

(2008) 04 MP CK 0035

Madhya Pradesh High Court

Case No: None

S.N.S. (Minerals) Limited and
Others and N.M. Dubash Stone
and Lime Co. (P) Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: April 17, 2008

Acts Referred:

- Mines and Minerals (Development and Regulation) Act, 1957 - Section 18

Citation: (2008) ILR (MP) 2565 : (2008) 3 MPHT 465

Hon'ble Judges: Rajendra Menon, J; A.K. Mishra, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Rajendra Menon, J.

As challenge in both these petitions are made to Rule 23-F of the Mineral Conservation and Development Rules, 1988 (hereinafter referred to as "Rules of 1988") incorporated vide Notification dated 10-4-2003, these petitions are disposed of by this common order. For the sake of convenience, facts in the record of Writ Petition No. 1679/2004 are referred to.

2. Petitioners in both these petitions are carrying on mining activities on the basis of lease granted to them under the Mineral Concession Rules, 1960. Vide Notification dated 10-4-2003 (Annexure P-2) published in the Gazette of India, the Central Government made certain amendments to the Rules of 1988. The aforesaid amendment were made in exercise of the powers conferred on the Central Government u/s 18 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter referred to as "Act of 1957"). Being aggrieved by the amendment incorporated in the Rules of 1988 vide the Mineral Conservation and Development

(Amendment) Rules, 2003, as contemplated under Rule 23-F pertaining to submission of financial assurance, petitioners have filed this petition. It is the case of the petitioners that the amendment is contrary to the powers conferred on the Central Government u/s 18 of the Act of 1957. It is the case of the petitioners that Section 18 does not permit framing of the Rules in the manner as done and, therefore, the Rule in question framed being in excess to the powers conferred u/s 18, is liable to be declared as ultra vires.

3. It was emphasized by learned Senior Counsel appearing for the petitioners that in pursuance to the agreement entered into under the Mineral Concession Rules, 1960 in statutory Form K, a separate provision has been made for deposit of an amount of Rs. 10,000/- as security with the State Government. This amount having been paid as security can be utilized by the Government for violation of any provisions of the mining lease and when security is already paid in pursuance to the agreement, there is no necessity for insisting upon any further assurance or security from the lease holder. Inter alia contending that the demand of financial assurance contemplated in Rule 23-F is not warranted in the light of the fact that security is already submitted in accordance to the Mineral Concession Rules and further as royalty and other payments are made in accordance with the statutory provision, it is not all necessary for seeking any further amount by way of financial assurance. It is stated by learned Senior Counsel for the petitioners that in accordance with the statutory provisions, closure plan has to be executed and approved by the Indian Bureau of Mines, who are conducting inspection of the mining area once or twice in a year and various measures have been provided for taking penal action in case of deviation from the closure plan. It was emphasized that when the measures for protection of environment are already taken in the agreement executed in Form K, appended to the Mineral Concession Rules, when security and royalty are being paid in accordance to the statutory provision and as per the closure plan when the measures for environment protection by planting of trees and reclamation of land is already being undertaken, there is no necessity for incorporating a further provision for seeking financial assurance for the purpose of protecting the environment and rehabilitation. Inter alia contending that the provision of Rule 23-F is ultra vires to the provisions of Section 18 of the Act of 1957, and is liable to be quashed for the grounds stated hereinabove, learned Senior Counsel appearing for the petitioners pray for grant to relief prayed for.

4. Shri Shekhar Sharma, learned Counsel representing respondent Nos. 1, 3 and 4, and Shri Alok Pathak, learned Govt. Advocate for the State, refuted the aforesaid contention and pointed out that as the financial assurance contemplated in the amended provision is for the purpose of conservation and protection of environment, it is well within the powers conferred on the Central Government u/s 18 of the Act of 1957. That apart, it is argued by them that the amount is not being claimed as a fee, tax or any other amount for the purpose of execution of the agreement, but it is only in the form of surety furnished by the lease holder to

indemnify the Competent Authority against reclamation and rehabilitation cost. It is the case of the respondents that payment of security and royalty is different from the financial assurance sought for and in doing so, it is argued that the Central Government has not acted in excess of its power nor is the proposed assurance sought by the amendment illegal or contrary to any statutory rule or provision warranting interference into the matter.

5. We have learned Counsel for the parties at length.

6. Section 18 of the Act of 1957 imposes a duty on the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India, so also for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operation. This rule enables the Central Government by Notification in the Official Gazette to make Rules as it may think fit for enforcement of the aforesaid provision and in particular for the purposes of doing the acts indicated in Sub-section (2)(a) to (q). Financial assurance is defined under Rule 3(jjj) of the Rules of 1988, and the same reads as under:

(jjj) "financial assurance" means the sureties furnished by the lease holder to the Competent Authority so as to indemnify the authorities against the reclamation and rehabilitation cost.

The amendment incorporated by the Notification in question impugned in this petition, i.e., Rule 23-F contemplates a provision to the effect that every lease holder has to furnish a financial assurance and the amount of financial assurance is Rs. 25,000/- for A category mines, Rs. 15,000/- for B category mines per hectare of the mining lease area, which is put to use for mining and allied activities. A minimum amount of financial assurance to be furnished in any of the forms referred to in Clause (2) is fixed at Rs. 2 lacs for A category mines and Rs. 1 lac for B category mines. A provision is made for payment of enhanced amount towards financial assurance in case of increase of mining area and allied activities. Further provision is made for reduction of the amount of financial assurance in case the lease holder undertakes reclamation and rehabilitation measures as part of the progressive closure of mine. The amount spent by the lease holder in this regard is reckoned to be the sum of financial assurance already spent by the lease holder and to that extent a reduction in the amount to be furnished, as financial assurance is permissible. Sub-rule (2) of Rule 23-F contemplates the procedure to be followed and prescribes the form in which the financial assurance is to be submitted. Four methods are contemplated for submission of financial assurance. They are: (a) by means of a Letter of Credit from any Scheduled Bank; (b) Performance or surety bond; (c) Trust fund build up through annual contribution from the revenue generated by mine and based on expected amount sum required for abandonment of mine; and (d) any other form of security or any other guarantees acceptable to the Competent Authority. Various other provisions are contemplated under

Sub-rules (3) to (7) of Rule 23-F, pertaining to the manner in which financial assurance is to be submitted; the authority to whom it is to be submitted; the time when it is to be submitted; so also the manner of releasing the financial assurance; and, the procedure for recovery of financial assistance.

7. The main ground of challenge to the aforesaid provision is mainly on the ground that u/s 18 of the Act of 1957, the Central Government cannot make a provision for claiming and insisting upon submission of any such financial assurance. A perusal of the amended provision and the scheme proposed by the aforesaid amendment to the Rules by the Notification in question indicates that financial assurance is nothing but a surety furnished by the lease holder to the Competent Authority so as to indemnify the authority against the reclamation and rehabilitation cost. This is the purpose for seeking financial assurance as is clear from the definition of financial assurance, as defined in Sub-rule (3)(jjj)- The amount of financial assurance indicated for A category and B category mine as contemplated under Rule 23-F is to be submitted in the various form prescribed in Sub-rule (2). The Second Proviso to Rule 23-F(1) contemplates a provision for proportionate reduction in the financial assurance to be submitted to the extent of reclamation and rehabilitation measure already undertaken by the leaseholder as part of progressive closure measure of the time. It is, therefore, clear from a complete reading of the amended provision that the amendment is incorporated for the purpose of indemnifying the Competent Authority in case reclamation and rehabilitation cost is incurred by the authority after mining operations are concluded. Under the statutory provision, a lease holder on closure of mine is required to take steps for reclamation and rehabilitation in respect of the mine or part thereof, after cessation of mining operation, and in this regard statutory provisions are envisaged by means of submitting a mine closure plan and a progressive mine closure plan. These provisions are incorporated in Rule 23-A and 23-B, by amendment in the Rules of 1988. It is, therefore, clear that it is the duty of the lease holder to undertake the rehabilitation and reclamation process after cessation of mining activities and the Rule in question, i. e., Rule 23-F is only a measure incorporated to ensure adherence to the aforesaid provision for rehabilitation and reclamation and in absence thereof to seek indemnification of the cost incurred by the Competent Authority for failure on the part of the lease holder.

8. The question is as to whether incorporation of the provision seeking furnishing of surety in various form as contemplated under Sub-rule (2) of Rule 23-F is beyond the powers vested in the Central Government u/s 18 of the Act of 1957.

9. As already indicated hereinabove Section 18 imposes statutory duty on the Central Government to take all steps as may be necessary for conservation and systematic development of minerals in India and to ensure protection of environment by preventing or controlling any pollution that may be caused by prospective or mining operation. After mining operation or prospecting operations are concluded the mining area has to be brought back to its original shape as far as

possible and for the said purpose rehabilitation and reclamation process are to be undertaken. This comes within the purview of protection of environment by preventing or controlling pollution, as envisaged u/s 18 of the Act of 1957, that being so, any measure taken by the Central Government in preserving the environmental; balance and for preventing or controlling pollution by incorporating measures for ensuring reclamation and rehabilitation would come within the ambit of Section 18 of the Act of 1957, and the contention of learned Senior Counsel for the petitioners to the effect that the Central Government is not empowered to incorporate any measures seeking financial assurance byway of surety or security for carrying out rehabilitation and reclamation activity is unsustainable. The provisions of Section 18 of the Act of 1957 is very wide and it includes within its fold any measure that may be introduced for reclamation and rehabilitation after mining operations or prospective operations are concluded and the said measure would clearly come within the ambit of the aforesaid section, that being, so we are of the considered view that the power conferred on the Central Government to take various steps as indicated in Section 18 and the power to formulate Rules as contemplated in Sub-section (2) of Section 18 would include measures to be taken by the Central Government for the purpose of ensuring reclamation and rehabilitation of the mining area after mining operation ceases.

10. The amendment incorporated by the Amending Rule of 2003 for submission of financial assurance is, therefore, well within the legislative competency of the Central Government and in enacting the Rule for the said purpose it cannot be stated that the Central Government has acted in excess of the powers conferred on it.

11. The arguments advanced with regard to feasibility in seeking financial assurance when royalty and security is already paid is concerned, the same is wholly misconceived. Payment of royalty and payment of Rs. 10,000/- as security under the Mineral Concession Rules for the purposes of execution of the agreement is entirely different. Security of Rs. 10,000/- is deposited in view of the provisions of Rule 32 of the Mineral Concession Rules, 1960 and is for the purpose of the due observance of the terms and conditions of the lease. The purpose of obtaining financial assurance as contemplated under Rule 23-F by the amendment in question is nothing but a surety furnished for indemnifying the Competent Authority in case the said authority is required to incur any cost for the purposes of reclamation and rehabilitation. The purpose and import of seeking financial assurance is entirely different from the purpose of claiming security deposit or payment of royalty and, therefore, on this ground interference cannot be made by this Court. That apart, once it is found by this Court that the Rule in question seeking financial assurance is in accordance to the powers conferred on the Central Government, further interference on the ground of financial burden or feasibility in insisting upon the submission of financial assurance cannot be gone into by this Court, until and unless it is found to be wholly arbitrary or unsustainable. Respondents have given

reasonable justification and as financial assurance insisted upon is nothing but a surety submitted for indemnification of the Competent Authority in the event of failure on the part of the petitioners to undertake reclamation and rehabilitation after closure of mining operations, the same cannot be termed as unreasonable or arbitrary warranting interference by this Court.

12. Shri M.L. Jaiswal, learned Senior Counsel, had submitted that the procedure contemplated under Sub-rule (2) of Rule 23-F, for submitting bank guarantee, is very harsh and impracticable and it may cause great hardship to the petitioners.

13. On the ground of hardship interference cannot be made by this Court. It is for the Government concerned to lay down procedure and the form in which security or surety is to be submitted and in case some forms for the said purpose are indicated, no mandamus can be issued directing the Central Government or the State Government or the Competent Authority to seek submission of security or surety in the particular form. The discretion available to the Competent Authority in this regard cannot be curtailed by this Court by issuing any direction as prayed for in this regard. Accordingly, in the facts and circumstances of the case, finding no illegality in the amendment incorporated and the action initiated for seeking submission of financial assurance, both the petitions are dismissed without any order so as to costs.