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

+ **W.P.(C) 3849/2012 & C.M. Nos. 8066/2012 & 18292/2012**

APLLE ALLOYS PVT LTD

..... Petitioner

Through: Mr Kailash Pandey, Mr Ranjeet Singh
and Ms Nupur Sharma, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Abhay Prakash Sahay, CGSC
with Mr Shivam Wadhwa and Mr
Suraj Kumar, Advocates for UOI.
Mr Ravi Kishan, Mr G. Prabhakar
and Mr Deepak Jaiswal, Advocates
for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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13.09.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 11.04.2012 (hereafter 'the impugned order') passed by the Central Government pursuant to the Revision Application filed by the petitioner against a demand notice dated 11.05.2011 (hereafter 'the impugned demand notice') issued by the State Government of Andhra Pradesh (hereafter 'the State Government'). The State Government had issued the impugned demand notice calling upon Sh Raghavacharyulu (the erstwhile lessee) to pay a sum of ₹1,04,98,389/- under Section 21(5) of The Mines and Minerals (Development and Regulation) Act, 1957 (hereafter 'the MMDR Act').

2. The impugned demand notice is premised on the basis that certain quantities of iron ore had been transported without a valid permit. This conclusion was drawn on the basis of the reports indicating discrepancy in the quantity of the closing stock of minerals and the monthly returns filed. The State Government had found that the difference in quantities of iron ore lumps was 18,605 MTs and difference in iron ore fines 14,256 MTs. The State Government had determined the value of the said stock at ₹90,21,763/- and the royalty payable thereon at ₹10,83,926/-. Accordingly a demand of ₹1,01,05,689/- was raised being the value of the shortfall of Iron Ore and the Royalty payable.

3. The impugned demand notice was challenged by the petitioner before the Central Government (hereafter, 'Mines Tribunal') under Section 30 of the MMDR Act. The said revision petition was rejected in terms of the impugned order.

4. The learned counsel appearing for the petitioner has restricted the challenge to the impugned order only on the limited ground that Section 21(5) of the MMDR Act – in terms of which the impugned demand has been raised – is inapplicable. The petitioner contends that even if the allegation that the iron ore was illegally transported without valid permit is accepted, the petitioner would not be liable to pay any penalty under Section 21(5) of the MMDR Act. He submits that there is no allegation that the iron ore was raised without lawful authority and, therefore, the cost of the mineral raised cannot be recovered.

5. The above controversy arises in the context of the following facts:-

5.1 By a notification dated 25.11.2004, the State Government granted a mining lease for laterite iron ore over land measuring 54.251 hectares located at Machanur (V), Pendimrri (M) Y.S.R. District (Kadapa) in favour of Sh M Subbarao. The said lease is hereafter referred to as 'the Lease'. The term of the Lease was for a period of 20 years and the lease deed was executed on 05.02.2005. Accordingly, the term of the lease would extend till 04.02.2025. The Lease was transferred, with the permission of the State Government, to K. Raghavacharyulu on 24.01.2007. Thereafter, by a notification dated 16.11.2010, the lease was further transferred by K. Raghavacharyulu in favour of the petitioner. Admittedly, the petitioner (the transferee) had furnished an undertaking by way of an affidavit dated 21.06.2010 affirming that it would accept all liabilities and pay arrears payable by the transferor (the erstwhile lessee).

5.2 The Deputy Director of Mines & Geology, Kadapa Region, Hyderabad (respondent no.3) had sought genuinity report with respect to 211 Transit Forms submitted by one M/s Vinayaka Steels Limited in respect of purchase of iron ore from Kadapa District. It was reported that 100 Transit Forms had been issued to K. Raghavacharyulu on 15.07.2008 but the consignee particulars did not tally with the despatch particulars submitted by him.

5.3 On 27.07.2010, an inspection was conducted at the mine head and a stock of 277 Mts of ore (processed or unprocessed) was found at the mine. It is stated that the monthly returns furnished for the month of July, 2010 disclosed a stock of mineral at 40,112 MTs. Accordingly, the Royalty Inspector reported that there was a discrepancy in the closing stock

mentioned in the monthly returns furnished by the Lessee and the stocks available at the mine head. Further, inspections were also carried out on 20.08.2010 and on 02.12.2010.

5.4 On the basis of the said reports, it was found that there was a discrepancy in the closing stock and the monthly returns.

5.5 In view of the above, a show cause notice dated 11.02.2011 was issued to K. Raghavacharyulu calling upon him to show cause as to why action should be not initiated on account of the discrepancy in the stocks identified in the inspection report dated 02.12.2010. Sh. K. Raghavacharyulu responded to the said show cause notice on 24.03.2011 through his constituted attorney. In the said response, it was stated that large heaps of iron ore in the form of Run-of-Mines (ROM) had not been taken into account. It was also stated that the Mines Manager had submitted monthly returns without proper knowledge between ROM, Lumps and Fines.

5.6 The said explanation was not accepted and the impugned demand notice was issued. The petitioner states that the said demand notice was served on Sh. K. Raghavacharyulu and not on the petitioner. The petitioner became aware of it subsequently and filed a revision petition before the Mines Tribunal under Section 30 of the MMDR Act.

5.7 The said proceedings culminated in the impugned order.

Reasons and Conclusion

6. At the outset, it is relevant to state that it is not necessary to examine the controversy whether there was, in fact, any discrepancy in the stock as

reported and the stock as found at site. The learned counsel appearing for the petitioner has not contested the findings of fact; as noticed hereinbefore, he has limited the challenge to the impugned order and the impugned demand notice only on the question of applicability of Section 21(5) of the MMDR Act.

7. The learned counsel appearing for the respondents have, at the outset, raised a preliminary objection as to the maintainability of the present petition and the jurisdiction of this Court to entertain the same.

8. Thus, the first and foremost question to be examined is whether the petitioner should be relegated to approach the Andhra Pradesh High Court on the ground of *forum non conveniens*. Mr Abhay Prakash Sahay, the learned counsel appearing for the respondents contended that since the Mine in question was located in Andhra Pradesh, the present petitioner ought to be relegated to approach the High Court in Andhra Pradesh. He earnestly contended that this Court would not have the jurisdiction to entertain the present petition. He relied upon the decision of this Court in ***M/s Sterling Agro Industries Ltd. v. Union of India: 181 (2011) DLT 658*** in support of his contention.

9. The contention that this Court does not have jurisdiction to entertain the present petition, is unmerited. The petitioner has impugned the order of the Central Government passed under Section 30 of the MMDR Act. Admittedly, the impugned order has been passed in New Delhi. This Court also does not consider it apposite to relegate the petitioner to approach the Andhra Pradesh High Court on the ground of *forum non conveniens*, as the

present petition is pending before this Court since over six years.

10. The next question to be examined is whether the impugned demand, whereby penalty had been imposed under Section 21(5) of the MMDR Act, is sustainable in terms of the said provision.

11. Section 21 of the MMDR Act provides for levy of penalties in respect of contravention of certain provisions of the said enactment and the rules made thereunder. Section 21(5) of the MMDR Act is set out below:-

“21. Penalties.—

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“(5) Whenever any person raises, without any lawful authority, any mineral from any land, the State Government may recover from such person the mineral so raised, or, where such mineral has already been disposed of, the price thereof, and may also recover from such person, rent, royalty or tax, as the case may be, for the period during which the land was occupied by such person without any lawful authority.”

12. It is apparent from the plain reading of Section 21(5) of the MMDR Act that the penalty contemplated therein can be levied only in cases where a person raises any mineral from any land “*without any lawful authority*”. Thus, the threshold condition to be satisfied for levy of penalty is that mineral should have been raised without lawful authority. This Court had pointedly inquired from the learned counsel for the respondents whether it was their case that the petitioner or its predecessor-in-interest did not have the authority to raise the iron ore from the Mine in question. Mr Abhay Prakash Sahay, learned counsel for the respondents did not dispute that the

petitioner/its predecessor in interest could mine the ore by working the Lease. He, however, contended that the expression “without any lawful authority”, as used in Section 21(5) of the MMDR Act, could not be construed narrowly. He submitted that the discrepancy in the stocks indicated that the iron ore had been transported without disclosing the same and without payment of royalty and, therefore, the same would fall within the scope of illegal mining/ mining without any lawful authority. He referred to the decision of the Supreme Court in the case of **Common Cause v. Union of India and Ors.: (2017) 9 SCC 499** and drew the attention of this Court to paragraphs 126 to 130 of the said decision. He contended on the strength of the aforesaid decision that penalty under Section 21(5) of the MMDR Act would be attracted in the case of any violation of the MMDR Act or the rules made thereunder.

13. It is apparent from a plain reading of the impugned demand notice that the imposition of penalty is premised on the finding that the iron ore had been transported without a valid permit. This is apparent from the opening sentences of the penultimate paragraph of the impugned demand notice that reads as under:-

“In view of the above circumstances it is presumed that the above mentioned total quantity of Iron ore was transported without valid permit. Hence the lessee lay able [sic] the pay the Royalty and cost of the Mineral under section 21(5) MM(D&R) act 1957 as detailed below:-.....”

14. There does not appear to be any allegation that minerals had been raised from the Mine in question without any lawful authority. In absence of any such finding, it is difficult to accept that penalty under Section 21(5) of

the MMDR Act would be attracted. Penalty under Section 21(5) can be levied only in cases where mineral is raised without authority of law.

15. The decision in the case of ***Common Cause v. Union of India and Ors.*** (*supra*) may not be of any assistance to the respondents. Paragraph 130 of the said decision, which is relied upon by the respondents, reads as under:-

“It is not, as suggested by the learned counsel, that illegal mining is confined only to mining operations outside a leased area. Such an activity is obviously illegal or unlawful mining. Illegal mining takes within its fold excess extraction of a mineral over the permissible limit even within the mining lease area which is held under lawful authority, if that excess extraction is contrary to the mining scheme, the mining plan, the mining lease or a statutory requirement. Even otherwise, it is not possible for us to accept the narrow interpretation sought to be canvassed by the learned counsel for the mining lease holders particularly since we are dealing with a natural resource which is intended for the benefit of everyone and not only for the benefit of the mining lease holders.”

16. Indisputably, the expressions “without lawful authority” and “illegal mining” are required to be interpreted in a wider sense. Illegal mining would include excess extraction of minerals over the permissible limit in the mining area or any excess extraction contrary to the mining scheme, mining plan or any statutory requirement. It is difficult to accept that illegal transportation of minerals, which have been raised in accordance with the mining plan, would constitute illegal mining.

17. The contention that transporting of minerals without permit would not invite penalties under Section 21(5) of the Act, was rejected by the Central

Government in the following words:-

“4.5 Section 21(5) of MMDR Act 1957 was invoked against the mining lease holder for the following breaches:-

(a) The missing quantity identified was the quantity not covered under advance royalty payment which was detected by the authorised inspecting officers after thoroughly verifying all the facts and information as per the records, which is in contravention of provisions of Section 21(5) of MMDR Act, 1957 and amended rules therein and the same consequently treated as unauthorized mining inspite of the existence of the mining lease. Hence the contention of revisionist is false.

(b) The penal clause, is one and the same both for lease holders and non-lease holders and that demand notice is raised under Section 21(5) of MMDR Act 1957 and not under 27(5) of MC Rules, 1960 and the question of lease holder falling within in the ambit of Rule 27(5) of MC Rules, 1960 does not arise.”

18. It is apparent from the above that the Central Government has not addressed the real issue involved in the present petition, that is, whether transportation of iron ore without submitting the necessary monthly returns and without adequate permit would constitute raising of minerals “without authority of law”. Further, the Mines Tribunal has also not considered the question whether, in fact, the mineral in question was raised without authority of law.

19. In view of the above, the impugned order is set aside to the limited extent that it holds Section 21(5) of the MMDR Act is applicable. The matter is remanded to the Mines Tribunal (Central Government) to consider the question whether the petitioner/its predecessor is guilty of raising the

mineral without authority of law.

20. Before concluding, it would be relevant to note that the learned counsel for the petitioner had conceded at the outset that the petitioner would be liable to pay the Royalty and the challenge was limited only to the recovery of the value of mineral. The impugned demand notice indicates that the Royalty has been computed at ₹10,83,926/-. Thus, there is no dispute that the petitioner is liable to pay the said amount as included in the impugned demand notice. In addition, the petitioner would also be liable to pay interest on the same. The only dispute that is required to be addressed by the Mines Tribunal is with regard to the recovery of the value of the iron ore.

21. The petition is disposed of in the above terms. All pending applications stand disposed of.

VIBHU BAKHRU, J

SEPTEMBER 13, 2018

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