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By Email/post

To

Nagpur Dated 30/01/2023

Shri Vikas Jangra,
Section Officer
Ministry of Mines
Govt. of India, New Delhi.

Sub: Reply on Report of the Inquiry Authority and DA's tentative disagreement note on the Article of charges against Shri K. K. Tardia, Regional Controller of Mines, IBM, Nagpur.

Ref: Office Memorandum No.34/6/2021-M.III, Shastri Bhawan, Ministry of Mines, New Delhi. Dated 16.01.2023

Sir,

In inviting above reference on the subject cited above, I enclose the written submission on the reply to Report of Inquiry Authority and note of disagreement of Disciplinary Authority on the Article of charges as per the directions in the letter referred above. Submitted for your sympathetic consideration.

With Regards

Encl.: As above

Yours faithfully,

K.K. Tardia
30.01.2023
(K.K. Tardia)
RCOM
TMP Division
IBM, Nagpur

DB
स्वर्गीय कुमार बिस्वास / Smarajit Kumar Biswas
यान निदेशक / Director
यान मंत्रालय / Ministry of Mines
भारत सरकार / Government of India
नई दिल्ली / New Delhi

Reply on Report of Inquiry Authority and note of disagreement of DA**With regard to the Report of Inquiry Authority (IA) on Article - I of charges**

The IA has concluded that the charge of approval of mining plans of five graphite blocks against the provisions of MMDR Act has been established. The IA has further observed that the decision of approval of such mining plans by Charged Officer (CO) was guided and influenced by circular dated 13.04.2021 which specifically mentions about the cases where mining lease were not executed and the fact that IBM did not reply to the letters of CO.

The circular dated 13.04.2021 states that mining plans of those cases where mining leases were not executed should be cancelled whereas this is a case where mining leases were executed without any mining plans by the State Government in an illegal manner and post facto approval of concerned mining plans after signing of mining leases is an illegal act of aiding and abetting in regularizing of the signing of mining leases. Thus, the pretext of the CO being influenced by the Circular dated 13.04.2021 does not hold good.

Further, the CO resorting to the excuse of approving the mining plans, after leases were signed by the State Government in an illegal manner, on the ground that IBM did not respond to his queries is absurd because he should have waited for a response after he had referred the matter to the higher authority for clarification. The fact that he referred the matter to the higher authority, itself, signifies that it was a doubtful case. The law states that no mining lease should be signed without the approval of the mining plan and any ex-post facto approval of the mining plan is simply aiding and abetting in regularizing of illegal mining leases.

Further, the IA's conclusion that this decision of execution of mining leases is solely taken by State Government and loss to the exchequer cannot be attributed to the CO is not agreed to. The IA did not mention that the action of ex-post facto approval of mining plans after signing of mining leases is aiding and abetting in regularizing the mining leases and thus helped in causing loss to the exchequer. Further, loss to the exchequer takes place when mining takes place. Mining can happen when the mining plan is approved. Thus, the action of the CO in approving mining plans was a step in causing loss to the exchequer.

Reply:- Approval of mining plan and grant of mining lease are two entirely different activities performed by two different Government agencies. Mining plan approval is performed by IBM as per Section 5(2)(b) of MMDR Act 1957 & Rule 16 of MCR 2016. Whereas mining lease is granted and executed by respective State Governments. Therefore, it is to conclude that post facto approval of concerned mining plans were given by Regional Controller of Mines (CO) for regularising grant of mining lease by state government is completely misplaced / misunderstood. Two different events performed by two different government agencies independently one by IBM central government agency and other by State Government.

Process of approval of mining plan by IBM commence after issuing letter of intent of grant of mining lease to applicant by State Government only. There is no post facto approval in these cases as stated in disagreement note.

It is mentioned that the as per statutory provision in vague no mining lease should be granted without the approval of the mining plan. Therefore, in the instant cases the illegalities reflect in the actions of the State Government of Arunachal Pradesh who granted mining leases in an illegal way without approval of mining plans and not on the part of RCOM /CO.

Page 2 of 5

255
76

IA's conclusion that this decision of execution of mining leases is solely taken by State Government independently without any reference to RCOM and loss to the exchequer cannot be attributed to the CO is absolutely true.

It is further to state that circular dated 13/04/2021 clearly mentions that mining plan should not be approved in those cases where lease is not executed. In the present matter in all the cases the mining leases were executed by the State Government. Therefore, there is no deviation of CO from this circular.

It is stated in note of disagreement that Mining can happen when the mining plan is approved and action of the CO in approving mining plans was a step in causing loss to the exchequer. The statement is not true as mining of mineral can only happen when mining lease right is granted by state government along with other clearances. Mere approval of mining plan does not guarantee/give right to applicant for grant of lease by state government and right for commencement of mining.

Hon'ble Supreme Court in WP 114 of 2014 (Common Cause Vs Union of India) on 02.08.2017 stated in its judgment that "*The grant of permission for mining and approving mining plans and the scheme by the Ministry of Mines, Government of India by itself does not mean that mining operation can commence. It cannot be accepted that by approving mining plan and scheme by the Ministry of Mines, the Central Government is deemed to have approved mining and it can commence forthwith on such approval...*"

There exist numbers of mining plan approved by IBM in past and Ministry is having list of earlier saved cases under section 10 A (2)(c) of MMDR Act (amendment 2015) 1957 where mining plans were approved by RCOM of IBM, but mining leases were not granted by State Government. In all these cases mining plan approval were also not revoked. Just approval of mining plan cannot be construed as loss to exchequer. Mining plan is document of procedure, how scientifically mineral can be extracted from any area. It does not give right of grant of mining lease to applicant. Even in the approval letter on mining plans, it is being clearly indicate that this approval is subject to the grant of all other statutory permissions. It is state government who provide mining lease right over an area to applicant. This reveals that IBM does not cause losses to the exchequer. Thus, to conclude that the action of the CO in approving mining plans was a step in causing loss to the exchequer is totally untrue and hypothetically assumed.

With regard to Report of the Inquiry Authority on Article - II of charges

IA has found that the Charged Officer failed to maintain devotion to his duties and behaved in a manner unbecoming of a government servant. As regards the findings of IA that CO is not responsible for causing loss to the exchequer; the same is not agreed to as mentioned in the preceding paragraph.

Reply:- All due care is taken for disposal of mining plan as per existing procedure/practices in IBM. It is to indicate here that CCOM vide letter dated 30.11.2021 has not given any clear instruction and merely directed to take remedial measures. As per the understanding the remedial measures needs to be undertaken by the State Government. In all earlier saved cases under section 10A(2)(c) of MMDR Act, no mining plan approval were revoked where mining application were declared lapses and no loss to exchequers is considered there.

Page 3 of 5

3

स्मरजीत कुमार बिस्वास / Smarajit Kumar Biswas
निदेशक / Director
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It is also to submit that instructions of CCOM office for taking remedial measure cannot be considered as instructions for revocation of approved mining plan in absence of specific revocation word.

Later on, these mining plans were revoked on 07.01.2022 by my successor Regional Controller of Mines and this revocation order of approved mining plans for all five cases were challenged in court of law before Hon'ble High Court Guwahati. Hon'ble Court Stayed all revocation of mining plans approval order in the WP(C)/1104/2022, WP(C)/1844/2022, WP(C)/1857/2022, WP(C)/1850/2022, WP(C)/1861/2022.

In a similar matter filed before Hon'ble High Court of Madhya Pradesh, Jabalpur (WP 10192 of 2021 titled JaykayCem (Central) Ltd. Vs Union of India and Ors.), Hon'ble High Court vide its order dated 26th of September 2022 has pronounced that 'IBM had no power to issue the order for revocation of approved Mining Plan under Section 5(2)(b) of the MMDR Act and the said order becomes unsustainable in law' (copy enclosed).

Previously, in all earlier saved cases under section 10A(2)(c) of MMDR Act, no approved mining plans were revoked where mining leases were not granted. Such cases were not considered as any loss to exchequers by not revoking approval of mining plan then how this instance considered for causes of loss to exchequers.

Thus, in absence of clear direction by the higher authorities and past experience in save cases of under section 10A(2)(c) of MMDR Act, revocation of approved mining plan was not done and view taken by undersigned is validated by above court judgement also.

In view of above, interpretation of instructions of CCOM by CO with regard to remedial measures, cannot be said to be a failure to maintain devotion to his duties and behaved in a manner unbecoming of a government servant.

Thus, to conclude that Charged Officer failed to maintain devotion to his duties is not true and findings of IA that CO is not responsible for causing loss to the exchequer is absolutely correct, in fact, it is only hypothetical assumption to loss of exchequer by approval/revocation of mining plan by RCOM/CO.

With regard to the Report of the Inquiry Authority on Article - III of charges

The IA has found the charges to be proved.

In his conclusion, the IA has also stated that the outcome of auction cannot be quantified and hence the loss may not be ascertained and it cannot be attributed to CO. Although, the quantum of loss caused cannot be ascertained without the outcome of auction, but definitely loss was caused in these cases where the mining leases were signed without auction when compared to a situation where the mining lease is signed after auction. After auction when the mining lease is signed, the lessee would pay auction premium in addition to royalty, DMF and NMET contribution. Whereas when the mining lease is signed without auction only royalty, DMF and NMET contribution is payable and no auction premium is paid. Therefore, to say no loss was caused because no auction took place is not correct and unacceptable.

Reply :- As already submitted earlier, mere approval of mining plan cannot be construed as loss to exchequer. Mining plan is document prescribing systematic and scientific exploitation

Page 4 of 5

of mineral deposit from any area alongwith protection of environment. Approval of mining plan does not give right of grant of mining lease to applicant by state government.

CO's role is limited to ensure scientific extraction of mineral and has no say in the grant of lease. As submitted above, there exist number of mining plans approved by IBM in past and Ministry is having list of earlier saved cases under section 10 A (2)(c) of MMDR Act (amendment 2015) 1957 where mining plans were approved by RCOM of IBM but neither mining plans approval were revoked nor mining leases were granted by state government. Just approval of mining plan cannot be construed as loss to exchequer. Approved Mining plan is required in both cases of grant of lease by auction mode and without auction mode. In the instant cases, it is the State government of Arunachal Pradesh that has executed the mining leases in favour of the concerned applicants much before the approval of mining plan and without referring to RCOM Guwahati. To conclude that loss was caused for non-revoking approved mining plan in these cases is totally untrue. As it is the state government to decide to go for auction or non-auction mode and CO had no role in it.

Concluding-

From the preceding reply it may be seen that and concluded that all the charges levied against me are baseless and without any factual context. The undersigned acted in best interest of IBM.

With regard

Yours faithfully,

(K.K. Tardia)
RCOM
TMDP Division
IBM, Nagpur

स्मरजित कुमार बिस्वास / Smarajit Kumar Biswas
निदेशक / Director
खान मंत्रालय / Ministry of Mines
भारत सरकार / Government of India
नई दिल्ली / New Delhi

338
79

**IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR
BEFORE
HON'BLE SHRI JUSTICE RAVI MALIMATH,
CHIEF JUSTICE
&
HON'BLE SHRI JUSTICE VISHAL MISHRA
ON THE 26th OF SEPTEMBER, 2022**

WRIT PETITION No. 10192 of 2021

BETWEEN:-

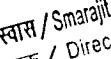
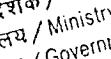
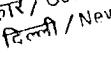
JAYKAYCEM (CENTRAL) LIMITED, A COMPANY INCORPORATED UNDER THE COMPANIES ACT, 1956, HAVING ITS REGISTERED OFFICE AT KAMLA TOWER, KANPUR, UTTAR PRADESH, 208 001, THROUGH SHRI ANIL BADGOTRI, AGED ABOUT 54 YEARS, S/O SHRI G.L. BADGOTRI, RESIDNET OF BASANT VIHAR, OPPOSITE PIYUSH SCHOOL KHIRHINI ROAD, KATNI (MADHYA PRADESH)

.....PETITIONER

(BY SHRI NAMAN NAGRATH - SENIOR ADVOCATE WITH SHRI SAHIL BALAIK, SHRI TUSHAR GIRI AND SHRI ARVIND RAY - ADVOCATES)

AND

1. UNION OF INDIA, THROUGH THE ADDITIONAL SECRETARY, THE ADDITIONAL SECRETARY, MINISTRY OF MINES, INDIAN BUREAU OF MINES, 2ND FLOOR, INDIRA BHAWAN, CIVIL LINES, NAGPUR (MAHARASHTRA)
2. THE REGIONAL CONTROLLER OF MINES, OFFICE OF THE REGIONAL CONTROLLER OF MINES, INDIAN BUREAU OF MINES, SCHEME NO.11, KAMLA NEHRU NAGAR, JABALPUR (MADHYA PRADESH)


 स्मरजीत कुमार बिस्वास / Smarajit Kumar Biswas

 निदेशक / Director
 खान मंत्रालय / Ministry of Mines

 भारत सरकार / Government of India

 नई दिल्ली / New Delhi

3. THE STATE OF MADHYA PRADESH,
THROUGH DIRECTOR, DIRECTORATE OF
GEOLOGY AND MINING, 29-A, KHANJI
BHAWAN, ARERA HILLS, JAIL ROAD,
BHOPAL (MADHYA PRADESH)

.....RESPONDENTS

**(SHRI VIKRAM SINGH - ADVOCATE FOR RESPONDENTS NO.1 AND 2
AND SHRI AMIT SETH - DEPUTY ADVOCATE GENERAL FOR
RESPONDENT NO.3)**

This petition coming on for admission this day, Hon'ble Shri Justice Ravi Malimath, Chief Justice passed the following:

ORDER

The case of the petitioner is that it was a Public Limited Company incorporated under the Companies Act, 1956. It is engaged in the business of manufacturing of cement. It is in the process of setting up an integrated cement plant in Panna District, Madhya Pradesh. On 21.08.2008, the petitioner submitted an application under Section 10 of the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act") for grant of Prospecting Licence for Limestone mining in an area admeasuring 3703.00 Hectares in Village Kamtana, Kakra, Saptai, Judi, Devri, Purohit, Devri Tahsil, Amanganj (Kakra Mining Block). On 15.03.2010, the State of Madhya Pradesh passed an order granting a Prospecting Licence to the petitioner to an extent of 3513.75 Hectares, for a period of two years subject to the various conditions. On completion of the various requirements of the said order, by the order dated 28.06.2010 a Prospecting Licence Deed for the areas mentioned therein was executed with a validity up to 14.06.2012.

2. Thereafter, the petitioner undertook the prospecting operations over the area in question. On completion of the prospecting operations, the petitioner submitted an application for grant of mining lease. Thereafter, the State of Madhya Pradesh accepted the petitioner's application and directed the

petitioner to submit a duly approved mining plan within a period of six months from 10.07.2014. Extension of time was granted. Thereafter, the mining plan was submitted, which was approved by the State on 03.08.2015. The petitioner, vide order dated 17.03.2016, was called upon to execute the mining lease for the area in question within a period of six months after complying with the various conditions. The said order was modified by the Government of Madhya Pradesh in view of Rule of 7 of Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (for short "the MCR Rules, 2016") where the mining lease was to be executed within a period of 90 days on fulfilling of various conditions. Thereafter a bank guarantee was submitted for a sum of about 0.5% of the value of the estimated resources at about Rs.53 Crores. A sum of Rs.86,30,000/- was deposited. A mine development and production agreement was executed with the State Government. Environmental Clearance was obtained. Thereafter, on 09.09.2020 the State of Madhya Pradesh executed a mining lease for Kakra Mining Block i.e the land in question. Thereafter, there were various communications between the Central Government and the State Government. Ultimately, the respondent No.2 passed the impugned order revoking the approval of the abovesaid mining plan. Questioning the same, the instant petition was filed.

3. An interim order of status quo was granted by this Court by the order dated 28.06.2021. Thereafter, an application was filed seeking to proceed in the mining activities. By the order dated 10.08.2021, it was held that no clarification is required as there is no ambiguity in the said order. The same was challenged before the Hon'ble Supreme Court in Special Leave Petition (Civil) No.20103 of 2021 [Jaykaycem (Central) Ltd vs. Union of India and others]. Vide order dated 07.01.2022 the Special Leave Petition was disposed off with a request to the High Court to dispose off the petition within a period

42
92

of four months from the said order. Thereafter, the matter was listed for consideration before this Court. The matter was adjourned at the request of the counsel for the petitioner on 16.03.2022. On 16.06.2022 learned counsel for the petitioner was absent. Vide order dated 21.06.2022, the matter was adjourned in view of the adjustment note. On 23.08.2022, counsel for the petitioner was absent. Thereafter, the matter has been taken up for final hearing.

4. Shri Naman Nagrath, learned senior counsel appearing for the petitioner's counsel contends that the impugned order passed by the respondents is bad on facts and in law, hence is liable to be set aside. That the respondents have no source or power to issue the impugned order. The respondents have exercised their powers under Section 5(2)(b) of the MMDR Act. The same is alien to the facts and circumstances involved. The respondents have no power to issue the same. Even otherwise, he contends that the petitioner is governed by the provision of Section 10A(2)(b) of the MMDR said Act. However, what is ostensibly being contended by the respondents is the applicability of Clause 10A(2)(c) of the Act. Hence, it is contended that the impugned order is liable to be set aside. He further contends that the said issue is no more *res integra* in view of the judgment of the Hon'ble Supreme Court in the case of Bhushan Power & Steel Ltd. Vs. State of Odisha, reported in (2017) 2 SCC 125.

5. The same is disputed by Shri Vikram Singh, learned counsel appearing for respondents No.1 and 2. He supports the impugned order and submits that there was no error committed by the respondents that calls for any interference. Contentions have been advanced on the merits of the matter.

6. Shri Amit Seth, learned Deputy Advocate General appeared for the respondent No.3/State. He has also filed his reply. He supports the case of the writ petitioner to the extent that the provision of law as contended by the

respondents is incorrect. By relying on the statement of objections, he pleads that the action of the State is appropriate and in tune with the relevant Acts and the Rules. Therefore, he pleads that the petition be dismissed.

7. Heard learned counsels.

8. The impugned order passed by the respondent No.2, as stated therein is in exercise of the powers contained in Section 5(2)(b) of the MMDR Act. In terms whereof, the mining plan was revoked by the impugned order. Section 5(2)(b) of the MMDR Act reads as follows:-

"5. Restrictions on the grant of prospecting licences or mining leases:-

*** *** ***

(2) No mining lease shall be granted by the State Government unless it is satisfied that—

*** *** ***

(b) there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned.

(Provided that a mining lease may be granted upon the filing of a mining plan in accordance with a system established by the State Government for preparation, certification, and monitoring of such plan, with the approval of the Central Government)"

9. On specifically being questioned, learned counsel for respondents No.1 and 2 fairly contends that the provisions of the said Rules do not empower the respondents to issue the said order. That there is no power as vested under Section 5(2)(b) of the MMDR Act for issuance of the said order. Apparently a wrong provision of law has been invoked. Therefore the respondents had no power to issue the impugned order. Therefore, we do not find that the source of power as exercised by the respondents No.1 and 2 has any nexus to the facts and circumstances of the case.


 स्मरजीत कुमार दिस्वास / Smarajit Kumar Biswas
 निदेशक / Director
 मंत्रालय / Ministry of Mines
 भारत सरकार / Government of India
 नई दिल्ली / New Delhi

10. In absence of any source of power, the impugned order becomes unsustainable. However, it is orally contended by the learned counsel for the respondents No.1 and 2 that in terms of Section 21 of the General Clauses Act, 1897, the respondents have the power to issue the impugned order. Section 21 of the General Clauses Act, reads as follows:-

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws. – Where, by any Central Act or Regulations a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued."

11. The Hon'ble Supreme Court in the case of Chintpurni Medical College and Hospital and Another vs. State of Punjab and others reported in (2018) 15 SCC 1 while considering the said contention held in paragraphs 26, 27 and 32 that when the statutory authority has to perform a particular duty under the statute, Section 21 of the General Clauses Act has no application and confers no powers to review such an act. That the powers to review/recall could be specifically provided under the particular section under which the power is sought to be exercised. Therefore, Section 21 of the General Clauses Act cannot be read to the power of respondents in passing the said order. Therefore, on this ground also, we are of the view that the contentions of the respondents of taking aid of Section 21 of the General Clauses Act, in our considered view, will not have any application to the facts of this case. Even though various contentions were advanced, so far as the merits of the matter is concerned, we do not think it appropriate to go into the same.

12. We are of the view that it is not a question that arises for consideration by this Court. The question of interpretation of the various provisions of law

that are being argued by each one of the counsels cannot form the subject matter of this petition. The impugned order only narrates the withdrawal of the mining plans in exercise of the power under Section 5(2)(b) of the MMDR Act. Since we have already come to the conclusion that the respondents had no power to issue the said impugned order under Section 5(2)(b) of the MMDR Act, we are of the view that the said order becomes unsustainable in law. Even otherwise, we are unable to get any satisfactory answer from respondents No.1 and 2 to sustain the impugned order under Section 5(2)(b) of the MMDR Act.

13. Consequently, the petition is allowed. The order dated 08.06.2021 passed by the respondent No.2 is quashed. However, we would like to clarify that the quashing of the said order will not come in the way of the respondents to pass any such order in accordance with law.

**(RAVI MALIMATH)
CHIEF JUSTICE**

prar

**(VISHAL MISHRA)
JUDGE**



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स्मरजीत कुमार बिश्वास / Smarajit Kumar Biswas
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