REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2206 OF 2013
(Arising out of S.L.P. (C) No.16139 of 2010)

State of Orissa & Ors. …Appellants

Versus

M/s Mesco Steels Ltd. & Anr. …Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. This appeal arises out of a judgment and order dated 16th May, 2008 passed by the High Court of Orissa at Cuttack whereby Writ Petition No.14044 of 2006 filed by the respondent-company has been allowed, an inter-departmental communication in the form of a letter dated 19th September, 2006 addressed by the Director of Mines to Joint Secretary to Government of Orissa quashed and by writ of mandamus the State Government directed to

execute a mining lease for an area measuring 1519.980 hectares in favour of the respondent-company.

3. By Notification No.647/91 dated 23rd August, 1991, the Government of Orissa de-reserved and threw open Iron/Manganese Ore areas spreading over 282.46 square miles in five blocks located in Keonjhar and Sundergarh districts in the State. Applications were then invited from interested private parties in terms of Rule 59 of the Mineral Concession Rules, 1960 for grant of prospecting licenses and mining leases in respect of the said blocks. The exercise was, it appears, intended to boost the economy of the State by ensuring optimum utilisation of its mineral reserves and in the process generating employment opportunities for the predominantly tribal population inhabiting the two districts of the State. The invitation to apply for leases and to set up steel plants was open to all leading steel manufacturers.

4. In response to the advertisement notice applications were received from different parties including one filed by respondent-Mesco Steels Ltd. These applications appear to have been evaluated, culminating in a conditional

recommendation made by the State Government in favour of the respondent-company. One of the conditions which the State Government imposed in exercise of its power under Rule 27 (3) of the Mineral Concession Rules, 1960 required that the lessee shall set up two full-fledged Steel Plants within a reasonable time to be intimated by the lessee at the time of issue of the terms and conditions for the grant of the proposed mining lease. The other condition required that the lessee would utilise the entire iron ore extracted from the lease area for meeting the captive requirement of the Steel Plants to be set up at Duburi and Jakhapura and that no commercial trading of the mining material shall be carried out by it.

5. By an order dated 7th January, 1999 the Government of India, Ministry of Steel and Mines, Department of Mines, conveyed the approval of the Central Government for grant of the mining lease for extraction of iron ore from an area measuring 1011.480 hectares in villages Kadakala and Luhakala besides an area measuring 508.500 hectares in villages Sundara and Pidapokhari in district Keonjhar for a

period of 30 years. The approval was subject to the State Government ensuring compliance of the amended provisions of the Mines and Minerals (Regulation and Development) Act, 1957 and the Rules made thereunder besides the provisions of the Forest (Conservation) Act, 1980 and Notification dated 27th January, 1994 issued in terms thereof.

6. On receipt of the approval from the Central Government the State Government conveyed to the respondent-company the terms and conditions subject to which it proposed to grant a mining lease for mining of iron ore from the area mentioned above which included 377.690 hectares of forest land in villages Sundara and Pidapokhari of Keonjhar district. A letter dated 8th February, 1999 issued by the State Government to the respondent-company stipulated the terms and conditions that would govern the proposed mining lease and required the respondent-company to convey its acceptance to the same. In response, the respondent-company by its letter dated 15th February, 1999 conveyed its unconditional acceptance of the terms

and conditions stipulated in the letter mentioned earlier. The acceptance letter was followed by another letter dated 13th March, 1999 by which the respondent-company informed the State Government that it had already taken steps for preparation of a mining plan and initiated action for preparation and approval of de-reservation proposal for the mining lease in village Sundara and Pidapokhari over an area measuring 508.500 hectares said to be forest land. What is significant is that the respondent-company also pointed out that it was on the verge of completion of its Steel Plant at Kalinga Nagar, Industrial Complex, Sukinda, P.O. Danagadi, District Jajpur, Orissa which was expected to be commissioned by April/May, 1999. The State Government eventually sanctioned the grant of a lease in favour of the respondent-company to the extent indicated earlier in terms of its order dated 17th March, 1999.

7. By a letter dated 19th June, 2000 addressed to the respondent-company the State Government pointed out that the company had failed to submit the required mining plan and obtain the approval of Ministry of Environment and

Forest, Government of India, in regard to forest land involved in the proposed mining lease despite extension of time allowed to the respondent-company by the Government in terms of its letter dated 11th October, 1999. The State Government further pointed out that on account of the company's inaction in the matter of setting up the proposed two steel plants, IDCO had initiated action for cancellation of allotment of 3100 acres of land allotted in favour of MESCO Kalinga Steel Plant, the sister concern of the respondent-company, for the proposed steel plant, captive power plant and township. The letter in that backdrop invited the respondent-company for a personal hearing in terms of Rule 26(1) of the Mineral Concessions Rules, 1960 to discuss whether the iron ore required by the respondent-company for the steel plant which was already in existence could be assessed to enable the company to retain the iron ore deposits required for the said plant and restore back the remainder to the Government.

8. The respondent-company acknowledged receipt of the letter above mentioned and, *inter alia*, pointed out that the

mining plan for the entire area had been prepared and submitted separately on 31st January, 2000. It was also pointed out that out of the total extent covered by the proposed lease only 508.500 hectares was forest land for which extent alone was a diversion proposal required to be submitted. It also referred to certain other steps taken by the company like survey and demarcation of the area which was underway. More importantly, the company stated that it had already invested Rs.57.12 crores in the project but had to put the same on hold on account of the steel market passing through a lean phase because of which all steel majors were facing problems due to a glut in the market. The respondent-company claimed to have undertaken substantial work for developing the mine including financial participation by a Canadian company and assured the Government that the proposed project would create enormous job opportunities for the people of Orissa.

9. For nearly four years thereafter the matter appears to have remained pending for a final decision at different administrative levels in the Government. What is significant

is that by letter dated 26th May, 2004 the Director of Mines, Orissa, wrote to the Joint Secretary, Department of Steel and Mines, Government of Orissa*, inter alia*, pointing out that an area measuring 469.25 hectares included in the proposed lease in favour of the respondent-company was overlapping with the area recommended for allotment to the Orissa Mining Corporation Ltd. and that even though the Government had moved for elimination of the said overlapping area in terms of Director's letter dated 1st June, 2000, no formal Government order in the matter had been received. The Director further pointed out that D.F.O., Keonjhar had reported in terms of its letters dated 15th January, 2004 and 7th February, 2004 that major portion of the surveyed and demarcated area came under Khandadhar D.P.F. and was reported to be forest land as per column 7 of the D.L.C. report to which effect an affidavit had also been filed before this Court by the State Government. It was also mentioned that the Mining Officer had reported that an area measuring 692.6953 hectares out of the surveyed and demarcated area of 802.6678 hectares came under forest land which attracted the provisions of Forest Conservation

Act, 1980. Clearance from the Ministry of Environment and Forests, Government of India, was, therefore, absolutely necessary for execution of any mining lease in respect of the said area and till such time this essential pre-condition was not fulfilled, the execution of the lease deed was not legally permissible. By another letter dated 19th September, 2006, the Director of Mines recommended re-allocation of resources based on the requirement of iron ore for the existing steel plant set up by the respondent-company. It was further recommended that the respondent-company should not be permitted to carry on any trading activity in iron ore removed from the area to be allocated in its favour based on its actual requirement for the existing unit.

10. Aggrieved by the said inter-departmental communication the respondent-company filed Writ Petition No.14044 of 2006 before the High Court of Orissa at Cuttack in which the company prayed for quashing of the recommendations made by the Director of Mines proposing to reduce the lease area granted to the respondent-company and prayed for a mandamus directing the State

Government to execute the mining lease in respect of the entire 1519.980 hectares of land in the villages mentioned earlier. By an order dated 1st February, 2007 the High Court directed maintenance of *status quo*. Despite the said order, however, the Government of Orissa issued a notice dated 6th February, 2007 by which it called upon the respondent-company to show cause as to why the overlapping area of 469.25 hectares of the State PSU and 921.258 hectares granted in excess of the captive requirement of the unit set up by the respondent-company may not be deducted from the total mining lease area of 1519.980 granted to the company. The High Court ignored the show cause notice primarily on the ground that the same had been issued in the teeth of the interim order by which the parties had been directed to maintain *status quo*, and eventually came to the conclusion that the proposed reduction of the mining lease area whether on account of the alleged overlapping of the areas with the area approved for Orissa Mining Corporation or on account of the failure of the respondent-company and its sister concern to set up the second steel plant was not justified. The High Court held that although the State

Government had not issued any final order so far regarding the deduction of the area yet since a final decision appeared to have been taken by it, thereby implying that the issue of a show cause notice after taking of such a decision was a mere formality. In coming to that conclusion, the High Court placed reliance upon paragraph 8 of the counter affidavit filed by the State Government before the High Court. The High Court also held that in the absence of a mining lease in favour of the respondent-company, it could not take the risk of setting up of a steel plant. The High Court accordingly quashed letter dated 19th September, 2006 and by mandamus directed the State Government to execute a formal mining lease in favour of the respondent-company. The present appeal assails the correctness of the said judgment of the High Court as already noticed earlier.

11. Appearing for the appellant, Mr. U.U. Lalit, learned senior counsel, made a three-fold submission before us. *Firstly*, he contended that the writ petition filed by the respondent-company was manifestly premature as the Government had not taken any final decision that could have

been challenged by the respondent-company nor was the writ petition, according to the learned counsel, maintainable against a mere inter-departmental letter dated 19th September, 2006, which did not by itself finally decide any right or obligation of the parties so as to furnish a cause of action to the respondent to challenge the same in the extra ordinary writ jurisdiction of the High Court. *Secondly*, it was contended that even if the letter could be described as a final decision taken by the State Government in regard to the reduction of the lease area, the respondent-company ought to have taken recourse to proceedings under Section 30 of the Act before the Central Government instead of rushing to the High Court in a writ petition. *Thirdly*, it was contended that the very issue of a show cause notice to the respondent-company suggesting reduction of the lease area after assessment of the actual requirement by reference to the plant already set up, meant that the Government had not taken any final decision in the matter and that the respondent-company could say whatever it intended to say in opposition to the action proposed in the show cause notice where upon the Government could notify a final order on the

same, which order could then be challenged by the respondent-company either before the Central Government or before the High Court in a writ petition if otherwise permissible. Inasmuch as the High Court ignored the show cause notice and proceeded on the assumption that the same was an exercise in futility, it fell in a serious error, argued Mr. Lalit. The proper course, according to the learned counsel, was to allow the State Government to take a final view on the show cause notice after considering the response which the respondent-company may have to make.

12. On behalf of the respondent-company it was contended by Mr. Rakesh Dwivedi, learned senior counsel, that although the show cause notice issued by the appellant-State had not been specifically challenged in the writ proceedings before the High Court, this Court could look into the notice and examine whether the same had been validly issued on grounds and material that are legally tenable. He urged that although the State Government may be competent to recall its recommendations in exceptional situations, any such exercise of powers of recall can never be exercised arbitrarily or whimsically. At any rate, the exercise of power of recall

was, according to the learned counsel, wholly unjustified in the facts and circumstances of this case as the whole attempt of the Government appeared to be to somehow deprive the respondent-company of the benefit of the mining lease already sanctioned in its favour. It was also contended that the question of overlapping of the area had since been examined and rejected by the State Government as was apparent from the Minutes of the Meeting held in the office of the Chief Minister on 29th October, 2001, a copy whereof has been placed on record as Annexure R-1. It was also contended that the State Government was making much ado about nothing regarding the setting up of the second steel plant and that the same was no more than a pretext to deny to the respondent-company its rightful due under the sanction order issued by the Central Government and the grant made by the State. It was contended by Mr. Dwivedi that the requirement of an approved mining plan which was one of the conditions for the grant of lease had already been complied with while the execution of a lease deed could be made subject to the clearance of the project and the grant of a no objection by the Ministry of Environment and Forest

under Section 2 of the Forest (Conservation) Act, 1980. The order passed by the High Court could to that extent be modified, argued Mr. Dwivedi. Inasmuch as the High Court had not taken note of the requirement of such clearance being essential not only under the Act aforementioned but also because of the directions issued by this Court in ***T.N. Godavarman Thirumulkpad v. Union of India & Ors. (1997) 2 SCC 267***, it had no doubt committed a mistake but that did not warrant, setting aside of the entire order passed by the High Court.

13. We have given our anxious consideration to the submissions made at the bar. The following questions, in our opinion, arise for determination:

(1) Whether the writ petition filed by the respondent-company was premature, the same having been filed against an inter-departmental communication that did not finally determine any right or obligation of the parties?

(2) Whether the show cause notice could be ignored by the High Court simply because it had been issued in violation of

the interim order passed by it requiring the parties to maintain *status quo*?

(3) Whether the show cause notice was without jurisdiction and could, therefore, be quashed?

14. We propose to deal with the questions ad seriatim.

Regarding Question No.1

15. The writ petition, as already noticed above, was directed against a communication that had emanated from the office of Director of Mines and brought forward certain factual aspects relevant to the question whether a lease deed could be immediately executed in favour of the respondent-company. A careful reading of the said communication would show that it was issued in pursuance of a letter dated 12th January, 2006 from the Joint Secretary, Government of Orissa to the Director of Mines and another letter dated 29th August, 2006. By the former letter the Joint Secretary to the Government had instructed the Director of Mines to take action pursuant to certain directions issued by the Chief Minister of Orissa. This included making a real assessment of the requirement of respondent-company and permitting

execution of a lease deed subject to clearance of the Ministry of Environment and Forest, Government of India. The instructions issued to the Director of Mines also required him to resume the excess area for reallocation of the same to other deserving parties. The Director of Mines had responded to the said communication and assessed the mineral deposits in the area by reference to maps and surveys and made a recommendation back to the State Government. It is obvious from a conjoint reading of letter dated 12th January, 2006 and communication dated 19th September, 2006 sent by the Director of Mines in response thereto that a final decision on the subject had yet to be taken by the Government, no matter the Government may have provisionally decided to follow the line of action indicated in its communication dated 12th January, 2006 issued under the signature of the Joint Secretary, Department of Steel and Mines. It is noteworthy that there was no challenge to the communication dated 12th January, 2006 before the High Court nor was any material placed before us to suggest that any final decision was ever taken by the Government on the question of deduction of the area granted in favour of the respondent so as to render the

process of issue of show cause notice for hearing the respondent-company an exercise in futility. On the contrary, the issue of the show cause notice setting out the reasons that impelled the Government to claim resumption of a part of the proposed lease area from the respondent-company clearly suggested that the entire process leading up to the issue of the show cause notice was tentative and no final decision on the subject had been taken at any level. It is only after the Government provisionally decided to resume the area in part or full that a show cause notice could have been issued. To put the matter beyond any pale of controversy, Mr. Lalit made an unequivocal statement at the bar on behalf of the State Government that no final decision regarding resumption of any part of the lease area has been taken by the State Government so far and all that had transpired till date must necessarily be taken as provisional. Such being the case the High Court was in error in proceeding on an assumption that a final decision had been taken and in quashing what was no more than an inter-departmental communication constituting at best a step in the process of taking a final decision by the Government. The writ petition

in that view was pre-mature and ought to have been disposed of as such. Our answer to question No.1 is accordingly in the affirmative.

Regarding Question No.2

16. In the light of what we have said while deciding question No.1 above, this question should not hold us for long. It is true that the High Court had by an interlocutory order directed the parties to maintain *status quo*, but whether the said order had the effect of preventing the State Government from issuing a show cause notice was arguable. The issue of show cause notice did not interfere with the *status quo*. It simply enabled the respondent-company to respond to the proposed action. Be that as it may, once the show cause notice was issued, the High Court could have directed the respondent-company to respond to the same and disposed of the writ petition reserving liberty to it to take recourse to such remedy as may have been considered suitable by it depending upon the final order that the Government passed on the said notice. What was significant was that the respondent-company had not assailed the

validity of the show cause notice on the ground of jurisdiction or otherwise. If the validity of the show cause notice was itself in question on the ground that the Government had no jurisdiction to issue the same, nothing prevented the company from maintaining a writ petition and challenging the notice on that ground. The High Court would in that event have had an opportunity to examine the validity of the notice. In the absence of any such challenge the High Court could not simply ignore the notice even if it was issued in breach of the order passed by the Court. It was one thing to prevent further steps being taken pursuant to the notice issued by the Government but an entirely different thing to consider the notice to be *non est* in the eye of law. The High Court could have taken the show cause notice as a reason to relegate the parties to a procedure which was just and fair and in which the respondent could urge all its contentions whether on facts or in law. Our answer to question No.2 is, therefore, in the negative.

Regarding Question No.3

17. Although it is not necessary for us now to examine the question of validity of the show cause notice as the same was not questioned before the High Court in the writ petition filed by the respondent-company, we may to the credit of Mr. Dwivedi, learned senior counsel appearing for the respondent-company, mention that he did not seriously challenge the validity of the notice on the ground of jurisdiction. Mr. Dwivedi fairly conceded that the State Government could, in appropriate situations, exercise the option of recalling or modifying its recommendations but contended that the present case did not present a situation that could justify such a recall.

18. We do not propose to make any comment or express any opinion to the merits of the show cause notice. So long as the notice is not without jurisdiction as indeed it does not appear to be so, the question whether the grounds taken in the same provide a good basis for proposed action can be left open for the Government to decide. All that we need say is that learned counsel for the parties made detailed submissions in regard to the grounds given in the notice and the validity thereof from their respective points of view and

in support of their respective versions. Some of these grounds and submissions were quite attractive also. But so long as the matter is yet to be examined by the State Government, we consider it unnecessary to prejudice the issues or express any opinion about the merits of the said contentions on either side. The proper course, in our opinion, would be to leave the contentions available to the parties open for being determined by competent authority in the Government who would, in our opinion, do well to carefully consider the reply which the respondent may submit to the said show cause notice and pass a reasoned order on the subject. Question No.3 is answered accordingly.

19. In the result we allow this appeal, set aside the judgment and order passed by the High Court and direct that the respondent-company shall submit its reply to the show cause notice dated 6th February, 2007 issued by the State Government within three months from today. The Government may then upon consideration of the reply so submitted pass a reasoned order on the subject within two months thereafter under intimation to the respondent. If the order so made is, for any reason found to be unacceptable by

the respondent-company, it shall have the liberty to take recourse to appropriate proceedings before an appropriate forum in accordance with law.

20. Parties are left to bear their own costs.

.....J.
(**T.S. Thakur)**

.....J.
(Gyan Sudha Misra)

New Delhi
March 6, 2013