

IN THE HIGH COURT OF BOMBAY AT GOA**WRIT PETITION NO.573 of 2016**

Mrs. Maria de Lourdes Filomena
Figueiredo de Albuquerque,
Legal heir and Cabeça de Casal
of Amalia Rodrigues
G. Figueiredo, major of age,
Indian National resident of
House No.377, Loutolim,
Salcete Goa. .. Petitioner

V/s.

The Ministry of Environment,
Forest and Climate Change,
Through its Director,
Impact Assessment Division
Government of India
3rd Floor, Indira Paryavaran
Bhawan Jorbagh Road, Aliganj,
New Delhi 110 003 ... Respondent

Mr. A. F. Diniz and Mr. K. Noorani, Advocates for
the petitioner.

Mr. Mahesh Amonkar, Central Government Standing
Counsel for the respondent.

CORAM :- C. V. BHADANG &

Ms. Nutan D. Sardessai, JJ

Reserved on :- 22nd JULY, 2016

Pronounced on :- 26th July, 2016

JUDGMENT : (Per C. V. Bhadang, J.)

Rule, made returnable forthwith. Learned
Counsel for the respondent waives service. Heard

finally by consent of the parties.

2. The challenge in this petition, is to the communication dated 20/03/2015, whereunder, the respondent has refused to lift the abeyance of the Environmental Clearance (EC) in respect of the Title Concession (TC No.65/51) Pola Dongor Iron and Manganese Ore of the petitioner, on the ground that a part of the mining area, is a forest land.

3. The brief facts, necessary for the disposal of the petition, may be stated thus :

That on 18/07/2007, the respondent had granted environmental clearance to the petitioner's Mining Lease (TC No.65/51) under EIA Notification dated 14/09/2006. On 12/07/2010, the Director of Mines and Geology, Government of Goa vide their letter dated 12/07/2010, informed the Principal Chief Conservator of Forests that the State Government has approved the proposal to process the case, for obtaining the clearance under Section 2 of the Forests Conservations Act, 1980. (the Act of

1980, for short) and requested the Department to take further necessary action to process the application and move the respondent for clearance under Section 2 of the Act of 1980.

4. On 14/03/2011, the Deputy Conservator of Forests informed the petitioner that the said office has been frequently inspecting the Mining Lease of the petitioner and it was found that the mine was operational in non-forest area. It was also mentioned that the forest area in the mine has been demarcated on the ground with 4 feet High RCC pillars, serially numbered at 20 metres intervals and it was confirmed during the inspection that the mine was not operating in the forest area.

5. It appears that in pursuance of the direction of the Supreme Court, the Government of Goa issued an order suspending the mining operations of all Iron and Manganese Ore mining leases in the State with effect from 11/09/2012. The respondent, on the basis of Shah Commission Report, vide order dated 14/09/2012, suspended/ kept in abeyance the

Environmental Clearances of in all 139 Mining Leases in the State of Goa, including that of the petitioner, by virtue of an order under Section 5 of the Environment Protection Act, 1986 (Act of 1986, for short).

6. The Supreme Court decided the aforesaid Writ Petition No.435/2012 on 21/04/2014 and subsequently, the Mines and Minerals Development and Regulation Act came to be amended by the Mines and Minerals (Development and Regulation) (Amendment) Ordinance, 2015 with effect from 12/01/2015. By virtue of the said amendment, the mining leases stood extended till 31/03/2020.

7. It appears that the respondent undertook an exercise of lifting of the abeyance on the Environmental Clearances of the Iron and Manganese Ore of Mining Leases in Goa. In respect of 22 cases out of 137 mining leases (as two cases were found by way of repetition), it was found that there is a forest land in the leased area or dispute regarding involvement of forest land and forest clearance is

not available. Therefore, in the light of the judgment of the Supreme Court in ***T.N. Goodavarman Thirumulpad Vs. UOI and others in Lafarge Umiam Mining Pvt. Ltd. Vs. Union of India and Ors;*** MANU/SC/0735/2011, it was found that Environmental Clearance can be granted only after obtaining of Stage I forest clearance. It has, therefore, been directed that these cases for lifting abeyance, would be considered after obtaining the forest clearance. The aforesaid twenty two cases include the case of the petitioner having TC No.65/51. By the impugned communication, the respondent has lifted the abeyance in respect of 72 cases, which includes 35 cases, in which the Environmental Clearance was granted under the EI Notification of 1994 and 37 cases, in which the Environmental Clearance was granted under EI Notification of 2006. One of the conditions as per para 10(2) of the impugned communication, is that no mining shall be allowed in the forest land, for which forest clearance is not available.

8. Feeling aggrieved by the refusal of the

respondent to lift the abeyance, for want of forest clearance, the petitioner is before this Court.

9. We have heard Shri Diniz, the learned Counsel for the petitioner and Shri Amonkar, the learned Central Government Standing Counsel for the respondent.

10. It is submitted by the learned Counsel for the petitioner that the petitioner has been granted Environmental Clearance in the year 2007 under the EI Notification dated 14/09/2006. It is submitted that the decision of the Supreme Court in the case of **Lafarge Umiam Mining Pvt. Ltd.** (supra) came on 06/07/2011. The learned Counsel has pointed out that the said decision applies to future cases and not where the Environmental Clearance is already obtained and is subsisting. It is, thus, submitted that the respondent could not have refused to lift the abeyance by placing reliance on the decision in the case of **Lafarge Umiam Mining Pvt. Ltd.** (supra).

11. It is next contended that the respondent

could not have refused to lift the abeyance, particularly when it has been found by the Forest Department that the forest area is segregated and has been cordoned off by erection of cement pillars and the Forest Authorities had found that no mining activities are carried out in the forest area. It is submitted that thus, the abeyance which even operates so far as the mining operations to the non-forest area is concerned, is clearly discriminatory and without any nexus to the object sought to be achieved. The learned Counsel has referred to the condition No.10(2), in which it is stipulated that no mining would be allowed in the forest land in which Forest Clearance is not available. It is contended that if such a condition can be imposed in respect of concessions in respect of which, the abeyance is lifted, the same condition can be imposed in respect of the petitioner to the extent of the mining lease falling in forest area. It is submitted that thus, the impugned decision, refusing to lift the abeyance in respect of the Title Concession of the petitioner is arbitrary and discriminatory, which needs to be set aside.

12. Shri Amonkar, the learned Counsel for the respondent has supported the impugned order. It is submitted that in respect of all such mining leases where (i) the part of the mining lease comprises of a forest area and/ or (ii) where there is a dispute whether mining lease comprises a forest area, the respondent has refused to lift the abeyance. It is submitted that thus, the contention that there is discrimination, cannot be accepted. It is submitted that once the part of the mining area is a forest land, the authority was justified in postponing the lifting of abeyance till the Stage I forest clearance is obtained. It is further submitted that the decision in the case of **Lafarge Umiam Mining Pvt. Ltd.** (supra) would be applicable and no case for interference in the impugned decision has been made out.

13. We have carefully considered the rival circumstances and the submissions made.

14. It appears from the communication dated

20/03/2015 that the respondent had constituted an Expert Appraisal Committee (EAC) on 21/03/2013, which submitted its report in October, 2013. The State Government has renewed the leases in 88 cases and had requested the Ministry to lift the abeyance on Environmental Clearance vide letters dated 07/01/2015 and 05/02/2015. Mines and Minerals (Development and Regulation) (Amendment) Ordinance, 2015 came into force on 12/01/2015, extending the mining leases for Merchant Mines till 31/03/2020. In view of this, the respondent had considered in all 137 cases for lifting of abeyance, on Environmental Clearance, which was issued on 14/09/2012, in the context of recommendation of EAC and as per the direction of the Supreme Court, in its order dated 21/04/2014, in Writ Petition No.435/2012, in the matter of **Goa Foundation Vs. Union of India**. The case of the petitioner (TC No.65/51) is one out of the 22 cases, where there is forest land in the leased area. The respondent has refused to lift the abeyance on the ground that Stage I Forest Clearance is not available and it says that the Environmental Clearance shall be issued only after Stage I Forest

Clearance is obtained. The respondent has placed reliance on the decision of Supreme Court in the case of **Lafarge Umiam Mining Pvt. Ltd.** (supra).

15. The contention on behalf of the petitioners are two fold, firstly that the petitioner already having obtained Environmental Clearance in the year 2007 as per the EI Notification of 2006, the decision in the case of **Lafarge Umiam Mining Pvt. Ltd.** (supra) would not apply, in as much as guidelines as set out in para 2 of the judgment are to be followed in future cases; secondly, the Forest area has already been cardoned off, which is apparent from the letter dated 14/03/2011 of the Deputy Conservator of Forest, which states that the Forest area in mining lease is demarcated on the ground and it was confirmed during inspection that the mine is not working in forest area. It is contended that the Environmental Clearance granted to the petitioner also categorically refers to the forest and non-forest part of the mining area.

16. The Supreme Court in the case of **Lafarge Umiam Mining Pvt. Ltd.** (supra), in para 30 held thus:

"30. Time has come for us to apply the constitutional "doctrine of proportionality" to the matters concerning environment as a part of the process of judicial review in contradistinction to merit review. It cannot be gainsaid that utilization of the environment and its natural resources has to be in a way that is consistent with principles of sustainable development and intergenerational equity, but balancing of these equities may entail policy choices. In the circumstances, barring exceptions, decisions relating to utilization of natural resources have to be tested on the anvil of the well-recognized principles of judicial review. Have all the relevant factors been taken into account? Have any extraneous factors influenced the decision? Is the decision strictly in accordance with the legislative policy underlying the law (if any) that governs the field? Is the decision consistent with the principles of sustainable development in the sense that has the decision-maker taken into

account the said principle and, on the basis of relevant considerations, arrived at a balanced decision? Thus, the court should review the decision-making process to ensure that the decision of MoEF is fair and fully informed, based on the correct principles, and free from any bias or restraint. Once this is ensured, then the doctrine of "margin of appreciation" in favour of the decision-maker would come into play. Our above view is further strengthened by the decision of the Court of Appeal in the case of R V. Chester City Council reported in (2011) 1 All ER 476 (paras 14 to 16)."

(Emphasis supplied)

It can, thus, be seen that while examining the challenge to the impugned decision, the Court has to look to the decision making process, to ensure that the decision is fair and fully informed, based on the correct principles and free from any bias or restraint. It has to be seen that relevant material has been considered.

17. In such circumstances, in our considered

view, it would be appropriate if the Competent Authority of the respondent decides the matter in respect of lifting of abeyance of the Environmental Clearance in respect of the petitioner (TC No.65/51) afresh, after hearing the petitioner or her representative.

18. Hence, we pass the following order :

(i) The petition is partly allowed.

(ii) The impugned communication dated 20/03/2015 to the extent it refuses to lift the abeyance of the Environmental Clearance in respect of TC No.65/51 of the petitioner, is hereby set aside.

(iii) The matter is remanded back to the respondent.

(iv) The Competent Authority of the respondent shall hear the petitioner or her representative and shall decide the matter afresh, in accordance with law.

(v) Rival contentions are left open.

(vi) Rule is made partly absolute in the aforesaid terms, with no order as to costs.

(vii) The respondent shall take a decision in the matter within a period of eight weeks from today.

Nutan D. Sardessai, J.

C. V. BHADANG, J.

SMA