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

+ **W.P.(C) 11302/2024, CM APPL. 46828-46830/2024**

HINDALCO INDUSTRIES LIMITED

.....Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Mr. Ashish Prasad, Ms. Mukta
Dutta, Mr. Siddharth Sharma and
Ms. Riya Kumar, Advocates.

versus

UNION OF INDIA & ANR

.....Respondents

Through: Mr. Kirtiman Singh, CGSC with Mr.
Waize Ali Noor, Mr. M. Khurana,
Mr. Ranjeev Khatana, Mr. Varun
Rajawat, Mr. Kartik Baijal, Mr.
Varun P., Advocates for R-1 to R-2

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

14.08.2024

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1. The present petition assails decision dated 09th August, 2024,¹ passed by Respondent No. 2/ the Nominated Authority, Ministry of Coal whereby Petitioner's representations dated 11th July, 2024 and 29th July, 2024 have been rejected. Petitioner contends that the impugned decision is contrary to the Court's directions dated 08th August, 2024 issued in writ petition bearing No. W.P.(C) 10765/2024 to the following effect:

"1. The Petitioner, the allocatee of Chakla Coal Mine located at village Chakla, Tehsil Chandwa, District Latehar, Jharkhand executed a

¹ "the impugned decision"



Coal Mine Development and Production Agreement dated 11th January, 2021 with Respondent No. 2 – the Nominated Authority, Ministry of Coal. According to the terms of the CMDA, the Petitioner was obligated to meet ‘Milestone No. 3’ as detailed in Schedule D, which required obtaining environmental clearance for the mine by 2nd June 2023. However, the necessary clearance was not secured by the stipulated deadline, resulting in a Show Cause Notice dated 20th June 2023 being issued to the Petitioner by Respondent No. 2.

2. The Petitioner points out that the Expert Appraisal Committee constituted under the Environment Impact Notification, 2006, during its 46th meeting recommended the grant of environment clearance to the Coal Block in question. This recommendation was contingent upon the attainment of Stage I Forest Clearance. In response, the Petitioner requested an extension from Respondent No. 2 to fulfil Milestone No. 3.

3. During its 22nd meeting held on 8th May 2024, the Scrutiny Committee accepted the Petitioner’s request for additional time to secure the required Stage I Forest Clearance and environmental clearance but also stipulated that the Petitioner’s Performance Bank Guarantee would be appropriated if the extended deadline was not met, without further recourse to the Committee.

4. Subsequently, upon seeking verification from the State Government regarding compulsory afforestation land, the Petitioner was informed that on 5th July 2024, the Conservator of Forests, Jharkhand Government had declined the permission for the diversion of forest land for the Chakla Coal Mine project. During a field visit, it was observed that a herd of 10 to 15 elephants had established abode in the project area and its vicinity.

5. In anticipation of the Performance Bank Guarantee being appropriated, the Petitioner submitted a representation to Respondent No. 2 on 29th July 2024. This representation requested their assistance in acquiring Stage I Forest Clearance and urged them to withhold any penalties as recommended by the Scrutiny Committee until the issue of non-grant of Stage I Forest Clearance was resolved.

6. The recommendations made by the Scrutiny Committee have not yet been considered by the Nominated Authority; however, a review is expected imminently. The Petitioner fears that these recommendations will be endorsed by the Nominated Authority, leading to the immediate appropriation of the Performance Bank Guarantee. Given these concerns, the Petitioner has initiated this writ petition seeking judicial intervention. The Petitioner requests that the Court direct the Respondent to address the



Petitioner's representation dated 29th July, 2024, specifically requesting a stay on any penalty enforcement pending the resolution of the Stage I Forest Clearance issue. Additionally, the writ petition seeks to set aside the Scrutiny Committee's Minutes of the Meeting dated 8th May, 2024.

7. *Mr. Sandeep Sethi, Senior Counsel for the Petitioner, urges that adherence to the timelines fixed under CMDPA was premised on the understanding the designated area would qualify for forest diversion and that the necessary Forest Clearance would be granted. He argues that the failure to achieve Milestone 3, due to the unanticipated denial of Stage I Forest Clearance, should be recognized as a 'change of event'. Consequently, he asserts that penalizing the Petitioner for non-compliance under these changed circumstances would be unjust and unwarranted.*

8. *Mr. Sethi also challenges the legitimacy of the adverse recommendation of the Conservator of Forests, Jharkhand Government which was critical in denying the said forest clearance. He argues that the recommendation was reliant on an inspection report dated 5th July, 2024, which is at best anecdotal and lacks formal certification. He points out that numerous other coal blocks in proximity to the Chakla Coal Mine have been operational for an extended period without similar issues. Thus, Mr. Sethi calls for a thorough reassessment involving all stakeholders, arguing that the Petitioner should not be penalized for bureaucratic delays that are beyond their control.*

9. *Mr. Kirtiman Singh, CGSC for Respondents No. 1 to 3, states that as pointed out by the Petitioner, the Scrutiny Committee recommendation are yet to be considered by the Nominated Authority. He suggests that the Petitioner's representation dated 29th July, 2024, should be formally presented to the Nominated Authority, which will consider it thoroughly in accordance with the prevailing circumstances and the applicable legal framework.*

10. *Considering these submissions, in the opinion of the Court, since the Nominated Authority is yet to form its view, the present writ petition can be disposed of with certain directions allaying the Petitioner's apprehensions:*

(a) *Petitioner's representation dated 29th July, 2024 shall be placed before the Respondent No. 2, the Nominated Authority, and the same shall be considered while deliberating upon the recommendations of the Scrutiny Committee.*

(b) *Any adverse decision with respect to appropriation of the*



Performance Bank Guarantee furnished by the Petitioner shall not be given effect to for a period of two weeks from the date of the order and a copy thereof shall be provided to the Petitioner.

(c) Petitioner shall be at liberty to take appropriate recourse against the said final decision of the Nominated Authority in accordance with law.

11. It is clarified that the Court has not examined the merits of the case and no opinion has been expressed thereon. All rights and contentions of the parties are left open.

12. With the above directions, the writ petition is disposed of along with pending application(s)."

2. Through the impugned decisions, the Nominated Authority while rejecting Petitioner's representations dated 11th July, 2024 and 29th July, 2024, has also called upon the Petitioner to operationalize the Chakla Coal Block as per the scheduled timelines in Coal Mine Development and Production Agreement.²

3. Mr. Sandeep Sethi, Senior Counsel for the Petitioner highlights that the impugned decision does not discuss the adverse recommendations dated 05th July, 2024 of the Conservator of Forests, Jharkhand thereby declining to recommend the Chakla Coal Mine for grant of Stage-I Forest Clearance. He argues that the impugned decision reflects a mechanical approach and disregards the impediments regarding the operational challenges and extenuating circumstances faced by the Petitioner as detailed in their submissions. The decision to enforce operationalization, as per the Coal Mine Development and Production Agreement, does not reflect a balanced consideration of all pertinent factors, particularly the environmental constraints that are beyond the Petitioner's control. This, he asserts, reflects

² "CMDPA"



a lack of substantive engagement with the issues raised by the Petitioner.

4. *Per contra*, Mr. Kirtiman Singh, CGSC representing the Respondents, submits that impugned decision has been taken in terms of the Court's direction dated 08th August, 2024 after duly considering Petitioner's representations.

5. The Court finds that the impugned decision fails to adhere to the directions issued on 08th August, 2024. Notably, this Court had explicitly mandated that Petitioner's representation dated 29th July, 2024, be carefully considered along with the recommendations of the Scrutiny Committee. However, it has come to the Court's attention that while the Scrutiny Committee's recommendations are still under consideration, Petitioner's representation has been rejected. Furthermore, Mr. Sethi's arguments carry considerable weight. The decision to reject Petitioner's representation appears to have been made without a thorough examination of the substantial issues raised therein and of the adverse recommendations dated 05th July, 2024 issued by the Conservator of Forest, Jharkhand, which stands in the Petitioner's way for obtaining the requisite Forest Clearance.

6. In view of the above, the present petition is disposed of with the following directions:

- a. The impugned decision dated 09th August, 2024 is set aside.
- b. The Petitioner's representations dated 11th July, 2024 and 29th July, 2024 must be re-considered along with the recommendations of the Scrutiny Committee by the Nominated Authority, Ministry of Coal and the decision thereon must specifically deal with Petitioner's contentions.
- c. The conditions in paragraphs No. 10(b) and 10(c) of order dated 08th August, 2024 in W.P.(C) 10765/2024 are reiterated and shall continue to



apply till the decision is rendered by the Nominated Authority.

7. With the above directions, the present petition, along with pending applications, is disposed of.

SANJEEV NARULA, J

AUGUST 14, 2024

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