



GAHC010034802021

Page No.# 1/13



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1300/2021

M/S SPECTRUM INFRA VENTURES PVT LTD AND ANR
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE
COMPANIES ACT, 1956 HAVING ITS REGD. OFFICE AT 5TH FLOOR, ASHA
TOWER, S.C.GOSWAMI ROAD, PAN BAZAR, GHY-01 IN THE DIST. OF
KAMRUP (M), ASSAM

2: BINOD KUMAR JAIN
S/O- LT. MAHAVIR PRASAD JAIN
DIRECTOR AND SHAREHOLDER OF M/S SPECTRUM INFRA VENTURES
PVT. LTD. AND R/O- 465/466
DOUBLE STOREY
SECOND FLOOR
NEAR RAJENDRA NAGAR
NEW DELHI- 11006

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM, MINES AND
MINERALS DEPTT., DISPUR, GHY-06

2:THE ADDL. CHIEF SECRETARY
GOVT. OF ASSAM
DEPTT. OF MINES HAVING HIS OFFICE SITUATED AT DISPUR
GHY-06

3:THE DIRECTOR
DIRECTORATE OF GEOLOGY AND MINING
GOVT. OF ASSAM
DAKHINGAON
KAHILIPARA



GHY-3

Advocate for the Petitioner : MR. D BARUAH

Advocate for the Respondent : SR. GA, ASSAM

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri Naveen Kumar
Ms. N. Upadhyay
Advocates for the respondents : Shri D. Mazumdar, Addl. AG, Assam
Ms. S. Sharma, GA, Assam

Date of hearing : **09.08.2022**

Date of Judgment : **24.08.2022**

JUDGMENT & ORDER

The writ jurisdiction of this Court has been sought to be invoked by the petitioners in respect of a direction of the Central Government dated 27.11.2018 passed under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called, the Act). It is the case of the petitioners that their rights have been recognized by the Central Government wherein a direction has been given for executing a Mining Lease Deed with the petitioner no. 1, no consequential action has been taken by the respondent authorities.

2. Before coming to the issue which has arisen for determination in this case, it would be convenient to state the facts of the case in brief.

3. The petitioner no. 1 is a Company incorporated under the Companies Act 1956



with its Head Office, Guwahati and the petitioner no. 2 is one of the Directors as well as Shareholders of petitioner no. 1. The petitioner no. 1 was initially named as "Spectrum Meghalaya Cement Company Private Limited" however, the name was changed to the present name with effect from 03.07.2014 and the said change has been duly incorporated in the Registrar of Companies vide the certificate dated 03.07.2014.

4. It is the projected case of the petitioner that on 07.12.2009, the petitioner company had applied for a mining lease for Sillimanite over an area of 1 sq. kilometer in the area of Chippilanso and Hapjan. The said application which was duly submitted with all enclosures was acknowledged by the Directorate of Geology and Mining, Government of Assam. Since the area was within the Karbi Anglong Autonomous Council, necessary No Objection was issued by the said Council on 27.07.2010. Subsequently, the Department vide communication dated 02.03.2012 informed the petitioners that the State of Assam had agreed to grant a mining lease for Sillimanite over the said area of 1 sq. km, the petitioner no. 1 was accordingly requested to submit a Mining Plan within six months which was to be approved by the Indian Bureau of Mines and to also obtain the environmental clearance. As indicated above, in the meantime, the petitioner no. 1 has changed its name by duly following the Rules and the same was allowed by the RoC.

5. In compliance of the Letter of Intent dated 02.03.2012, the petitioners had submitted the various requirements including the Mining Plan with Progressive Mine Closure Plan, duly approved by the Indian Bureau of Mines on 08.07.2014. The petitioners had accordingly submitted the same on 17.07.2014 to the State Government for doing the needful. The Pollution Control Board, Assam had also informed the Ministry of Environmental Forest, Government of India vide communication dated 24.02.2014.

6. As a matter of record, on 12.01.2015, the Mines and Minerals (Development and Regulation) Amendment Ordinance 2015 was promulgated whereby Section 10A was inserted in the Act. As per the said Section, all applications received prior to 12.01.2015 shall become ineligible except provided in Sub-Section (2). As per the said Sub-Section, the applications for rights of existing concession holders as provided in the provisions of Sub-Section (2) were not to become ineligible.

7. As, in the comprehension of the petitioners, the Ordinance did not have any effect on its pending application, the petitioner no. 1 issued a communication dated 10.04.2015 to the Department of Mines and Minerals informing that since all the formalities were completed, the mining lease be granted at the earliest. Subsequently, on 22.07.2015, the Central Ministry, Environment, Forest and Climate Change Department accorded the Environment Clearance (EC) in favour of the petitioners in respect of the present mining proposal.

8. It is the pleaded case of the petitioners that during that time, the Minerals (Other Than Atomic and Hydro Carbons Energy Minerals) Concessions Rules, 2016 were brought into force and Rule 8 of the MCR, 2016 provided for the rights under the provisions of Section 10A(2)(c) of the Act. As per Rule 8(4) of the Rules of 2016, where an order for grant of mining lease has been issued under Sub-Rule (2), a mining lease shall be executed with such applicant and registered before 11.01.2017. As per the petitioners, the aforesaid provision of Rule 8 (4) of the Rules of 2016 shall not apply to the petitioners as the respondent authorities had issued the grant order only on 24.01.2017 i.e. after 11.01.2017.

9. The petitioners were also aware that on the said subject, the opinion of the learned Advocate General, Assam was sought for who had opined that the Letter of Intent issued in favour of the petitioner company was legally enforceable. The said

opinion was obtained by the petitioners under the RTI Act. Even thereafter no action was taken for grant of the mining lease despite numerous representations from the petitioners.

10. Finally, the Department had issued a communication dated 24.01.2017 stating that a mining lease was granted for the aforesaid area and the petitioner was directed to communicate its acceptance so that the mining lease can be granted. Accordingly, on 27.01.2017 the petitioners submitted its acceptance along with which the mining Lease Deed was also submitted in Form K duly filled up. However, again the matter was not proceeded and even the representations filed by the petitioners were ignored / overlooked. In the meantime, there was also a communication made to the Income Tax Department requiring issuance of no objection Certificate *qua* the petitioner company. This communication is also stated to be something wholly irrelevant by the petitioners.

11. Finally, on 10.08.2018 after waiting for a long period of time, the petitioner no. 1, company had preferred a Revision Application being No. 01(01)2018/RC-II under Section 30 of the Act before the Revisionary Authority which is the Ministry of Mines, Government of India. The Ministry had accordingly issued a communication dated 27.08.2018 to the State Government seeking its response. It was further directed till such consideration, not to grant any lease in the said area to any other party. The Revision was accordingly heard and vide order dated 27.11.2018, the same was allowed with a direction to the State Government to immediately execute a mining Lease Deed in favour of the petitioner company and submit a compliance report.

12. It is the case of the petitioners that despite the fact that orders passed under Section 30 of the Act are binding in nature, the State Government did not comply with the same. Even on this occasion, the petitioners allege that numerous representations

have been ignored. Situated thus, the petitioners had again approached the Revisionary Authority vide IA dated 16.03.2020 seeking appropriate directions towards compliance of the order dated 27.11.2018. The said IA was however disposed of by the Revisionary Authority stating that when a specific order is already issued, the question of issuance of any compliance order does not arise.

13. As the matter was still required to be brought to its logical end by grant of mining lease, the present writ petition has been filed.

14. I have heard Shri Naveen Kumar, learned counsel for the petitioners. I have also heard Shri D. Mazumdar, learned Additional Advocate General, Assam assisted by Ms. S. Sarma, learned State Counsel. The documents placed before this Court have also been duly perused.

15. Shri Kumar, learned counsel for the petitioners submits that the petitioners have fulfilled all the requirements as per the Scheme of the Act and therefore the State Government is under a corresponding duty to grant the mining lease. Drawing the attention of this Court to the communication dated 24.01.2017, the learned counsel for the petitioners submits that the State Government in clear and unequivocal terms had granted the mining lease to the petitioner no. 1 company and after some formalities, the Deed was to be executed. He further submits that that the Revisionary Authority in its order dated 27.11.2018 had taken into account all the facts and circumstances including the order dated 24.01.2017 of grant of mining lease. The issue of change of names has also been taken into consideration. Thereafter, the Revisionary Authority in clear terms had directed the State Government to sign the Lease Deed immediately and submit compliance.

16. The learned counsel for the petitioners submits that the order dated 27.11.2018 was never put to challenge by the State Government and accordingly the same has

attained the finality. In that view of the matter, it is argued that the State Government does not have any other option but to comply with the same.

17. In support of his submissions, the learned counsel for the petitioners has relied upon the following case laws:

- i. AIR 1967 SC 964 [Gujarat Pottery Works v. B.P. Sood]***
- ii. 1969 SCC OnLine Ori 6 [Nandram Hunatram v. State of Orissa]***
- iii. AIR 1970 Cal 389 [Economic Investment Corporation Ltd. v. The Commissioner of Income Tax, W.B. and Ors.]***
- iv. (1976) 4 SCC 427 [Dharam Chand jain v. State of Bihar]***
- v. 1984 SCC OnLine Cal 171 [Pioneer Protective Glass Fibre P. Ltd. V. Fibre Glass Pilkington Ltd.]***
- vi. 1992 Supp (1) SCC 443 [Union of India v. Kamlakshi Finance Corpn. Ltd.]***
- vii. 2003 6 AWC 4934 All [Ingersoll Rand Wadco Tools Ltd. v. U.P. State Industrial Development Corporation and Ors.]***
- viii. (2007) 2 SCC 326 [CIT v. Ralson Industries Ltd.]***
- ix. 2011 SCC OnLine Ori 59 [MSP Sponge Iron Ltd. v. State of Orissa and Ors.]***
- x. (2017) 2 SCC 125 [Bhushan Power & Steel Ltd. V. State of Odisha].***
- xi. Order dated 08.07.2021 passed in D.B. Special Appeal (writ) No. 301 of 2021 [State of Rajasthan and Ors. v. Ojaswi Marbles and Granite Private Ltd and Ors.] and***

xii. Order dated 01.09.2021 passed in S.B. Civil Writ Petition No. 360/2017 [M/s NU Vista Limited v. Union of India & Ors.]

18. In the case of **Dharam Chand Jain** (Supra), the Hon'ble Supreme Court has held that in matters of grant of mining lease, the State Government is a subordinate authority and is obliged under the law to carry out and comply with the order of the Central Government. A similar ruling has been given in the case of **MSP Sponge Iron Limited** (Supra), wherein it has been stated that in matters relating to Mineral Concessions Rules, 1960, the State Government is bound by the directions issued by the Central Government.

19. In the case of **Nandram Hunatram** (Supra), a Division Bench of the Hon'ble Orissa High Court has held that the Central Government in exercise of powers under Rule 54 is a quasi-judicial authority and the State Government being an inferior authority is bound by the same.

20. In the case of **Kamlakshmi Finance Corpn. Ltd.** (Supra), the Hon'ble Supreme Court has held that judicial discipline requires the orders of a higher appellate authority should be followed unreservedly by the subordinate authority. A similar view has been expressed in the case of **Ralson Industries Ltd.** (Supra).

21. In the case of **Economic Investment Corporation Limited** (Supra), the Hon'ble Calcutta High Court has held that by change of name, the new company holds all the assets and properties belonging to the old company and there is no change in the legal status. A similar view has been expressed by the same High Court in the case of **Pioneer Protective Glass** (Supra) and also by the Hon'ble Allahabad High Court in the case of **Ingersoll Rand Wadco** (Supra).

22. In the case of **Gujarat Pottery Works** (Supra), the Hon'ble Supreme Court has held that execution of a formal lease is only compliance with the legal

requirements to make the grant legally enforceable.

23. In the case of **Ojaswi Marbles** (Supra), a Division Bench of the Hon'ble Rajasthan High Court has held that the rigors of Section 10A(2)(c) would not be applicable where Letter of Intent has already been issued. The same High Court in the case of NU Vista (Supra) has held that the action of the State in not issuing mining lease being unjustified, the time period in taking over possession shall be treated as not to be counted.

24. In the case of **Bhushan Steel** (Supra), the Hon'ble Supreme Court has held that a right in law is vested on the applicants under the third category i.e. those covered under Section 10A(2)(c) of the Act as all necessary formalities were complied with and for this reason the Parliament had made a provision saving those rights.

25. Defending the State Government and its instrumentalities, Shri Mazumdar, learned Additional Advocate General, Assam however submits that no case for interference has been made out in the present writ petition. By referring to the affidavit-in-opposition filed on 29.10.2021, Shri Mazumdar has contended that vide a communication dated 04.09.2019 the State Department had informed the Ministry regarding the change in name and therefore a clarification was sought for. A reminder was also issued on 04.12.2019 which was not responded to and therefore, it is contended that without any clarification from the Ministry, no consequential action could be taken.

26. By referring to the Act, more specifically Section 19 thereof, the learned Additional Advocate General has contended that any lease in the pipeline would be void if it contravenes any provision of the Act. Reference has also been made to Section 8A which deals with period of grant of a mining lease for Minerals other than Coal, Lignite and Atomic Minerals. According to the learned AAG, under Section

10A(c), the earlier application has become ineligible and the grant has to be through auction as per Section 11.

27. It is submitted on behalf of the respondents that the contention of the petitioners on the applicability of promissory estoppel is fallacious inasmuch as, it is a settled principle that there is no estoppel against law. It is also contended that no indefensible rights of the petitioners have been infringed in the present case and a prayer for grant of mandamus is without any basis.

28. In support of his submissions, Shri Mazumdar, learned AAG has placed reliance upon the following case laws:

i. (1986) 2 SCC 343 [Santosh Kumar and Ors. v. Central Warehousing Corporation and Anr.]

ii. (2012) 11 SCC 1 [Monnet Ispat and Energy Limited v. Union of India and Ors.]

iii. (2017) 2 SCC 125 [Bhushan Power and Steel Limited v. S.L. Seal, Additional Secretary (Steel and Mines), State of Odisha and Ors.]

29. In the case of ***Monnet Ispat*** (Supra), the Hon'ble Supreme Court has held that Minerals are valuable natural resource and constitutes national wealth for which the management should be in a way that helps in the country's economic development. It has further been held that exploitation of natural resources has to be made judiciously. It has further been held that the Government or even a private party under the doctrine of estoppel cannot be asked to do an act which is prohibited by law.

30. In the case of ***Bhushan Power*** (Supra), the Hon'ble Supreme Court has held that under Section 10A(1) of the Act, all applications received prior to coming into

force of the Amendment Act of 2015 became ineligible.

31. In the case of **Santosh Kumar** (Supra), the Hon'ble Supreme Court has held that an application under Article 226 of the Constitution of India is not meant to avoid or circumvent the process of law and the provisions of the statute.

32. Rejoining his submissions, Shri Kumar, learned counsel for the petitioners has submitted that the issue of change of name of the petitioner no. 1 company cannot be re-agitated as the matter has been put to rest by the communication of the Central Government. He has further submitted that the Hon'ble Division Bench of the Allahabad High Court in the case of **Ingersoll Rand Wadco** (Supra) has made the law point clear and so as the Hon'ble Calcutta High Court in the case of **Economic Investment Corporation Limited** (Supra), the learned counsel has submitted that it is not the pleaded case of the respondents that the permission granted in the year 2017 is the Letter of Intent, rather the communications would indicate that clarification was sought for by the State Government from the Central Government.

33. After hearing the parties and on perusal of the materials on records, what transpires is the inaction of the State authorities in the matter of grant of mining lease to the petitioner no. 1 company pursuant to the process which was initiated in the year 2012. Whereas the petitioners are banking upon the order dated 27.11.2018 passed by the learned Revisionary Authority under Section 30 of the Act and Rule 36 of the Rules, the stand of the State Government is that clarification sought for from the Centre are yet to be made for which, action have not been taken.

34. In the comprehension of this Court, the issue boils down to the only aspect of not granting the formal lease by executing the Lease Deed by the State respondents with the petitioner no. 1 and whether such action is justified.

35. However, upon going through the record of the case which had culminated in

an order dated 27.11.2018 passed by the learned Revisionary Authority on the said issue, there is hardly anything left for adjudication apart from the fact of execution / implementation of the said order dated 27.11.2018. In fact, the petitioners had made another endeavour by filing an interlocutory application before the Central Government which however was disposed of with an observation that no further clarification was necessary after such clear directions made vide order dated 27.11.2018.

36. Though the learned Additional Advocate General, Assam has tried to bring in certain other issues in order to justify its inaction, such attempt is meaningless and futile due to the principal fact that the order dated 27.11.2018 passed by the Revisionary Authority has attained finality and has not been put to challenge in any higher / appropriate forum. The only issue which is discernible from the pleadings was the change in the name of the petitioner no. 1 company and the Revisionary Authority in its order dated 27.11.2018 has dealt with the issue elaborately. The conclusive part in para 6 of the order dated 27.11.2018 makes it clear regarding the change of name. For ready reference, paragraph 6 is extracted herienbelow-

"I have gone through the records and submissions of the parties. The revisionist had already submitted ROC certificate for change of the name of the company where old and new name are mentioned. The grant order has already been issued. The State Government is directed to sign Lease Deed immediately and submit compliance as grant order has already been passed."

37. As indicated above, this Court is not inclined to entertain the attempt on the part of the State Government to question the legality of the order dated 27.11.2018 inasmuch as, such question can be raised only by specific challenge to the same and not in a position of a respondent in a proceeding. There is no scope in a writ



proceeding for cross objection and even otherwise, the only pleaded issue was the change of name which has been answered by the Revisionary Authority by assigning reasons and discussing case laws and the same has attained finality.

38. This Court is of the opinion that there cannot be a collateral challenge to an order by a respondent in a writ proceeding instituted by a petitioner for implementation of such order. The legality and validity of such order passed by an authority with jurisdiction can be questioned only by an independent proceeding and not as a respondent.

39. The case law referred to by the State are not applicable in the instant case. The instant case is not a case where there is any legal Bar for final execution of the Lease Deed which has been directed by the Revisionary Authority vide the order dated 27.11.2018. The case of **Santosh Kumar** (Supra) on issuance of writ under Article 226 of the Constitution of India is clearly not applicable in the instant case as in that case, there was element of fraud, corruption and collusion. On the other hand, the case laws relied upon by the petitioners are found to be applicable. In any case, this Court has held that the controversy at hand has been put to rest by the order dated 27.11.2018 and therefore the present is a fit case for issuance of a writ of Mandamus.

40. Accordingly, the instant writ petition is allowed by directing the respondents to grant the lease and execute the same immediately and in any case, within a period of 45 (forty five) days from the date of receipt of certified copy of this order.

41. No order as to cost.

JUDGE

Comparing Assistant