

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W. P. (C) No. 5225 of 2014

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M/s Tata Steel Ltd. an existing Company incorporated under the Companies Act through Mrs. Meena Lall wife of Shri Behari Lall, working as Chief Legal Services having registered office at 24, Homi Mody Street, PO Fort, PS Fort, Town & District Mumbai, Maharashtra and having its Steel Plant and Office at Jamshedpur, PO & PS Bistupur, Town Jamshedpur, District East Singhbhum Petitioner

-V e r s u s-

1. The State of Jharkhand through its Secretary, Department of Mines & Geology, Nepal House, PO & PS- Doranda, District-Ranchi
2. The District Mining Officer, West Singhbhum at Chaibasa, PO & PS- Chaibasa, District-West Singhbhum
3. Election Commission of India through Chief Electoral Officer-cum-Principal Secretary, Cabinet(Election) Department having its Office at Sector-2, PO & PS Dhurwa Town & District-Ranchi Respondents

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CORAM: - HON'BLE MR. JUSTICE APARESH KUMAR SINGH

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For the Petitioner: M/s Binod Kanth, Sr. Advocate, Indrajit Sinha, Nandini Gore, Ganesh Pathak, Advocates

For the State: M/s M. L. Verma, Sr. Advocate, Rajesh Shankar, G.A., Abhay Prakash, JC to GA

For the ECI: Dr. Ashok Kr. Singh & Mr. Asif Khan, Advocates

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C.A.V. On 02.12.2014

Pronounced On 11/12/2014

Heard learned counsel for the parties.

2. The writ petition has been preferred for the following reliefs:-
 - (a) for issuance of an appropriate order directing the respondent no. 2, the District Mining Officer, West Singhbhum at Chaibasa to forthwith issue an express order in furtherance of its considered opinion in terms of Section 8(3) of the Mines Minerals (development & Regulation) Act 1957

in respect of the petitioner's Noamundi Iron Ore Mines and pursuant to its application for renewal dated 17.12.2009.

(b) an appropriate writ, order or direction for setting aside the notice dated 04.09.2014 referring to notification no. 510(E) dated 18.07.2014 issued by the District Mining Officer, West Singhbhum, Chaibasa whereby the petitioner has been asked to stop mining operations of its Noamundi Iron Ore Mines situated in the district of West Singhbhum.

3. The case of petitioner is that its a Public Limited Company under the Companies Act, 1956 having its registered office at Mumbai and its works at Jamshedpur in the district of East Singhbhum, Jharkhand. It was incorporated in 1907 with the primary objective of manufacturing and selling iron and steel products, which were carried out in the petitioner's steel plant at Jamshedpur in the district of East Singhbhum. The petitioner was granted mining lease of iron ore over an area of 1160.06 Hectares in Noamundi district, West Singhbhum. The Mining lease was originally granted for a period of 30 years w.e.f. 01.01.1922 by the then Provincial Government. It was twice renewed for a period of 30 years w.e.f. 01.01.1952 to 31.12.1981 and 01.01.1982 to 31.12.2011. The petitioner has been operating mining lease on the strength of about 4500 direct/indirect workers and officers and the ore from Noamundi Mines lease meets 60% of the requirement of the petitioner for its steel production at Jamshedpur. Since 2nd period of mining renewal was to expire on 31.12.2011, the petitioner made application in Form 'J' prescribed under Mineral Concessions Rules 1960 for renewal of mining lease. The said application was submitted on 17.12.2009 and acknowledged by the District Mining Officer, Chaibasa by issuance of statutory Form 'D'. As per the provisions of Rule 24 A (6) of Mineral Concessions Rules 1960 (hereinafter referred to as the MCR), if an application for renewal of a mining lease made within

prescribed time by the lessee, is not disposed of by the State Government before the date of expiry of the lease, the period of that lease shall be deemed to have been extended by further period till the State Government passes order thereon. Accordingly, as per the petitioner, they have been carrying out mining operations adhering to the statutory and regulatory requirements. The petitioner claims to have obtained forest clearance earlier for 346.49 hectares on 23.04.1999 and for 24.43 hectares on 07.11.2007. However, in terms of requirement of Forest Guidelines 2004 Clause 4.16, the petitioner also made an application for fresh forest clearance in Form 'B' under the Forest Conservation Rules, 2003 to the Principal Chief Conservator of Forests (Nodal), Ranchi on 21.12.2009. On 29.03.2012, the Ministry of Environment and Forest (in short MOEF) granted temporary working permission w.e.f. 29.03.2012 for a period of one year. It was extended further and the petitioner was granted stage I clearance on 06.09.2013 with working permission for a period of one year. Stage II forest clearance was issued by the MOEF on 04.09.2014. In the meantime, on 10.06.2013, the petitioner also received environmental clearance for mining of 10 MTPA and expansion of beneficiation facilities from 10 MTPA to 18 MTPA. During the period of pendency of application for renewal of the mining lease, the petitioner is said to have made several representations vide Annexure-8 series. In the meantime, as per the judgment delivered by the Hon'ble Supreme Court in the matter of ***Goa Foundation*** in ***W. P. (C) No. 435 of 2012 dated 21.04.2014***, it has been held that the opinion of the State Government in terms of Section 8(3) is a *sine qua non* for carrying out mining operations in terms of Rule 24 A (6). The petitioner thereafter again represented for taking a decision on its pending renewal application on 18.06.2014, The Government of India amended Rule 24 A (6) and substituted it. As per the amended Rule, if an

application for first renewal of a mining lease is made within the period before expiry of the lease, it would be deemed to have been extended for a further period of two years or till the State Government passes order thereupon, whichever is earlier. Further such an application for first renewal which have not been disposed of by the State Government before the date of expiry of lease pending for disposal on the date of notification of the amendment, it shall be deemed to have been extended by further period of two years from the coming into force of the amendment or till the State Government passes order thereupon or the date of expiry of the maximum period allowed for first renewal, whichever is earliest. However, amended Rule provided that this shall not apply to renewal under sub section (3) of Section 8 of the MMDR Act, 1957. Further amendments were brought in Rule 9 of the said Rules. The State Government through its letter dated 20.08.2014 made a request to the Government of India for seeking relaxation under Section 31 of the Act and to grant mining lease w.e.f. 01.01.2012 i.e. the date on which the renewal of the mining lease for Noamundi Iron Mines fell due for a period of 20 years. According to the petitioner, the said letter indicates that the State Government had in principle taken a decision to renew mining lease of the petitioner. In the meantime, the Indian Bureau of Mines (in short IBM) gave a report on 28.08.2014 in terms of MC Rules 1960 recommending grant of renewal in favour of the petitioner. Further representations were made by the petitioner to the State Government for favourable consideration of its pending mining lease. However, the petitioner was shocked to receive the notices dated 03.09.2014 and 04.09.2014, Annexure-17 and 18 respectively issued by the State Government asking it to discontinue the mining operations. The petitioner thereafter made specific requests for issuance of express orders under Section 8 (3) of the Act so as to resume

mining operations. It has been stated on behalf of the petitioner that the sudden stoppage of mining operations and further discontinued mining operations has adversely affected the work population of 2,500/- directly at the mine site alongwith its adverse impact on the Jamshedpur steel works where a work population of 75,000/- depend directly or indirectly. The petitioner claims to contribute substantially towards statutory payment such as royalty, welfare cess, Sales Tax, Excise, Electricity Duty etc. to the central as well as the State Government. In the financial year 2013-14, the petitioner claims to have paid Rs. 288 crores as royalty to the State Government, Rs. 397 crores VAT/CST, Rs. 2688 crores towards excise duty, Rs. 77 crores towards cess, Rs. 75 crores towards service tax and Rs. 400 crores towards other taxes. With the aforesaid factual background, the petitioner has preferred this writ petition for the instant reliefs.

4. When the matter was taken up on 26.09.2014, a learned Single Bench of this Court after hearing the learned Senior counsel for the petitioner and the respondent-State had been pleased to pass the following orders:-

“The writ petition on being mentioned before the Hon'ble Division Bench, has been directed to be listed today.

2. Aggrieved by letter dated 3/4.09.2014 whereby, the petitioner-company has been directed to stop mining, it has approached this Court by filing the present writ petition.

3. The petitioner is represented by Mr. Binod Kanth and Mr. Gopal Jain, the learned Senior counsels, assisted by the counsel Ms. Nandini Gore, Mr. Indrajit Sinha and Mr. Ganesh Pathak. The respondents are represented by Mr. Rajesh Shankar, G.A. assisted by the counsel Mr. Abhay Prakash.

4. The learned Senior counsel for the petitioner-company submits that the mining lease with respect to Noamundi Mines was granted to the petitioner-company way back in the year, 1922 for 30 years which was renewed in the year, 1952. Subsequently, the mining lease for Noamundi Mines was again renewed in the year, 1981 and it was due for further renewal in the year, 2011. More than one year

before the expiry of the mining lease, the petitioner-company submitted an application on 17.12.2009 for grant of renewal of the mining lease. In the meantime, the report of the Indian Bureau of Mines was also received by the State Government and the State Government itself wrote a letter to the Central Government opining that the condition contained in Section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 may be relaxed in the case of petitioner-company however, ignoring its own communication/recommendation, the State Government has issued impugned letter directing the petitioner-company to stop mining of Iron Ore in Noamundi, forthwith. It is submitted that in the light of the said report, the State Government was required to take a decision. For more than 5 years after the application dated 17.12.2009 was submitted, no decision has been taken by the State Government for renewal of the mining lease in favour of the petitioner-company. It is thus, submitted that the action of the respondents in issuing communication dated 3/4.09.2014 is illegal, arbitrary and contrary to the provisions of the Mines and Minerals (Development and Regulation) Act, 1957.

5. *Mr. Rajesh Shankar, the learned counsel appearing for the respondent-State of Jharkhand has submitted that in view of decision of the Hon'ble Supreme Court in "Goa Foundation Vs. Union of India" [W.P.(C) No.435 of 2012] and the amendment in Rule 24A(6) of the Mineral Concession Rules, 1960, the State Government was under a duty to pass necessary orders in the cases in which the licencees were claiming benefit of the provision for deemed extension for second or subsequent renewals.*

6. *In reply, the learned Senior counsel appearing of the petitioner-company has submitted that the order in W.P(C) No. 435 of 2012 has been considered by the Hon'ble Supreme Court in "Common Cause Vs. Union of India & Ors." [W.P. (Civil) No. 114 of 2014] and it has been observed by the Hon'ble Supreme Court that the State Government is required to take a decision immediately on the applications seeking renewal of the mining lease. It is submitted by the learned Senior counsel appearing for the petitioner-company that the respondent no. 1 should take into consideration the materials brought on record before this Court including communication dated 20.08.2014 and any other material which the petitioner-company desires to produce before the respondent no. 1.*

7. *From the materials brought on record, it is apparent that though the petitioner-company moved an application on 17.12.2009 seeking renewal of mining lease for Noamundi Mines, the State Government has not taken a decision as yet. It is stated that inaction on the part of the State Government led to closure of the mines of the petitioner-company from where the petitioner-company procures about 60 % of the Iron Ore. It is submitted that the total annual production of*

the petitioner-company is about 10 million tones and the effect of the order dated 3/4.09.2014 is, total collapse of production of the petitioner-company.

8. In view of the rival submissions, I feel that the State Government should take a decision immediately on the application of the petitioner-company seeking renewal of mining lease. Let a decision be taken by the respondent no. 1 considering the materials produced before this Court including the communication dated 20.08.2014 and any other material which the petitioner-company desires to produce before the respondent no. 1. Accordingly, the respondent no. 1 is directed to take a decision on the application of the petitioner-company for renewal of the mining lease for Noamundi Mines on or before 06.10.2014 and let it be produced before this Court on or before 09.10.2014. It is made clear that no further extension of time would be granted and the matter would be decided on the basis of materials already brought on record. The parties are permitted to file additional affidavit.

9. Post the matter on 09.10.2014 under the heading "For Final Disposal."

10. Let a copy of this order be given to the learned counsel for the parties."

5. The matter was thereafter placed before this Bench. The respondent-State, in the meantime, preferred an interlocutory application bearing I. A. No. 5321 of 2014 on 08.10.2014 praying for some more reasonable time to do the needful in due compliance of the mandatory statutory norms and duty as directed by this Court vide order dated 26.09.2014. When the matter was taken up on 21.10.2014, the copy of the letter no. 2417 dated 20.10.2014 issued by the Mines and Geology Department was produced before this Court. It was submitted on behalf of the State that the Cabinet has taken a decision in respect of the third renewal of the Mines of the petitioner and directed it to submit unconditional consent to fulfill 37 conditions prescribed, as indicated in the said letter.

6. In view of the aforesaid development that had taken place, it was submitted on behalf of the learned counsel for the State that the petitioner is required to submit their consent before the Competent Authority of the State and thereafter the respondents would proceed to take a decision to

issue formal orders of resumption of mines provided all conditions are fulfilled and statutory norms are also complied.

7. In view of the submissions made by the parties and the decision taken by the State Government as conveyed through letter dated 20.10.2014, this Court vide order dated 21.10.2014 observed that it is now for the petitioner to submit their consent as required in the letter dated 20.10.2014. It was further observed that the respondent-State would take a decision upon submission of such consent.

8. On 07.11.2014, the petitioner informed this Court that it has submitted its consent to the terms and conditions contained in letter dated 20.10.2014, however, using the expression “without prejudice to our rights under the law” through letter dated 01.11.2014, Annexure-24, which was brought on record by way of supplementary affidavit filed by the petitioner on 05.11.2014. After hearing the parties, the following order was passed on 07.11.2007:-

“After the last order dated 21.10.2014 the petitioner has submitted his consent to the terms and conditions contained in letter dated 20.10.2014 of the Department of Mines and Geology, Government of Jharkhand, however using the expression “without prejudice to our rights under the law”. A supplementary affidavit has been filed thereafter by the petitioner on 5.11.2014 enclosing the said letter of 1.11.2014 (Annexure-24). The correspondence between the department of Mines, Government of Jharkhand and the Ministry of Mines, Government of India on the question of relaxation of certain conditions have also been enclosed with the said affidavit. It is submitted by learned senior counsel for the petitioner that now after submission of the consent the State Government is obliged to take a decision and allow resumption of Mining as also execute the mining lease. It is further submitted that submission of consent by using the expression “without prejudice to our right under law” cannot be objected to by the State. Petitioner has the right to raise his grievance in respect of any terms and conditions which may be contrary to law and the constitutional provisions. It is further submitted that even the Ministry of Mines, Government of India has through its letter dated 3.11.2014 clarified that the question of grant of relaxation of rules by the Government of India in exercise of power under Section 31 of the M.M.D.R Act does not arise. Therefore, now it is the

State Government which has to issue the formal orders of resumption of mining and execute the mining lease. Learned senior counsel has further submitted that the petitioner is suffering on account of mining operation being stopped through letter dated 4.9.2014 issued by the Government of Jharkhand. Therefore, he has made a prayer that the respondent- State be directed to issue formal orders of resumption of mining. It is further submitted that since the process of renewal is a continuing one and on account of orders passed earlier by this Court, the State has also taken a decision as contained in their letter dated 20.10.2014, no question for seeking permission from the Election Commission of India is required as is being made out by the respondent- State.

Mr. Ajit Kumar, learned A.A.G appearing on behalf of the State submits that the petitioner has submitted their consent, which is not unconditional as required by the State Government. He has also referred to the correspondence between the Department of Mines, Government of Jharkhand and the Ministry of Mines, Government of India as contained in letter dated 22.10.2014 and 3.11.2014 respectively. He however submits that the model code of conduct has come into force w.e.f. 25.10.2014 in view of the ensuing assembly election and therefore, necessary permission from the Election Commission would be required and only after such permission the Respondent- State will be able to issue formal orders for renewal. Therefore, such exercise shall take some more time. An interlocutory application being I.A. No. 5695 of 2014 has been filed by the respondent- State for allowing some more time to them to issue formal orders under Section 8(3) of the MMDR Act, in view of the aforesaid development.

Having considered the rival submission of the parties on the aforesaid issues, this Court is of the opinion that the respondents are not justified in taking an objection to the consent submitted by the petitioner by using expression "without prejudice to our rights under the law". The conditions imposed by the respondent- State for execution of mining lease are supposed to be in conformity with the law, the MMDR act and rules framed thereunder and also the larger scheme of constitutional provisions. Whether or not such conditions do lie within the legal framework may be subject matter of adjudication upon being raised by the person aggrieved.

The second issue relating to enforcement of model code of conduct by the Election Commission of India due to ensuing Assembly election in the State of Jharkhand, however seems to be justified. The State Government has through the instant interlocutory application prayed for some more time to seek permission from the Election Commission and only thereafter issue formal orders of renewal.

As prayed for by learned counsel for the respondent-state, let

the matter appear on 18.11.2014 so that the State Government may undertake the exercise for seeking permission from the Election Commission of India.

On the request of learned counsel for the respondent-state, let a copy of this order be handed over to him.”

9. The matter was taken up on 18.11.2014. It was brought to the notice of this Court by way of supplementary counter affidavit that in pursuance of this Court's order and in continuance of the earlier correspondences, specific request has been made to the Chief Electoral Officer vide letter no. 1311 dated 18.11.2014. Previous correspondences were also annexed on the subject. The petitioner has, however, submitted that the matter is not being pursued with urgency and earnestness for seeking permission from the Election Commission of India. After hearing the parties, this court directed the Election Commission of India through Chief Electoral Officer -cum-Principal Secretary, Cabinet (Election Department), Government of Jharkhand to be impleaded as respondent no. 3 in the instant writ petition and notices were issued upon it. When the matter was taken up thereafter on 27.11.2014, the respondent-State of Jharkhand filed an I. A. No. 6184 of 2014 seeking modification/ clarification of the order dated 07.11.2014 passed by this Court to the extent sought for. After hearing the learned Sr. counsel for the respondent-State as also the petitioner, the following order was passed on 27.11.2014:-

“The instant application preferred by the respondent State of Jharkhand seeks modification / clarification of the order dated 07.11.2014 passed by this Court to the extent, as is quoted here-under:

“Having considered the rival submission of the parties on the aforesaid issues, this Court is of the opinion that the respondents are not justified in taking an objection to the consent submitted by the petitioner by using expression “without prejudice to our rights under the law”. The conditions imposed by the respondent- State for execution of mining lease are supposed to be in conformity with the law, the MMDR act and rules framed thereunder and also the larger

scheme of constitutional provisions. Whether or not such conditions do lie within the legal framework may be subject matter of adjudication upon being raised by the person aggrieved”

2. Learned Senior Counsel Mr. M. L. Verma, while seeking modification of the observations made in the aforesaid order, submitted that the conditions imposed by the State Government are in consonance with the law and report of the M.B. Shah Commission and the petitioner does not have a reason to question the same. Petitioner's consent in the manner it has been given, is not unconditional acceptance as required by the State Government. Reference has been made to certain averments made by the petitioner in the supplementary affidavit dated 05.11.2014, where it has stated that the conditions imposed by the State are illegal, contrary to law and without jurisdiction. Learned Senior counsel laboured to justify the conditions which are imposed. Learned Senior Counsel further submitted that whether they say so in specific terms or not, their rights under the law are not going to be affected by the conditions imposed.

3. Learned Senior Counsel for the petitioner submitted that the consent letter is at Annexure-24 to the same supplementary affidavit dated 05.11.2014 and is dated 01.11.2014 where the expression used is wholly innocuous. It is submitted that the petitioner has given consent to the terms and conditions contained in the letter dated 20th October 2014 of the State Government, however, without prejudice to their rights under the law. No exception can be taken to use of such expression as the question whether the conditions are within the frame work of law or not, can only be adjudicated before the appropriate forum, if raised by an aggrieved person. Learned senior counsel also submitted that apart from the consent letter, the expression used in the said affidavit need not be attached much significance. The petitioner abides by the language used in the consent letter dated November, 1st, 2014.

4. I have heard learned counsel for the parties on the prayer made in the instant interlocutory application. The extracts of the order dated 7th November, 2014, of which the modification/clarification is sought for, have already been quoted in the foregoing paragraphs. This Court was very clear in the expression used while making such observations that whether the conditions imposed by the respondent-State do lie within the legal frame work may be subject matter of adjudication upon being raised by a person aggrieved. Nothing more need to be read out of the observation. As would also appear, the petitioner's consent letter dated 1st November, 2014 has only used the expression that their consent to the terms and conditions contained in the letter of the State Government dated 20th October, 2014 is without prejudice to their rights under the law. This Court has neither been asked to get into the correctness or legality of the

conditions imposed, nor is supposed to express any opinion on the same at this stage.

5. Having considered the rival submissions of the parties and also the specific stand taken by the petitioner, as conveyed through their senior counsel that they seek to confine themselves to the language used in their consent letter dated 1st November, 2014 as aforesaid, this Court is of the view that no modification/clarification is required in the observations made by this Court in the order dated 7th November, 2014.

6. Accordingly, the aforesaid I.A. stands disposed of.

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The Election Commission was noticed on the previous date and the petitioner has effected personal service of notice upon the newly added respondent no. 3 and filed an affidavit to that effect. Today, learned counsel for the petitioner are pressing for issuance of an order for resumption of mining operation by the petitioner stating that the formalities of consent as required by the State Government's decision have already been complied with.

Since the Election Commission has been made a party and has been effected notice, let the matter be adjourned to be listed on 2nd December, 2014 for appearance of Election Commission.”

10. Thereafter, when the matter was taken up on 02.12.2014, the Election Commission has also appeared through their counsel and submissions were made on behalf of the respective parties.

11. Learned Senior Counsel for the petitioner once again made a vehement request to direct the respondent-State to issue express order under Section 8(3) of the MMDR Act and to allow resumption of mining. He referred to the decision of the Cabinet, Government of Jharkhand contained in letter dated 20th October, 2014, whereunder the respondent-State themselves have indicated that upon furnishing of the consent on the part of the petitioner express order would be issued and the petitioner could start mining operation. It is also stated that the Government of India, Ministry of Mines, vide its letter dated 3rd November, 2014, responded to the request of the respondent-State in the matter of relaxation of rules. It

has clarified that question of grant of relaxation from the rules by the Government of India under Section 31 of the MMDR Act does not arise. It is submitted that the decision of the State Government has been taken pursuant to the order passed by this Court on 26th September,2014 and after submission of the consent letter by the petitioner and there being no requirement of relaxation from the Government of India any more, the State Government should issue express order under Section 8(3) of the MMDR Act so as to allow the petitioner to start mining once again. It is further submitted that operation of the Model Code of Conduct would not come in the way of issuance of the express orders as the entire decision has been taken by the State Government prior to the enforcement of the Model Code of Conduct and pursuant to the direction passed by this Court on 26th September,2014. It is further submitted that as per the respondent-State itself the execution of lease is to be done within a period of three months. Therefore, there is no question of violation of Model Code of Conduct in view of the letter dated 26th November,2014, issued by the Election Commission of India in the matter of renewal of mining lease/licences. Fervent plea has been made that the whole operation of company is going to come to standstill if such express orders are not immediately issued.

12. Mr. Ashok Kumar Singh, learned counsel, who has entered appearance on behalf of the Election Commission of India, opened his submissions by saying that the matter relating to grant of permission in respect of the mining lease of the petitioner at Noamundi has not been clearly and categorically represented before the Election Commission by the State Government. The communications, which have been made by the State Government on this issue, relate to eight such companies and did not clarify as to whether permission is sought for execution of the lease deed or for issuance of an express order under Section 8(3) of the MMDR Act or

for resumption of mining. The respondent-State also did not clarify as to why the case of the petitioner is to be considered separately for grant of any permission. Even then the Election Commission has conveyed its opinion through its letter dated 26th November,2014 that the question of renewal of mining lease /licences may be deferred till the completion of election in the State in all respects in view of Model Code of Conduct being in force. It is submitted that under the provisions of Article 324 of the Constitution of India, the Election Commission has a salutary role to ensure free and fair election. To ensure fairness in election any kind of largesse or concession is not permitted during enforcement of the Model Code of Conduct and no new project, programme or promises etc can be made. He has referred to do's and dont's in the compendium of instructions issued by the Election Commission of India for enforcement of Model Code of Conduct during the general election. It is submitted that grant of lease is definitely a concession and, therefore, the respondent-State should wait till the elections are over and the Model Code of Conduct ceases its force. However, the learned counsel submitted that in any case if the directions are to be issued by the Court, the same has to be obeyed.

13. Learned counsel for the Election Commission of India has, however, also made the submission that due to enforcement of Model Code of Conduct the State Government should not issue an express order at the moment.

14. From the submissions of the learned counsel for the respondent-Election Commission of India and the respondent-State it appears that the last date of election in the State of Jharkhand is 20th December,2014 whereafter the Model Code of Conduct would cease to have force and the results of the elections are to be declared on 23rd December,2014.

15. Mr. M.L.Verma, learned Senior Counsel appearing on behalf of the

State has justified the delay on the part of the State Government in taking a decision in the matter of 3rd renewal of the mining lease of the petitioner. It is submitted that forest clearance, which is mandatory, has only been granted to the petitioner by the Ministry of Environment and Forest on 4th September, 2014, even if an application for renewal was made in 2009. It is submitted that the respondent-State is bound by the judgment rendered by the Apex Court in the case of Goa Foundation and the amendment made to Rule 24(A)(6) of the MMDR Act by the Government of India in July, 2014. By virtue of the judgment and the amendment made, any mining after expiry of the lease of the petitioner on 31st December, 2011 became illegal in view of the specific provisions of Section 4 of the MMDR Act. The State Government has thereafter to form an opinion before any express order is to be issued as required under Section 8(3) of the Act. Once a mining becomes illegal after expiry of the lease, the State Government is justified in resorting to the penal provisions under Section 21(5) for recovery of the rent, royalty etc of the illegally mined mineral from the petitioner company as the State Government is the owner of the mines. However, the State Government has taken a magnanimous view by not initiating any prosecution against the petitioner. It is submitted that once an express order is issued in terms of Section 8(3) of the MMDR Act, the petitioner is permitted to start mining operation though the execution of the lease deed may require a period of three months' time as has also been indicated in the letter dated 20th October, 2014 issued by the Mines Department containing the decision of the State Government.

16. Learned senior counsel further submitted that the Model Code of Conduct is in force now and it would cease to operate upon the conclusion of the election by 20th December, 2014 i.e. the last date of polling. Therefore, this Court would not issue a direction upon the respondents for

issuance of an express order during enforcement of the Model Code of Conduct, as it would amount to compelling the authority to do an illegal act. He has relied upon judgments rendered by the Hon'ble Supreme Court in the case of *K.S.Bhoir Vs. State of Maharashtra & ors., reported in 2001 (10) SCC 264* and in the case of *State of U.P. & ors. Vs. Harish Chandra & ors., reported in 1996(9) SCC 309* in support thereof.

17. Upon hearing the counsel for the parties and upon considerations of the relevant materials on record, it appears that the issue in controversy has narrowed down to the question of issuance of an express orders in terms of section 8(3) of the M.M.D.R Act and the time frame within which it is to be done. The State Government after issuance of an interim direction by the learned Single Bench of this Court on 26.9.2014 in the instant matter took a decision as contained in the letter dated 20.10.2014 that upon furnishing of the unconditional consent on the part of the petitioner to the conditions imposed therein, it would issue express orders i.e. order under Section 8(3) of the act where after the petitioner could start mining operations. Though a further condition was imposed therein but because of the clarification of the Government of India that there is no requirement of relaxation of Rules by it, that condition has no relevance any more. However, it appears that during the pendency of the writ petition, the Election Commission of India enforced the model code of conduct in view of the Assembly Election being held in the State. The Election Commission of India on notice has also appeared and indicated their stand which is also contained in their letter dated 26.11.2014 addressed to the State Government. As per the said communication the Election Commission of India has given its opinion that the renewal of mining lease/licenses may be deferred till the completion of Election in all respects in view of the model code of conduct being in force. The State Government its decision contained in letter dated

20.10.2014 have themselves indicated that the mining lease agreement is to be executed within a period of 3 months but on submission of consent by the petitioner- company and upon issuance of express orders, it can start mining operations. It is therefore evident that on issuance of an interim direction upon the respondent-State to take a decision on the question of renewal of mining lease of the petitioner on 26.9.2014, the State Government took a decision on 20.10.2014 i.e. before coming into force of the model code of conduct w.e.f. 26.1.2014. This Court, while passing the order dated 26.9.2014 was conscious of the direction issued by the Hon'ble Supreme Court in the case of *Common Cause Vrs. Union of India* (In W.P.C. No. 114 of 2014) where it had observed that the lessee operating his second and subsequent renewal without any express orders of renewal passed by the State Government will not be allowed to operate by the State Government until the express orders are passed in terms of section 8(3) of the M.M.D.R Act. The Hon'ble Supreme Court had also directed that all renewal application under Section 8(3) of the M.M.D.R Act will be considered and disposed of by the State Government within 6 months from today i.e. date of order vide order dated 16.5.2014 passed in the said case. It is also evident that in view of the directions passed by the Apex Court in the case of *Goa Foundation(Supra)*, amendments have been made to Rule 24(6) of the Mineral Concession Rule wherein it is made clear that this rule would not apply to the renewal under sub section 3 of section 8 of the M.M.D. R Act.

18. From the conspectus of the background facts, reasons and judgments / orders passed by the Hon'ble Supreme Court, it emerges that,

- i. renewal application of the petitioner was made on 17.12.2009 before expiry of its lease with effect from 31.12.2011,

- ii. specific direction was issued by this Court upon the respondent State on 26.09.2014 to take a decision on the application of the petitioner-company seeking renewal of the mining lease, on or before 06.10.2014,
- iii. the Hon'ble Supreme Court in the case of **Common Cause versus Union of India (Supra)**, had issued a direction that all renewal applications under section 8(3) of the M.M.D.R. Act be considered and disposed of by the State Government within a period of six months from the date of the order i.e. 16.05.2014.
- iv. The State Government took a decision on 20.10.2014 to grant renewal of the mining lease to the petitioner upon submission of its unconditional consent to the conditions imposed therein,
- v. The State Government also took a decision to issue Express Orders under section 8(3) of the M.M.D.R. Act upon submission of such consent by the petitioner whereupon, it could start mining operations,
- vi. The Model Code of Conduct came into force on 26.10.2014 after such a decision was taken by the State Government,
- vii. The petitioner company submits its consent letter on 1.11.2014,
- viii. Election Commission of India through its communication dated 26.11.2014 gave its opinion that renewal of mining lease / licence may be deferred till the completion of election in all respects in view of the Model Code of Conduct being in force,

ix. it also appears from the case of the petitioner that on account of stoppage of mining operations on issuance of the impugned letter dated 04.09.2014, operations of the petitioner company has been adversely affected also affecting large work population directly or indirectly dependent upon it. It further appears that the petitioner pays substantial royalty, taxes, cess and duties to the State Government as well as Central Government as statutory payments arising out of operations carried out by it on the basis of such mining activity and production.

19. It therefore appears that no fresh policy decision is required to be taken by the State Government in respect of the matter relating to renewal of the petitioner's mining lease as the same has already been taken earlier on 20.10.2014 itself before coming into force of Model Code of Conduct. Only the consequential orders i.e. Express Orders under section 8(3) of the M.M.D.R. Act is now required to be issued, also in view of the policy decision already taken on 20.10.2014 and pursuant to interim direction passed by this Court earlier on 26.09.2014 in the instant case.

20. Therefore, the respondent State is directed to issue Express Orders under section 8(3) of the M.M.D.R. Act in terms of the decision of the State Government dated 20.10.2014 within a period of one week from today. On issuance of Express Orders under section 8(3) of the M.M.D.R. Act by the State Government, on or before 18.12.2014, the petitioner would be entitled to start its mining operations, otherwise, as it appears, the continued stoppage of mining operations thereafter would have serious adverse consequence not only upon the petitioner but also on the interest of the State. Upon issuance of the Express Orders by the State Government,

impugned notice dated 04.09.2014 shall cease to have any effect.

Writ petition is accordingly allowed in the manner and to the extent indicated herein-above.

(Aparesh Kumar Singh, J.)

Kamlesh/ Pandey/Mohanti/Ranjeet