

FINAL ORDER NO. 14/2014
DATE: 27 /1/2014

(In Revision Application file No.22/37/2012-RC-I)

M/s. Ramesh Prasad Sao

Revisionist

Vs.

State Government of Odisha

Respondent

ORDER

(Under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 and Rule 55 of the Mineral Concession Rules, 1960 (MCRs).

This Revision Application has been filed on 29.5.2012 challenging the State Government order No. 5333/SM dated 8.7.2011 whereby the State Government has constituted a Committee, which according to the Revisionist is in complete derogation of the provisions of MMDR Act, 1957 particularly that contained under Section 26(2) of the said Act as the power which ought to have been exercised by the State Government only through its officers or subordinate authority has been delegated to the private person.

2. The revisionist has also challenged the Report dated 27.5.2011 and subsequent initiation of further proceedings on the basis of the said Report submitted by the Committee constituted by the impugned order.

3. After the para-wise comments were filed by the State Government, the matter was first heard on 5.11.2013 in the presence of both the parties. At the time of hearing it was submitted on behalf of the State Government that they have already filed a Writ Petition in Orissa High Court and the learned counsel appearing on behalf of the State Government wanted some time to produce a copy of the order of the Hon'ble High Court and a copy of the Writ Petition. Two weeks' time was given to the State Government to file the same. The matter was thereafter taken up on 21.11.2013. Although the State Government did not file copy of the order of the Hon'ble High Court, the matter was adjourned and taken up again and heard on 18.12.2013. The Revisionists were represented by Shri Manas Mohapatra, Senior Advocate, Shri Shiv Mangal Sharma and Shri Shrey Kapoor, Advocates. The State Government

was represented by Ms. Kirti Mishra, Advocate. No copy of the order passed by the Hon'ble High Court has been filed till date. In view of this there is no other alternative left but to dispose of this RA on the basis of available records and submissions made by the parties.

4. In the Revision Application the revisionist has submitted:-

- (i) That the revisionist had obtained the Mining Lease by virtue of a Transfer Deed executed on 15.11.1986 from one Mr. M.H. Rehman who was granted the lease for 20 years w.e.f. 23.6.1980.
- (ii) That on 14.7.2011, the Committee constituted vide impugned order dated 8.7.2011 visited the lease hold area. On 25.7.2011 the Committee submitted a report to the Department of Steel & Mines of the State Government. The State Government thereafter issued a show-cause notice on 22.9.2011 alleging that the revisionist has violated the provisions of Rule 37 of the MC Rules, 1960 in as much as the revisionist has appointed one Triveni Earth Movers Pvt. Ltd. as its raising contractors. The revisionist on 25.10.2011 filed a reply to the said show-cause notice denying the allegation. The revisionist submitted that the appointment of raising contractor by the revisionist is not violative of any of the provisions of Rule 37 of the MC Rules.
- (iii) That while the hearing on the show-cause notice was still going on the State Government issued another show-cause notice on 26.3.2012 in the same manner and provided a copy of the impugned order dated 8.7.2011 constituting the committee and the impugned report of the said committee.

5. After receipt of the copy of the impugned order and the impugned report submitted by the Committee, the revisionist has filed this RA on the following grounds:

- (i) That the impugned order dated 8.7.2011 constituting the said Committee is completely without jurisdiction since the power available to the State Government under Rule 37 of the MC Rules has been delegated to the private persons that too without following mandatory procedure laid-down under Section 26(2) of the MMDR Act. It has also been submitted

that the impugned order constituting the committee is ab-initio void, in as much as two private persons namely Sri U.N. Nayak, Financial Consultant of OMC Ltd. and Sri Arun Kumar Verma, a practicing Chartered Accountant have been included as members of the said Committee. The State Government is neither authorized under the MMDR Act, 1957 nor the rules made thereunder to constitute a committee consisting of private persons to cause entry or to inspect the working of any Mine or for any other purpose connected thereto.

- (ii) That the impugned order is contrary to the Gazette Notification No. 8096-IV(A)-SM-101/2009-SM dated 19.12.2009 published in the extra ordinary gazette of Government of Orissa on 29.12.2009 which confers the same power on the Director Mines, Joint Director/Deputy Director Mines/Mining officers for conducting enquiries into any allegation of violation of any of the provisions of the MMDR Act, 1957, MC Rules, 1960 and other applicable Rules. That it is further clear from a bare perusal of the provisions of sub-section 2 of Section 26 of the MMDR Act, 1957 that the State Government can delegate powers available to it under the MMDR Act and Rules framed there under only by way of a notification to be published in the Official Gazette and not merely by office order as has been sought to be done by the impugned order date 8.7.2011.
- (iii) That it is a well settled principle of law that if a statute prescribes a particular procedure or manner for doing an act that thing must be done strictly as per that procedure only or not at all. In other words non-compliance of a statutory procedure renders the impugned order null and void. It is therefore submitted that non-compliance of the mandatory provisions laid down under sub-section (2) of Section 26 render the impugned order liable to be declared illegal and void (2010 (13) SCC 1 para 43 Sandur Manganese Ore vs. State of Karnataka).
- (iv) That the constitution of the Enquiry Committee vide impugned order date 8.7.2011 is also without jurisdiction in as much as

the state Government has requested the Central Government to constitute judicial enquiry Commission under the Commission of Enquiries Act, 1952 for investigation of allegations concerning appointment of raising contractor or conduct of mining operations by such contractor and accordingly the said Commission known as Justice M.B. Shah Commission has already commenced its enquiry as per the notification dated 22.11.2010 issued by the Government of India and published in the Gazette of India, Extra Ordinary, Part- II Section 3, Sub-Section (ii).

- (v) That the aforesaid Commission constituted by the Central Government has visited the Mining Lease held area of several lessees including that of the revisionist and have inspected all the documents including those pertaining to or relating with engagement of raising contractors. Since the matter is still pending before the aforesaid Commission, it would, therefore, be wholly illegal and improper on the part of the state Government to conduct a simultaneous and overlapping enquiry vide the impugned order. It is further submitted that the conduct of simultaneous and overlapping enquiry by two authorities may lead to grave anomalies and illegality resulting into conflicting order. Apart from that it is very burdensome and iniquitous on the part of the Revisionist to face same enquiry before two different authorities at the same time.
- (vi) That it is well settled principle of law that the State Government is acting as a mere delegate of Parliament while exercising powers under the MMDR Act and the MC Rules. The State Government is purely a statutory functionary while exercising powers under the MMDR Act and MC Rules. The State Government has been divested of legislative and executive powers with respect to mines and Minerals development and it cannot act in a manner inconsistent with the provisions of the MMDR Act and M.C. Rules in matters pertaining to regulation of Mines and Minerals.

6. The State Government, on the other hand in their reply have submitted that there were numerous allegations that a number of mining

lessees have entered into agreement/arrangement with third parties for raising ore from their leasehold area, which could be in violation of rule 37 of the MC Rules. In the face of such allegations, the State Government constituted a committee (“Committee”) vide order/notification no.5333/SM dated 8.7.2011 to carry out an investigative study of the financial transaction between the lessees and their raising contractors and to find out if there was any prima facie violation of rule 37 of the MC Rules.

7. The State Government has further contended that although the Notification Dated 08/07/2011 does not specify the provisions under which the Notification constituting the said Committee was issued but the nature of functions assigned to the Committee correspond to those enumerated in clauses (a) to (f) of section 24 (1) of the M MDR Act. It has further been submitted that the provisions of section 24 should be read in the context of and compared with the provisions contained in section 23B, where in the Parliament has specifically used the words, 'any Gazetted Officer of the Central or the State Government'. In view of this there is no room for doubt that the use of the words 'any person' in section 24 (1) was to enable the State Government to choose from a broad category of persons, whether government servants or otherwise.

8. The state government has also submitted that section 26 of the MMDR Act relates to delegation of powers by the Central Government and the State Government and in this case notification in the Official Gazette is necessary, but there is no such requirement in case of matters enumerated in section 24 (1) there is no such requirement and as such the Constitution of the Committee by a general order with two non-governmental persons does not violate any procedures prescribed in the MMDR Act.

9. As regards the Constitution of Shah Commission is concerned, the State Government has contended that the bar in the second proviso to section 3 (1) of the Commission of Enquiry Act is only with regard to the appointment of another Commission of Enquiry by the State Government, while enquiry by a Commission appointed by the Central Government is

pending. In this case, the State Government has not appointed any Commission of Enquiry but has merely exercised its statutory powers under rule 37 of the MC Rules and for that purpose has constituted a Committee under section 24 (1).

10. The State Government has further stated that the grounds taken by the Revisionist are untenable in law and misconceived. It has been submitted that the impugned order does not involve any delegation of powers conferred under the MMDR Act or MC Rules, but merely entrusts the functions enumerated in section 24 to the Committee, for which there is no requirement of a notification in the Official Gazette. The State Government has also denied that there was any malice as alleged by the Revisionist. The Committee was instructed to begin examination of the transactions in respect of certain mines, but it does not mean that there was any hidden agenda or malice on the part of the State Government.

11. The learned counsel appearing on behalf of the State Government has reiterated the submissions made in the reply and submitted that the establishment of the Committee by a general order with the two non-government persons does not violate any procedure specified in the MMDR Act and the rules made thereunder. The establishment of the Committee does not suffer from any jurisdictional error or any error of procedure. Therefore, it is open to the State Govt. to consider the report furnished by the Committee and to take pursuant actions as deemed appropriate. Section 28 of the MMDR Act provides for laying before the legislature, rules made and notifications issued under the MMDR Act, which are in the nature of delegated legislations. However, the order dated 8.7.2011 is not in the nature of delegated legislation but merely an executive order. Therefore, there is no requirement for tabling of the order dated 8.7.2011 before the State legislature.

12. In this case both the parties have relied upon their own perception and interpretation of Section 24 and Section 26(2) of the MMDR Act, 1957. The State Government's view is that the impugned order, although does not explicitly mention that it has been passed under Section 24 of the MMDR Act but nonetheless it is an order passed under the aforesaid section of the Act and as such the State Government can legally authorize

'any person' to do or to carry out any of the assigned tasks entrusted to such person by an order passed under this Section. On the other hand, the revisionists have contended that the provisions of Section 24 must be read with the provisions of the MMDR Act which deals with 'delegation of powers' by the Central Government or the State Government as the case may be. Sub-section (2) of Section 26 provides that the State Government may, by notification in the official gazette, direct that powers exercisable by it under this Act may, in relation to such matters and subject to such conditions, if any, as may be specified in the notification, be exercisable also by such officer or authority subordinate to the State Government. Their contention is that the words 'any person' appearing in Section 24 must be read to mean an officer or officers under the State Government and that the power to be conferred under Section 24 is delegation of power for all purposes and as such any order passed under Section 24 must be in conformity with the conditions laid down under Section 26 read with Section 28 of the MMDR Act, 1957. The only question which, therefore, needs to be determined is as to whether Section 24 under which the impugned order is claimed to have been passed, should be read independently or should be read along with Section 26 and Section 28 of the Act. There can be no doubt that authorization contemplated under the impugned order is a 'delegation of powers' by the State Government and as such it can be only in favour of an officer or authority under the State Government; otherwise it would be in contravention of the provisions of Section 26 of the MMDR Act, 1957.

13. Another argument which is a corollary to the above, relates to as to whether the impugned order should be treated as 'notification'. Apparently it relates to constitution of a committee which is intended to be notified for the purpose of causing an inquiry as to whether there is any prima facie violation of the provisions of Rule 37 (wrongly mentioned in the order as Section) of MC Rules., 1960. There can be no doubt that the committee constituted by the impugned order is intended to cause an inquiry on behalf of the State Government and in exercise of powers conferred on the State Government. It is, therefore, a delegation of the powers of the State Government to a committee so constituted and notified by the impugned order. From its very nature it is more a 'notification' as it has been classified by the State Government and being a 'notification' it must meet the mandatory requirements laid down in

Section 26 of the MMDR Act, 1957. It is an admitted fact that the said notification has not been laid before the House of the State Legislature as required under Section 28(3) of the MMDR Act, 1957.

14. After hearing both the sides and after carefully examining the issues involved, I am of the view that the State Government ought not to have included private persons in the Committee constituted to exercise statutory powers conferred under section 24 of MMDR Act. The impugned order constituting the Committee with private persons as its members cannot be held to be justified under the law. Further the State Government has not complied with the procedure laid down under Section 28 (3) of the MMDR Act, 1957. The impugned order constituting the said committee is therefore liable to be set aside and the same is hereby set aside. All actions of the State Government taken on the basis of the reports of the said Committee also rendered void ab-initio. The State Government may, however reconstitute the Committee in accordance with law and the said Committee may de-novo enquire into allegations pertaining to violation of the provisions of MMDR Act, M.C. Rules and other legal provisions by the Revisionists and other lessees. It is needless to state that any such committee constituted to enquire or investigate into the alleged violations of legal provisions shall while conducting such enquiry or investigation, act and conduct its enquiry in accordance with the principles of natural justice.

The Revision Petition accordingly stands allowed.

(Arun Kumar)

Joint Secretary & Revisionary Authority