

IN THE HIGH COURT OF BOMBAY AT GOA
WRIT PETITION NO.1005 OF 2019

Vedanta Limited & Anr.

.... Petitioners

V/s

Director of Mines & Geology & Ors.

....Respondents

Shri S.S. Kantak, Senior Advocate with Shri A. Gosavi, Advocate for the Petitioners.

Shri D. Pangam, Advocate General with Shri Deep Shirodkar, Additional Government Advocate for the Respondents No.1 & 2.

Shri Mahesh Amonkar, Central Government Standing Counsel for the Respondent No.3.

**Coram:- M. S. SONAK &
PRITHVIRAJ K. CHAVAN, JJ.**

Date:- 25th November, 2019

ORAL ORDER : (Per M.S. Sonak, J.)

Heard Shri Kantak, learned Senior Counsel along with Shri A. Gosavi, learned Counsel for the petitioners, Shri D. Pangam, learned Advocate General along with Shri Deep Shirodkar, learned Additional Government Advocate for respondents no.1 & 2 and Shri M. Amonkar, learned Central Government Standing Counsel for respondent no.3.

2. The petitioners impugn communication dated

19/11/2019 made on behalf of the State Government. The communication expresses inability to consider the representation of the petitioner dated 29/10/2019. By this representation, the petitioner had requested the State Government to amend their mining lease and extend the period from 1987 to 2037 i.e. for a period of 50 years in terms of Section 8(A)(3) of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act).

3. Shri Kantak, the learned Senior Counsel for the petitioners submits that the provisions of Section 8(A)(3) of the MMDR Act are quite clear and in terms of such provisions, the State Government was obliged to amend the Lease Deed. He submits that the decision of the Hon'ble Apex Court in the case of *Goa Foundation V/s. Sesa Sterlite Limited & Ors.*¹, referred to as the *Goa Foundation – II judgment*, really does not come in the way of the State Government in considering the request made by the petitioner in its representation. He submits that in the said judgment the issue was only whether the State Government was justified in granting the second renewal. He submits that there was no discussion on the scope and import of the provisions of Section 8(A)(3) of the MMDR Act though, there may have been some reference to the provisions of the MMDR Amendment Act of 2015

¹ (2018) 4 SCC 218

by which such provision was introduced with effect from 12/01/2015. Shri Kantak, therefore, submits that the State Government was duty bound to take into consideration the provisions in Section 8(A)(3) of the MMDR Act and, on such basis, process and even grant the request made by the petitioners.

4. Shri Kantak further submits that the issue raised in this petition is in fact covered by the decision of the Hon'ble Supreme Court in the case of **Common Cause Vs Union of India**, 2017(9) SCC 499 and based upon the same, the reliefs in the representation should have been granted by the State Government.

5. Shri D. Pangam, the learned Advocate General for the State of Goa submits that the impugned communication dated 19/11/2019 itself records that the State Government is *prima facie* in agreement with the contention raised on behalf of the petitioners. Shri Pangam, however, points out that the decision of the Hon'ble Apex Court in **Goa Foundation – II judgment** is quite clear inasmuch as all mining operations in the State of Goa ordered to be stopped with effect from 16/03/2018 until fresh mining leases or other renewals and fresh environmental clearances are granted. He submits that the State Government has already filed a review petition before the Hon'ble Apex Court seeking review of the

decision in *Goa Foundation – II judgment*. He however submits that as long as the said judgment is not reviewed or clarified, the State Government, had no option than to reject the request made by the Petitioner.

6. Having heard the submissions of the learned counsel, we are satisfied that it will not be appropriate for us to entertain the present petition for brief reasons, that follows :

7. In the first place, the Petitioner has raised grounds that the decision of the Hon'ble Supreme Court in the case of *Goa Foundation -II* is “*per incuriam*” and/or “*sub silentio*” and therefore, the State Government or for that matter this Court, should not consider itself to be bound by the said decision. In the course of arguments however Shri Kantak did say that the issue of “*per incuriam*” is not being pressed at this stage and before this Court, but the issue of “*sub silentio*” may be considered.

8. According to us, such labels are not really relevant. In effect, the Petitioner wishes us to direct the State Government to consider its representation without being bound by the clear directions issued by the Hon'ble Supreme Court in the case of *Goa Foundation – II*. That it will not be proper course of action for this

Court to follow. The State Government too, quite correctly, has refused to adopt such a course of action. In fact, as pointed out by the learned Advocate General, the State Government has filed a review petition before the Hon'ble Supreme Court regards the decision in *Goa Foundation – II* and has rejected the representation of the Petitioner, in the circumstances as they presently prevail. Accordingly, we see no infirmity in the impugned communication as it stands.

9. Secondly, we note that the directions of the Hon'ble Supreme Court in *Goa Foundation-II* are quite clear in that the State of Goa has been directed to take all necessary steps to grant the “*fresh mining leases*” in accordance with the provisions of MMDR, 1957. The Ministry of Environment and Forests is also directed to take all necessary steps to grant “*fresh environmental clearances*” to those who are successful in obtaining “*fresh mining leases*”. The Hon'ble Supreme Court, in the same judgment has also directed the State of Goa to stop all mining operations with effect from 16th March, 2018 until “*fresh mining leases (not fresh renewals or other renewals)*” are granted and “*fresh environmental clearances are granted*”. Faced with such clear and categorical directions, we agree with the learned Advocate General that the State of Goa had no option but to reject the representation made by the Petitioner, for

the present. There is accordingly, no case is made out to interfere with the impugned communication.

10. Thirdly, we feel that it will not be appropriate for us to go into the issue of “ *sub silentio*” or for that matter “*per incuriam*”. This is more so because from the perusal of the decision in *Goa Foundation-II*, we find that when the same was delivered, the provisions of Section 8(A)(3) of the MMDR Act or for that matter the entire 2015 Amendment, by which such provision was introduced, were already in force. In fact, the Hon'ble Supreme Court has made specific reference to the 2015 Amendment as also its earlier decision in the *Common Cause* (supra) which Shri Kantak, today seeks to rely upon. In such circumstances, it will not be appropriate for us to entertain the present petition particularly when it is now pointed out that the State Government has already filed a review petition before the Hon'ble Supreme Court in respect of *Goa Foundation -II judgment*.

11. The Petitioner has not even bothered to make the Goa Foundation a party to this petition. In the peculiar facts, we feel that this was necessary.

12. For all the aforesaid reasons, we dismiss this petition.
There shall be no order as to costs.

PRITHVIRAJ K. CHAVAN, J.

M. S. SONAK, J.

NH/at*