

(2013) 03 JH CK 0015

Jharkhand High Court

Case No: W.P. (C) No. 3563 of 2012

Vindhyachal Singh and Others

APPELLANT

Vs

The State of Jharkhand and
Others

RESPONDENT

Date of Decision: March 13, 2013

Citation: (2013) 2 JLR 399

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh, J.

Heard learned counsel for the parties. This application is directed against the impugned order no. 306 dated 11.05.2012 issued by the respondent no. 4, Assistant District Mining Officer, Latehar whereby he has expressed his inability to issue the transport challan in favour of the petitioners in absence of Environmental Clearance Certificate from the Department of Pollution Control Board. The petitioners have also sought direction upon the Pollution Control Board to issue N.O.C. u/s 25 and 26 of the Water (Prevention and Control of Pollution) Act, 1974 and u/s 21 of the Air (Prevention of Control and Pollution) Act, 1981 and in the meantime petitioners have also sought for issuance of the transport challan in favour of these nine petitioners in the present writ petition.

2. According to the petitioners, they had been granted mining lease for the major minerals and deeds of lease have also been executed by the State Government for different period. They were carrying mining activities and extracted concerned minerals from mines and transported on the basis of transport challan issued from time to time by the respondent-Office of District Mining Officer. Learned counsel for the petitioners submits that the applications were made for grant of issuance of N.O.C. before the Pollution Control Board. It is also submitted that the applications for renewal of lease have been made by the petitioners within stipulated time after

its expiry, which are still pending before the Competent Authority, therefore, in the meantime, they are entitled to continue their mining activities during the pendency of the renewal application of lease. However, because of the order passed by the Assistant Mining Officer, all the activities relating to transport of the excavated mineral is being suddenly interrupted.

3. The respondent-Pollution Control Board, on the other hand, in their counter affidavit have taken stand that in terms of the provisions of Environmental Protection Act and notification issued thereunder, each one of these petitioners have been directed to obtain environmental clearance from the Competent Authority at the time of renewal of their mining lease. It is, therefore, submitted that mining operation without N.O.C., consent to operate from State Pollution Control Board and without obtaining environmental clearance by the competent authority, is not permissible in law.

4. Learned counsel for the Board has drawn attention upon the applicability of the EIA Notification, 1994 whereunder in respect of Mining Project of major minerals having more than 5 hectares lease hold area, at the time of renewal of lease, the environmental clearance is mandatory in terms of the judgment of the Hon"ble Supreme Court delivered in the case of M.C. Mehta Versus Union of India and Others. In that view of the matter, the respondent-Pollution Control Board submits that the petitioners cannot claim to operate mining activities or insist for their transportation in absence of compliance of the mandatory requirement of law.

5. The respondent-State, on the other hand, also appeared and filed their counter affidavit in which the similar stand has been taken on their behalf that in absence of environmental clearance certificate, before renewal of the mining lease, which are pending before the respondent-authorities, the petitioners are not entitled to transport the mining mineral, which is contrary to the requirement of law under the various environmental laws as also the direction of the Hon"ble Supreme Court. Learned counsel for the State also submits that in these circumstances, the District Mining Officers concerned have been directed not to issue mining transport challan in favour of these persons, who have not obtained environmental clearance certificate and also have not been granted NOC from the State Pollution Control Board.

6. The petitioners, on the other hand, have stated that these mineral have been mined before the expiry of the mining lease and are lying in their custody, which need to be transported and, therefore, precondition of the environmental clearance for transportation of excavated mineral, is not mandatory.

7. Learned counsel for the petitioners, however, submitted that they are in process to approach before the Competent Authority under the Ministry of Environment and Forest for seeking environmental clearance certificate. Learned counsel for the petitioners also submits that in similar circumstances, Madhya Pradesh High Court

has directed the authorities to issue transport challan for removing the extracted minerals.

8. I have heard learned counsel for the parties and have gone through the relevant materials on record. In the instant case, the mining lease of nine petitioners for major minerals have already expired and they have made application for renewal of their mining lease before the Competent Authority. From perusal of Annexure-4 of the writ petition itself, it appears that area granted for mining lease in respect of individual petitioners are beyond five hectares where the competent authority is the Ministry of Environment and Forest and which has the jurisdiction to grant environmental clearance in respect of mining lease beyond five hectares of area. These petitioners, however, have claimed that they need to transport their excavated minerals from the mining area in question, which were already excavated under lease granted to them. However, it is requirement of the provisions of notification issued under the Environmental Protection Act, 1986 that for all mining project of major minerals more than five hectares lease area, for renewal of their lease, environmental clearance is mandatory and as of now these petitioners have not obtained environmental clearance from the competent authority of the Ministry of Environmental and Forest. In these circumstances, the request made by the petitioners for grant of transport challan before complying with precondition of obtaining mandatory environmental clearance certificate, NOC from the competent authority with consent to operate from the State Pollution Control Board is not based on subsisting legal right to transport mineral which is said to be excavated on their behalf before the expiry of the mining lease. At the moment the mining lease have admittedly expired and thereafter, environmental clearance certificate has not been taken at the time of application for renewal of permanent lease. The order relied upon by the petitioner is only an interim order passed by the Madhya Pradesh High Court. In the present facts of the case, it is not practically possible to direct the respondent-authorities to ascertain whether the excavated mineral were extracted at the relevant point of time when the original lease was existing or not or thereafter. Therefore, the prayer made in the instant writ petition for directing the respondent to issue transport challan cannot be accepted. The petitioners will have to obtain necessary environmental clearance certificate from the competent authority as also NOC with consent to operate mining lease from the Pollution Control Board before they can lawfully operate the mines in question in respect of which the renewal application, is still pending before the competent authority. In these circumstances, I do not find any reason to interfere in the writ petition. However, it will be open to the petitioners to approach competent authorities for grant of such Environmental Clearance Certificate as also NOC that are mandatory requirement of law in respect of the mining lease in question. If such application is made before the competent authority for seeking environmental clearance certificate then he may consider the same in accordance with law within a reasonable time. However for the facts and reasons rendered hereinabove, this writ

petition is, dismissed.