

THE HIGH COURT OF ORISSA : CUTTACK

W.P.(C). No.12119 of 2014

In the matter of an application under Article 226 of the Constitution of India.

M/s Jindal Steel & Power Ltd.
and another Petitioners

-Versus-

State of Odisha & others Opp. Parties

For Petitioners : M/s. Sanjit Mohanty (Sr. Advocate)
S.Nanda, R.R.Swain &
J.K.Naik.

For Opp. Parties : M/s. S.P.Mishra (Advocate General)
& M.S.Sahoo (A.G.A)

P R E S E N T :

THE HON'BLE MR. JUSTICE INDRAJIT MAHANTY
&
THE HON'BLE MR. JUSTICE B.K.NAYAK

Date of Judgment: 08. 04. 2016

I. Mahanty, J. In the present writ application, the petitioners-M/s Jindal Steel and Power Limited (hereinafter referred to as "M/s M/S JSPL") have entered into an agreement with Sarda Mines

Pvt. Ltd. (hereinafter referred to as 'SMPL') to purchase Lump Ore (RoM) from SMPL. Pursuant to such agreement, the petitioners-M/s JSPL had sought for permission from the State of Odisha and the State Government vide letter dated 27.03.2004 permitted the petitioners to purchase Iron Ore in the form of RoM from SMPL (lessee) of Thakurani Iron Ore Mines Block-B. It is further stated that the M/s JSPL had been procuring Iron Ore (RoM) from SMPL and have paid the total amount of royalty and other taxes on the purchase of said Iron Ore (RoM) and thereafter, processed the same at its processing plant located within the leasehold area of SMPL and such RoM on being processed into Lump Ore and Fines, was stored at the despatch point within the leasehold area of the mine. Such processed Iron Ore/Fine were being despatched by M/s JSPL to its Pelletisation Plant located at Deojhar, Odisha and Integrated Steel Plant at Raigarh, Chhattisgarh. Such transportation of ore was being permitted by the mining authority till 31.3.2014, on which date, the Deputy Director of Mines (DDM) Joda called upon the petitioners to stop transportation of ore.

2. The M/s JSPL addressed various letters to the appropriate authorities seeking permission to remove such Ore and Fines. By letter/order dated 23.6.2014 under Annexure-1,

the petitioners' representation dated 12.5.2014 under Annexure-2 seeking grant of permission for transporting Iron Ore procured from SMPL on which royalty had already been paid and admittedly, the processed Iron Ore i.e. Lump Ore and Fines have been stored at the despatch point situated within the leasehold area of SMPL, was rejected. This letter/order dated 23.6.2014 (under Annexure-1) rejecting the petitioners' representation is the subject matter of challenge in this writ petition.

3. It would be appropriate to take note of the following facts:

- (i) The petitioners are engaged in the business of manufacture of steel and steel products at Pelletisation Plant at Deojhar, Odisha and an Integrated Steel Plant at Raigarh in the State of Chhattisgarh.
- (ii) This representation had come to be filed for the sole purpose of seeking permission to transport the Lump Ore and Fines which have been produced by processing of RoM by the petitioners purchased from SMPL.
- (iii) The SMPL (lessee) has been granted the mining lease vide mining lease dated 14.8.2001 and the

said lease remains valid for 20 years i.e. till 13.8.2021. The SMPL (mining lessee) possessed a valid Forest Clearance and Environment Clearance and the respective clearances are noted as hereunder:

(a) The Ministry of Environment and Forest, Govt. of India (in short "MoEF") vide Letter dtd.21.06.2001 conveyed its approval for diversion of 865.276 Ha. of forest land out of the total lease hold area of 947.046 Ha. of SMPL, under Section 2 of the Forest (Conservation) Act, 1980. Under the said approval SMPL was permitted to conduct mining operation in 249.276 Ha. (where 94.024 Ha. is broken up prior to 25.10.1980, 155.252 Ha. is to be broken up afresh in phases) and 616 Ha. interspersed area to be maintained as forest out of the total diverted forest land of 865.276 Ha; And

(b) Environment Clearance (in short "EC") was granted by MoEF vide Letter dtd.22.09.2004 for 4 MTPA Iron Ore (lumps) with a validity for 20 years. The said EC dated 22.9.2004 is co-terminus with the period of the mining lease.

Copies of Forest Clearance and Environment Clearance have been annexed as Annexures-17 and 18 respectively.

4. The SMPL had sought for permission from the State Government (O.P. Nos.2 and 3) to sell the Iron Ore (RoM) on examine basis within the leasehold area to M/s JSPL for crushing

and sizing as per conditions specified therein. The State Government while granting approval under letter dated 27.03.2004 and 5.4.2004 had permitted SMPL to sell the Iron Ore to M/s JSPL subject to payment of royalty at the “highest rate” prescribed for the lumpy Iron ore containing 65% Fe and above for the entire quantity of RoM supplied to the M/s JSPL. It is also an admitted fact that permission as sought for transportation of processed ore/fines has already suffered royalty at the highest rate as approved by the State Government and the same has been duly paid.

It would also be relevant here to note that M/s JSPL has a valid trading licence (Annexure-5) under the Orissa Minerals (Prevention of Theft, Smuggling and Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 (in short “OMPTS Rules”) for procurement, processing, storage and selling of Iron Ore, from the despatch point within the leasehold area of SMPL and the State Government have from time to time issued necessary “transit permits” under Rule-10 of OMPTS Rules for transportation of minerals from within the leasehold area of SMPL.

5. In the light of the facts as noted hereinabove, while transactions were being effected in the manner as noted above,

Opposite Party No.3 (Deputy Director of Mines, Joda) issued letter dated 31.3.2014 directing the SMPL (lessee) to stop all mining activities within the mines with effect from 1.4.2014, on the ground of Environmental Clearance dated 29.10.2008 for enhancement of production from 4 MTPA Iron ore (Lumps) to 15 MTPA RoM had expired on 31.03.2014.

In view of the said order, the opposite party consequently also refused to grant the petitioner (M/s JSPL) "transit permit" for transporting the procured and processed Iron ore (CLO and Fines) from the despatch point to its Pelletisation Plant at Keonjhar, Odisha as well as the Steel Plant at Raigarh in the State of Chhattisgarh.

6. The M/s JSPL made various representations on 9.4.2014, 15.4.2014, 12.5.2014, 4.6.2014 and 18.6.2014 under Annexure-2 series requesting the opposite parties for grant of permission to transport the processed minerals which had been purchased from SMPL on which, royalty and all taxes had already been paid/collected.

7. Opposite Party No.3 (Deputy Director of Mines, Joda) on receipt of such representation made by M/s JSPL by letter dated 15.04.2014 under Annexure-8 series, sought for certain instructions from the Director of Mines, Odisha and the Director

of Mines in turn, under letter dated 23.04.2014 (Annexure-7), sought for clarification from the Deputy Director of Mines in respect of the representation made by M/s JSPL.

The Deputy Director of Mines, Joda enquired into the matter and submitted its clarification vide its report dated 3.5.2014 under Annexure-8 series and in response to Point Nos.3 and 4, the following report was submitted:

“No.3 xxx The details of annual statement of ROM procured, processed and despatched by the Petitioner since 2004-05 to 2013-14 and closing balance as on 31.03.2014 as per the register (FORM E) and monthly returns in Form E were provided by the Petitioner

No.4 x x x

In view of the above submissions, it is requested to kindly consider the representation of M/S JSPL for lifting of the applied quantity of iron ore as recommended in this office letter no.1693/Mines dtd.15.04.2014 from their crusher unit through downhill pipe conveyor belt to their pellet plant located at Deojhar as the stocks lying at the crusher site are royalty paid iron ore.”

It is further submitted on behalf of M/S JSPL that the entire processed Iron Ore (29978 MT of Lump and 12205328 MT of Fines) in terms of the report of the Deputy Director of Mines-O.P.3 dated 3.5.2014 are lying stocked after processing, prior to 31.03.2014 at the despatch point.

8. The Director of Mines-Opposite Party No.2 vide his impugned letter dated 28.5.2014 addressed to the Commissioner-

cum-Secretary, Steel & Mines Department-Opposite Party No.1 while recommending the rejection of the representation made by the petitioners seeking permission for transportation of Iron Ore made the following observation:

“xxx In view of the above legal provisions, despatch of the materials in question from the crusher point within the leasehold area of M/s Sarda Mines Pvt. Ltd. is to be considered as part of the mining operation within the leasehold area which can not be allowed without the valid statutory clearances. Thus the permission cannot be given for transporting of the above minerals, although legally procured, processed and stocked in the leasehold area.”

As a consequence of such non-recommendation, the impugned order/letter dated 23.6.2014 and 26.6.2014 came to be issued by the opposite parties-State, rejecting the prayer of the petitioners. Hence necessitating the present challenge.

9. M/s JSPL (petitioners herein) filed the present writ application with the following prayers:

- (i) Direct the Opp. Parties to grant permission to the petitioner to transport the entire processed ore (CLO & Fines) from the dispatch point within the lease area to its Pelletisation Plant at Deojhar and/or to the railway siding from where it can be transported by rakes to its Integrated Steel Plant at Raigarh in Chattisgarh;

- (ii) For setting aside the letters/orders dated 23.06.2014 and 26.06.2014 (Annexure-1; Page-25. to 26) passed by the Opposite Parties.

10. At this stage, it would be important to take note of the stand of the State Government in its counter affidavit dated 28.7.2014 wherein it is stated that “mining activities/operations” includes transportation and that transportation of such minerals is not permissible after the expiry of Environmental Clearance. At Para-25 of the counter affidavit, it has been stated as follows:

“xxx Moreover, considering the fact that the processed Ore is within the lease area of Sarda Mines, the Petitioner ought to have known that Environmental Clearance of the said mine is valid until 31.03.2014 and drawn up plan for evacuation of the processed ore within the said date. xxx”

11. At this stage, it would be most relevant to take note of the fact that during pendency of the writ petition, SMPL (lessee) has obtained the necessary clarification/permission from the Ministry of Environment, Forest & Climate Change, Govt. of India (in short “MoEF & CC”) vide letter dated 15.01.2015 to operate its mine for production up to 4 million ton Iron Ore (Lumps) per annum as per the EC dated 22.9.2004 and was also clarified in the said letter that, the EC dated 22.9.2004 for mining of 4 MTPA of Iron ore lump is valid for 20 years (Annexure-16).

It is submitted on behalf of M/s JSPL that the ground of objection for issue of “transit permit” for transportation of Ore as narrated hereinabove, no more exists in view of the clarification/permission issued by the MoEF dated 15.1.2015 under Annexure-16.

12. The State Government filed a further affidavit on 23.02.2015 stating that the SMPL (lessee) cannot be allowed to operate the mines in view of the interim order dated 16.05.2014 passed in W.P.(C) No.114 of 2014 (***Common Cause vrs. Union of India and others***) by Hon’ble Supreme Court of India.

13. The M/s JSPL (petitioners herein) responded to the aforesaid objection by stating that this subsequent stand of the State Government is of no relevance, inasmuch as, insofar as W.P.(C) No.114 of 2014 (*Common Cause vrs. Union of India and others*) is concerned, the interim order was with regard to “resumption of mining operation” by SMPL and has nothing to do with the request made by M/s JSPL (purchaser) for “transportation of the processed Ore (Lumps) produced by them after processing the RoM and sold to M/s JSPL by SMPL, during the validity of the mining lease and after payment of royalty and taxes thereon.

It is further submitted that grant of permission to the petitioners (M/s JSPL) for transporting the processed Ore already

purchased by it from the SMPL, cannot be termed as “mining operations/activities”. In this respect, reliance is placed on the definition of term “mining operation” under Section 3(d) of the Mines and Minerals (Development & Regulation) Act, 1957 (in short “MMDR Act”) which does not include transportation of minerals by a buyer, who also possesses the necessary licence to transport under the OMPTS Rules. It is submitted that the State in its additional affidavit had attempted to expand the definition of “mining operation” by relying upon the definition given in Section 2(j) & (h) of the Mines Act, 1952. In this respect, it is submitted that the enactment of Mines Act, was essentially a welfare legislation and the objective of such statute was to ensure welfare and safety to the persons who are working in the mines and consequently, the object of extended meaning of the “mining operation” in the Mines Act, was to give a wide scope to the applicability of the said Act, with the object of extending the beneficial sweep of the enactment to the maximum number of people associated with the mining operations.

It is submitted that the definition of the provision under the Mines Act, 1952 cannot be imported to defeat the specific definition provided under Section 3(d) of the MMDR Act, 1957 and it is well settled that, since the MMDR Act, itself, contains the definition of the term “mining operation” for the purpose of MMDR

Act, it is no longer open for the State to attempt to import the definition by attempting to rely upon any other Act including the Mines Act. It is further stated that “transportation” of the procured and processed minerals by the petitioners who possess the necessary license under the OMPTS Rules and who have purchased the RoM from the mining lessee, is clearly permissible under law and further that the clarification given by the MoEF under its communication dated 15.1.2014, that the EC dated 22.9.2004 granted to SMPL (lessee) continues to be valid and that SMPL also possessed the valid lease deed which would expire only in the year 2021. Therefore, the objection raised by the State Government regarding transportation of Ore by the petitioners is wholly untenable.

It is submitted on behalf of the petitioners (M/S JSPL) that since the petitioners possess a valid licence under the OMPTS Rules and has already paid the necessary royalty for procured and processed Ore lying at the despatch point, within the mine of SMPL, “transportation” thereof cannot come under the purview of “mining operations” since the same was covered under the OMPTS Rules. In other words, it is submitted that the OMPTS Rules comes into operation the moment the licensee procures/purchases ore and such transportation of ore from the selling mining leaseholder,

cannot come within the perview of “mining operation/activities”. In this respect, the petitioners placed reliance on the judgments in the case of **Bihar Mines Ltd. vs. Union of India** (AIR 1967 SC 887); **Shri Shri Tarakeshwar Sio Thakur Jiu v. Dar Dass Dey & Co. & others** (AIR 1979 SC 1669) and **BanarsiDass Chadha and Brothers vs. Lt. Governor, Delhi Administration & others** (AIR 1978 SC 1587) and submit that the term “mining operation” have been specifically defined under Section 3(d) of the MMDR Act, 1957 which means any operation undertaken for the purpose of “winning”. Consequently, the term “winning” would clearly encompass the activity of extracting the mineral from the mines to the pithead. In conclusion, it is submitted that whereas the original objection raised by the State Government and its authority, was for the purported lack of the authority and EC on the part of SMPL and once such objection no longer be said to have existed in view of the subsequent issue of letter dated 15.1.2015 by the MoEF (Annexure-16).

Learned counsel for the petitioners further reiterated that the present writ application does not seek any right to carry out any mining operation by SMPL and the only relief sought for is with regard to seeking transportation of ore already purchased by the petitioners prior to 31.3.2014 and permission to transport the

processed ore since payment of royalty and taxes have already been made in respect thereof.

14. At this point, it would be relevant to take note of the decisions of the Hon'ble Supreme Court cited by the petitioners as referred hereinabove.

In the case of ***The Bihar Mines Ltd.*** (supra), the Constitutional Bench of the Hon'ble Supreme Court has dealt with Section 3(d) of the MMDR Act, 1957 and in particular, the scope of the expression "winning" in Para-21, it has been noted as follows:

"xx xx In a popular sense, winning a mineral means getting or extracting it from the mine. This is one of its dictionary meaning, see The Shorter Oxford Dictionary xx xx".

In the case of ***Shri Shri Tarakeshwar Sio Thakur Jiu*** (supra), the Hon'ble Supreme Court has dealt with the rights of mining lessee under the MMDR Act, 1957 and in particular Paragraphs-23 and 24, which are quoted as hereunder:

"23. The Agreement (Ex.I) is not a very lengthy document. The material part of this document may be extracted as below:

This deed of Agreement is executed to the effect following:-

..... We the First Party, have been carrying on the business of sand near Haripal Station. Sand was necessary for carrying on the said business and the sand lying inside the land described in the schedule below should be taken out and proposal having been made to the second parties for the purpose of

business, the second parties agreed to take settlement to the effect that we can take out the sands of the said lands and become bound by the agreement on the following terms and conditions of taking out the sand from the said land only. xxxx”

24. From what has been extracted above, the following characteristics of the transaction are clear:-

(i) A right to “raise” and “take out” and remove sand “lying inside” the land in dispute was granted by the plaintiff to the defendant. The words “raise” and “take out sand” from “inside” the land are wide enough to include not only the “right to carry out all the operations” necessary for “extracting” sand, but also to take it away and appropriate it. Construed in the context of the document as a whole, these words put it beyond doubt that rights to carry out “mining operations” (within the definition in clause (d) of Section 3 of the Central Act 67 of 1957) for winning sand and to appropriate it, were granted.

(ii) These rights were granted for a period of 9 years, commencing from April 27, 1950.

(iii) These rights were granted for a “price” fixed on yearly basis, irrespective of the quantity of sand extracted. The “price” fixed is Rs.66/- per annum. This consideration is payable in the month of Chaitra every year. In case of default, the First Party (grantee) shall not be entitled “to raise the sand next year” and the Second Party (grantor) shall have a right to recover the arrears of rent together with interest at 12% by bringing a suit against the First Party.

(iv) “The Second Party will be entitled to take khas possession of the land” “at the end of the stipulated period”. This condition, (contained in paragraph 4 of Ex.I) read along with the other parts of the documents, necessarily implies that if the First Party continues to pay the “price” as stipulated (a) he shall be entitled to enter into and remain in exclusive khas possession of the land for the purpose of carrying out the mining operations for the full stipulated period of

9 years and (b) the Second Party (plaintiff) will not be entitled to retake khas possession of the land and revoke the so-called 'license' before the end of the said period of 9 years."

15. The State in support of its contentions placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Goa Foundation**, (2014) 6 SCC 590 wherein the Hon'ble Supreme Court placed reliance upon an earlier judgment rendered by it in the case of **Samaj Paribartan Samudaya**, (2013) 8 SCC 154 in which it is held as follows:

"xxx inasmuch as the activity of dumping mineral wastes will pollute the environment, it will come within the meaning of activity of mining included in the schedule to the notification issued under Sub-rule(3) of Rule-5 of the Environment (Protection) Rules, 1986 xxx"

16. In this respect, learned counsel for the petitioners submitted that the mining-lessee (SMPL) as on date, possesses the necessary Environmental Clearance (EC) which remains valid up to the year 2021 as clarified by MoEF in its letter dated 15.1.2015 under Annexure-16 and, therefore, there exists no legal impediment in this regard.

17. On a consideration of the facts and law as advanced by the learned counsel for the respective parties, the facts that clearly emanate are as follows:

- (i) M/S JSPL had entered into an agreement with SMPL (mining lessee) for purchase of Iron Ore (RoM).
- (ii) The State of Odisha have granted permission to SMPL for sell of Iron Ore (RoM) to the petitioners-M/S JSPL to examine within the leasehold area for crushing and sizing and SMPL was required to pay royalty at the highest rate prescribed for the lumpy Iron ore containing 65% Fe (irrespective of the actual quality of the ore), which have been paid.

18. The impugned order/letter directing stoppage of transportation issued by the Deputy Director of Mines, Joda on 31.3.2014 as well as rejection of the petitioners' representation by the Opposite Parties-State dated 23.6.2014 and 26.6.2014 proceeded on the ground that SMPL (mining lessee) did not possess the necessary Environmental Clearance. This ground is no longer valid in view of the clarification issued by the MoEF under letter dated 15.1.2015 under Annexure-16.

19. Admittedly, the petitioner-M/S JSPL holds a valid licence under the OMPTS Rules, 2007 which entitles the petitioners

to procure, process, store and sale of Iron Ore from the despatch point within the leasehold area of SMPL.

The essential issue which is contested by the parties is the definition of term “mining operation”. While the State have placed reliance on the definition of the aforesaid words as available under the Mines Act and in particular in Section 2(i) and (h) thereof, the petitioners have placed reliance on the definition of term “mining operation” as given in Section 3(d) of MMDR Act, 1957, which means any operations undertaken for the purpose of winning any mineral. The expression has been dealt with by Hon’ble the Supreme Court of India at various occasions and is no longer *res integra*. The term “mining operation” under the MMDR Act read with OMPTS Rules, are only legislations under which, the lessee’s activities within the leasehold area are to be controlled.

20. The fact situation as noted hereinabove is looked into from another point of view that, there is no dispute that the petitioners-M/s JSPL had a contract for purchase of ore with the lease (SMPL) with agreement for sale. Such an agreement is obviously covered under the Indian Contract Act, 1872 as well as the Sale of Goods Act, 1930. In Chapter IV of the Sale of Goods Act, 1930, Section 33 needs to be noted as hereunder:

“33. Delivery.- Delivery of goods sold may be made by doing anything which the parties agree shall

be treated as delivery or which has the effect of putting the goods in the possession of the buyer or of any person authorized to hold them on his behalf.”

In the facts situation of the present case, admittedly, the seller-SMPL (lease) has effected delivery of RoM (iron ore) to the petitioners and the petitioners have thereafter processed the ore into sized iron ore and fine and is seeking permission for transportation thereof. It would be clear from Section 33 of the Sale of Goods Act, 1930 that, ones SMPL (lease) delivers the goods to the purchaser i.e. M/s JSPL (petitioners) and the petitioners in turn, has paid the seller the value thereof including royalty and taxes. The contract is duly performed and right, title and interest in such property gets to be vested with the purchaser i.e. the petitioners-M/s JSPL. Consequently, the attempt made by the Opposite Parties (State) prevents such transportation after right, title and interest in the property has been transferred to the purchaser i.e. M/s JSPL, cannot be justified in law since the petitioners in their capacity as buyer, is no longer governed by neither the MMDR Act, 1957 nor the Mines Act, 1952.

21. We are of the considered view that reference to the definition of “mining operation” under the Mines Act, 1952 is wholly misplaced. We are of the further considered view that the facts situation that has arisen in the present case is not the situation

where any reference or reliance can be placed in the Mines Act which is clearly a beneficial legislation for the welfare of the workman.

22. The next point of issue relates to the reliance placed by the State on the interim orders passed by the Hon'ble Supreme Court in the case of *Goa Foundation* (supra). We are of the clear and considered view that since MoEF have issued EC on 15.01.2015 under Annexure-16 clarifying that Environmental Clearance of SMPL remains valid and coterminous within its lease up to the year 2021, the said judgment has no application to the fact situation of the present case.

23. In the light of the discussion made hereinabove, we hereby quash the letter dated 31.03.2014 issued by the Deputy Director of Mines, Joda (O.P. No.3) directing stoppage of transportation of Ore and consequently, we also direct quashing of the letters/orders dated 23.6.2014 and 26.6.2014 under Annexure-1 by which order the petitioners-M/s JSPL's representation was rejected. We further direct that the Opposite Parties shall grant permission to the petitioners-M/s JSPL to transport the entire processed Ore (Lump and Fines) already stacked from the despatch point located within the leasehold area of SMPL to its Pelletisation

Plant at Deojhar, Odisha and/or to the railway site from where it can be transported by the petitioners.

24. The writ application is thus allowed. No order as to costs.

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I.Mahanty, J.

B.K.Nayak, J. - I agree.

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B.K.Nayak, J.