

SAMAJ PARIVARTANA SAMUDAYA AND ORS. A

v.

STATE OF KARNATAKA & ORS.

I. A. No. 248 of 2015

in B

Writ Petition (C) No. 562 of 2009

AUGUST 28, 2017

[**RANJAN GOGOI, PRAFULLA C. PANT
AND NAVIN SINHA, JJ.**] C

Mines and Minerals – Sale of iron-ore in State of Karnataka – Interim application is filed by FIMI seeking the direction from the Court that iron-ore and manganese ore may be sold in Karnataka without recourse to e-auction conducted by the monitoring committee set up by the Supreme Court – Held: The sale and purchase of iron-ore had been conducted in the most outrageous manner and on wholly unacceptable terms in the past resulting, inter alia, in huge leakage of government revenue – Such experiences and events cannot be allowed to resurface – Therefore, on an overall view of the matter, dispensation is not warranted with the existing policy of sale and purchase of iron-ore by e-auction in the State of Karnataka – The restoration of ‘normalcy’ in the process of sale and purchase of iron-ore must wait for the future and at least till such time that significant headways are made in the other connected aspects of the matter. D E

Disposing of the I.A., the Court F

HELD: Sale and purchase of iron-ore through the Court Appointed Monitoring Committee and by e-auction is not a singular but a connected facet of what was visualized by the Court in its bid to check, control and regulate mining and also to restore nature and environment to its earlier pristine purity, so far as possible. A cap on production and restoration of ecology and environment through a Comprehensive Environment Plans for the Mining Impact Zone (CEPMIZ) has been visualized by this Court in its order dated 18th April, 2013. The connected aspects i.e. lifting of the cap or enhancement thereof and launching of the CEPMIZ scheme is under active consideration of this Court in G H

A other connected Interlocutory Applications (I.As.). When the said connected issues are pending, it cannot be said that the situation has become ripe for the normal rule of sale and purchase to be restored so far as the sale of iron-ore in the State of Karnataka is concerned. The experience of the past has been
 B horrific. It cannot be allowed to come back. Sale and purchase of iron-ore had been conducted in the most outrageous manner and on wholly unacceptable terms resulting, inter alia, in huge leakage of government revenue. Such experiences and events cannot be allowed to resurface. Taking an overall view of the matter,
 C time has not come to dispense with the existing policy of sale and purchase of iron-ore in the State of Karnataka through the Court Appointed Monitoring Committee by e-auction. The restoration of ‘normalcy’ in the process of sale and purchase of iron-ore must wait for the future and at least till such time that significant headways are made in the other connected aspects of the matter dealt with by the final order of this Court dated 18th
 D April, 2013 passed in Writ Petition (C) No.562 of 2009. The application filed by FIMI South is rejected. The suggestions of the CEC and the State of Karnataka as made in their respective reports/affidavits filed before the Court are also not accepted. [Paras 10-12] [729-E-H; 730-A-D]

E CIVIL ORIGINAL JURISDICTION: I. A. No. 248 of 2015 in Writ Petition (Civil) No. 562 of 2009.

Under Article 32 of the Constitution of India.

F S.S. Shamsbery, AAG, Shyam Divan, Sr. Advocate (A.C.), A.D.N. Rao (AC), Siddhartha Chowdhury (AC), Prashant Bhushan, Ms. Anitha Shenoy, Jayant Mohan, Kumar Dushyant Singh, Kunal Verma, Yugandhara Pallav Jha, K. Raghavacharyulu, Kailash Pandey, Ranjeet Singh (for Gaichagpou Gangmei), Kunal Chatterji, Chanchal K. Ganguli, Amit Sharma, Ankit Raj, Ms. Ruchi Kohli, M. Yogesh Kanna, Ms. Mahalakshmi, Ms. Sujatha B., Sandiv Kalia, Dr. Sanjay Gupta,
 G Nandram, Advs. for the appearing parties.

The Judgment of the Court was delivered by

RANJAN GOGOI, J. 1. This application (I.A. NO.248 of 2015) has been filed seeking the following direction from the Court:

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“that iron-ore and manganese ore may be sold in Karnataka without recourse to e-auction conducted by the monitoring committee set up by this Hon’ble Court.” A

2. The response of the Central Empowered Committee (“CEC” for short) was sought for by this Court. Pursuant thereto a report dated 28th April, 2016 of the CEC has been submitted. In the said report the CEC has stated that it agrees with the statement of the applicant – Federation of Indian Industries, Southern Region (FIMI South) that the basic objectives behind the sale of iron ore through the Monitoring Committee, in terms of the various orders passed by this Court from time to time, have been achieved and an alternative system needs to be put in place. The main suggestions of the CEC are as follows: B C

(I) The mechanism must provide for the registration of both the buyers and sellers of iron-ore. The sellers of the ore, or the mining-ore lessees, must declare their statutory approvals, modalities of the Reclamation and Rehabilitation Plan (‘R & R Plan’) and the estimated annual quantity of iron-ore produced by them. The buyers of the ore must declare their eligibility to purchase the ore and the industry connected with said purchase. D

(II) The sale of iron-ore by sellers to the buyers must be through an online platform. This e-platform must provide for all the relevant information concerning the iron-ore, such as the grade and moisture-content of the ore, minimum acceptable price by the seller and the provision to view the bids offered by registered buyers on a real-time basis so that there could be a price-match amongst prospective buyers. E

(III) The mechanism must provide for online registration of the agreements and transactions executed between the registered buyers and sellers. F

(IV) The mechanism must provide a method for online deposit of applicable royalty, taxes, contribution to the Special Purpose Vehicle (‘SPV’) and other statutory duties; along with the subsequent online confirmation of such receipt. G

(V) The mechanism must consist of checks-and-balances which can be implemented across the e-platform, in order to ensure that H

A the sale or purchase of iron-ore is not substantially below the market price.

3. In its counter/reply, the State of Karnataka has indicated its broad agreement with the suggestions of the CEC and has incorporated certain additional recommendations including setting up of a Committee consisting of officials of the State Government to monitor the sale of iron-ore through the e-platform on the basis of long term agreements, a Model of which has also been submitted to the Court.

4. Other stake-holders like the writ petitioners in Writ Petition (C) No. 562/2009 – Samaj Parivartana Samudaya and ors. have objected to any change from the existing pattern of sale of iron-ore through the Monitoring Committee whereas M/s Vedanta Ltd., an iron-ore lessee operating within the State of Karnataka has supported the stand taken by FIMI South in the present I.A. i.e. I.A. No.248 of 2015.

5. The Monitoring Committee through whom iron-ore is currently being sold by e-auction was constituted by the order of this Court dated 2nd September, 2011 accepting the recommendations of the CEC dated 1st September, 2011 to sell the total quantity of illegally extracted iron-ore which at that point of time was 25 MMT (approximately).

6. After the sale of the illegally mined iron-ore was complete, this Court by order dated 23rd September, 2011 continued to entrust the duty and responsibility of sale of iron-ore to the Monitoring Committee. The above position was continued by this Court by its Order dated 18.4.2013 disposing of Writ Petition I No. 562/2009 and other connected cases. This is how the current status/situation with regard to sale of iron-ore by e-auction through the Court Appointed Monitoring Committee continues.

7. In the order of this Court dated 18th April, 2013 in Writ Petition I No. 562 of 2009 there is a vivid and graphic description of the enormity of the illegal mining and consequential damage to the ecology and environment that had led to the intervention of this Court and had prompted exercise of its jurisdiction in the present matter. Innovative measures and orders with the aid of Article 142 of the Constitution of India were felt necessary and consequently passed by the Court from time to time including the final order dated 18th April, 2013 to comprehensively deal with the issue of illegal mining and depredation of nature and environment. It is in the above said context that the constitution of the Monitoring Committee and the continuance of its role in the

matter of sale of iron-ore by e-auction had been conceived and continued by this Court on the basis of the various orders passed from time to time. A

8. It is in the aforesaid backdrop and having regard to the progress achieved in terms of what was contemplated and visualized by this Court in its final order dated 18th April, 2013 that the tenability of the prayers made by the FIMI South will have to be considered. B

9. What has been suggested in the report of the CEC dated 28th April, 2016 and the in-principle approval thereof by the State of Karnataka along with the suggestions offered by the State would seem to indicate that in place of Monitoring Committee constituted by this Court another Monitoring Committee consisting of officials of the State Government (of Karnataka) is proposed to over-see and supervise the sale of iron-ore through a hybrid system of long term contracts and sales through an e-platform including payment of taxes, royalty, etc. C

10. While it is correct that any trading process has to be free and fair with liberty to the contracting parties to work out their own terms of sale and purchase, what cannot be ignored are the circumstances which had prompted the Court to conceive of and continue with a departure from the normal rule and instead to have a regulated, if not, highly controlled system of sale and purchase of iron-ore. Sale and purchase of iron-ore through the Court Appointed Monitoring Committee and by e-auction is not a singular but a connected facet of what was visualized by the Court in its bid to check, control and regulate mining and also to restore nature and environment to its earlier pristine purity, so far as possible. D E

11. A cap on production and restoration of ecology and environment through a Comprehensive Environment Plans for the Mining Impact Zone ('CEPMIZ' for short) has been visualized by this Court in its order dated 18th April, 2013. The connected aspects i.e. lifting of the cap or enhancement thereof and launching of the CEPMIZ scheme is under active consideration of this Court in other connected Interlocutory Applications (I.As.). When the said connected issues are pending it cannot be said that the situation has become ripe for the normal rule of sale and purchase to be restored so far as the sale of iron-ore in the State of Karnataka is concerned. The experience of the past has been horrific. It cannot be allowed to come back. Sale and purchase of iron-ore had been conducted in the most outrageous manner and on wholly F G

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A unacceptable terms resulting, inter alia, in huge leakage of government revenue. Such experiences and events cannot be allowed to resurface. Taking an overall view of the matter, we are of the opinion that time has not come to dispense with the existing policy of sale and purchase of iron-ore in the State of Karnataka through the Court Appointed Monitoring Committee by e-auction. The restoration of 'normalcy' in the process of sale and purchase of iron-ore must wait for the future and at least till such time that significant headways are made in the other connected aspects of the matter dealt with by the final order of this Court dated 18th April, 2013 passed in Writ Petition (Civil) No.562 of 2009.

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C 12. We, therefore, for the present reject the application (I.A. No.248) filed by FIMI South and consequently do not entertain the support to the prayers made therein by M/s Vedanta Ltd. For the same reason we do not also accept the suggestions of the CEC and the State of Karnataka as made in their respective reports/affidavits filed before the Court.

D 13. I.A. No.248 accordingly is disposed of in the above terms.