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Hindalco Industries Ltd. Vs State of Jharkhand and Others

Writ Petition (C) No. 1032 of 2004

Court: Jharkhand High Court

Date of Decision: June 21, 2004

Acts Referred:
Constitution of India, 1950 â€" Article 226#Forest (Conservation) Act, 1980 â€" Section 2

Citation: (2004) 3 JCR 380

Hon'ble Judges: M.Y. Eqbal, J

Bench: Single Bench

Advocate: A.K. Mehta, for the Appellant; Indrani Sen Choudhary, for the Respondent

Final Decision: Dismissed

Judgement

M.Y. Eqbal, J.
Petitioner has challenged the orders as contained in the letter No. 1994, dated 21.11.2003, and letter dated 17.1.2004,

whereby respondent No. 4, the Divisional Forest Officer, South Forest Division, Daltonganj, Medninagar, Palamau directed the petitioner not to

carry on mining operation without the prior approved of the Central Government under the Forest Conservation Act, 1980 and also not to use and

undertake the repair work of the road, namely, Hami-Orsa Road.

2. The case of the petitioner-M/s. Hindalco Industries Ltd. (in short the Company) is that in the year 1985-86 a mining lease was granted in

respect of mineral "Bauxite" in the districts of Latehar, Palamau, Lohardaga and Gumla within the State of Jharkhand. On 29.1.1985, a lease deed

was executed in favour of the petitioner in respect of 411.85 acres of land for a period of 20 years. Another lease was granted on 17.7.1986, in

respect of 764 acres of land in village Orsa in the district of Palamau for a period of 20 years. The area was surveyed and demarcated and

possession of the land alleged to have been handed over to the petitioner-Company. There is only one road, namely, Hami-Orsa road through

which Bauxite can be transported from the leasehold area.

3. Petitioner"s case is that the Company could not start mining activities as the Deputy Commissioner by letter dated 12.11.1987, stopped mining

activities. However, on 11.5.1988, the Deputy Commissioner, Daltonganj granted permission to the petitioner to do the repairing work of Hami-

Orsa road subject to certain conditions. On 30.7.1988, petitioner said to have filed an application before the Divisional Forest Officer for de-

reservation of the forest land for non-forest purposes and submitted a proposal to that effect. In 1996, after the Deputy Commissioner recalled the

order dated 12.11.1987, the petitioner again started mining activities only on the non-forest land and the Divisional Forest Officer, Daltonganj

directed the petitioner to do the repair work of the aforementioned road. It is contended by the petitioner that the mining activities is carried out in

the raiyati lands after taking permission from the Deputy Commissioner. In 2003, the petitioner intended to restart the mining activities from 15th

December, 2003 and intimation to that effect was given to the Divisional Forest Officer, Latehar. It is contended by the petitioner that it is

surprised to receive the impugned letter whereby respondents directed the petitioner not to carry on any mining activities.

4. The case of the respondents in the counter affidavit is that the substantial portion of the leasehold area covers the forest land and there is a

specific stipulation in the lease-deed that the mining lease would be subject to the provisions of Forest Conservation Act, 1980. It is further stated

that the leasehold area is also situated in the vicinity of Mahuadanr Wolf Sanctuary as notified by the State Government vide notification dated

23.6.1976. After the grant of mining lease the petitioner in 1988 requested the D.F.O. to allow him to repair the road and further requested him to

demarcate the forest land so as to enable him to submit proposal/application for permission under the Forest Conservation Act and accordingly

proposals were submitted with some defects and in 1992 a complete proposal/application was submitted by the petitioner. Respondents have

denied in their counter-affidavit to have granted permission to start the mining activities.

5. I have heard Mr. A.K. Mehta, learned counsel appearing for the petitioner and Mrs. Indrani Sen Choudhary, learned counsel appearing for the

respondent-State.

6. In view of the clear and unambiguous provisions contained in Section 2 of the Forest Conservation Act, 1980, read with explanation thereof, the

State Government or any other authority cannot direct that any forest land or a portion of forest land shall be used for any non-forest purposes

without the prior approval of the Central Government. In other words, whenever any forest land is required to be put to non-forest use the State

Government or other authority is required to obtain the approval of Central Government and it is only then any order or direction can be issued by

the Government for using the forest land for non-forest purposes.

7. It appears that because of the mandatory provisions of the Forest Conservation Act, 1980 a specific clause was incorporated in the lease-deed

stimulating that the mining lease would be subject to the provisions of the said Act.

8. Although the mining lease-deed was executed by and between the petitioner and the authorities of the respondent-State in the year 1986 but the

mining activities was not started which is evident from Annexure-16 to the writ petition, which is a letter dated 18.11.2003, written by General

Manager of the petitioner to the Divisional Forest Officer, Latehar. The letter reads as under :

The Divisional Forest Officer, Latehar.

Sub : Road repairing work from Hami to Orsa forest road.

Dear Sir,

This has reference to letter No. 126 dt. 24.1.1996, issued by Divisional Forest Officer, Daltongang South Forest Division, Daltonganj on the

above subject matter.

Vide the above letter D.F.O. Daltonganj has kindly given permission for repairing of forest road from Hami to Orsa.

In this context we would like to inform you that there is a lease granted by State Govt. in the year 1986 in the name of Hindalco Industries Limited

for mining and its operation purposes. Since then Company has tried to start this work in the year 1987, but due to law and order problem the Dy.

Commissioner, Palamau imposed restriction for any mining activities in this area. Dy. Commissioner revoked this restriction, Palamau in 1999 till

then we are in continuous effort to start our mines on Orsapat and Chiro Kukud.

In this context we have made a complete presentation on 17th October 2003 before the Dy. Commissioner, Latehar and S.D.O. Latehar has also

visited on 24th October 2003 at Mahuadanr Block. We have also given intimation to Dist. Admin. Latehar for starting mining work from 15th

December, 2003.

In view of above we want to start road repairing work from Hami to orsa w.e.f. 1.12. 03.

This is for your kind, information please.

Thanking you,

Yours faithfully,

For Hindalco Industries Limited

Sd/-

GENERAL MANAGER (M.O)

9. Similarly, from perusal of the letter dated 2.12.2003, Annexure-18 it also appears that till 2003 no mining activities was started even on the so-

colled raiyati land.

The said letter is also worth to be quoted herein below :

To

The Divisional Forest Officer,

Sourth Division,

Daltonganj

Sub : Mining operation at Orsa and Chiro-Kukud Mines

Sir,

Further to our letter No. 304/1475, dated 18.11.2003, we are submitting herewith the map showing the forest land around our leasehold area in

Orsa and Chiro-Kukud admeasuring 12.50 and 26.17 acres respectively.

We hereby confirm that no mining operation shall be carried out in forest land, which has been demarcated in the map. Mining will only be done in

the raiyati land purchased by us falling within our leasehold area.

We sincerely believe you would be kind enough to accord permission to start mining operation in the raiyati plots of our lease hold area. We

request that no restriction may kindly be imposed on commencement of mining operation in the raiyati area. We shall be ever grateful for the

support of Forest Department in this regard.

Thanking you,

Yours faithfully,

For Hindalco Industries Limited,

Sd/-

General Manager (Mines Operation)

10. It has not been disputed by the petitioner that after the execution of the mining lease-deed a complete proposal/application was submitted by

the petitioner to the D.F.O. in 1992 for the purpose of obtaining approval the Central Government for carrying out the mining activities.

Admittedly, the Central Government has not. accorded permission till date as contemplated under the said Act for doing the mining activities. In my

considered opinion, therefore, the petitioner is not entitled to start mining activities by using the forest land or portion thereof for non-forest

purposes.

11. So far the application of the petitioner seeking permission to repair the road which falls within the forest land in order to facilitate the

transportation of minerals after the mining activities are started I have no doubt in my mind in holding that even such activity of repairing or

constructing road which falls within the "" forest land for the purpose of transportation of minerals to be extracted from the leasehold area shall also

come within the definition of mining activities and that can also not be done without the prior approval of the Central Government. In other words,

any mining activities or any other activities incidental thereto cannot be done without the prior approval of the Central Government. There

respondents, therefore, rightly issued the impugned letter directing the petitioner not to start mining activities or conduct any repair of the road for

the purpose of transportation of minerals. The impugned orders need no interference by this Court.

12. There is no merit in this writ petition which is accordingly dismissed.