

**IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI
(SPECIAL ORIGINAL JURISDICTION)**

WEDNESDAY, THE SIXTH DAY OF MAY, TWO THOUSAND AND TWENTY

:PRESENT:

**THE HONOURABLE THE CHIEF JUSTICE SRI JITENDRA KUMAR MAHESHWARI
AND
THE HONOURABLE SMT JUSTICE LALITHA KANNEGANTI**

WRIT PETITION No. 8410 of 2020

Between :-

M/s. Standard Metalloys Pvt.Ltd., Through its Authorized Signatory, Sh. Sumit Tripathi, Having Regd. Office at 819, Naurang House, 21, K.G. Marg, New Delhi-110001

..Petitioner

AND

1. Union of India, Rep by its Secretary Ministry of Mines, Shastri Bhawan, New Delhi-110001.
2. Additional Director General and Administering Authority, Geology Survey of India, GSI Complex, Seminary Hills, Nagpur-440006.
3. Department of Atomic Energy, Rep by its Secretary, Anushakti Bhawan, Mumbai-440001.

..Respondents.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to,

(i)issue an appropriate writ, order or direction in the nature of writ of certiorari to quash notification dated 27.7.2019 issued by the Department of Atomic Energy as being ultra vires the OAMDR Act and/or the Atomic Energy Act, and/ or

(ii)issue an appropriate writ, order or direction in the nature of writ of certiorari to quash order dated 6.11.2019 issued by the Central Government, and/ or

(iii)issue an appropriate writ, order or direction to declare Rule 3A of the Off-Shore Area Mineral Rules, 2006 as ultra vires the OAMDR Act, 2002, and/or

(iv)issue an appropriate writ, order or direction in the nature of writ of mandamus to direct the respondents to execute and sign the deed of exploration licence with the petitioner in furtherance of order of grant dated 5.4.2011 and in terms of the inter party decision of the Honble High Court of Delhi under compliance to this Honble Court,

(v)issue an appropriate writ, order or direction in the nature of writ of certiorari for quashing of reference dated 01.04.2019 made by Ministry of Mines to CBI for reopening of PE No. PE AC1 2012 A0005 already closed earlier by the CBI vide closure report dated 28.3.2013

I.A. No. 1 of 2020 :-

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of W.P., the High Court may be pleased to pass ex-parte and interim orders in favour of the Petitioners and direct status quo be maintained with regard to the offshore blocks mentioned with regard to the offshore blocks mentioned in notification dated 07.06.2010, pending disposal of W.P.No. 8410 of 2020, on the file of the High Court.

I.A No. 2 of 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of W.P., the High Court may be pleased to pass ex-parte and interim orders in favour of the Petitioners and stay the operation of the order dated 6.11.2019 and notification dated 27.07.2019, pending disposal of W.P.No. 8410 of 2020, on the file of the High Court.

Contd.2...

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri Yashraj Singh, learned counsel, representing Sri Vivek Chandrasekhar, Advocate for petitioner and of Sri P. Ponna Rao, For Assistant Solicitor General on behalf of respondents, the Court made the following

ORDER :-

“Sri Yashraj Singh, learned counsel, representing Sri S.Vivek Chandrasekhar, learned counsel for the petitioner.

It is represented that Sri P. Ponna Rao, learned counsel from the office of the Assistant Solicitor General, appears on behalf of the respondents. Time is sought on his behalf to file reply.

This petition is arising out of the order dated 06.11.2019 passed by the Government of India, Ministry of Mines, in exercise of the power under Section 7 of the Offshore Areas Mineral (Development and Regulation) Act 2002 (for short, ‘the OAMDR Act’) in furtherance to the notification dated 27.07.2019 issued by the Department of Atomic Energy (DAE), *inter alia*, prohibiting grant of operating rights of offshore blocks to any private companies except the Government companies. The challenge to Rule 3A of the Offshore Areas Mineral Concession Rules, 2006 (for short, ‘the OAMC Rules’), as ultra vires and contrary to the provisions of the OAMDR Act has also been made, asking such relief.

Upon hearing, we are of the considered opinion that this petition deserves to be admitted. Accordingly, it is admitted for final hearing.

Heard on I.A.Nos.1 and 2 of 2020 filed for interim relief.

On perusal of the record, it is apparent that the petitioner was granted exploration licence in respect of certain offshore blocks in Bay of Bengal sector on 05.04.2011. The grant was challenged in various High Courts, i.e., the High Courts of Bombay, Madras and Andhra Pradesh, by different private parties. The Nagpur Bench of the Bombay High Court passed its judgment on 17.09.2013 in Writ Petition No.1502 of 2011, holding that there is no illegality in the selection process for grant of exploration licence. The SLP preferred bearing No.5530 of 2014 was dismissed on 31.03.2014. In view of the order passed by the Bombay High Court and dismissal of SLP, the writ petition filed before the High Court of Andhra Pradesh was withdrawn. After dismissal of the writ petition, the Ministry of Mines, *vide* order dated 30.06.2016, decided to annul the notification dated 07.06.2010 and the subsequent grant of exploration licences, inviting fresh applications. The said action was challenged again in various High Courts. Learned Single Judge of the Delhi High Court, *vide* judgment dated 06.02.2019 in W.P.(C).No.7537 of 2018, was pleased to set aside the order dated 30.06.2016, directing the authorities to execute the exploration licence of the petitioner within a period four weeks. The order passed by the learned single Judge was assailed before the Division Bench in L.P.A.Nos.184 & 185 of 2019 along with batch. The said LPAs were dismissed *vide* detailed order dated 25.04.2019. The Division Bench has dealt with the issue regarding grant of exploration licences only to the Government companies and in the context of Rule 18(1)(iv), approval of the DAE on the issue of exploration licence. The Division Bench of the Delhi High Court passed the order in the following terms:

"76. For the present, it is sufficient for us to hold that as per the statutory provisions and the law existing, the selection process has been completed. The selection process was upheld by the Nagpur Bench of the Bombay High Court which was affirmed by the Hon'ble Supreme Court; and thereafter in two cases exploration licences have also been issued. Merely because some preliminary enquiry is proposed to be taken or some officers are being dealt with departmentally for their so-called mala fide actions, we see no reason to make any indulgence into the matter; and as already held by the learned writ court and approved by us, they are nothing but an afterthought or resonance by way of justification now given for justifying the actions of the appellants. The issue of mining of atomic minerals and the security concerns have been addressed in detail but so long as the OAMDR Act and the Rules framed thereunder permit grant of exploration licence or production licence on certain conditions for these minerals, we see no reason as to why in anticipation of some change in the statutory provision by the Government, which is still only at the stage of consideration, interference should be made by us. The question of pick-and-choose policy has also been considered by the learned writ court in detail and has been rejected.

77. A very interesting feature of the additional affidavit which was pointed out to us by Shri Tushar Mehta, learned Solicitor General at the time of hearing warrants consideration. In the additional affidavit, by highlighting safety reasons and public importance, it was sought to be indicated that on account of prohibition or importance of preventing mining and exploration of atomic minerals, mining leases of majority of the lessees have been cancelled or stopped since 2013. However, if we see para 6 of the affidavit we find the respondents submit that the said 50 mining leases were granted in offshore areas under the MMDR Act. However, they do not say that they have been cancelled because mining of atomic minerals in area is prohibited; on the contrary, in the affidavit it is stated "Furthermore, due to mass scale illegalities the said mining activities in majority of the mines have been stopped since the year 2013", meaning thereby that mining activity has been stopped in majority of cases but still in many cases out of 50 mining leases mining activities are being carried out and the affidavit does not say that the mining activities were stopped due to prohibition in atomic minerals being mined or explored but on account of large scale illegalities in the mining activities, meaning thereby that they have been stopped because of breach in the terms and conditions of the mining lease and nothing more.

78. In view of the aforesaid discussions and reasons, we are of the view that the writ court has rightly set aside the impugned action and the impugned order dated 30.06.2016; and we find no infirmity or illegality in the impugned judgment dated 06.02.2019 warranting any interference. The appeals are without any merit and accordingly dismissed without any order as to costs.

79. We may add that on 06.02.2019 the learned writ court had directed the appellants to execute the exploration licence of the respondents as per the procedure within four weeks from the date of receipt of the order. This order has not been given effect to till now. Accordingly, we direct the Administering Authority to execute the exploration licences as directed by the learned writ court within a period of two weeks from today as the matter is pending since long due to pendency of cases before various Courts."

The aforesaid order was assailed before the Hon'ble Supreme Court by filing SLP No.11759 of 2019. The Supreme Court, vide order dated 29.07.2019, disposed of the SLP, observing as under:

"We are not inclined to interfere with the impugned orders passed by the High Court. The policy decision would be prospective in nature and it would be open to the Government of India to take action in accordance with law as per the policy decision including the respondent. However, we make it clear that similar action has to be taken against all the players in field, 16 in number, and not against one individual. The directions of the High Court shall not come in the way in implementing the policy decision/action. However, the action taken shall be open to judicial review on its own strength and merits that has to be tested on the anvil of the law and the provisions of the Act in appropriate proceedings, if it is questioned.

We also make it clear that CBI inquiry has to be in accordance with law and would be subject to decision of High Court and it cannot be confined against individual company."

Thereafter, without making any amendment in the OAMDR Act, as proposed before the High Court as well as the Hon'ble Supreme Court in the SLP, merely making an amendment in Rule 3A of the OAMC Rules, which may be prospective, the notification impugned has been issued on 27.07.2019 and a consequential order has been passed on 06.11.2019. It is urged that a contempt petition was filed before Hon'ble the Supreme Court, vide Contempt Petition No.967 of 2019 in SLP (C).No.13018 of 2019, and the same was disposed of on 27.01.2020 with an observation that the Government has passed the order, therefore, the Court is not inclined to interfere with the contempt petition and the legality of the order can be questioned in appropriate proceedings. However, in furtherance thereto, this petition has been filed. It is said that after disposal of the contempt petition, the Government is proceeding to grant exploration licence in respect of the offshore blocks already allotted to the petitioner. Therefore, operation of the order dated 06.11.2019 may be stayed including the notification dated 27.7.2019.

After hearing the learned counsel for the petitioner and in view of the various orders passed by the Delhi High Court as well as Hon'ble the Supreme Court, *prima facie*, we are of the considered opinion that the petitioner has made out a case for grant of interim relief.

Accordingly, by way of interim relief, it is directed that operation of the notification dated 27.07.2019 as well as the order dated 06.11.2019 and further action of grant of exploration licence in respect of the offshore blocks allotted to the petitioner shall remain stayed.

List the case after six weeks for further orders."


ASSISTANT REGISTRAR

//TRUE COPY//

for ASSISTANT REGISTRAR

To

- 1.The Secretary, Union of India, Ministry of Mines, Shastri Bhawan, New Delhi-110001.
- 2.The Additional Director General and Administering Authority,
Geology Survey of India, GSI Complex, Seminary Hills, Nagpur-440006,
Maharashtra State.
- 3.The Secretary, Department of Atomic Energy, Anushakti Bhawan,
Mumbai-440001, Maharashtra State.
(Addressee Nos. 1 to 3 by RPAD)
- 4.Two CCs to Sri P. Ponna Rao, Assistant Solicitor General, High Court of A.P.,
At Amaravati(OUT)
- 5.One CC to Sri S. Vivek Chandrasekhar, Advocate(OPUC)
- 6.One spare copy.

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