

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Judgment reserved on: 24/01/2019****Judgment delivered on: 26/02/2019****WP No. 177 of 2005**

1. M/s Chhattisgarh minerals and Smelting Limited, a Company, through Shri Rohit Agrawal, S/o Shri G.P. Agrawal, aged about 26 years, Executive Director of M/s. Chhattisgarh Minerals Raipur, Chhattisgarh, having its Registered Office at Plot No.5 Urla Industrial area post office Birgaon.
2. Shri Rohit Agrawal S/o Shri G.P. Agrawal, aged about 26 years, Executive Director of M/s Chhattisgarh Minerals and Smelting Limited, R/o D-4, 2nd Floor Ekatma Parisar Raipur, Chhattisgarh.

---- Petitioners**Versus**

1. State of Chhattisgarh through the Secretary, Department of Mineral Resources, D.K.S. Bhawan, Mantralaya, Raipur, Chhattisgarh.
2. The Chhattisgarh Mineral Development Corporation Limited 27/520, New Shanti Nagar, Shankar Nagar Road, Raipur, Chhattisgarh.

---- Respondents

For the Petitioners	: Mr. Amrito Das, Advocate.
For respondent No.1	:Mr. Yogesh Pandey, Advocate.
For the Respondent2/State	:Mr. Adil Minhaj, PL.

Hon'ble Shri Justice Rajendra Chandra Singh Samant**CAV ORDER****26.02.2019**

Heard.

1. This petition has been filed by the petitioners for quashment of notice dated 23.10.2002 and for issuing appropriate writ (s) /direction (s) to the respondents directing them to renew prospecting license and grant

mining lease.

2. Facts of the case, in brief, are that the then M.P. State Mining Corporation Ltd. invited tenders for Joint Venture Mining and Smelting of Cassiterite (Tin-ore), petitioner submitted his tender which was accepted by M.P. State Mining Corporation Ltd. and a memorandum of understanding was executed on 28.10.1996 between the petitioners & M.P. State Mining Corporation Ltd. creating a Joint Venture Company (in short 'JVC') by the name M.P. Dravya Mining and Smelting Ltd., which was duly incorporated under the Companies Act. The enterprise of this company was to explore and exploit tin-ore from Bastar District, regarding which an agreement was also executed for setting up a tin smelting plant. It was agreed that the Joint Venture Company shall be given lease-hold rights over the mining areas for a minimum period of 20 years with a right of successive renewals. Subsequent to reorganization of MP State and creation of new State of C.G., M.P. Dravya Minerals and Smelting Ltd. was restyled as "C.G. Minerals and Smelting Ltd." i.e. petitioner No.1. After making an initial survey the petitioners submitted applications before the M.P. State Mining Corporation, for grant of mining leases and also prospective licenses in the respective areas. Thus, petitioners have discharged their obligation under the agreement by making survey of prospective mining areas, making investment of more than Rs. 1 crore and installing a plant with the hope, that the respondents would also discharge the obligation undertaken by them under the agreement. Subsequent to reorganization of State of MP, under the new situation, respondent No.2 being the successor of M.P. State Mining

Corporation is bound by the agreement entered between petitioner and M.P. State Mining Corporation Ltd., however, supply of tin-ore has been arbitrarily withheld by the C.G. Mining Development Corporation Ltd. and by issuing notice dated 23.10.2002 (Annexure-P1) respondent No.2 has not only denied the existence of any agreement with the petitioner but also denied liability under the agreement dated 28.10.1996 under which the JVC was constituted and, therefore, has denied the execution of the Joint Venture Agreement dated 28.10.1996.

3. It is submitted that under Section 60 of M.P. State Reorganization Act, 2000, the companies specified in the Seventh Schedule of the Act, 2000 shall, on and from the appointed date, unless otherwise provided for in any law or otherwise in any agreement among the successor States, continue to function in the areas in which it was functioning immediately before that day. Reference is made to Entry No.3 of the Seventh Schedule of the Act, 2000 which shows the M.P. State Mining Corporation Ltd. as one of the Companies, therefore, the Joint Venture Company that was created by the M.P. State Mining Corporation Ltd. continued to exist, which is deliberately being denied by the respondents. Similarly under Section 43 of Act, 2000, the assets and liabilities of State undertaking, pass-on to the successor State and for this reason also respondent No.2 is bound to comply with the terms of agreement dated 28.10.1996.
4. Learned counsel for respondent No.1 opposes the grounds raised in the petition and submissions made in this respect. He submits that no relief can be claimed by the petitioners against the respondents

because they were not parties to the said agreement. Vide Notification dated 16.6.1978 (Annexure-R1), it was notified that all tin bearing areas of District Bastar are reserved only for public sector exploitation, therefore, there had been no question of granting any mining lease or prospecting license in favor of the petitioner-company, a private entrepreneur. Apart from this, the petition has been filed after a delay of three years because of which it is not maintainable. It is also submitted that under the provisions of Section 60 of the Act, 2000, State of Chhattisgarh has created a new company in the name and style of "C.G. Mineral Development Corporation", which cannot be said to be a successor of C.G. State Mining Corporation. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of Mohinder Gill & another Vs. Chief Election Commissioner, New Delhi reported in 1978(1) SCC 405 wherein it has been held that an order passed by a statutory functionary cannot be supplemented with fresh reasons. It is also submitted that this petition is also barred in view of the conditions agreed between the parties under the agreement entered between the petitioners and M.P. State Corporation Ltd., which are mentioned in Para-17 & 18. There is also provision in the agreement for resolution of dispute through arbitration, which is specifically mentioned in Clause-23 of the agreement titled as disputes and settlements. It is submitted that the State has adhered to the provisions of the Act, 2000 and no case is made out in favor of the petitioner.

5. Learned counsel for respondent No.2 submits that initially the Memorandum of Understanding dated 20.8.1996 was in between M.P.

State Mining Corporation Ltd. and M/s Dravya Industrial Chemicals Ltd., in the name and style of JVC and as M/s C.G. Minerals and Smelting Ltd., carried out the work without the consent of this respondent after the formation of the State of Chhattisgarh which was impermissible. The petitioner never commenced any business activities and the JVC has also failed to fulfill its obligation according to the agreement. Hence, the contract has become voidable. Apart from that, the contract does not have any binding effect upon respondent No.2, therefore, the petition against the respondent No.2 is not maintainable.

6. In reply, it is submitted by learned counsel for petitioner that petitioner is company duly incorporated under the provision of the Companies Act and the fresh certificate of change of name has been issued by the Registrar of Companies vide Annexure-A15. Submissions made by the respondents regarding breach on the part of the petitioner is baseless as no notice was served upon the petitioner for breach of contract, therefore, it is prayed that petition be allowed.
7. The ground of objection in this case, which is very much material, is regarding delay in filing of this petition invoking the jurisdiction of this Court. Impugned notice is dated 23.10.2002, whereas the petition has been brought after passing of a period lapse of 03 years i.e. in the year 2015.
8. The question of delay and laches came to be considered by the Hon'ble Supreme Court in various matters and it has been settled clearly that the Court should decline to exercise extraordinary

jurisdiction in case the petitioner invokes jurisdiction of Court with inordinate delay. Further, in ***State of Uttranchal Forest Development Corporation & another Vs. Shiv Charan Singh Bhandari and Ors.*** reported in ***2013(12) SCC 179***, ***Ram Kishore Vs Municipal Corporation of Delhi*** reported in ***2007(2) SCC 112***, ***New Delhi Municipal Council Vs. Pan Singh and others*** reported in ***(2007)9 SCC 278***, ***P.S. Sadashiva Swamy Vs. State of Tamil Nadu*** reported ***(1975)1 SCC 152***, ***Bhoop Singh Vs. Union of India & Ors.*** reported in ***1992 (3) SCC 136***, ***In Channai Metropolitan Water Supply and Sewerage Board & Ors. Vs. T.T. Murali Babu*** reported in ***(2014)4 SCC 108***, the Hon'ble Supreme Court has held that the Court should not lightly condone the delay and it should do so only if there is reasonable or sufficient cause shown for the delay. Huge delay in absence of plausible reasoning should not be condoned.

9. In the case in hand, no explanation has been offered by the petitioner for the delay in filing this petition. The main grievance of the petitioner is with respect to non-issuance of mining lease and non-renewal of prospective license. The contract between the petitioner and M.P. State mining Corporation had been of dated 28.10.1996. This agreement was for exploration and exploitation of tin-ore from the notified mining areas and it was the responsibility of M.P. Mining Corporation to provide for the lease and mining rights to another company in the JVC. The prospective license was issued to M.P. State Mining Corporation. This prospective licence was not issued in favor of the petitioner and neither there is anything on record to show that the rights for exploration and exploitation were transferred to JVC, as

agreed in the agreement dated 28.10.1996 in the last line of Clause-2, that later on whole rights shall be given to JVC for a minimum period of 20 years which were never transferred to petitioner. Therefore, it cannot be said that the grievance of petitioner arose for the first time on issuance of the notice dated 28.10.2002. Under these circumstances it appears that the petitioner has failed to raise the dispute and seek redressal of his grievance in the appropriate time. Hence, in view of the decision in the matter of State of Uttranchal's case (supra) and other judgments referred in this order, it is found that on account of delay on the part of the petitioner, this petition is not maintainable.

10. Accordingly, the petition is dismissed.

Sd/-

(Rajendra Chandra Singh Samant)
Judge

Nisha