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Note # 190

Ref: Notes 168 and Notes 171 above

The matter under consideration pertains to disciplinary proceeding against Sh. K.K. Tardia, RCOM, IBM. In this case, with the approval of Disciplinary Authority (D.A.) (Note #174) this Ministry had sent Report of the Inquiry Authority, and the DA's tentative disagreement with the said report to Shri K.K. Tardia, RCOM, with an opportunity to submit his written representation within 15 days to this Ministry.

2. The following are DA's tentative disagreement on the Report of Inquiry Authority (IA) and thereafter reply/submission of Charged Officer (CO):-

(I). DA's disagreement on IA's Report 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

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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 of CO:-

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 Government. Therefore, it is to conclude that post facto approval of concerned mining plan were given by Regional Controller of Mines (CO) for regularizing 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 as per statutory provision in vogue 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 no on the part of RCOM/CO.

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

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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 10A(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.

(II). DA's disagreement on IA's Report on Article - II of charges

IA has found that the Charged Officer (CO) failed to maintain devotion to his duties and behaved in a manner unbecoming of a Government servant. As regards the findings

(Signature)

थानेश्वर कुमार / THANESHWAR KUMAR
अवर सचिव / Under Secretary
खान मंत्रालय / Ministry of Mines
भारत सरकार / Govt. of India



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 of CO:-

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.

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 26 September, 2022 has pronounced that 'IBM had no power to issue the order of revocation of approved Mining Plan under Section 5(2)(b) of the MMDR Act and the said order becomes unsustainable in law'.

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 Plans 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 judgment also.

(Signature)

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In view of above, interpretation of instruction of CCOM by CO with regard to remedial measures, cannot be said to be a 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 and 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.

(III). DA's disagreement on IA's Report 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 of CO:-

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 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, these 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.

Conclusion by CO

In view of preceding reply Shri K.K. Tardia has concluded that all the charges levied against him are baseless and without any factual context and he has acted in best interest of IBM.

3. The representation dated 30.01.2023 from Charged Officer (CO) Shri K.K. Tardia has been examined and the following points emerge:-

(i) He has reiterated his stand that all the charges levied against him are baseless and without any factual context; however

(ii) Shri Tardia has failed to establish that he has NOT acted against the law. The Mines and Mineral (Development and Regulation) Act, (MMDR)1957 was amended vide Notification published on 28.03.2021 clearly stipulating that the right to obtain prospecting license following by mining lease or a mining lease, as the case may be, shall lapse on the date of commencement of the amendment. To reinforce this provision IBM circular dated 13.04.2021 was issued clearly stating that mining plans of those cases where mining lease were not executed should be cancelled.

(iii) Shri Tardia has failed to defend his action of approving five mining plans for Graphite mineral, initially provisionally in May, 2021 and then finally in August,, 2021, after the state Government of Arunachal Pradesh illegally approved the mining lease in January & February, 2021. Whereas, as per Section 5(2)(b) of MMDR Act, 1957 no mining lease shall be granted by the State Government unless it is satisfied that mining plan is duly approved by the Central Government.

(iv) Shri Tardia has also not been able to disprove the fact that there will be loss to the exchequer. The court judgments he has cited in his representation are not

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applicable in his case. His citing the examples of various lapsed mining plans also do not hold good since mining leases were executed in these cases by the State Government(s) after mining plans were approved. Whereas, he had granted ex-post facto approval of mining plans after State Government had illegally granted mining leases.

(v) Through his instant representation Shri Tardia has tried to misguide the Disciplinary Authority but the fact remains that he has acted in a manner unbecoming of a government servant, leading to loss to the exchequer; thereby he failed to maintain absolute devotion to duty.

4. As per provision of Rule 15 of the CCS (CCA) Rules, 1965

Rule 15(3)(a):- In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:

(i) A copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and

(ii) Comments of Disciplinary Authority on the representation of the Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.

(b). The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under Clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days on the advice of the Commission.

5. In view of the above submissions, if approved, the case may now be submitted to Disciplinary Authority (DA) i.e. Minister of Mines for his approval to seek advice of UPSC as per Rule 15 of the CCS (CCA) Rules, 1965.

06/03/2023 12:48 PM

VIKAS JANGRA
ASSISTANT SECTION OFFICER

Note # 191



06/03/2023 01:39 PM

SUBODH KUMAR
SECTION OFFICER

Note # 192

06/03/2023 02:00 PM

ABHISHEK KUMAR UPADHYAYA
UNDER SECRETARY

Note # 193

06/03/2023 02:29 PM

समरजीत कुमार बिस्वास|SMARAJIT KUMAR BISWAS
निदेशक|DIRECTOR

Note # 194

Para 5 of note#190 for approval of Minister of Mines.

07/03/2023 03:28 PM

SANJAY LOHIYA
ADDITIONAL SECRETARY

Note # 195

11/03/2023 12:53 PM

VIVEK BHARADWAJ
Secretary

Note # 196

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RAOSAHEB PATIL DANVE
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Note # 197

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SHRI PRALHAD JOSHI
HON'BLE MOM

Note # 198

22/03/2023 10:52 AM

VIVEK BHARADWAJ
Secretary

Note # 199

22/03/2023 10:57 AM

श्री संजय लोहिया | SANJAY LOHIYA
अपर सचिव | ADDITIONAL SECRETARY

Note # 200

22/03/2023 01:46 PM

ABHISHEK KUMAR UPADHYAYA
UNDER SECRETARY

Note # 201

22/03/2023 03:20 PM

SUBODH KUMAR
SECTION OFFICER

थानेश्वर कुमार / THANESHWAR KUMAR
अवर सचिव / Under Secretary
खान मंत्रालय / Ministry of Mines
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

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06/03/2023 02:29 PM समरजीत कुमार बिस्वास|SMARAJIT KUMAR BISWAS
निदेशक|DIRECTOR

Note # 194

Para 5 of note#190 for approval of Minister of Mines.

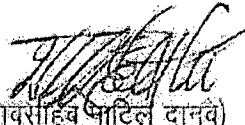
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SANJAY LOHIYA
ADDITIONAL SECRETARY


Note # 195

11/03/2023 12:53 PM

VIVEK BHARADWAJ
Secretary


(रावसाहेब पाटिल दानवे)
खान राज्यमंत्री

दिनांक: 16-3-2023


थानेश्वर कुमार / THANESHWAR KUMAR
अवर सचिव / Under Secretary
खान मंत्रालय / Ministry of Mines
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

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06/03/2023 02:29 PM समरजीत कुमार बिस्वास | SMARAJIT KUMAR BISWAS
निदेशक | DIRECTOR

Note # 194

Para 5 of note#190 for approval of Minister of Mines.

07/03/2023 03:28 PM

SANJAY LOHIYA
ADDITIONAL SECRETARY

Note # 195

11/03/2023 12:53 PM

VIVEK BHARADWAJ
Secretary

Note # 196

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16/03/2023 05:02 PM

RAOSAHEB PATIL DANVE
HON'BLE MOS

(प्राधद जोशी)
(Pralhad Joshi)
कोयला एवं खान मंत्री
Minister of Coal & Mines
Date: 21/3/23

(99)

थानेश्वर कुमार / THANESHWAR KUMAR
अवर सचिव / Under Secretary
खान मंत्रालय / Ministry of Mines
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi