

COMMON CAUSE

v.

UNION OF INDIA & ORS

(Writ Petition (Civil) No. 114 of 2014)

MAY 16, 2014.

**[A.K. PATNAIK, SURINDER SINGH NIJJAR, FAKKIR
MOHAMED IBRAHIM KALIFULLA, JJ.]**

Mines and minerals:

Mines and Minerals (Development and Regulation) Act, 1957 – s. 8(3) – Mineral Concession Rules, 1960 – r. 24A(6) – Illegal mining in State of Odisha – Writ petition – Several lessees operating without clearances under the 1986 Act and the 1980 Act, and without renewal by the Government – Interim order – Pursuant thereto, examination of the matter by Central Empowered Committee (CEC) – Submission of report by CEC as regards the mining leases which are operational, which were not having requisite environmental clearances, which are suspended, rejected or lapsed, and those under first renewal and deemed renewal provision – Out of these 26 iron ore/manganese leases being operated as second and subsequent deemed renewals u/r. 24A(6) of the 1960 Rules without any express orders of renewal passed by the State Government – Held: Directions issued that the 26 leases operating as second and subsequent renewals without any express orders of renewal passed by the State Government would not be allowed to operate by State Government until express orders are passed in terms of s.8(3) of the 1957 Act – State Government directed to consider all renewal applications and dispose them of within six months from today – State Government further directed to consider first the

A *renewal applications in respect of leases granted for captive mining for providing iron or manganese ore as raw material for industries and thereafter, the renewal applications in respect of the other leases – Environment (Protection) Act, 1986 – Forest Conservation Act, 1980.*

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Goa Foundation Vs. Union of India Writ Petition (C) No. 435 of 2012 dated 21.4.2014—referred to.

CIVIL ORIGINAL JURISDICTION : Writ Petition (Civil) No.

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114 of 2014.

Under Article 32 of the Constitution of India.

D K. V. Vishwanathan, Rakesh Kumar Khanna, ASG., Dr. Abhishek Man Singhvi, Mukul Rohtagi, Pinaki Mishra, F. S. Nariman, Gopal Jain, Gopal Subramaniam, Ashok Parija, K. K. Venugopal, Manas Mahopatra, P.P. Rao, Ajit Kumar Sinha, Anil B. Dewan, Raj Panjawani, Prashant Bhushan, Ramesh K. Mishra, Shyam Singh Chauhan, Ramesh Singh, R.M. Patnaik, Kedar Nath Tripathi, Sunil K. Jain, Madhur Jain, Jagmohan Sharma, Rajat Jeriwal, Aakash Bajaj, Sanjeev Kumar, R.N. Karanjawala, Manik Karanjawala, Nandini Gore, Devina Sehgal, Tahira Karanjawala, Neha Khandelwal (for Karanjawal & Co.) Anand Varma, P. M. Patnaik, Shiv Mangal Sharma, E Nishit Agrawal, Shrey Kapoor (For AURA & Co.) D. L. Chidananda, Seema Rao, Mohit Nagar, Syed Tanweer Ahmad, F Sudarshan Singh Rawat, D.S. Mahra, Tanveer Ahmad, Sukhbeer Kaur Bajwa, Kirli Renu Mishra, Apurva Upmanyu, Dheeraj Nair for the Appearing Parties.

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The Order of the Court was delivered by

H **A. K. PATNAIK, J. 1.** This writ petition relates to mining in the State of Odisha. When the writ petition was heard on the preliminary point on 21.04.2014, we found from the averments

in paragraph 14 of the writ petition that several lessees were operating without clearances under the Environment (Protection) Act, 1986 and the Forest (Conservation) Act, 1980, and without renewal by the Government and we were of the opinion that an interim order needs to be passed in respect of the lessees who are operating the leases in violation of the law. On 21.04.2014, therefore, while issuing notice in the writ petition, we directed that the matter be listed on 28.04.2014 for consideration of the interim order that should be passed in the writ petition. On 21.04.2014, we also directed that the CEC, in the meanwhile, will make out a list of such lessees who are operating the leases in violation of the law and granted liberty to the parties to produce their papers before the CEC and directed that the State of Odisha and the Union of India will cooperate with the CEC to prepare the list.

2. Pursuant to the order passed on 21.04.2014, the CEC examined the matter during a meeting held on 24.04.2014 with the Chief Secretary, the Commissioner-cum-Secretary (Mines), the Principal Secretary (Forest), the Principal Chief Conservator of Forests and other senior officers of the Government of Odisha as well as Dr. V.P. Upadhyay, Director IA (Non-Coal Mining) and Mrs. Bharati, Director (AOHQ), of the Ministry of Environment and Forests and the Secretary General, Federation of Indian Mining Industries (FIMI) and also examined the representations received by the CEC on behalf of the lease holders, and has submitted a report dated 25.4.2014.

3. We have considered the report dated 25.4.2014 of the CEC, and the submissions made by learned counsel appearing for different parties, and we find that 102 mining leases do not have requisite environmental clearances, approvals under the Forest (Conservation) Act, 1980, approved Mining Plan and/or Consent to Operate. A list of these 102 mining leases is annexed to the report of the CEC as Annexure R-2. The CEC

A has, however, stated in the report that mining operations in these 102 mining leases have been suspended and these 102 mining leases have been classified as non-working leases. We direct that mining operations in these 102 mining leases listed in Annexure R-2 of the report of the CEC shall remain
 B suspended, but it will be open to such lessees to move the concerned authorities for environmental clearances, approval under the Forest (Conservation) Act, 1980, approval of Mining Plan or Consent to Operate and as and when the mining lessees are able to obtain all the clearances/approval/consent,
 C they may move this Court for modification of this interim order in relation to their cases.

4. We further find that 29 mining leases listed in Annexure R-3 to the report of the CEC have been determined or have
 D been rejected or have lapsed. We direct that mining operations in these 29 mining leases will also remain suspended, but it will be open for the lessees of these 29 mining leases to move the concerned authorities or the Court or the Tribunal for necessary relief and as and when they get appropriate relief
 E from the concerned authorities or the Court or the Tribunal, they may move this Court for modification of this interim order in relation to their cases.

5. We also find that 53 iron ore/manganese mining leases listed in Annexure R-4 to the report of the CEC are operating
 F and all of them are having approvals under the Forest (Conservation) Act, 1980, Consent to Operate granted by the Odisha State Pollution Control Board and approved Mining Plans and 3 more mining leases listed in Annexure R-5 are
 G located in forest as well as in non-forest land and those located in non-forest area do not have approval under the Forest (Conservation) Act, 1980. Hence, a total of 56 iron ore/manganese mining leases are presently operating in the State of Odisha, but out of these 56 operating mining leases, lease

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deeds in respect of 16 mining leases listed in Annexure R-6 to the report of the CEC have been executed and the balance 40 mining leases are operating under the deemed renewal provision in Rule 24A(6) of the Mineral Concession Rules, 1960. Out of these 40 mining leases, 14 leases are operating as first renewal and 26 leases are operating as second and subsequent renewals and the renewal applications are at various stages of examination and in some cases 'in principle' decision to grant the renewals have been taken and the follow up actions are under process.

6. The 16 mining leases listed in Annexure R-6 to the report of the CEC in respect of which the lease deeds for grant or the renewal of mining leases have been executed may be allowed to be operated for the time being as they have valid lease deeds in their favour. Out of the remaining 40 mining leases, 14 leases are under the first renewal. As the lessees have a right of first renewal for a period not exceeding 20 years under Section 8(2) of the Mines and Minerals (Development and Regulation) Act, 1957 and as under Rule 24A(6) of the Mineral Concession Rules, 1960, the leases are deemed to have been extended by a further period till the State Government passes orders thereon, these 14 leases under the first renewal may be allowed to be operated. The remaining 26 leases are being operated as second and subsequent deemed renewals under Rule 24A(6) of the Mineral Concession Rules, 1960 without any express orders of renewal passed by the State Government. We have already taken a view in our judgment dated 21.4.2014 in Writ Petition (C) No. 435 of 2012 (*Goa Foundation Vs. Union of India*) that the provision of deemed renewal in Rule 24A(6) of the Mineral Concession Rule, 1960 is not available for the second and subsequent renewals of a mining lease considering the language of Section 8 (3) of the Mining and Minerals (Development and Regulation) Act, 1957. Hence, these 26 leases cannot be allowed to be operated until

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A the State Government passes express orders in terms of
 Section 8(3) of the Mines and Minerals (Development and
 Regulation) Act, 1957 after it forms an opinion that in the
 interests of mineral development it is necessary to renew the
 leases and after it records reasons for renewal of the leases
 B in respect of the minerals.

7. Learned counsel for the lessees, however, submitted
 that the lessees are not at fault inasmuch as they have
 submitted their applications for renewal in time and it was for
 C the State Government to consider their applications and pass
 orders in terms of Section 8(3) of the Mines and Minerals
 (Development and Regulation) Act, 1957 and, therefore, the
 lessees should not be allowed to suffer closure of their mines
 for the fault of the State Government. We cannot accept this
 D submission of learned counsel for the lessees because under
 Section 8(2) of the Mines and Minerals (Development and
 Regulation) Act, 1957 the lessees have a statutory right of a
 first renewal for a maximum period of 20 years, but after the
 expiry of the first renewal they have right only to apply for further
 E renewal of the leases under Section 8(3) of the Mines and
 Minerals (Development and Regulation) Act, 1957 and the
 State Government has the power to renew for a further period
 only if it is of the opinion that in the interest of mineral
 development it is necessary so to do and only if reasons are
 F recorded by the State Government for such renewal of the
 leases and in the case of the 26 lessees who are operating
 under the second and subsequent renewals, this opinion has
 not been formed and the reasons have not been recorded by
 G the State Government in terms of Section 8(3) of the Mines and
 Minerals (Development and Regulation) Act, 1957.

8. Mr. K.V. Viswanathan, learned Additional Solicitor
 General, referred to the application for intervention filed on

behalf of Ministry of Steel, Government of India, supported by the affidavit of Shri K.B. Nair, Under Secretary, Ministry of Steel, Government of India, and submitted that more than 50% of the requirement of iron ore of the country is met from the State of Odisha and a large number of iron ore leases in the State are granted for captive mining and the ore from the mines is being utilized for the manufacturing of the steel in the plants of the lessees. He further submitted that commercial miners are also providing raw material to iron and steel industries not only in the State but also in the whole country. He submitted that while there is a need to impose time limits by various authorities, closure of mining operations due to delay in decisions by the State Government on mining lease renewal applications, may adversely affect the availability of critical raw materials like iron ore for domestic value addition industry, including the steel sector and, therefore, where the application for renewals have been made within the time prescribed under the statute, the State Government which has to take the decision should be directed to decide the applications in a time bound manner so that the industry is not penalized.

9. We find from the report of the CEC that the Chief Secretary, Odisha, has stated before the CEC that a special drive has been undertaken to complete the process of renewal of the mining leases and for this purpose a High Level Committee under the Chairmanship of the Additional Chief Secretary has been constituted and this Committee has met five times and in a number of cases 'in principle' decisions have been taken and efforts are on to ensure that the process of renewal of leases is completed within the next six months.

10. After considering the report of the CEC as well as the submissions on behalf of the parties, we direct as an interim measure that these 26 leases operating as second and subsequent renewals without any express orders of renewal

A passed by the State Government will not be allowed to operate by the State Government until express orders are passed in terms of Section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 and we also direct that all renewal applications under Section 8(3) of the Mines and Minerals (Development and Regulation) Act, 1957 will be considered and disposed of by the State Government within six months from today. We further direct that the State Government will consider first the renewal applications in respect of leases which were granted for captive mining for providing iron or manganese ore as raw material for industries and only thereafter consider the renewal applications in respect of the other leases. In any case, the State Government will ensure that the entire process of consideration and disposal of renewal applications under Section 8(3) of the Act is completed within six months from today. With the aforesaid interim directions, the interim matter stand disposed of.

Nidhi Jain

Writ Petition disposed of.