

A

COMMON CAUSE

v.

UNION OF INDIA & ORS.

(IN RE: SARDA MINES PVT. LTD.)

B

(I.A. No. 40 of 2015, I.A.No.42 of 2015, IA No.61 of 2015 in IA No.40 of 2015 and IA No.111989 of 2018)

In

(Writ Petition (C) No. 114 of 2014)

C

NOVEMBER 12, 2018

**[MADAN B. LOKUR AND DEEPAK GUPTA, JJ.]**

*Environmental laws: Illegalities involved in the mining lease of Sarda Mines Private Limited (SMPL) – In the instant case, SMPL was granted permission on 13.7.1999 to extract 1.4 LTPA of iron ore – However, environmental clearance was granted to SMPL on 22.9.2004, which referred to the proposal for expansion of production of iron ore (lump) from 1.5 LTPA to 4.0 MTPA – Validity of environmental clearance granted to SMPL and the production of iron ore without/in excess of the environmental clearance challenged – Held: Permission granted on 13.7.1999 was for production of iron ore and not for iron ore (lump) – Even MMDR Act referred to mineral iron ore and not to iron ore (lump) – Therefore, the environmental clearance granted on 22.9.2004 must be understood in the context of permission granted on 13.7.1999 and MMDR Act – Environmental clearance does not have any retrospective effect – It is operational from the date it is granted – Therefore, the mining activity carried out by SMPL from 13/14.8.2001 till the date of environmental clearance that is 22.9.2004 is legal to extent of 1.4 LTPA and SMPL cannot be penalized for this mining activity during this period – Since environmental clearance does not have retrospective effect, the first year of production would be 2004-2005 (pro rata) based on the environmental clearance – The records showed that there was excess mining of iron ore from the first year of production itself – This excess mining was clearly illegal and must be penalized – Central*

H

*Empowered Committee (CEC) is directed to quantify the penalty to be imposed on SMPL from 22.9.2004 and based on the terms of the environmental clearance – Mines and Minerals (Development and Regulation) Act, 1957.* A

*Iron ore: Environmental clearance – Extraction of mineral iron ore is extraction of iron ore Run of Mine (ROM) – Lumps of iron ore are by-product of ROM – In the instant case, permission was granted to SMPL on 13.7.1999 to extract mineral iron ore – This had no reference at all to the sub-category or by-product called iron ore (lump) but has to be understood as permission to extract mineral iron ore ROM – It was this permission that was sought to be proposed for expansion of production – The environmental clearance on 22.9.2004 was only with reference to iron ore ROM – This must be read in the context of the MMDR Act which refers to mineral iron ore and does not refer to iron ore (lump) – There is no merit in objections raised by SMPL to the report of the CEC with regard to the validity of the environmental clearance or the excess or illegal mining of iron ore by SMPL.* B C D

#### **Disposing of the IAs, the Court**

**HELD:** The concept of extraction or production of iron ore (lump) introduced in the environmental clearance was alien to the permission granted on 13<sup>th</sup> July, 1999 and the MMDR Act. Therefore, the environmental clearance granted on 22<sup>nd</sup> September, 2004 must be understood in the context of the permission granted on 13<sup>th</sup> July, 1999 and the MMDR Act. The mining activity carried out by SMPL from 13/14 august 2001 till the date of environmental clearance that is 22<sup>nd</sup> September, 2004 is legal to the extent of 1.4 LTPA and SMPL cannot be penalised for this mining activity during this period. [Paras 8, 10][1209-H; 1210-A-B; 1211-B] E F

*National Mineral Development Corporation Ltd. v. State of M.P. (2004) 6 SCC 281 : [2004] 2 Suppl. SCR 1; Tata Steel Limited v. Union of India (2015) 6 SCC 193: [2015] 6 SCR 29 – relied on.* G

*Common Cause v. State of Orissa. (2017) 9 SCC 499 – referred to.*

H

A

**Case Law Reference**

(2017) 9 SCC 499 referred to Para 2

[2004] 2 Suppl. SCR 1 relied on Para 16

B

[2015] 6 SCR 29 relied on Para 17

CIVIL ORIGINAL JURISDICTION: I.A. No. 40 of 2015, I.A. No. 42 of 2015, I.A. No. 61 of 2015 in I.A. No. 40 of 2015 and I.A. No. 111989 of 2018 in Writ Petition (C) No. 114 of 2014

Under Article 32 of the Constitution of India.

C

Harish N. Salve, Sr. Adv., A. D. N. Rao, Sudipto Sircar, Siddhartha Chowdhury, Ms. Aparajita Singh, Advs. with him (A.Cs.)

D

Rakesh Dwivedi, Mukul Rohatgi, Ms. V. Mohana, A. K. Panda, Ajit Kumar Sinha, Sr. Advs., Prashant Bhushan, Pranav Sachdeva, Rahul Gupta, Shibashish Misra, Sridhar Potaraju, Ms. Sindoor VNL, Ms. Shiwani Tushir, Ms. Kirti R. Mishra, Ms. Sansriti Pathak, Ms. Apurva Upmanyu, Eklavya Dwivedi, Naveen Kumar, Saurabh Kirpal, Mrs. Nandini Gore, Ms. Khushboo Bari, Ms. Natasha Sahrawat, Ms. Neha Khandelwal, Ms. Sushil Jethmalani, Sanjai Kumar Pathak, Ms. Akanksha Kaul, Gurmeet Singh Makker, Balendu Shekhar, P. K. Mullick, Atulesh Kumar, Raj Bahadur, B. K. Prasad, Sunil Dogra, Vivek Vishnoi, Abhishek Sharma, Sanjay Kapur, Ms. Sheena Taqui, Anil Kumar, Ms. Mansi Kapur, Ms. Shubhra Kapur, Baij Nath Patel, Ms. Pratyusha Priyadarshini for M/s Parekh & Co. Manoj K. Singh, Anurag Abhishek, Prem Prakash, Raj Kumar Mehta, Ms. Himanshi Andley, Advs. for the appearing parties.

F

The Judgment of the Court was delivered by

**MADAN B. LOKUR, J.**

G

1. In this batch of substantive applications, we are concerned with what is described as “Illegalities involved in the mining lease of Sarda Mines Private Limited” by the Central Empowered Committee in its report of 16<sup>th</sup> October, 2014.

2. It is not necessary to repeat all the facts leading up to these applications since the background has already been detailed by us in *Common Cause v. State of Orissa*.<sup>1</sup>

H

<sup>1</sup> (2017) 9 SCC499

3. While dealing with the mining lease of Sarda Mines Private Limited, the Central Empowered Committee or the CEC concerned itself with seven issues. They are: A

1. Regarding renewal of the mining lease.
2. Regarding validity of the Environmental Clearance. B
3. Regarding sale of iron ore in the form of ROM by Sarda Mines Private Limited.
4. Regarding diversion of additional land for mining and allied activities
5. Regarding production of iron ore without/in excess of the Environmental clearance. C
6. Regarding enquiry done by the State Government for alleged violation of Rule 37, MCR, 1960 [Mineral Concession Rules of 1960]. D
7. Regarding alleged ownership of the mining lease actually being with Jindal Steel and Power Ltd.

4. For the present, we are concerned only with the validity of the environmental clearance granted to Sarda Mines Private Limited or SMPL and the production of iron ore without/in excess of the environmental clearance. The concern relates to a mining lease granted to SMPL over 947.046 hectares of land for 20 years from 14<sup>th</sup> August, 2001 to 13<sup>th</sup> August, 2021. The mining lease is of Thakurani Mines, Block B, Village Soyabali, District Keonjhar in Odisha. We are not concerned with the validity or otherwise of the grant or renewal of the mining lease to SMPL. E F

**Grant of permission to mine**

5. It has been pointed out to us and this is not disputed, that SMPL was granted permission on 13<sup>th</sup> July, 1999 to extract 1,40,000 MT of iron ore per annum. The permission granted clearly indicates that it is in the context of reopening (to the extent of broken up area of 94.024 acres) the existing mine where the highest production was 1,39,802.00 MT during 1966 as certified by the Deputy Director (Mines). The said extraction or production was of iron ore and the permission granted in 1999 was also for extraction or production of iron ore. This was in accord H

A with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) that permits mining of the mineral iron ore.

The permission granted on 13<sup>th</sup> July, 1999 reads as follows:

B “Subject : Reopening of iron ore mines in Block-B in village Soyabali of Thakurani iron ore mines in District Keonjhar, Orissa - clarifications reg.

Sir,

C This has reference to letter of 10<sup>th</sup> June, 1999 jointly from you and Shri M.L. Sarda seeking clarification on applicability of the provisions of the EIA Notification of 1994. We have noted the following:

D (i) The Department of Steel and Mines, Government of Orissa has agreed to renew mining lease in respect of Block-B covering an area of 2340.20 acres in village Soyabali of the Thakurani iron ore mines in favour of Shri S.L. Sarda and Shri M.L. Sarda.

E (ii) The entire lease area is in reserve forest for which de-reservation proposal has been forwarded by the DFO, Keonjhar to the PCCF, Bhubaneswar.

(iii) Already broken up area is 94.024 acres.

(iv) Highest production from Block-B mines was 1,39,802.00 MT during 1966 as certified by Dy. Director (Mines), Joda, Keonjhar in his letter No. 7892 dated 26.5.99.

F (v) Applications have been submitted to Orissa State Pollution Control Board for obtaining “consent to operate” and IBM for approval of mining plan.

G Further, it has been noted that you are planning to reopen the mine sometimes by the end of 1999 without change in broken up area and production level. Also there is no plan to modernise the mine. It has also been noted that wet drilling will be adopted on working phases. Besides management of surface run off, mine water discharge and plantation of OB dumps, water spraying on haul roads, transfer points and crushing plant will be done regularly.

H

The provisions of EIA Notification of 1994 are not applicable to the renewal of mining lease proposals that do not involve expansion or modernisation. However, you should confine excavation only to already broken up area of 94.024 acres as per mining plan approved and limit production to 1,40,000 MTPA [TPA?]. You are also advised to obtain other statutory approvals from the concerned authorities including the forestry clearance under the Forest (Conservation) Act, 1980 and ensure compliance with the general environmental conditions as indicated in Annexure-I. In case, you plan any expansion or modernisation then prior approval under the provisions of the EIA Notification of 1994 as amended subsequently should be obtained from the Ministry.”

6. Again, the admitted position is that SMPL did not act upon the permission granted on 13<sup>th</sup> July, 1999 till 13/14 August, 2001. The apparent reason is that the mining lease in favour of SMPL was renewed only on 13/14 August, 2001. It is only after the mining lease was renewed that SMPL started mining or extracting iron ore on the basis of the permission granted on 13<sup>th</sup> July, 1999.

#### **Grant of environmental clearance**

7. The next important date that we are concerned with is 22<sup>nd</sup> September, 2004 that is the date on which SMPL was granted environmental clearance for the extraction of iron ore. The environmental clearance granted to SMPL was for expansion of production of iron ore (lump) from 1.5 lakh tonnes per annum (LTPA) to 4.0 million tonnes per annum (MTPA). There was a progressive gradation in the production capacity inasmuch as during the first year the increase in production was permitted from 1.5 LTPA to 0.5 MTPA; 3.0 MTPA by the third year and 3.750 MTPA from the fifth year to achieve the rated capacity in production of 4.0 MTPA during the 17<sup>th</sup> year.

8. However, what is strange about the environmental clearance granted to SMPL on 22<sup>nd</sup> September, 2004 is that it referred to the “proposal for expansion of production of iron ore (lump)” from 1.5 LTPA to 4.0 MTPA. In fact, the permission granted on 13<sup>th</sup> July, 1999 was for production of iron ore and not for iron ore (lump). It is not even the case of SMPL that it was granted the permission on 13<sup>th</sup> July, 1999 for the extraction or production of iron ore (lump). Moreover, the MMDR Act refers to the mineral iron ore and not to iron ore (lump). The concept of

- A extraction or production of iron ore (lump) introduced in the environmental clearance was alien to the permission granted on 13<sup>th</sup> July, 1999 and the MMDR Act. Therefore, the environmental clearance granted on 22<sup>nd</sup> September, 2004 must be understood in the context of the permission granted on 13<sup>th</sup> July, 1999 and the MMDR Act. If so appreciated, then it is clear that environmental clearance was granted to SMPL only related to the expansion of production of iron ore from 1.5 LTPA to 4.0 MTPA. As mentioned above, it is not even the case of SMPL that it was granted permission to extract iron ore (lump) to the extent of 1.4 LTPA in terms of the permission granted on 13<sup>th</sup> July, 1999. Our understanding of the environmental clearance in this context and in this regard keeping these factors in mind is of considerable importance insofar as the decision in the applications is concerned, as will be apparent a little later.

**Retrospective effect of the environmental clearance**

9. Learned counsel for SMPL did not contest or dispute that an environmental clearance does not have any retrospective effect. It is operational from the date it is granted. In any event, this issue is no longer *res integra* having been settled in the decision rendered in **Common Cause** in paragraph 87 of the Report. The submission made, however, was that the benefit of retrospectivity of the environmental clearance should be given to SMPL from the date on which the mining lease was renewed, that is, with effect from 13/14 August, 2001. The reason for claiming this benefit is that the expanded permissible production would then commence from August 2001 and SMPL would be entitled to extract a larger quantity of iron ore with the progressive gradation given in the environmental clearance with the result that the 3<sup>rd</sup> year of production would be 2004 and the 5<sup>th</sup> year of production would be 2006 and not 2009. Similarly, the 17<sup>th</sup> year of production would be 2018 and not 2021.

10. We simply cannot accept this submission since it is plainly contrary to the decision of this Court in **Common Cause**. Moreover and additionally, accepting the submission would mean that for the period from 13/14 August, 2001 till 22<sup>nd</sup> September, 2004 SMPL would have the benefit of the permission granted on 13<sup>th</sup> July, 1999 as well as the retrospective benefit of the environmental clearance dated 22<sup>nd</sup> September, 2004 meaning thereby that SMPL would have two mining permissions, which is obviously not possible. However, we cannot deny

H

to SMPL the benefit of the permission granted on 13<sup>th</sup> July, 1999 on the basis of which SMPL carried out mining activities from the date of renewal of the mining lease that is 13/14 August, 2001 till 22<sup>nd</sup> September, 2004. Even learned *Amicus* does not have any objection to granting the benefit of the permission to SMPL for this period, to the extent that SMPL extracted or produced 1.4 LTPA of iron ore during this period. Therefore, the mining activity carried out by SMPL from 13/14 August, 2001 till the date of the environmental clearance, that is, 22<sup>nd</sup> September, 2004 is legal to the extent of 1.4 LTPA and SMPL cannot be penalised for this mining activity during this period.

11. It was submitted by learned counsel for SMPL that if the environmental clearance is not given retrospective effect then it would mean that its validity would not be co-extensive with the term of the mining lease. Resultantly, the operation of the environmental clearance though granted for the life of the mining lease would necessarily be curtailed to the detriment of SMPL. This submission is noted only to be rejected. The submission made can hardly be a ground for giving retrospective effect to the environmental clearance. If the life of the environmental clearance is curtailed due to operation of the law, then so be it.

12. Learned counsel for SMPL has shown us a Summary of the Project, Environmental Impact Assessment and Environmental Management Plan relating to the proposed expansion of the Thakurani iron ore mine, Block-B, District Keonjhar, Orissa. This document is of February 2002 and is to be found on page 25 of volume 168 of the paper book. He has drawn our attention to page 28 thereof which relates to the mining proposed by open-cast method using drilling and blasting. The production build-up is given in the form of a chart but it takes 2001-2002 as the first year of production. This is obviously on the assumption that the environmental clearance relates back to the date of renewal of the mining lease in 2001. However, since we have held that the environmental clearance does not and cannot have any retrospective effect, the first year of production should in fact be 2004-2005 (pro rata) based on the environmental clearance. On the basis of the chart pointed out by learned counsel for SMPL, it is quite clear that there has been excess mining of iron ore from the first year of production itself. This excess mining is clearly illegal and must be penalised in terms of our judgement in *Common Cause*.

H



- A 13. We leave it to the Central Empowered Committee (CEC) to quantify the penalty to be imposed on SMPL from 22<sup>nd</sup> September, 2004 and based on the terms of the environmental clearance. The calculation should also take into consideration our conclusion that the environmental clearance is not retrospective and the first year of production, in view of the environmental clearance granted to SMPL would be 2004-2005. Any mining in excess of the environmental clearance by SMPL would be and is illegal.
- B

**Extraction of iron ore (lump)**

- C 14. The main rub of the controversy before us lies in the terminology employed in the environmental clearance granted to SMPL - whether it was entitled to extract iron ore (lump) or mineral iron ore, within the limits laid down in the environmental clearance.

- D 15. Before resolving this controversy, it must be clearly understood that extraction of the mineral iron ore is the extraction of iron ore Run of Mine or ROM. Lumps of iron ore are, in a sense, a by-product of ROM as are topsoil, mineral rejects, sub-grade ore and fines and the distinctions made are for the purposes of payment of royalty. The submission of learned counsel for SMPL is to the effect that SMPL was entitled to extract iron ore (lump) in terms of the environmental clearance. If this submission is to be taken literally, then SMPL was entitled to extract only iron ore (lump) without extracting iron ore ROM. This would be much like the argument put forth by Portia enabling Shylock to extract his pound of flesh without spilling a drop of blood. However, we need not take a decision in this regard merely on semantics.
- E

- F 16. That lumps are a by-product of the extraction of iron ore ROM is clear from the decision of this Court rendered in *National Mineral Development Corporation Ltd. v. State of M.P.*<sup>2</sup> wherein this Court noted the process of winning the mineral as described by the appellant therein in the following words:

- G “Iron ore deposits occur mostly in the hill ranges and iron ore is found on the top of the hill i.e. on the surface. The process by which the mineral is won has been described by the appellant as under:

“The ore is extracted by opencast method of mining for which mining benches are prepared. Firstly, holes are drilled on the benches covering the entire height of the bench at regular

H <sup>2</sup> (2004) 6 SCC 281

distance depending on ore types. After charging of the holes with explosives this portion of the bench is blasted. **The blasted material known as ROM (run-of-mines) consists of large boulders, fragments and fines along with other contaminants. ROM is transported to crushing plant by dumpers and crushed to below 150 mm sizes. This crushed ROM contains lump, fines and also contaminants such as alumina and silica.** The crushed ore is transported to screening plant through conveyor belts and is washed with water and screened in vibrating screens. Vibrating screens segregate ore into different sizes such as lump, calibrated ore and fines.....” (Emphasis supplied by us).

17. Similarly, in *Tata Steel Limited v. Union of India*<sup>3</sup> it was observed that in the process of mining, iron ore is extracted (that is ROM) and separated into ore lumps, fines and waste material which is commonly known as slime.

18. Looked at in this light, the context in which permission was granted to SMPL on 13<sup>th</sup> July, 1999 is important. Permission was granted to SMPL to extract the mineral iron ore. This had no reference at all to the sub-category or by-product called iron ore (lump) but must be understood as permission to extract mineral iron ore ROM. It was this permission that was sought to be proposed for expansion of production and if it is looked at in this contemporaneous or historical (whichever) background, then it is quite obvious that the environmental clearance granted on 22<sup>nd</sup> September, 2004 was only with reference to iron ore ROM. This must also be read in the context of the MMDR Act which refers to the mineral iron ore and does not refer to iron ore (lump). A combination of these two factors convinces us that the environmental clearance granted to SMPL was only with reference to iron ore ROM and not iron ore (lump), notwithstanding the terminology employed in the environmental clearance.

19. Taking the view as canvassed by learned counsel for SMPL would lead to a rather anomalous situation wherein, for the purposes of extracting iron ore (lump) of a permissible quantity, SMPL could extract as much iron ore ROM as it desired. In other words, for the purposes of extracting iron ore (lump) of 4.0 MTPA could it be said that SMPL was entitled to extract iron ore ROM to the extent of 6.0 MTPA or even 8.0

---

<sup>3</sup> (2015) 6 SCC 193

- A MTPA? The answer to this is certainly in the negative otherwise the environmental clearance granted to SMPL would be devoid of any rational meaning whatsoever. Also taking this into consideration, it does appear to us that though the environmental clearance granted to SMPL was unhappily worded, it must be given a realistic meaning so that it is not rendered ineffective on the ground of vagueness and to the detriment of the environment as also to the detriment of SMPL.

20. In this context, it is necessary to refer to the Summary of the Project, Environmental Impact Assessment and Environmental Management Plan of February 2002 placed on record by SMPL in volume 168 of the paper book. The table or chart on page 28 thereof and which forms a part of the document indicates that for the production ore extraction of iron ore (lump) the total excavation of iron ore ROM proposed is almost double the quantity. The chart is as follows:

Years	Lump Ore (+5- 180m and 30 + 18m) (MT)	Total Excavation (MT)	ROM (MT)	Top Soil (MT)	Mineral rejects (MT)	Subgrade Ore (MT)	Fines, -5 mm (MT)
1 <sup>st</sup> year 2001-2002	0.500	1.151	0.770	0.000	0.349	0.032	0.270
2 <sup>nd</sup> year 2002-2003	1.196	2.159	1.840	0.000	0.267	0.052	0.644
3 <sup>rd</sup> year 2003-2004	1.976	3.499	3.040	0.000	0.121	0.338	1.064
4 <sup>th</sup> year 2004-2005	2.990	4.829	4.600	0.000	0.183	0.046	1.610
5 <sup>th</sup> year 2005-2006	3.750	6.058	5.770	0.000	0.231	0.057	2.020
Sub Total	10.412	17.696	16.020	0.000	1.151	0.525	5.606
2007-2011	18.750	33.571	28.850	0.024	1.342	3.355	10.100
2012-2016	18.750	33.547	28.850	0.000	1.342	3.355	10.100
2017-2021	20.00	35.779	30.770	0.000	1.431	3.578	10.770
Grand Total	67.912	120.593	104.90	0.024	5.266	10.813	36.576

21. It is quite clear to us even from the above chart that the interpretation sought to be given by learned counsel for SMPL to the environmental clearance was never intended and if it was, then the

unfortunate consequence would be that the environmental clearance must be held to be invalid and quashed, resulting in greater damage to the interests of SMPL than envisaged. On a realistic interpretation to the environmental clearance, for the purposes of calculating excess or illegal production of iron ore, the entire extraction of iron ore ROM is required to be taken into consideration.

A

B

22. We may note in this context that it has come on record that the entire iron ore ROM extracted by SMPL is actually sold to Jindal Steel and Power Ltd. or JSPL and it is not only iron ore (lump) that is sold to JSPL. In this factual background, the issue of the relationship between SMPL and JSPL arises but we are not concerned with this for the present. However, what is more important is that it is the sale of iron ore ROM that is made by SMPL to JSPL and not the sale of iron ore (lump). In other words, SMPL is desirous of taking full advantage of its extraction and production of iron ore ROM but at the same time shying away from the legal consequences that follow.

C

23. It was submitted by learned counsel for SMPL that the CEC has confused itself between extraction or production of iron ore ROM and extraction or production of iron ore (lump) and as a consequence, it has arrived at an incorrect figure of excess or illegal mining by SMPL. In fact, the contention is that SMPL has neither been involved in any excess or illegal mining and the conclusions arrived at by the CEC are totally incorrect. We cannot accept this submission in view of the discussion above, including the conduct and activities of SMPL, the provisions of the MMDR Act and the context in which the permission and environmental clearance was granted to SMPL. Under the circumstances, we find no merit in the objections raised by SMPL to the report of the CEC with regard to the validity of the environmental clearance or the excess or illegal mining of iron ore by SMPL.

D

E

F

24. However, in view of our conclusion, the CEC might have to rework the quantum of excessive or illegal mining carried out by SMPL and the consequent penalty. For this, we grant 6 weeks' time to the CEC to do the needful. All records relevant for arriving at a decision should be made available by SMPL and the concerned authorities to the CEC.

G

25. The substantive applications are disposed of to the above extent and in terms of the above directions.