioner being aggrieved, has filed the present writ petition. The learned counsel for the petitioner's submits that, the order is unsustainable, for the following reasons :-

(i). That the impugned order has civil consequences and therefore, it required to be set aside as it was passed without notice to the petitioner.

(ii). The petitioner had supplied relevant material to respondent no.2, based on which, a recommendation was made by respondent no.2 to respondent no.1 vide communication dated 25.09.2008. None of which was taken into account while passing the impugned order.

4.5 It is in particular the petitioner's case that, none of the material with regard to the financial and technical strength of the petitioner was considered.

4.6 For the aforesaid reasons, the learned counsel for the petitioner says that, the impugned order needs to be set aside.

5. The learned counsel for respondent no.2, supports the submission of the petitioners to the extent that, the exercise with regard to the inter-se merit of applicants was dutifully done, and that, the finding returned by respondent no.2, were backed by relevant material.

6. On the other hand, the learned counsel for respondent no.1 seeks to rely upon, the impugned order to demonstrate that, the proposal for grant of RP was rightly rejected.

6.1 The learned counsel for respondent no.1, has also drawn my attention to the comparative chart to show that the petitioner was a newly incorporated company at the relevant point in time, and that consequently it virtually had no net worth.

6.2 In so far as the technical personnel are concerned, the learned counsel for respondent no.1 says that, the petitioner had only indicated that they propose to engage personnel, most of whom were not in place.

7. I have heard the learned counsels for the parties and perused the record.

7.1 While facially, there may be something to be said vis-a-vis the financial and technical strength of the petitioners, what respondent No.1 lost sight of was that it ought to have given an opportunity to the petitioners to, at least, persuade it, to uphold the recommendations made by respondent no.2, in its favour.

7.2 While the comparative chart does show that, petitioner No.1 is a company, which was incorporated only in 2005, there is a reference to the fact that, the Director of the company had the necessary wherewithal to invest funds. In this behalf, it may be relevant to note that the Director's net worth is shown as Rs.29.73 crores.

7.3 What seems to have persuaded respondent no.2, to recommend the case of the petitioners is that, their proposal promised value addition to the assets of the State i.e., State of Chhattisgarh.

7.4 As a matter of fact, in paragraph 18 of the counter affidavit, respondent no.2, has set out the reasons, as to why it chose to recommend the case of the petitioners. For the sake of convenience, the same is extracted hereinbelow :-

“..The answering respondent most humbly and respectfully submits that all the four applicants were found capable as per their respective company's financial and technical prowess. However, since M/s. Poddar Diamond Ltd. and M/s. Diamond India Ltd. had not submitted any proposal for value addition in the State of Chhattisgarh, the answering respondent had to make a choice for the purpose of awarding the permit between M/s. De Beers India Pvt. Ltd. and M/s. Idha Iron and Steel Ltd. owing to the fact that both these entities had submitted the proposal for value addition in the State of Chhattisgarh. However, since the proposal of M/s. Idha Iron was more particular with reference to setting up of cutting and polishing Industry in Raipur or any other suitable place in Chhattisgarh in the form of value addition, the said reconnaissance permit was awarded in the favour of M/s. Idha Iron and Steel Ltd..”

7.5 Having regard to the above, it is evident that respondent no.2, at least, is seeking to back its recommendation. Therefore, in my view, if for no other reason, for this reason alone, respondent no.1 should have at least

called upon the petitioner to support its case for the grant of RP.

8. In these circumstances, I am of the opinion that the order dated 17.02.2012, deserves to be set aside. It is ordered accordingly. Respondent no.1, will give an opportunity to the petitioners to present its case. Respondent no.1 shall thereafter pass a speaking order. While doing so due regard will be given to the material placed on record by respondent no.2, qua the proposal made by the petitioners. Respondent no.1, shall complete its exercise as expeditiously as possible though not later than twelve (12) weeks from today.

9. The writ petition is disposed of.

10. In order to hasten the process, the petitioners will be at liberty to place on record those documents which they had filed with their proposal for grant of RP, with respondent no.2.

RAJIV SHAKDHER, J

FEBRUARY 06, 2015

yg