

this Court for the following reliefs:

(i) An appropriate writ, order or direction commanding upon the respondents to forthwith pass an order in terms of Section 8(3) of the Mines and Minerals (Development & Regulation) Act, 1957 in respect of the petitioner's Durgaiburu Captive Mining Lease and upon grant/passing of the aforesaid order, the petitioner be permitted to resume its mining operations of Durgaiburu Mining Lease of Gua Ore Mines;

(ii) A further writ/order/direction for quashing the orders dated 03.09.2014 and 04.09.2014 issued by the State of Jharkhand on the basis of amendment in Rule 24A(6) of MCR, 1960 whereby mining operations were stopped in the leases where on the basis of deemed extension of leases under second and subsequent renewals, mining was being done;

(iii) Any other appropriate writ(s), order(s) or direction(s) as may be deemed fit and proper for doing conscionable justice to the petitioner.

FACTS :

3. The petitioner is a Public Sector Undertaking duly registered under the Companies Act. It was granted mining lease for Durgaiburu Mining Lease of Gua Ore Mines for 30 years on 22.02.1949 and it was renewed for a period of 30 years which expired on 21.02.2009. It submitted its application for renewal of Durgaiburu Mining Lease of Gua Ore Mines in Form- J on 08.02.2008, seeking second renewal of the lease-deed for Durgaiburu Mining Lease of Gua Ore Mines, along with all necessary statutory clearances. A report from the Indian Bureau of Mines (IBM) in terms of Rule 24A(3) of Mineral Concession Rules, 1960 was sought and a favourable recommendation was given by Indian Bureau of Mines vide letter dated 28.08.2014 as corrected by letter dated 01.09.2014. The State Government also

wrote a letter to the Central Government on 20.08.2014 seeking exemption with respect to certain conditions however, vide letter dated 04.09.2014, the petitioner-Company was directed to stop mining operation in Durgaiburu Mining Lease of Gua Ore Mines, which compelled the petitioner-Company to approach this Court. The petitioner-Company has employed more than 18,000 employees who and their families are dependent on the operation of the plant. Due to closure of the Durgaiburu Mining Lease of Gua Ore Mines, a critical condition has arisen in which the Bokaro Steel Plant may have to be shut down. If the petitioner-Company has to suspend production, it would incur huge financial and operational loss to the Company. In the last five years, the petitioner-Company has paid about Rs. 2,000/- crores to the State of Jharkhand on account of royalty, cess, value added tax and other taxes. The application dated 08.02.2008 while remained pending, the petitioner-Company was permitted to continue mining in the Durgaiburu Mining Lease of Gua Ore Mines however, vide letter dated 04.09.2014, the respondent-State of Jharkhand directed the petitioner-Company to suspend the mining operations, a direction which cannot be sustained in law.

4. A counter-affidavit has been filed on behalf of the respondent- State of Jharkhand stating that all sincere efforts were made to dispose of the second renewal application of the petitioner- Company however, certain developments took place in the intervening period, due to which decision with respect to second renewal of Durgaiburu Mining Lease of Gua Ore Mines could not be taken. Rule 24A(6) of the Mineral Concession Rules, 1960 was amended on 18.07.2014 vide Notification dated 18.07.2014 by which provision for deemed extension for second and subsequent renewals of mining lease has been omitted. A letter dated 25.07.2014 has been sent to the Comptroller General, Indian Bureau of Mines and the report of the Indian Bureau of

Mines has been received on 28.08.2014. The Government of Jharkhand vide letter dated 20.08.2014 sought relaxation of certain conditions from the Ministry of Mines, Government of Jharkhand and it has also made a request for expeditious consideration so that, a decision with respect to renewal of pending application of the petitioner-Company under Section 8(3) of the Mines and Mineral (Development and Regulation) Act, 1957, can be taken. In view of the decision in "*Goa Foundation Vs. Union of India & Ors.*", reported in (2014) 6 SCC 590 and amended Rule 24A(6), the Government of Jharkhand directed its officers to issue letter directing closure of mining operations by the lessee whose second and subsequent renewal applications under Section 8(3) of the MMDR Act, 1957 were pending. There is no provision like express order in the Act and Rules but there has to be express order authorising second and subsequent renewals and it cannot be a deemed order as interpreted by the Hon'ble Supreme Court.

5. An supplementary affidavit and rejoinder to the counter-affidavit of the respondent-State of Jharkhand, have been filed by the petitioner- Company. The respondent-State of Jharkhand has also filed two supplementary counter-affidavits reiterating the stand taken in the writ petition and the main counter-affidavit.

SUBMISSIONS :

6. Mr. Maninder Singh, the learned Additional Solicitor General of India representing the petitioner- Company has submitted that in view of the specific provision contained in Section 8(3) read with Rule 24A(3), the respondent- State of Jharkhand is under a statutory duty to issue an express order in terms of Section 8(3) of the Mines and Mineral (Development and Regulation) Act, 1957. The Mines and Mineral (Development and

Regulation) Act, 1957 and the Rules made thereunder together form a complete code insofar, as grant of mining lease and renewal of mining leases, are concerned. Section 13 gives power to the Central Government to make rules and in exercise of powers conferred under Section 13 of the MMDR Act, the Central Government has framed the Mineral Concession Rules, 1960 which specifically stipulates the conditions for grant of mining lease and renewal of mining lease and therefore, the State Government is not permitted to add any additional condition and seek unconditional acceptance of an additional condition as a pre-condition for grant of second or subsequent renewal of the mining lease under Section 8(3) of the MMDR Act. The conditions sought to be imposed vide letter dated 22.10.2014 are void and contrary to the MMDR Act, 1957 as well as Rule 24A(3) read with Rule 27(3) of the Mineral Concession Rules, 1960. The petitioner-Company is a wholly owned Public Sector Undertaking and it has its own standing in the country. The suspension of the operation of the petitioner-Company is likely to affect thousands of people and it would certainly be affecting the Public Interest, in general.

7. Per contra, Mr. Jai Prakash, the learned Additional Advocate-General submitted that the renewal under Section 8(3) of the MMDR Act is not automatic rather, it is subject to the State Government forming an opinion that, it is in the interest of Mineral Development and it is necessary to do so to authorise the renewal of a mining lease, and then only an order under Section 8(3) of the MMDR Act, 1957 can be passed. In view of the decision in "*Goa Foundation Vs. Union of India & Ors.*", reported in (2014) 6 SCC 590 and the subsequent amendment dated 18.07.2014 in Rule 24A(6) of the Mineral Concession Rules, 1960, it was imperative for the State Government to impose certain conditions as a pre-condition to the second or subsequent

renewal of the mining lease, for which the applications were pending before the State Government. In view of the decision in “Goa Foundation”, all mining by the petitioner-Company after 21.02.2009 has been treated as illegal and therefore, the State Government was constrained to impose additional conditions vide letter dated 22.10.2014. The learned Additional Advocate-General has further submitted that the conditions imposed vide letter dated 22.10.2014 are in exercise of power under Rule 27(3) of the Mineral Concession Rules, 1960. It is submitted that in view of the Assembly Elections, the “Model Code of Conduct” has been enforced in the State of Jharkhand and therefore, any decision granting/executing mining lease to the petitioner-Company may be treated as violating “Model Code of Conduct” and thus, invite action against the officers.

8. In reply, the learned Additional Solicitor General of India relying on a judgment of the Hon'ble Supreme Court in “*Gajraj Singh & Ors. Vs. State Transport Appellate Tribunal & Ors.*”, reported in (1997) 1 SCC 650, contended that purpose of renewal is to prevent discontinuation or forfeiture. With reference to various provisions in the MMDR Act and the Mineral Concession Rules, 1960, it is submitted that the second renewal of the mining lease of the petitioner-Company must relate to the date immediately after the expiry of the date on which previous lease-deed expired i.e., with effect from 22.02.2009. Lastly, it is submitted that once it is found that a favourable report has been received from IBM as contemplated under Section 24A(3) based on which, the State government has formed an opinion as contemplated under Section 8(3) of the MMDR Act, 1957, a mandamus is required to be issued to the respondent-State of Jharkhand for authorising the second renewal for Durgauburu Mining Lease of Gua Ore Mines in favour of the petitioner-Company, with effect from 22.02.2009. Further

reiterating that, the only condition which is required to be satisfied for second or subsequent renewals of mining lease under Section 8(3) of the MMDR Act, 1957, is the condition, contained in Section 8(3) read with Rule 24A(3) of the Mineral Concession Rules, 1960. The condition is, a report from the Indian Bureau of Mines (IBM) to the effect that, it would be in the interest of mineral development to grant the renewal of the mining lease. It is submitted that under Rule 27(3) of the Mineral Concession Rules, 1960, the imposition of additional conditions is permitted in two ways namely, (a) with the previous approval of the Central Government or, (b) at the instance of the Central Government and resort to Rule 27(3) is available, only if, it is found necessary that it is “in the interest of mineral development” that additional condition is required to be imposed. Thus, further conditions beyond the statutory conditions stipulated under the Act or the Rules can be imposed strictly in accordance with Rule 27(3) and not otherwise. In the present case, the requirement of Rule 27(3) is not satisfied. The learned Additional Solicitor General of India has pointed out that the MMDR Act itself makes a distinction between a private company and a Government company/undertaking under Section 17A(1A) of the Act. It is submitted that if a public body is under a statutory duty to execute or perform an act within stipulated time, such performance of statutory duty by an authority/officer would not attract the “Model Code of Conduct”. Moreover, once the Court issues a direction, all statutory bodies as well as State functionaries are under a duty to obey the Court's order and, if in compliance of the Court's order an action is taken, it certainly cannot be said to violate the “Model Code of Conduct”.

Discussion :

9. Before discussing the rival contentions raised on behalf of the parties, the scheme of the Mines and Minerals

(Development and Regulation) Act, 1957 needs to be noticed. The MMDR Act, 1957 has been enacted in “public interest”. The MMDR Act is intended for the development and regulation of mines and minerals under the control of the Union. Section 8 provides for periods for which mining lease may be granted or renewed. It provides that the maximum period for which a mining lease can be granted cannot exceed 30 years and the minimum period for which a mining lease can be granted shall not be less than 20 years however, the second and subsequent renewals of the mining lease can be only for a maximum period of 20 years. Thus, even the maximum period as well as the minimum period of the lease has been fixed under the Act and the State Government has no say in the matter. Section 8(3) of the MMDR Act, 1957 provides for second and subsequent renewals of mining leases. It provides that if the State Government is of the “opinion” that it is in the “interest of the mineral development” and “it is necessary to do so”, for the reasons recorded, the State Government can authorise the second and subsequent renewal of the mining lease in respect of the minerals not specified in Part A and Part B of the First Schedule for a period or periods not exceeding 20 years in each case. Section 9 provides for payment of royalty and dead rent. Section 13 gives a power to the Central government to make rules. Section 13(2)(g) speaks of the terms on which, and the conditions subject to which, a mining lease may be granted or renewed. Section 18 provides that it is the duty of the Central Government to take all steps for conservation or systematic development of minerals in India and for the said purpose it can frame rules.

10. It is to be noticed that the preamble of the MMDR Act and the preliminary section were amended by Act 38 of 1999. Earlier, the preamble to the MMDR Act read as “Regulation of Mines and Development of Minerals”. By the amending Act of

1999, the words “Regulation of Mines and Development of Minerals” has been substituted by the expression “Development and Regulation of Mines and Minerals”. Similarly, the title of the Act also carried a similar change. In my opinion, the changes in the title of the Act as well as, in the preamble of the MMDR Act, 1957 brought by Act 38 of 1999 are significant. It indicates the legislative intent that the development of minerals under the control of Union is the prime object under the MMDR Act. Under Section 8(3) also, the expression “in the interest of mineral development” occurs. Rule 24A(3) requires a report from IBM to ascertain, whether it is in the “interest of the mineral development” to grant renewal to an existing lease-holder. A conjoint reading of Section 8(3), Rule 24A and the legislative intent running through the scheme of the MMDR Act, 1957, leaves no manner of doubt that once the State Government forms an opinion that it is in the interest of mineral development that an existing mining lease should be renewed, the State Government would be under a statutory duty to pass an express order under Section 8(3) of the MMDR Act, 1957. It is not disputed that in letters dated 20.08.2014 and 22.10.2014, the State Government has recorded its satisfaction that it is in the interest of mineral development to authorise renewal of the existing lease of the petitioner's company.

11. The second limb of the argument of the learned Additional Solicitor General of India is addressed to challenge to the conditions sought to be imposed upon the petitioner's company vide letter dated 22.10.2014. Referring to Section 18 of the MMDR Act and Rule 24A(3) of the Mineral Concession Rules, 1960, it is contended that the second renewal of the lease for Durgaiburu Mining Lease of Gua Ore Mines must be granted with effect from 22.02.2009 for a period of 20 years. The penalty of an amount of Rs. 1982.57 crores sought to be imposed upon the

petitioner-Company on account of alleged illegal mining cannot be made a pre-condition for grant of renewal/renewals of the mining lease. Whereas, Mr. Jai Prakash, the learned Additional Advocate-General has submitted that after the amendment in Rule 24A(6) with effect from 18.07.2014 and the decision of the Hon'ble Supreme Court in "Goa Foundation", the mining by the petitioner-Company after 21.02.2009 has to be treated illegal and therefore, it was imperative for the State Government to impose penalty.

12. Though, the facts of the present case may not be similar to the facts in the "Goa Foundation", still the fact remains that in para 28 of "Goa Foundation" the Hon'ble Supreme Court has held that the provision for deemed extension would not be available in cases of second and subsequent renewals. In para 87.1 the mining in the said case has been held to be illegal though, the learned Additional Solicitor General of India with reference to para 82 and 85 in "Goa Foundation" tried to demonstrate that it was in the peculiar facts of the said case that the Hon'ble Supreme Court recorded a finding in para 87.1. The fact however, remains that after 21.02.2009, the existing lease of the petitioner-Company was not renewed. The State Government has written letter dated 20.08.2014 seeking relaxation/exemption from certain conditions though, vide letter dated 03.11.2014, the Central Government has expressed its inability to respond specifically to the said letter. In para 5 of letter dated 20.08.2014, it is stated that " यदि राज्य सरकार के द्वारा नवीकरण की जाती है तो वह prospective date से ही किया जा सकता है न कि retrospective date से। इस खनन पट्टा में वर्तमान में खनन कार्य किया जा रहा है। खनन पट्टा को राज्यहित में retrospective date दिनांक. 22.02.2009 से नवीकरण किये जाने की आवश्यकता है अन्यथा दिनांक 22.02.2009 से किया गया खनन कार्य अवैध खनन की श्रेणी में आ जायेगा।" It appears that the matter is still under active consideration of the State Government. What would be the

effect of the decision of “Goa Foundation” insofar as, the mining by the petitioner-Company after 21.02.2009 is concerned and whether the conditions sought to be imposed upon the petitioner-Company vide letter dated 22.10.2014 are permissible in law or are illegal and void, are the matters in issue in W.P.(C) No. 5640 of 2014 and therefore, I refrain from entering into the merits of the rival contentions insofar as, validity of letter dated 22.10.2014, is concerned.

13. Coming to the facts of the case, I find that Durgaiburu Mining Lease of Gua Ore Mines was initially granted to the petitioner-Company on 22.02.1949 which was renewed for 30 years till 21.02.2009. The petitioner-Company submitted its application in Form- J on 08.02.2008 and it has all necessary statutory clearances granted by the statutory body. The report of IBM was received on 28.08.2014 wherein it is recorded that, “In view of the above, it would be in the interest of mineral development to grant Second Renewal of Mining Lease for Iron ore (Dugaiburu, Gua Mine) over an area of 1160.06 ha in Village- Dugaiburu, Gua, District-West Singhbhum, Jharkhand State of Steel Authority of India Limited (SAIL) under Rule 24A(3) of Mineral Concession Rules 1960.....”. On 16.10.2014 when the matter came up for hearing the Court passed the following order;

“From the aforesaid facts, I find a strong prima facie case in favour of the petitioner for issuing an interim mandamus to the respondent-State of Jharkhand to take a decision on application dated 08.02.2008 submitted by the petitioner seeking grant of second renewal of Durgaiburu Mining Lease of Gua Ore Mines. Accordingly, a direction is issued to the respondent nos. 1 and 2 to take a decision on the application dated 08.02.2008 submitted by the petitioner within a period of two weeks from the date a copy of order is communicated to the respondent nos. 1 and 2, but no later than 5th of November,

2014 and the decision be communicated to the petitioner forthwith.”

14. Thereafter, as noticed above, the State of Jharkhand issued letter dated 22.10.2014 to the petitioner-Company. In letters dated 20.08.2014 and 22.10.2014, the State Government has specifically recorded that it has taken a decision to grant second renewal for Durgaiburu Mining Lease of Gua Ore Mines to the petitioner-Company.

15. The learned Additional Solicitor General of India has relied on decisions in “*Controller and Auditor-General of India, Gian Prakash, New Delhi & Anr. Vs. K.S. Jagannathan & Anr.*” (1986) 2 SCC 679 and in “*Secretary, Cannanore District Muslim Educational Association, Karimbam Vs. State of Kerala & Ors.*” (2010) 6 SCC 373. In “*Controller and Auditor-General of India*” (supra), the Hon'ble Supreme Court has observed as under,

20. “..... In all such cases and in any other fit and proper case a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus or a writ in the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

16. The petitioner-Company has filed a supplementary affidavit dated 05.11.2014 stating as under,

3. “That the petitioner Steel Authority of India Limited undertakes that it shall abide by all such conditions which could be lawfully stipulated and are legally enforceable.”

17. The Additional Solicitor General of India appearing for the petitioner-Company has fairly submitted that in addition to the undertaking of the petitioner-Company as stated in para 3 of the supplementary affidavit dated 05.11.2014, the petitioner-Company undertakes to abide by condition/conditions, if any, imposed by this Court.

18. In view of the peculiar facts of the case as noticed above and the discussions in the fore-going paragraphs, I am of the opinion that the writ petition deserves to be allowed and a mandamus is required to be issued to the State of Jharkhand to issue express order under Section 8(3) of the Mines and Mineral (Development and Regulation) Act, 1957 however, on the condition that, “the petitioner-Company would submit an undertaking to the State of Jharkhand that it would abide by the decision in W.P.(C) No. 5640 of 2014, subject to its right of appeal/revision”. Upon submission of the undertaking by the petitioner-Company, the Respondent No. 2 would issue express order under Section 8(3) of MMDR Act, 1957 within a period of one week, and if for any reason, an express order is not issued, the petitioner-Company is permitted to commence its mining operations in Durgaburu Mining Lease of Gua Ore Mines.

19. Insofar as, the “Model Code of Conduct” operating in the State of Jharkhand is concerned, it is to be noted that the petitioner-Company is an undertaking of national importance and continuance of its operation would be in the national interest. As rightly pointed out by the learned Additional Solicitor General of India, the petitioner-Company is a Public Sector Undertaking under the Central Government and its operations would be covered under Section 17A(1A) of the MMDR Act. The Respondent No. 2 is at liberty to seek formal permission, if necessary, of the Jharkhand State Election Commission, Ranchi.

20. In the result, the writ petition stands allowed. The impugned order dated 04.09.2014 would stand quashed, seven days after the petitioner-Company submits its undertaking as directed by this order.

21. Let a copy of this order be given to the counsel for the parties.

(Shree Chandrashekhar, J.)

Manish/A.F.R.