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

\+ W.P.(C) 6831/2020

SARDA MINES PRIVATE LIMITED & ANR. ..... Petitioners

Through Mr.Parag P.Tripathi, Sr.Adv. with Mr.Mahesh Agarwal and Mr.Rishi Agarwala, Advs.

versus

UNION OF INDIA & ORS. ..... Respondents

Through Mr.Chetan Sharma, ASG with Mr.Kirtiman Singh, CGSC, Mr.Waize Ali Noor and Mr.Rohan Anand, Advs. for UOI.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

O R D E R

% 23.09.2020

This hearing is conducted through video conferencing.

1. This writ petition is filed by the petitioners seeking to impugn the communication dated 21.09.2020 issued by respondent No.1 directing stopping of mining operations at Thakurani Iron Ore Mines- Block B, Keonjhar with immediate effect.

2. A perusal of the impugned order dated 21.09.2020 shows that it notes the following aspects pursuant to the opinion of the Department of Legal Affairs of Ministry of Law. Relevant portion of the said order reads as follows:

> a) EC dated 29.09.2004 is under EIA 1994 and was valid for 5 years only.
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> b) The letter dated 15.01.2015 permitting to mine against EC limit of 4 MTPA under the EC of 2004 is also against the said statutory notification and the law laid down by Hon'ble

Supreme Court, hence, may not be acted upon.

c) EC dated 22.09.2008 lost its validity till 2013-14 and PP is required to obtain fresh EC.

d) Resumption of Mining Operation by PP is contrary to law and direction of Hon'ble SC dated 15.01.2020 and Ministry should take it seriously.

e) Ministry is advised to initiate appropriate action in the matter for violation of existing norms as per existing provisions of the law and the procedure established in this regard."

3. The learned senior counsel appearing for the petitioners has urged that the entire premise of this communication is erroneous as the Environment Clearance (*in short the 'EC'*) dated 29.09.2004 is valid for upto 20 years.

Learned senior counsel has also pointed out to a communication dated 15.01.2015 again issued by the Union of India, Ministry of Environment, Forest & Climate Change where while dealing with the case of the petitioner it has been pointed out that the matter has been examined and the permission to mine as per the conditions of the EC in question for 4 MTPA is approved subject to permission from the Supreme Court. This permission of mining was confined only to 4 MTPA granted by letter dated 22.09.2004 and would be reviewed, if required.

Learned senior counsel has also relied upon various orders of the Supreme Courts including the orders dated 20.11.2018, 04.01.2019 and 15.01.2020 to plead that the issue of the EC dated 22.09.2004 which permits mining of 4 MTPA Iron Ore (Lump), is for a period of 20 years, is noted in these orders. It is also stated that EC for expansion was issued on 29.10.2008 but the petitioners for the time being are not making any submissions regarding the EC of 2008.

Learned senior counsel has also stated that resumption of the mining operation has been done by the petitioners as per the directions of the Supreme Court dated 15.01.2020 after payment of the requisite sum of Rs.993 crores as was directed by the Supreme Court in its order dated 15.01.2020.

4. Learned ASG Mr.Chetan Sharma has however pointed out that there are certain criminal prosecutions launched against the petitioners at the local courts. He has also stated that ECA has in its meeting taken a decision to stop the mining and hence the communication has been sent. He seeks some time to place on record the relevant facts and documents.

5. A perusal of the EC clearance dated 22.09.2004 shows that it categorically states that environment clearance is for 20 years and fresh clearance would be required at the time of renewal of the lease.

6. The Supreme Court in its order dated 12.11.2018 in W.P.(C) 114/2014, concluded that CEC might have to rework the quantum of excessive or illegal mining carried out by the petitioners and the consequent penalty. The CEC was granted six weeks time to do the needful. In para 7 of the said order, the Supreme Court noted that on 22.09.2004 the petitioners were granted EC for extraction of iron ore.

7. I may now look at the order passed by the Supreme Court in IA No.186810/2019 dated 15.01.2020, which reads as follows:

> "**I.A. No. 186810 of 2019**:
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> The applicant, M/s Sarda Mines Pvt. Ltd. (hereinafter, "SMPL"), holds a mining lease for Thakurani (Block B) iron-ore mines at Keonjhar, Odisha. Since, 31.03.2014, its mining operations are lying closed, and it has accordingly approached

this Court seeking appropriate directions for resumption of its mining operations.

2. This Court through judgment dated 02.08.2017 in the lead matter, had inter alia held that those mining-lease holders who had extracted minerals either without or in excess of environment/forest clearance, would be liable to deposit the mineral so raised (or its value if disposed off) with the State Government. Owing to a dispute raised by some mining-lease holders, including SMPL, as to whether in fact they had excavated minerals without requisite clearances, this Court referred their cases to the Central Environment Committee (CEC) for quantification of compensatory dues. This CEC submitted a self speaking report dated 08.05.2019 finding that:

> "M/s SMPL during the period 2001-02 to 2010-11 has produced 135,34,703 tonnes of excess quantity/illegal production of iron ore in violation of the Environmental Clearance granted by MoEF&CC. Accordingly, M/s SMPL is liable to pay Rs.933,60,79,689 (Rupees nine hundred thirty three crores sixty lakhs seventy nine thousand six hundred and eighty nine only) in terms of the Judgment dated 02.08.2017 in WP (C) No. 114 of 2014 and Judgment dated 12.11.2018 in IA No. 40 of 2015, IA No. 42 of 2015, IA No. 61 of 2015 and IA No.11989 of 2018 in WP (C) No. 114 of 2014 of this Hon'ble Court."

3. During these proceedings, this Court on 22.11.2017 constituted a committee consisting of Hon'ble Mr. Justice G. S. Singhvi and Hon'ble Mr. Justice Anil R. Dave, retired judges of this Court with a specific mandate to ascertain whether there was any violation of Section 6 of the Mines and Minerals (Development and Regulation) Act, 1957 or of Rule 37 of the Mineral Concession Rules, 1960. The Committee in Volume VIII of its Report (which was taken on record by this Court on 24.10.2019) examined SMPL's case and noted that there was no violation of either Section 6 of the Mines and Minerals

(Development and Regulation) Act, 1957 or of Rule 37 of the Mineral Concession Rules, 1960.

4. In light of these observations, SMPL contends that it is suffering irreparable injury and highlights how it has already lost more than 5 ½ years and how hardly half-a-year of its lease-period is left. Expressing willingness to furnish an undertaking or bank guarantee equivalent to its dues as assessed by the CEC, applicant seeks permission to resume mining operations. Upon notice, learned counsel for the State of Odisha and the CEC express no objection against granting SMPL's prayer for resumption subject to it depositing the CEC-assessed dues and strictly complying with all other mandatory rules, regulations and conditions for conducting mining operations.

5. In view of the above, the application is allowed in the following terms:

(i) SMPL is granted one month's time to deposit the dues as assessed by CEC in its report dated 08.05.2019.

(ii) In addition, SMPL shall file an undertaking to comply with all the rules, regulations and other mandatory provisions for carrying out mining operations.

(iii) After complying with directions (i) and (ii) above, SMPL can resume its mining operations in the leased-area for the remainder of its lease period."

8. It is manifest from a reading of the above order that the State of Odisha and CEC had expressed no objection for resumption of mining in question by the petitioner subject to depositing the CEC assessed dues and strictly complying with all mandatory rules, regulations and conditions for conducting mining operations. The court granted to SMPL(the petitioners herein) one month time to deposit the dues as assessed by the CEC in its

report dated 08.05.2019. It has been stated by the learned senior counsel for the petitioner that pursuant to the above directions, a sum of Rs.933.06 crores was deposited on 28.01.2020 by the petitioner.

9. In the light of the above orders of the Supreme Court, in my opinion, the impugned order dated 21.09.2020 is *prima facie* erroneous.

10. The petitioner has made out a *prima facie* case. Till the next date of hearing, the impugned order dated 21.09.2020 shall remain stayed.

11. Issue notice. Learned counsel for respondent No.1 accepts notice. Notice be issued to respondent No.2, returnable for 21.10.2020. Counter affidavit be filed within two weeks. Rejoinder, if any, be filed within one week thereafter.

JAYANT NATH, J.

SEPTEMBER 23, 2020/v