

(In Revision Application File No.5/(1)/2008-RC-I)

M/s IDIO Construction and Industries (India) Ltd. - Petitioner

Vs.

State Government of Bihar - Respondent

ORDER

(Under Section 30 of the Mines and Minerals (Development & Regulation) Act, 1957 (MMDR Act) and Rule 55 of the Mineral Concession Rules, 1960 (MCR).

This Revision Application has been filed by M/s IDIO Construction and Industries (India) Ltd., the petitioner to challenge the State Government of Bihar's order No. CC-1/MM/12/07(Khand) 200/M.Patna dated 28.01.2008 (herein after referred to as the "Impugned Order").

2. Through the Impugned Order the State Government has cancelled the Mining Lease granted to the petitioner for mineral Quartz, Quartzite (Silica Stone) over an area of 48.92 Acres in village Bishunpur, Taluk (Pargana) Kajra, Distt. Lakhisarai, Bihar .

3. The ground of rejection cited in the impugned order are that though the lease granted was for major mineral but the petitioner has been utilising the same as a minor mineral without seeking permission of the State Govt. Moreover, this is also resultling in loss of revenue on account of royalty to the State Govt.

4. The petitioner in the revision application has stated that the lease granted by the State Govt. was for major mineral and later on it was found that the material extracted was of low grade, which could be used as road metal. The petitioner had applied to District Mining Officer for change in the usage of the mineral. The mineral extracted is mixed and can be used both for industrial and civil purpose. However, the respondent has cancelled the lease and is in the process of taking the possession of the area.

5. The case was heard on 22.4.08 for hearing of the stay application and stay was granted by the Tribunal on the impugned order of the State Govt. dated 28.1.2008 and respondent was directed not to take any further action in pursuance of the impugned order till the final disposal of the RA or till further order, whichever is earlier. The petitioner was also directed not to undertake any mining, extraction activities and also not to transport the mineral till the disposal of Revision Application.

6. The State Government in its comments has stated that the petitioner was extracting and dispatching minor mineral for construction purposes in violation of terms and conditions of the lease. That there has been loss of revenue to the public exchequer. That the lease held by the petitioner was for Quartz and Quartzite which if used for industrial purposes is a major mineral and if used for building purposes, is a minor mineral and therefore is covered under Rule 27(1)(0) of MCR,1960. The petitioner itself contends that they applied for permission for use of minor mineral as per Rule 27(1)(0) and without obtaining permission started exploiting the minor mineral. The petitioner was given due opportunity to by issuing show cause notice and action was taken only after considering the show cause filed by the petitioner.

7. The petitioner in his counter comments has stated that they were not given opportunity for hearing, thus there was violation of the principle of the

natural justice. If there has been breach of some rule, no notice has been given to remedy the breach and time frame under which it was to be rectified. That the report of the IBM is to be considered which says that there would be 40% wastage/rejects from the leased area in question, implying that more than 40% of the extracted mineral would be of low grade. The report does not say that the same is minor mineral. That the petitioner is not the end user of the mineral at this stage. The question is the issuance of necessary transport challans for the minerals which is of low grade which has been claimed as minor mineral by the respondent. That to remove high grade quartz, the quartz which is in the sub-soil of low grade has to be removed which has been done by the petitioner and there has been no violation of Rules and Acts.

8. The case was taken up for hearing on 13/3/08 where the State Govt. was represented by Shri Gopal Singh, Standing Counsel and Shri I.D. Paswan, Addl. Director(Mines), Department of Mines & Geology, Govt. of Bihar. The petitioner was represented by Shri P.K. Ray, Advocate and Shri Raman Jee Jha, Director. The petitioner as well as the State Govt. were asked to submit written submission if any. The petitioner in its written submission has stated that the matter extracted from the lease was found to be of low grade & not fit for being utilized as major mineral. The petitioner got the same tested in the State Geological Laboratory, Hazaribagh in terms of clause 14(a) of the grant order contained in memo no 977/M dated 30/5/01. The laboratory reported that the sample is of building grade (Low grade) and can be used as road metal. The petitioner sought issuance of challan for despatch of low grade material as per clause-14(b) from the D.M. Lakhisarar, who recommended the same to the Govt. The State Govt. vide letter dated 12/10/07 directed the petitioner to stop despatch of the mineral by the DMO. The petitioner has also contended that the impugned order is bad in law in view of the non-compliance of the mandatory provisions of Section 4A (3) of MMDR Act, 1957 & Rules 27(5) of MCR, 1960. The petitioner

was never served with any notice under rule 27(5) of MCR, 1960 State Govt. is not competent to terminate the lease under section 4A(1) of the Act. for a major mineral. In the light of natural justice, the State Govt. ought to have afforded opportunity to the petitioner to show cause as to why the lease in question would not be cancelled.

9. The State Govt. in its written submission has submitted that even if it was found that the mineral extracted was a minor and not a major mineral intimation of this was to be sent to the State Govt. within 60 days under rule 27(1)(a) of MCR, 1960. As per clause 14(b) of lease, the applicant was to submit a test report within 60 days which was done belatedly after 3 years. The mineral so extracted was sold in the market in violation of rule 27(1)(0) of MCR, 1960 & also in terms and condition of the lease. In view of rule 52 of BMMc Rules, 1972, the permission/lease cannot be granted in respect of minor minerals to the petitioner under the afore mention provision of the said rule. Mining lease of minor mineral in respect of stone can be granted by way of public auction. It is not permissible to make an exception in the case of the applicant.

10. During the hearing the petitioner submitted that State Govt. as violated the provisions of rule 26(1) MCR, 1960 as no opportunity of hearing was given. The State Govt. has also violated the mandatory provision of rule 27(5) of MCR, 1960. The State Govt. has taken shelter under rule 27(1)(0) of MCR, 1960. The provision of clause 14(b) of grant order has been wrongly invoked. The report of the laboratory analysis clearly stated that the mineral quartzite extracted was of lower grade and not fit to be used as a major mineral. The petitioner sought approval from the State Govt. for using the mineral as minor mineral which was not conveyed and instead cancelled the lease. The petitioner also drew the attention towards the observation of the Hon'ble High Court of Patna while dismissing the Writ Petition filed by the petitioner.

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11. The State Govt. submitted that provisions of rule 27(5) are not applicable in the case Provision of rule 27(1) (0) are relevant in this case. The State Govt. issued the mandatory 60 days notice, the reply of the petitioner was examined and the lease was determined. The petitioner sold all the mineral extracted as minor mineral. The petitioner should have taken prior-approval for desposal of mineral. The petitioner has also violated clause 24 of the grant order. The State Govt. has incurred a loss of 20 crores on account of royalty Provision of rule 26(1) is not applicable since it was not a case of fresh grant /renewal of M.L. and instead was a case of termination of M.L. Provision of rule 27(5) relates to violation on account of non-payment of royalty. The very charavter of the lease non been chaged by the lessee.

12. We have heard the arguments made by both the parties and have also perused the record of the case. The petitioner has violated the provisions of rule 27(1)(0) of MCR, 1960 as it sold the mineral without waiting for approval of the State Govt. though the request for the same was made before the State Govt. and no decision of the State Govt. was communicated to the petitioner. Required notice under rule 27(5) of MCR, 1960 was served upon the petitioner. As regard applicability of rule 26(1) is concerned, the same is not applicable in this case, In view of the above, State Govt's order dated 28/01/08 is upheld and Revision Application is, accordingly, disposed of.

(M.A. Khan Yusufi)

Joint Secretary & Legal Adviser

(V.K. Thakral)

Joint Secretary(Mines)

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