

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

* * * *

Writ Petition No. 3434 of 2011

Between:

D. Shankarlal Sharma

....Petitioner

And

The Union of India, rep. by its
Secretary (Mines), Ministry of Mines,
Shastri Bhavan, New Delhi and others

....Respondents

ORDER PRONOUNCED ON : **12.04.2016**

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers : YES
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : NO
Marked to Law Reporters/Journals?
3. Whether Their Ladyship/Lordship wish to : NO
see the fair copy of the Judgment?

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No. 3434 of 2011

Order:

Heard Sri S.S. Prasad, learned Senior Counsel for the petitioner, learned Government Pleader for Mines and Smt. N. Shoba, learned counsel for the sixth respondent.

2. The petitioner submitted an application on 12.04.2007 for grant of mining lease for Manganese Ore in an extent of 34.78 Acres in Survey Nos.3 and 15 of Duvvam village, Garividi Mandal, Vizianagaram District. The petitioner was invited by the fifth

respondent for inspection, survey and demarcation of the applied area on 07.09.2007 and the petitioner attended for the same. Consequent to the survey, the extent was reduced to 32.41 Acres. The petitioner consented for the same. The Tahsildar, Garividi Mandal issued No-Objection Certificate for grant of mining lease for the said extent of 32.41 Acres, by his letter dated 18.09.2007. The fifth respondent recommended the sanction of mining lease in favour of the petitioner to the third respondent for onward transmission to the second respondent. Since the petitioner already set up a Sinter manufacturing unit with a capacity of 9000 MT per annum, he submitted a representation on 10.09.2007, addressed to the fifth respondent and also a letter dated 22.10.2007 to the second respondent to consider the mining lease application for preference under Section 11(5) of the Mines and Minerals (Development and Regulation) Act, 1957. The second respondent issued a memo No.12228/M.III(2)/2008-2, dated 14.10.2008, directing the petitioner to show cause as to why the mining lease application dated 12.04.2007 should not be rejected. In response to the said show cause notice the petitioner submitted a detailed explanation through his counsel on 29.10.2008 to the second respondent. The second respondent issued memo No.12228/M.III(2)/2008-2, dated 05.01.2009 indicating the decision of the Government deciding to grant mining lease for Manganese Ore over an extent of 39.65 Hectares in Survey Nos.3/3, 15 to 19 and 29 to 31 of Duvvam village, Garividi Mandal, Vizianagaram District for a period of 20 years in favour of the sixth respondent. Challenging the said decision, the petitioner filed a statutory revision application on 16.02.2009 under Rule 54 of the Mineral Concession Rules, 1960 before the first respondent. After hearing the parties, the first respondent passed final orders, vide No.417 of 2010 dated 04.10.2010 in RA No.02(5)/2009-RC-II, rejecting the revision application of the petitioner dated 16.02.2009. Challenging the same, the above Writ Petition was filed.

3. The sixth respondent filed a counter affidavit stating that it applied for grant of mining lease on 31.08.1991 in an extent of 39.655 Hectares in Survey Nos.3/3, 15 to 19 and 29 to 31 of Duvvam village, Garividi Mandal, Vizianagaram District. The Assistant Director of Mines and Geology surveyed the area on 10.10.1991 and forwarded his report to the Director of Mines and Geology, vide his letter No.3651/M/91 dated 16.11.1991. The District Collector issued a No-Objection Certificate vide his letter dated 27.04.1992. When the application of the sixth respondent was not disposed of, the sixth respondent preferred a revision under Rule 64 of the Mineral Concession Rules, 1960. The revision application of the sixth respondent was rejected on the ground that as per the amended provision, the time limit is 24 months, hence directed to approach after 10.09.1993. The sixth respondent preferred revision on 01.10.1993 for setting aside the deemed rejection of the application. But, the application of the sixth respondent was returned by the first respondent in its order dated 15.10.1993 on the ground that the deemed refusal provisions were deleted vide GSR No.6-E, dated 07.01.1993. Later on, by GO Ms. No.276, Industries and Commerce Department dated 13.08.1993, the area specified was de-reserved which was earlier notified exclusive exploitation. The counter affidavit further states that there were several amendments to Section 11 of the Mines and Minerals (Development and Regulation) Act, 1957 and one such amendment is by Act 38 of 1999 with effect from 20.12.1999. The writ petitioner submitted his application for grant of mining lease overlapping the area applied by the sixth respondent on 20.04.2007. There was also another application received on 20.04.2007, but those two applications were subsequent to the application of the sixth respondent. Further, the application is only for the land in Survey Nos.3 and 15 of Duvvam village. In the absence of any notification inviting applications fixing a date as provided in Rule 59(1)(ii) of Mineral Concession Rules, 1960 the application of the sixth

respondent cannot be called as premature application. The application of the writ petitioner dated 12.04.2007 was 13 years after issuing the notification of de-reservation and hence cannot claim any priority for grant of mining lease.

4. Though the present writ petition was filed challenging the proceedings of the second respondent dated 05.01.2009, certain events took place subsequent to filing of the Writ Petition which have bearing on the present dispute. As stated earlier, there were three applications; the application of the writ petitioner and the sixth respondent apart from the application of one third party by name SK Sarwagi and Company Private Limited. The third party filed an application on 19.04.2007 in respect of the very same area which is involved in the present Writ Petition. The third party, M/s. Sarwagi and Company Private Limited preferred a revision to the first respondent against the impugned order. The case of the third party was that the mining lease for the area was earlier granted to M/s. Rai Bahadur Seth Shreeram Durga Prasad and Fatehchand Narsing Das (RBSSD & FND) and their mining lease was cancelled on account of huge default in payment of royalties; that the area in question was thereafter reserved vide order dated 05.01.1978 for public sector undertakings; since RBSSD and FND could not itself apply for re-grant of mining lease of the said area, made the sixth respondent herein, a partnership concern whose partners are blood relatives of the partners of RBSSD & FND, apply for mining lease, vide application dated 03.09.1991; that the application of the sixth respondent was premature as the area was not available for grant and reserved for public sector undertakings and hence it ought to have been rejected. The revision preferred by the third party was dismissed by the first respondent on 21.06.2010. Challenging the said dismissal, the said third party preferred WP(C) No.6618 of 2010, before the High Court of Delhi and the same was allowed on 04.10.2010 by the learned single Judge of High Court of Delhi remanding the matter and the order dated 21.06.2010 of the first

respondent was set aside. The 1st respondent was directed to consider the matter afresh. On remand, the first respondent passed an order on 14.09.2011 again dismissing the revision of the third party. When the same was challenged again before the High Court of Delhi in WP (C) No.8793 of 2011, a learned single Judge of the High Court of Delhi allowed the Writ Petition by an order dated 09.02.2012, by considering the point whether the application of the sixth respondent herein who was arrayed as a respondent in the Writ Petition filed by the third party was governed by the proviso to Section 11(2) of the Act or under Section 11(4) of the Act and held that in view of the decision of the Hon'ble Supreme Court in **Sandur Manganese and Iron Ores Limited v. State of Karnataka**^[1], Section 11(2) applies only to virgin areas and not to notified areas and, accordingly, held that the application of the sixth respondent herein dated 03.09.1991 was premature and could not have been given priority under Section 11(2) of the Act. He directed the State Government to invite fresh applications in terms of notification dated 05.09.1994 for grant of mining lease with respect to subject area. The sixth respondent herein preferred LPA No.234 of 2012 before a Division Bench of the High Court of Delhi, which dismissed the appeal, by an order dated 27.03.2012. The Division Bench took into consideration the amendment made to Section 11 of the Act which has to be applied to the consideration of the application by taking into account the date of consideration of application as the date relevant for the purpose of application of the provision. It held that the State Government erred in applying the rule prevailing on the date of filing of the application rather than the date of consideration of the application. As a result of such decision on an appeal preferred by the sixth respondent herein now the State Government is obligated to invite fresh applications in terms of notification dated 05.09.1994 for grant of mining lease with respect to subject area.

5. The petitioner herein who applied on 12.04.2007 submits that the benefit availed by the petitioner in WP(C) No.8793 of 2011 before the High Court of Delhi should be extended to the present writ petitioner also. Since the very order which is impugned in the present Writ Petition was under challenge before the High Court of Delhi which rendered its decision on sound lines, there is no reason for this Court to differ from the view expressed by the High Court of Delhi.

6. The relevant portion of the impugned order dated 05.01.2009 passed by the second respondent reads as follows.

“On receipt of the said notices M/s. S.K. Sarawagi and Company Pvt. Ltd., and Sri D. Shankarlal Sharma have submitted their representations vide references 7th and 8th cited. They have mainly objected for consideration of the application of M/s. Radhika Metals and Minerals which was filed on 03.09.1991 i.e., when the subject area was under reservation for the use of Public Sector. However, the Director of Mines and Geology while giving factual position has stated that as per sub-section 2 of section 11 of MM (D&R) Act, 1957 the application M/s Radhika Metals and Minerals has to be treated as eligible as it is received on the 1st day of the date from which the applications are entertained for this area. However, M/s Radhika Metals and Minerals has stated that they are a group of companies and the only mine owner in the country to have diversified uses of Manganese Ore and their present area applied is contiguous with their existing mining leases and buffer zone can be avoided and scientific and systematic mining is possible and going for value addition.

After careful examination of the matter, Government felt that the Director of Mines and Geology while giving factual position in his proposals vide reference 4th cited have already examined the objections raised by the later applicants and recommended the case of M/s Radhika Metals and Minerals, as they have got priority under sub-section 2 of section 11 of MM (D&R) Act, 1957. Accordingly the applications of Sri D. Shankarlal Sharma and M/s S.K. Sarawagi and Company Private Limited, deserves no consideration and their ML applications 2nd and 3rd cited are hereby rejected.

Further, Government have provisionally decided for grant of mining lease for Manganese Ore over an extent of 39.655 Hectares in Survey No.3/3, 15 to 19 and 29 to 31 of

Duvvam village, Garividi Mandal, Vizianagaram District, in favour of M/s Radhika Metals and Minerals for a period of 20 years, subject to obtaining the Consent for Establishment (CFE) from the State

Pollution Control Board and Environmental Clearance from MoEF, GOI as per the Notification No.SO 1533, dated 14.09.2006 and also subject to prior approval of GoI under Section 5(1)(a) of MM (D&R) Act, 1957, and subject to submission of AMP under Rule 22(4) of MC Rules 1960.”

7. When the same was challenged by the petitioner herein, the revision of the petitioner was dismissed by following the order passed in the revision filed by M/s. SK Sarawagi and Company Private Limited on 21.06.2010. But as stated above, the said order dated 21-6-2010 was set aside by the High Court of Delhi in WP(C) No.6618 of 2010 dated 04.10.2010 and the matter was remanded. After remand, when an order was passed by the first respondent on 14.09.2011 dismissing the revision preferred by M/s. SK Sarawagi and Company Private Limited, it was challenged and the same was allowed by the learned single Judge of the High Court of Delhi as stated above and was confirmed by the Division Bench of the said High Court.

8. Section 11 of the Mines and Minerals (Development and Regulation) Act, 1957 as on the date of consideration of the application of the sixth respondent reads as follows.

“Section 11.Preferential right of certain persons.—

(1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person: Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,—

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

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

licence;

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

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

(2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section:

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) The matters referred to in sub-section (2) are the following:—

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) such other matters as may be prescribed.

(4) Subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier: Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section.”

9. The High Court of Delhi, on the basis of the law applicable to the case, held that the law prevailing as on the date of consideration of the application should be taken into account, but not the law prevailing on the date of filing of the application. After de-reserving the subject area, the Government has not issued any notification inviting applications. The application of the sixth respondent was prior to the date of de-reservation, whereas the applications of the petitioner herein and the third party (M/s SK Sarawagi and Company Private Limited) were subsequent to the date of de-reservation. As stated above, by virtue of

the order of the High Court of Delhi, the State Government has to issue a notification inviting applications consequent to the de-reservation of the area.

10. In that view of the matter, the impugned order of the first respondent dated 01.10.2010, confirming the order of the second respondent dated 05.01.2009, has to be set aside and are, accordingly, set aside. The State Government is directed to issue a notification inviting applications consequent to de-reservation of the area.

11. The Writ Petition is, accordingly, allowed. However, in the circumstances, no costs.

12. As a sequel thereto, the miscellaneous applications, if any pending in this Writ Petition shall stand closed.

A.
Date: 12th April 2016
Nsr

RAMALINGESWARA RAO, J

[\[1\]](#) (2010) 13 SCC 1