

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

% **Date of decision: 14th October, 2015**

+ **W.P.(C) NO.5499/2012**

N. RAJASHEKAR **..... Petitioner**

Through: Ms. Shweta S. Parihar, Adv.

Versus

UNION OF INDIA AND ORS **..... Respondents**

Through: Mr. Vivek Goyal, Adv. for R-1.
Mr. Joseph Aristotle S. & Mr. M.B.
Elak Kumaran, Advs. for R-2.
Mr. Mayank Kshirsagar & Mr. Balaji
Srinivasan, Advs. for R-3.
Mr. Rajeev Sharma with Ms.
Radhalakshmi R. & Ms. Priyanka
Raj, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The petition impugns the order dated 28th February, 2012 of the Revision Authority (Central Government) under the Mines and Minerals (Development and Regulation) (MMDR) Act, 1957 of dismissal of the Revision Application (under Section 30 of the Act read with Rule 55 of the Mineral Concession Rules, 1960) preferred by the petitioner against the order dated 20th / 25th October, 2010 of the respondent No.2 Government of State of Karnataka.

2. The petition came up before this Court first on 3rd September, 2012

when the counsel for the petitioner confined the challenge in the petition to non consideration of the pertinent parameters in the matter of grant of mining lease, both by the Revision Authority as well as by the Original Authority.

3. Notice of the petition was issued, though interim relief sought was not granted. The matter has thereafter been adjourned from time to time. No counter affidavits have been filed by any of the respondents despite opportunity.

4. The counsel for the petitioner today also seeks adjournment on the ground that the main counsel Mr. Ankur S. Kulkarni is not available.

5. However, there is no justification for non appearance of the main counsel when the matter is listed before this Court and the petition as old as this cannot be kept pending awaiting the counsels.

6. The counsel for respondent No.3 Mysore Minerals Ltd. (MML) has been heard and the file has been perused.

7. The counsel for the respondent No.3 MML has at the outset drawn attention to the order dated 15th April, 2014 recording the *prima facie* view that this Court is not the *forum conveniens* for the present controversy and drawing attention of the counsels to ***Sterling Agro Industries Ltd. Vs.***

Union of India 181 (2011) DLT 658 (LB). He contends that since the matter relates to the mining lease of the State of Karnataka and the petitioner as well as the contesting respondents No.2 and 3 are also not situated within the territorial jurisdiction of this Court, the parties should be relegated to the jurisdiction of the High Court of Karnataka at Bangalore. Reliance is also placed on the judgment of the Division Bench of this Court in *Chinteshwar Steel Pvt. Ltd. Vs. Union of India* 2013 LawSuit (Del) 4608 in this regard.

8. I have however enquired from the counsel for the respondent No.3 MML, what is the local flavour in the present litigation, owing whereto this Court though admittedly having territorial jurisdiction to entertain this petition owing to the Revision Authority whose order is impugned being located within the territorial jurisdiction of this Court, should refuse to do so because of the High Court of Karnataka being a more appropriate and suitable Court to decide the controversy.

9. No such local flavour has been pointed out.

10. I am of the view that this Court would be justified in refusing to exercise the jurisdiction on the ground of *forum conveniens* only if finds that another High Court is the more appropriate and suitable Court to decide the controversy. Else, if the matter does not entail knowledge of any local

flavour and entails only adjudication of legal issues, the recusal of jurisdiction on such ground would not be proper. Reference in this regard may be made to *Jan Chetna Vs. Ministry of Environment & Forests* 189 (2012) DLT 550 where a Division Bench of this Court held where the challenge is purely legal and though relating to a project in the State of Chhattisgarh, has no local flavour to hold that the High Court of Chhattisgarh was better equipped to deal with the said issue rather than this Court, the doctrine of forum conveniens cannot be invoked and jurisdiction cannot be refused to be exercised.

11. A perusal of the record shows:

- (i) that in pursuance to the public notice issued by the Government of the State of Karnataka inviting applications for re-grant, under Rule 59 (1) of the Mineral Concession Rules, 1960, of mining rights, in land ad-measuring 147.18 acres in Doddakanya, Yechagalli and Gaddanapur villages of Nanjangud Taluk of Mysore district, for Dunite, Magnesite and Chromite Minerals, the petitioner, respondent No.3 MML as well as three others applied and the respondent No.2 Government of the State of Karnataka, after giving an

opportunity of hearing to all the applicants, vide order dated 20th / 25th October, 2010 granted the mining lease in favour of the respondent No.3 MML, an undertaking of the Government of Karnataka (GoK), and rejected the other applications including of the petitioner;

- (ii) aggrieved therefrom, the petitioner preferred the Revision Application aforesaid;
- (iii) it was the contention of the petitioner before the Revision Authority that his application being first in priority, the petitioner should have been granted the mining lease in preference over the respondent No.3 MML;
- (iv) the Revision Authority however, in the impugned order has reasoned that since the area had been re-notified for re-grant under Rule 59(1) as aforesaid, all applications received have to be considered simultaneously and the contention of the petitioner of having a preferential right for the reason of having applied first, is not correct;
- (v) the second ground urged by the petitioner before the Revision Authority was that there was violation by the Original

Authority i.e. respondent No.2 Government of State of Karnataka, of the principles of natural justice;

- (vi) no merit has been found by the Revision Authority in the said contention also, it being not disputed that the petitioner had also been given personal hearing by the respondent No.2 Government of the State of Karnataka;
- (vii) the third contention of the petitioner before the Revision Authority was that the grant of mining lease in favour of the respondent No.3 MML by the official of GoK who was a nominee Director of the GoK on the Board of Directors of respondent No.3 MML, was vitiated;
- (viii) the same also did not find merit with the Revision Authority;
- (ix) the Revision Authority has otherwise found that the respondent No.3 MML was granted the mining lease taking into consideration the experience in mining, manpower, machines, financial status and proposed investments in the project and that the State Government of Karnataka being the owner of the minerals within the State territories has taken a decision in the interest of the mineral development in the area.

12. I have perused the petition to see the grounds pleaded by the petitioner on the aspect of non consideration of pertinent parameters, the only ground to which the challenge in this petition was confined as aforesaid.

13. The case of the petitioner is, i) that he is an engineer by profession; ii) that he has worked for more than 30 years with Tata Iron and Steel Company Ltd. (TISCO) as Engineer and Contractor and has lot of experience in the field of mines and minerals; iii) that TISCO had been carrying on the mining operations in the said area for over 85-90 years on the basis of lease earlier granted by the Government of the State of Karnataka and the petitioner thus has special knowledge of mining operations of the said minerals in the area; iv) that the area came up for re-grant only on surrender of the lease by the TISCO in 2003; v) that the respondent No.2 GoK vide Notification dated 13th March, 2003 notified the availability of the said area for re-grant of mining lease under Rule 59 supra and invited applications for grant of mining lease; vi) that the petitioner, vide application dated 9th May, 2003 applied for mining lease; vii) that pursuant to the State Government processing the application of the petitioner, the Senior Geologist conducted a spot inspection of the said area

and filed a report dated 6th June, 2003 stating the availability of Magnesite, Chromite and Dunite in the said area and recommending it in favour of the petitioner; viii) that the respondent No.3 MML on 6th April, 2004 filed its application for grant of mining lease in the said area; ix) in further consideration of the petitioner's application, the Tehsildar, Mysore Taluk also conducted a spot inspection and submitted report dated 18th May, 2004 recommending grant of mining lease in favour of the petitioner; x) the Deputy Commissioner, Mysore also on 26th May, 2004 recommended grant of mining lease in favour of the petitioner; xi) that the respondent No.2 GoK vide its letter dated 17th June, 2004 sought approved mining plan from Indian Bureau of Mines (IBM), consent letter from Karnataka State Pollution Control Board (KSPCB) and Certificate from Department of Environment and Ecology (DEE), from the petitioner in pursuance to the application aforesaid of the petitioner; xii) that the petitioner accordingly applied to the IBM and obtained approval dated 9th November, 2005 and pursued the other permissions sought from him including of furnishing the project details to the Ministry of Environment and Forest (MoEF); xiii) that IBM on 10th January, 2008 approved the modified mining plan of the petitioner; xiv) that in pursuance to the application of the petitioner for

consent from the KSPCB, the Expert Appraisal Committee conducted a public hearing on 20th February, 2009 and the MoEF vide its letter dated 11th May, 2009 sought clarification from the Ministry of Mines pertaining to grant of mining lease stating that environment clearance is granted to the applicant pursuant to mining lease notification; xv) that the petitioner on 10th July, 2009 informed the respondent No.2 GoK of the status of the approvals and clearances by IBM, KSPCB and MOEF and informed that environment clearance will be granted pursuant to mining lease notification and requested to issue the notification; xvi) that the respondent No.2 GoK on 24th March, 2010 issued notice under Rule 26(1) to the petitioner asking him to submit his representation in respect of mining lease operations; xvii) that however the petitioner was shocked to receive the copy of the order dated 20th / 25th October, 2010 of the respondent No.2 GoK recommending grant of mining lease in favour of the respondent No.3 MML; and, xviii) that during the pendency of the Revision Application, the State Government of Karnataka allotted 10 acres of land from the aforesaid area for building a residential school for minorities and which was challenged by the petitioner by filing a writ petition before the High Court of Karnataka; in the said proceedings, the State Government of Karnataka took a stand that it is cancelling the

recommendation for grant of mining lease in favour of respondent No.3 MML and in view whereof the said writ petition was disposed of with liberty to the petitioner to revive if the lease in favour of the respondent No.3 MML is not eventually revoked.

14. The petitioner, in the petition, has contended, a) that the order dated 20th / 25th October, 2010 of the respondent No.2 GoK is non reasoned and contrary to Section 11(3) of the MMDR Act; b) that the respondent No.2 GoK by its conduct has created legitimate expectation in the petitioner and is bound by promissory estoppel; c) that the Notification dated 13th March, 2003 calling for applications was open ended without having a time limit for receiving applications and which is contrary to MMDR Act and the Rules as they provide for a 12 month period for disposal of applications; the respondent No.3 MML had applied only after more than one year of the notification; d) that the official of the Government of State of Karnataka who heard and passed the order dated 20th / 25th October, 2010 was also a Director on the Board of respondent No.3 MML and that the respondent No.2 GoK had before the High Court of Karnataka in the writ petition aforesaid informed of its decision to cancel the mining lease recommended in favour of respondent No.3 MML. Reliance in the petition itself is placed

on *Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka* JT 2010 (10) SC 157 where the Supreme Court, finding that the government gave no clear reasons to show as to why certain applicant was preferred over others, had quashed the order of the State Government. It is contended that the same is the position here.

15. Though no counter affidavits have been filed before this Court but the respondent No.2 GoK in its response to the Revision Application before the Revision Authority had pleaded:

- (i) that in response to the Notification dated 13th March, 2003 supra, five applications seeking grant of mining lease including from the petitioner and the respondent No.3 MML were received.
- (ii) that all the five applicants were afforded personal hearing on 22nd April, 2010 under Rule 26(1).
- (iii) that after assessing all the applications and taking into consideration Section 11(4) of the MMDR Act, the Government of State of Karnataka considered it appropriate to grant mining lease to the respondent No.3 MML which has vast experience in mining field since 1965;

- (iv) that as per Section 11(4) of the MMDR Act, all applications received in pursuance to the notification have to be considered simultaneously as if all such applications have been received on the same day and the State Government is to grant mining lease to the applicant it may deem fit taking into consideration the matters specified in Section 11(3).
- (v) that an applicant has to produce relevant documents only after final order is passed under Section 11(4) but the petitioner furnished the documents without waiting for the final order.

16. The petitioner, in the petition, has not pointed out any provision requiring priority to be given to the applicant who has obtained such approvals or any other pertinent parameters which ought to have been considered.

17. I have considered the case of the petitioner qua the contentions raised in the petition.

18. The Revision Authority, in the impugned order, has affirmed the said reasons. With respect to the approvals, which the petitioner claims to have already obtained, the Revision Authority reasoned that obtaining thereof was irrelevant inasmuch as the same were not required to be obtained prior to the

grant of mining lease. The said order of Revision Authority further records, i) that the respondent No.3 MML was also impleaded as a party to the revision petition and had filed its comments; ii) that the steps taken by the petitioner of obtaining various approvals and the particulars / clarifications sought from the petitioner were *null and void* since till then no lease had been granted in favour of the petitioner and without which the said steps could not have been taken; iii) that respondent No.3 MML is capable and more competitive than the petitioner and hence there was no violation in grant of mining lease in favour of the respondent No.3 MML; iv) that the statutory documents and clearances have to be submitted only after grant of mining lease; v) when compared to respondent No.3 MML, the petitioner's experience in the mining field is less; vi) the respondent No.3 MML has got manpower and machineries, no mention even whereof has been made by the petitioner; vii) the respondent No.3 MML is having financial status and ready to invest Rs.200 crores for the project; and, viii) though the petitioner had submitted NOC from Deputy Commissioner, Mysore but the said NOC had been withdrawn; the petitioner had filed a writ petition in the High Court of Karnataka in this regard but which has been dismissed.

19. It is not as if the Government of State of Karnataka or the Revision

Authority have not paid any heed to all the said pleas of the petitioner. The Government of the State of Karnataka in its order dated 20th / 25th October, 2010 chose respondent No.3 MML over the petitioner reasoning, (i) that the respondent No.3 is a GoK undertaking, operating for 45 years in different minerals especially in the backward areas of the State; (ii) that the respondent No.3 had been forced to stop mining lease falling in Western Ghats owing to the order of the Supreme Court, rendering 800 of its manpower surplus and loss of revenues; (iii) that another Magnesite Mine being operated by the respondent No.3 MML was going to be exhausted shortly and the technical staff employed therein also would be rendered workless; (iv) that the respondent No.3 MML has a sound financial capability.

20. The contention of the senior counsel for the petitioner on the first date of hearing i.e. 3rd September, 2012 as aforesaid that the pertinent parameters in the matter of grant of mining lease had not been considered, cannot thus be accepted.

21. The petitioner having limited the challenge in this writ petition to the ground of non-consideration of the pertinent parameters by the Revision Authority as well as by the Original Authority while coming to the

conclusion that respondent No.3 MML is more suitable for allocation of the mine in issue, I am not required to deal on merits with the contentions of the petitioner in the petition. The scope of the present writ petition has been confined to considering only whether the pertinent parameters have been considered or not.

22. I had however during the hearing also enquired from the counsels for the respondents whether an undertaking of the State Government was entitled to any weightage over others in the matter of grant of mining lease. Though at that time the counsels were unable to state anything but the counsel for the respondent No.3 MML has, after the order was dictated in the Court and before it could be signed and released, handed over a copy of the judgment of the Supreme Court in *Monnet Ispat and Energy Ltd. Vs. Union of India* (2012) 11 SCC 1 highlighting paras 133, 134, 137, 138, 143, 144, 213, 214 and 215 thereof.

23. On a reading of the aforesaid judgment, I find that the Supreme Court therein negated the plea of promissory estoppel and legitimate expectation in the matter of grant of mining lease. It was held that the doctrine of promissory estoppel may be applied against the government where the interest of justice, morality and common fairness dictated such a course and

where it is necessary to prevent fraud or manifest injustice; however the government, under the doctrine of promissory estoppel cannot be asked to do an act prohibited in law and in no case the doctrine of promissory estoppel can be pressed into it to compel the government or a public authority to carry out a representation or promise which is contrary to law or which is outside the authority or power of the officer of the government or the public authority to make. In this context, it was also held that no one has a legal or vested right to grant of a mining lease. Else, in the said judgment, in the context of the provisions of the MMDR Act providing for reservation of mining areas by State Government for exploitation by the public sector, it was held that the State Government's power as owner of land and minerals vested in it is inseparable from its authority to make reservation of a particular mining area within its territory for its own use and that setting aside by a State of land owned by it for its own exclusive use and under its dominance and control is an incident of sovereignty and ownership. It was further held that the State Government's paramount right as owner of the mines do not get affected by the MMDR Act. The sole rider is that the discretion so exercised by the State Government should not suffer from any legal flaw.

24. Though in the present case, the respondent No.2 GoK did not choose to reserve the said area for exploitation by the public sector and invited applications from public for grant of mining lease thereof and thus the judgment aforesaid cannot be said to apply on all fours but in my view the same nevertheless supports the proposition that the State Government even while considering such applications, other things being equal, cannot be faulted for exercising the discretion in the matter of grant of mining lease in favour of a public sector undertaking rather than to a private party if it is of the opinion that the same is in the interest of the State. That is what has happened in the present case. It is not the case of the petitioner that he is in any way better than the respondent No.3 MML in whose favour recommendation for grant of mining lease has been made. The claim of the petitioner for being better was premised only on his having applied prior in point of time and his having taking various other steps. However both of the said factors are found to be irrelevant and inconsequential in the matter of grant of mining lease as aforesaid.

25. Earlier also, I find the Supreme Court to have in *State of Tamil Nadu Vs. M.P.P. Kavery Chetty* (1995) 2 SCC 402 dismissed the challenge to Rule 19A of the Tamil Nadu Minor Mineral Concession Rules, 1959 giving

preference to a State Government Company or a Corporation or Company owned or controlled by the State Government holding that all things being equal, having regard to the other requirements provided in the Rules, there is nothing wrong in a State Government Company or Corporation being preferred.

26. I therefore do not find any merit in the petition; the same is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

OCTOBER 14, 2015

‘gsr’

(corrected & released on 24th December, 2015)