

## **M/S. Hindustan Aluminium Corporation ... vs State Of Bihar And Others on 19 April, 1991**

**Equivalent citations:** AIR1991SC1521, 1991(2)BLJR931, JT1991(5)SC435, 1991(1)SCALE739, (1991)3SCC428, 1991(2)UJ155(SC), AIR 1991 SUPREME COURT 1521, 1991 (3) SCC 428, 1991 AIR SCW 1298, (1991) 5 JT 435 (SC), 1991 (2) UJ (SC) 155, 1991 (2) BLJR 931, (1991) 2 PAT LJR 68, (1991) 2 BLJ 178

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**Bench:** K.N. Singh, N.M. Kasliwal

ORDER

N.M. Kasliwal, J.

1. The above appeals by special leave are directed against the judgment of Patna High Court dated 15.5.1978.

2. The appellant M/s. Hindustan Aluminium Corporation Limited (in short 'Hinddalco') and respondent No. 5 Aluminum Corporation of India (in short respondent company), both applied for the grant of lease for mining bauxite with regard to the areas mentioned in their applications filed on 3rd March, 1965. According to the appellant, its application was earlier in point of time than the respondent company's application and for that reason it was entitled to preferential consideration under Section 11 of the Mines and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as 'the Act'). This assertion of the appellant remained unrebutted by the respondent company. The State Government did not pass any order of the aforesaid application of the respondent company for nine months and as such the same was deemed to have been rejected by virtue of Rule 24 of the Mineral Concession Rules, 1960 (hereinafter referred to as 'the Rules'). On a revision application filed by the respondent company, the Central Government by its order dated 21st July, 1966 directed the State Government to consider the application of the respondent company. The State Government thereafter considered the respondent company's application and rejected the same by order dated 8th October, 1969, on the ground that the respondent company did not appear to be interested in working the area already allotted to them. The respondent company aggrieved by the State Government's order filed another revision application under Rule 54 of the Rules before the Central Government. This revision application was allowed by the Central Government by its order dated 20th April, 1971 and a direction was issued to the State Government

to grant a mining lease in respondents favour for bauxite over an area of 362 acres in Mauza Pakhar at an early date. The order did not specify any area or specific plots, instead it only mentioned the area of 362 acres. Even after the aforesaid order, the State Government did not take any action. The respondent company filed a writ petition in the High Court of Patna which was numbered as C.W.J.C. No. 1186 of 1971, praying for direction to the State Government to grant lease to them. The State Government also filed a writ petition in the High Court challenging the order of the Central Government dated 20th April, 1971. The writ petition filed by the State Government was numbered as C.W.J.C. No. 1220 of 1971.

3. After protracted negotiations held between the respondent company and the State Government, an agreement was reached between the parties. In pursuance to the aforesaid agreement the State Government issued a direction for grant of mining lease in favour of respondent company by a letter dated December 20, 1972. The effect of the agreement was that the respondent company undertook not to press for the implementation of the Central Government's order dated 20th April, 1971 and both the writ petitions were ultimately withdrawn by the State Government and respondent company. The High Court as such dismissed both the writ petitions by order dated 10.1.1973. It is noticeable that there was a lock-out in the factory of the respondent company from 15th September, 1973 and as such it did not take any effective steps to get the mining lease deed executed in its favour by the State Government. The Director of Mines vide his letter dated 4.2.1975 asked the respondent company to come to Patna and to have discussions with regard to the execution of lease deed. The State Government also issued a direction to the District Mining Officer to execute lease in favour of respondent company within two months from the date of the issuance of the said order dated 12th March, 1975. The respondent company did not take any steps to comply with the said order and allowed the said time limit to lapse.

4. On March 3, 1965 Hindalco applied for a mining lease over an area of 230.55 acres in village Pakhar. As already noted, this application was earlier in point of time to the application of the respondent company and it overlapped a part of the area applied for by the respondent company. This application was rejected by the State Government by order dated 25th September, 1967 on the ground that the question of increase in rates of royalty was pending for consideration of the Central Government and the grant of lease to Hindalco at that point of time might result in loss to the State Exchequer. Hindalco filed a revision before the Central Government against the order dated 25th September, 1967. The revision application was allowed by the Central Government by order dated 19th July, 1968 and it directed the State Government to reconsider the application of Hindalco dated March 3, 1965 for grant of mining lease. Hindalco therefore made several representations to the State Government for the grant of mining lease in terms of the directions given by the Central Government, but the State Government did not take any steps, ultimately the Hindalco filed a writ petition in Delhi High Court. During the pendency of the aforesaid writ petition Hindalco made efforts to explain the need and urgency for the grant of mining lease to the State Government and during such negotiations the State Government suggested Hindalco to set up an aluminium plant in Bihar. The said proposal of the State Government was accepted by Hindalco on the assurance that the mining lease would be granted to it. The State Government by its letter dated 21st November, 1972 directed the Deputy Commissioner, Ranchi to execute a mining lease for an area of 230.55 acres in favour of Hindalco on the terms and conditions mentioned in the aforesaid letter. Hindalco

withdrew their writ petition on 7th March, 1973. Thereafter, Hindalco held negotiations with the State Government in respect of the allocation and re-allocation of the area. The State Government issued a direction to the District Mining Officer to execute a mining lease in favour of Hindalco within two months from the date of the issuance of the order dated March 12, 1975. Hindalco complied with the said order and the State Government granted a lease for an area of 215.25 acres in village Pakhar and a formal deed of lease was executed on 17th April, 1975. On the execution of the said lease deed the Hindalco took effective steps for exploitation of bauxite in terms of the lease and engaged a large labour force and also invested huge sums of months in purchase of machinery and tools for the exploitation of the mineral.

5. In August, 1975 the District Mining Officer, Ranchi informed the Hindalco that the respondent company had obtained temporary temporary injunction restraining Hindalco from carrying on the mining operation in the leased lands until the final disposal of the writ petition C.W.J.C. 1475 of 1975. Hindalco then moved application in the Patna High Court for vacating the order of temporary injunction as it was causing serious loss and injury to it and was also adversely affecting the revenue of the State in so far as it related to the production of aluminium. The High Court considered it proper to hear the application for vacation of the order of temporary injunction along with the final hearing of the main writ petition filed by respondent company. The High Court ultimately by order dated 15th May, 1978 allowed the writ petitions and issued direction to the State of Bihar to execute a mining lease in favour of the respondent company in respect of the lands as applied by the respondent company and to take all necessary steps to put the respondent company in possession thereof. The High Court held that the deed of lease executed by the State of Bihar in favour of Hindalco was ineffective and inoperative in respect of that part of the area which was allowed in favour of the respondent company. Aggrieved, the Hindalco has preferred appeal before this Court.

6. The High Court allowed the writ petition filed by the respondent company and directed the State Government to execute mining lease in favour of the respondent company in respect of the area of 362 acres and it further declared that the mining lease executed in favour of the appellant was ineffective and inoperative with regard to that part of the area which was included in the respondent company's area. The result of these directions was that the mining lease already granted in favour of the appellant stood modified. These directions were issued by the High Court on the finding that the appellant had not applied for a mining lease in respect of any area covered by the respondent company's application and further the respondent company was not a party to the negotiations and agreement between the State of Bihar and the appellant company, therefore, the State Government was bound to execute and carry out the Central Government's direction dated 20.4.1971, by executing a lease in favour of the respondent company in respect of the entire area, in respect of which respondent had made an application. The High Court further held that the State had no authority in law to grant lease in appellant's favour in respect of the area for which respondent company had made application for grant of mining lease. These findings of the High Court were challenged before us by the learned Counsel appearing for the appellant. He took us through the record and pointed out that High Court committed error in recording these findings.

7. Before, we consider the findings recorded by the High Court it is necessary to bear in mind that the appellant as well as the respondent company both had annexed maps showing the details of

plots and the area in respect of which they had applied for mining lease but the same are not on record. In the absence of the maps it is difficult to uphold the findings recorded by the High Court that the area which was leased out to the appellant for mining purposes was the same as had been claimed by the respondent company. But, even assuming that the respondent company had also applied for the same area in respect of which a mining lease was granted to the appellant the order of the State Government could not be vitiated, if two parties apply for grant of mining lease in respect of the same area, it is open to the State Government to grant mining lease to the party for the whole area or in respect of lesser area. The State Government is not bound to grant mining lease in respect of the entire area claimed by a party. Moreover, the appellant's application dated 3rd March, 1965 was prior in time and, therefore, the State Government was justified in granting mining lease in respect of the area claimed by the appellant even though a part of the same area may have been claimed by the respondent company. It is relevant to note that the respondent company was closed and there was a lockout in the company from 15th September, 1973 till the date of the decision of the High Court. It is further noteworthy that the respondent company in spite of service of notice of this Court has not put in appearance either at the time of the interim order or at the time of final hearing of the appeal. On behalf of the State Government also it has been submitted before us that the respondent company has not carried out mining operation in the area and it does not appear to have interest in the matter. These facts clearly show that the respondent company is not taking interest in these proceedings as it is no longer interested in the litigation.

8. On a careful scrutiny of the records, we find that the Central Government had by its order dated 20.4.1971 merely directed the State Government to grant a mining lease to the respondent company. The order did not specify any particular plot or area for the purpose. The State Government had challenged the validity of the Central Government's order and during the pendency of the petition there was a compromise between the State Government and the respondent company as a result of which latter agreed to accept mining lease for a reduced area of 327 acres instead of 362 acres. Since, the respondent company entered into compromise with the State Government and agreed to a lesser area, the order of the Central Government dated 20.4.1971 stood modified to that extent. The High Court in our opinion rightly directed the State Government to execute the mining lease in favour of the respondent company with regard to the reduced area, but the High Court committed error in interfering with the mining lease granted to the appellant earlier in time. The Central Government's order could not and did not affect the validity of the mining lease granted in appellant's favour. Section 11 of the Act confers a preferential right on the party making application prior in time. Since the appellant's application for the grant of lease was earlier in time the State Government was justified in granting lease in appellant's favour in respect of even that portion of areas in respect of which the respondent company may have also applied. We are, therefore, of the opinion that the High Court was not justified in interfering with the appellant's mining lease.

9. In the result, we allow the appeals, set aside the order of the High Court dated 15th May, 1978 cancelling the appellant's mining lease. Since non has appeared on behalf of the respondents there will be no order as to costs.