

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P (C) No. 35636 of 2020

Prabir Ghose

.....

Petitioner

*Mr. Goutam Mishra, Sr. Advocate
along Mr. A. Dash, Advocate*

Vs.

State of Orissa and others

.....

Opposite parties

Mr. P.P. Mohanty, AGA

CORAM:

DR. JUSTICE B.R. SARANGI

MISS JUSTICE SAVITRI RATHO

ORDER

08.03.2022

Order No.

05.

This matter is taken up through hybrid mode.

2. Heard Mr. Goutam Mishra, learned Senior Advocate along with Mr. A. Dash, learned counsel for the petitioner and Mr. P.P. Mohanty, learned Additional Government Advocate.

3. The petitioner has filed this writ petition seeking to quash the order dated 22.10.2020 under Annexure-1, wherein the petitioner has been intimated that his proposal for extension of validity of the Mining Lease in favour of Prabir Kumar Ghose for China Clay under Section 8A (5) of Mines and Minerals (Development and Regulation) Act, (in short "MMDR Act") 1957 is inadmissible as per law and hence his prayer for extension of the said lease is rejected.

4. Mr. Goutam Mishra, learned Senior Advocate appearing along with Mr. A. Das, learned counsel for the petitioner contended that the order impugned is a non speaking order and as such the same has been passed without assigning any reason and thereby the order cannot sustain in the eye of law. It is also further contended that though information was sought under Right to Information Act, the

reason has been placed on record pursuant to the RTI application, that also cannot sustain in the eye of law. So far as the pleadings made in the counter affidavit, it is contended that the opposite parties have only justified the order impugned, which also cannot sustain in the eye of law.

5. Mr. P.P. Mohanty, learned Additional Government Advocate contended that the order in Annexure-1 having been passed by explaining that the validity of lease cannot be granted under Section 8 A(5) of the MMDR Act, 1957 and therefore, the claim has been rejected. As such much reliance has been placed to the averments made in the counter affidavit by which they have justified the reasons of passing such order in Annexure-1.

6. Having heard learned counsel for both the parties and after going through the record, it appears that a mining lease for China Clay in Village-Jhankarpali was granted in favour of Late Bimal Kanti Ghose, father and predecessor in interest of the petitioner by executing the lease deed on 15.09.1966 for a period of 20 years under MMDR Act 1957, which was registered on 16.01.1967. The original lease was for the period from 15.09.1966 to 14.09.1986. The first renewal mining lease was executed on 14.09.1986 for a period of 10 years from 15.09.1986 to 14.09.1996. Thereafter the second renewal of mining lease deed was executed on 11.03.2003, which was registered on 13.03.2003, for a period of 20 years with effect from 15.09.1996 to 14.09.2016.

7. In the meantime the MMDR Act 1957 has undergone amendment on 12.01.2015 by the MMDR Amendment Act, 2015. A new Section 8A was inserted. Section 8A (5) of the MMDR Amendment Act 2015 provides that where mineral is used for captive purpose, the period of lease shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2030 with

effect from the date of expiry of the period of renewal last made or till completion of renewal period, if any, or a period of fifty years from the date of grant of such lease, whichever is later. Similarly Section 8A (6) of the Act provides that where the mineral is used for other than captive purpose, the period of lease shall be extended and be deemed to have been extended up to a period ending on the 31st March, 2020 with effect from the date of expiry of the period of renewal last made or till completion of renewal period if any, or a period of fifty years from the date of grant of such lease, whichever is later. Section 8A (3) of the Act provides that all mining lease granted before commencement of the Amendment Act shall be deemed to have been granted for a period of 50 years. As per Section 8A(3) of the Act the fifty years was expired on 14.09.2016. Therefore, when the petitioner sought extension of validity of the mining lease, the claim of the petitioner has been rejected under Section 8A (5) of the MMDR Act, 1957. The order impugned only states that the proposal for extension of validity of the lease under Section 8A (5) of the MMDR Act, 1957 lease is inadmissible as per law and hence the prayer of the petitioner for extension of the said lease is rejected.

8. In view of such position, the petitioner has only been communicated with the letter dated 22.10.2020 without assigning any reason, the same cannot sustain in the eye of law. In the counter affidavit filed, the reasons have been assigned, which are not available in the impugned order under Annexure-1.

9. It is well settled principle of law laid down by the Apex Court in **Mohinder Singh Gill and another v. The Chief Election Commissioner, New Delhi and others**, AIR 1978 SC 851 that :

“When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise an order bad in the beginning may by the time it comes to Court on account

of a challenge, get validated by additional grounds later brought out.”

10. In **Commissioner of Police, Bombay v. Gordhandas Bhanji**, AIR 1952 SC 16, the Apex Court held as follows :

“Public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself. Orders are not like old wine becoming better as they grow older.”

11. Similar view has also been taken in **Bhikhubhai Vithlabhai Patel and others v. State of Gujarat and another**, (2008)4 SCC 144.

12. In view of the law laid down by the Apex Court mentioned supra and looking at the impugned order in Annexure-1, a conclusion can be drawn that by a cryptic order has been made, which has been explained by filing counter affidavit, which is not permissible under law.

13. Reasons being a necessary concomitant to passing an order, the appellate authority can thus discharge its duty in a meaningful manner either by furnishing the same expressly or by necessary reference to those given by the original authority.

14. In **Union of India v. Mohan Lal Capoor**, AIR 1974 SC 87 it has been held:

“Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject-matter for a decision whether it is purely administrative or quasi-judicial and reveal a rational nexus between the facts considered and conclusions reached. The reasons assure an inbuilt support to the conclusion and decision reached. Recording of reasons

is also an assurance that the authority concerned applied its mind to the facts on record. It is vital for the purpose of showing a person that he is receiving justice.”

The decisions, referred to above, have been followed in ***Sanjay Kumar Rout v. State of Orissa***, AIR 2018 ORISSA 162, rendered by a Division Bench of this Court, where Dr. Justice B.R. Sarangi is a member.

15. In view of the discussions made above, the order dated 22.10.2020 passed by opposite party No.1 in Annexure-1 cannot sustain in the eye of law and accordingly, the same is liable to be quashed and is hereby quashed. The matter is remitted back to said authority concerned to take a decision afresh by passing a reasoned and speaking order in accordance with law by affording opportunity of hearing to the petitioner.

16. With the above observation/direction, the writ petition stands disposed of.

17. Issue urgent certified copy as per rules.

(DR. B.R. SARANGI)
JUDGE

(SAVITRI RATHO)
JUDGE

Arun