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BEFORE THE NATIONAL GREEN TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

ORIGINAL APPLICATION NO. 723 OF 2023

JAN KALYAN BHOOMI MUKHTI FOUNDATIONAPPLICANT

VERSUS

MINISTRY OF COAL & ORS.

....RESPONDENTS

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....RESPONDENTS

COUNTER AFFIDAVIT ON BEHALF OF RESPONDENT NO. 3

I, Ajay Kumar Mehta, aged about 54 years, son of _Ajun Prasad Mehta, Resident of Saunda Dih, G.M. Office Sayal, P.O.- Saunda, P.S.- Bhurkunda, District- Ramgarh, State - Jharkhand, PIN - 829133, do hereby solemnly affirm and state

as follows:-

That I am working as Staff Officer (Mining) at Barka Sayal Area



of M/s CCL the Respondent No. 3 and as such well acquainted with the facts and circumstances of the case.

2. That I have been duly authorized to swear this Counter Affidavit on behalf of Respondent No. 3 and otherwise competent to do so.
3. That I have myself gone through the contents of the Application filed by the applicant under section 18 (1) read with section 14 and 15 of the National Green Tribunal Act and have understood the same.
4. That the Applicant by filing this Original Application has prayed for the following reliefs:-

"A. To quash and set aside the Letter of Acceptance issued by Respondent No. 3 to Respondent No. 4 for re-opening, salvaging, rehabilitation, development and operation of Saunda-D UG Mine situated in district Ramgarh, State of Jharkhand which annexed as Annexure No. 1.

B. Direct the Respondents not to proceed further with the process of auction of Saunda D Mine for the purposes of extracting and excavating coal which is situated at district Ramgarh, State of Jharkhand; and/or



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C. To constitute an expert committee to frame new guidelines regarding the process and pre-conditions which are required to be fulfilled before auctioning of coal blocks to various entities."

PRELIMINARY OBJECTIONS AND SUBMISSIONS:

5. That the present Application is misconceived and based on incorrect facts and knowledge. The contents of the Application are denied in its entirety even if not traversed hereinafter. The answering Respondent reserves its right to file a comprehensive para wise reply should it become necessary.
6. That the Respondent respectfully submits that the Applicant has an alternate remedy available to address any grievance it has and the present forum does not have the jurisdiction to adjudicate the nature of grievance that has been raised by the Applicant in the present Application. The grievance of Applicant does not relate to violation of any Environmental law and therefore the filing of the present Application is an abuse of process of law.
7. That the answering Respondent submits that Law relating to scope of interference / judicial review in Tender matters has now been well settled by Hon'ble Supreme Court of India as well as this Hon'ble Court in a catena of Judgments and is only restricted



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to examination of any arbitrariness, unreasonableness and malafide intent involved (if any) in the decision-making process.

8. That the answering Respondent most humbly submits that it has complied with all the Regulatory mechanisms and norms in place and therefore the Original Application by the Applicant is frivolous and therefore not maintainable. It is humbly submitted that accordingly, the O.A. needs to be dismissed in limine.
9. That the answering Respondent most respectfully submits that the answering Respondent has always complied with all the Environmental Norms in respect of its mining operations in connection with the coal mine in question i.e. Saunda-D UG Mine.

It is submitted that under the prevailing environmental norms no mining operation can be undertaken before grant of Environmental Clearance ("EC") by the Central Government or the State Environment Impact Assessment Authority ("SEIAA").

The Ministry of Environment and Forest (hereinafter referred to as MoEF for the sake of brevity) by Notification dated 14.09.2006, the Environment Impact Assessment, 2006 (EIA in short) has laid down the procedure for grant of EC by the Central

Government or the State Environment Impact Assessment Authority (SEIAA in short) as the case may be in respect of



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projects which impact the environment. The following is the procedure laid down in this regard under the EIA Notification, 2006:-

- i) Project proponent first identifies the location of proposed plant after ensuring compliance with existing siting guidelines. If project site does not agree with the siting guideline, the proponent has to identify another alternative site for the project.
- ii) The project proponent then assesses if the proposed activity/project falls under the purview of Environmental Clearance. The project proponent with the help of environmental consultant works to determine the category under the Schedule of the EIA Notification in which the project falls. The schedule has 2 main categories:
 - a) Category A: It is dealt at Centre level. All the projects require Environmental Impact Assessment report ("EIA report") for appraisal and also have to undergo public consultation process.
 - b) Category B: The category 'B' is further divided into category 'B1' and 'B2' except township and area development projects.



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- c) Category B1: It is dealt at State level. The projects categorized as B1 require EIA report for appraisal and also have to undergo public consultation process. All Category 'B' projects/activities listed under the Schedule of EIA Notification shall be considered as Category 'B1' projects and appraised as per the procedure prescribed in the EIA Notification except specifically mentioned in category 'B2'.
- d) Category B2: it is dealt at state level or District level depending on sub-category. The projects categorized as 'B2' are to be appraised based on the application accompanied with pre-feasibility report and other relevant documents at state level except the projects of mining of minor minerals at district level.
- iii) After categorization of the project, the said project is required to pass mainly through the following four steps:
- (a) Screening;
 - (b) Scoping;
 - (c) Public Consultation; and
 - (d) Appraisal.

- iv) The project proponent then takes up the process to determine detailed and comprehensive Terms of Reference



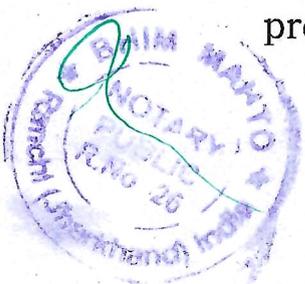
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("TOR") addressing all relevant environmental concerns for the preparation of EIA report in respect of the project or activity for which prior environmental clearance is sought.

After the EIA report is ready, the Project Proponent approaches the concerned State Pollution Control Board ("SPCB") and the State Forest Department (if the location involves use of forestland).

The SPCB evaluates and assesses the quantity and quality of effluents likely to be generated by the proposed unit as well as the efficacy of the control measures proposed by the project proponent to meet the prescribed standards. If the SPCB is satisfied that the proposed unit will meet all the prescribed effluent and emissions standards, it issues consent to establish (or NOC), which is valid for 15 (fifteen) years.

- v) The next stage is of public hearing which is a mandatory step in the process of environmental clearance for certain developmental projects. This provides a legal space for people of an area to come face-to-face with the project proponent and the government and express their concerns.



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- vi) The process of Public Hearing is conducted prior to the issuance of NOC from SPCB. The District Collector is the chairperson of the public hearing committee. Other members of the committee includes the official from the district development body, SPCB, Department of Environment and Forest, Taluka and Gram Panchayat representative, and senior citizen of the district, etc. The hearing committee hears the objections/suggestions from the public and after inserting certain clauses it is passed on to the next stage of approval (MoEF).
- vii) Subsequently, the Project Proponent submits an application for Environmental Clearance with the Ministry of Environment and Forest if it falls under Project A category or the State Government if it falls under project B category. The application form is submitted with EIA report, EMP, details of public hearing and NOC granted by the State Regulators.
- viii) Environmental appraisal: The documents submitted by the Project Proponent are first scrutinised by a multi-disciplinary staff functioning in the Ministry of Environment and Forests who may also undertake site-visits wherever required,



interact with the investors and hold consultations with experts on specific issues as and when necessary.

After this preliminary scrutiny, the proposals are placed before specially constituted committees of experts whose composition is specified in the EIA Notification. Such committees, known as Environmental Appraisal Committees have been constituted for each Sector such as River Valley, Industries, Mining etc. and these committees meet regularly to appraise the proposals received in the Ministry.

In case of certain very special/controversial projects, which have aroused considerable public interest, the committee may also decide to arrange for public hearings on those projects to ensure public participation in developmental decisions. Announcements for such public hearing are made at least 30 days before through newspapers.

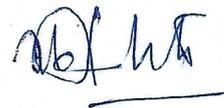
On the basis of the exercise as stated in the foregoing paragraphs, the Appraisal Committees makes their recommendations for approval or rejection of particular projects. The recommendations of the Committees are then



processed in the Ministry of Environment and Forests for approval or rejection.

- ix) Issuance of clearance or rejection letter: When a project requires both Environmental Clearance as well as prior approval under the Forest (Conservation) Act, 1980, proposals for both are required to be given simultaneously to the concerned Divisions of the MoEF. The processing is done simultaneously for clearance/rejection, although separate letters may be issued. If the project does not involve diversion of forest land, the case is processed only for Environmental Clearance,
- x) Once all the requisite documents and data from the project authorities are received and public hearings (wherever required) have been held, assessment and evaluation of the project from the environmental angle is completed within 90 (ninety) days and the decision of the Ministry is conveyed within 30 (thirty) days thereafter.

10. That the answering Respondent submits that the Respondent has followed the aforesaid process in obtaining ECs for all of its operations in connection with extraction of coal vis-a-vis the coal mine in question.



11. That it is further submitted that the Request for Bid (RFB in short) for Re-opening, Development and Operation of Saunda-D UG Coal Mine ("Tender") issued by the answering Respondent takes into account all the environmental norms which have to be followed by the Mine Operator in order to excavate/ extract coal from the mine.

In this regard it is submitted that Clause 1.1.3 of the Request For Bid (herein after referred to as RFB) provides that the responsibility of the Mine Operator being the occupier of the mine will include Exploration and Preparation of Geological Report; preparation and approval of the Mining Plan, Detailed Project Report and Resettlement and Rehabilitation Plan; undertaking rehabilitation and resettlement activities as per the approved R&R Plan; procuring Environmental Clearance, Forest Clearance if required; obtaining applicable Permits, Licenses, Statutory Clearances etc. for the project and performing all other obligations of the Mine Operator in accordance with the Contract Agreement and that of an owner under the Mines Act, 1952.

12. That the aforesaid clause namely 1.1.3 of RFB also mandates the Mine Operator to be responsible for compliance of all conditions laid down in the Environmental Clearance and Forest Clearance



(SPV) as per Clause- 3.9.4 of RFB. Thereafter several compliances as per MCA and RFB have to be complied with. Actual work of excavation/extraction of coal would still be dependent upon compliances and other factors which would take quite some time and to the estimation may even take more than 2 years time, which again would be dependent upon several conditions and factors.

14. That as per the contract agreement, the Mine Operator has to comply and fulfill certain Condition Precedent. It is only after such conditions are complied with, the Mine Operator can excavate/extract coal. In this regard Clause 4.1.2 (c) of the Model Contract Agreement (hereinafter referred to as MCA) provides that the Mine Operator is required to prepare the Terms of Reference (ToR) for Environmental Clearance.

Further, Clause 4.1.2(h) of MCA of the Contract Agreement provides that the Mine Operator is also required to process all the applicable Permits from the concerned Government Instrumentality relating to Environmental Protection and Conservation of the Site, including Environmental Clearance by following the procedure specified under the Environment Impact Assessment Notification, 2006 and Forest Clearance in accordance with the Forest (Conservation) Act, 1980.

It is submitted and clarified that the Mine Operator can only commence Operations of Excavation/ Extraction of Coal once all the aforesaid Condition Precedents are satisfied by the Mine Operator.

15. Therefore, as indicated above, since, the Mine Operator is proceeding with the process of compliances, no Operations of



Excavation/ Extraction of Coal has commenced. The Mine Operator, in terms of the Agreement is duty bound to complete the compliances and only thereafter would commence the work of Excavation/ Extraction of Coal. There has not been any violation of any Environmental Laws in respect to Saunda -D UG Mine located in the District of Ramgarh, State of Jharkhand. In view of the same, the present Application deserves to be dismissed.

16. That in view of the preliminary submission and averments made in the preceding paragraphs, the Applicant is not entitled for any relief whatsoever and the instant Application being devoid of merit, the same is liable to be rejected.
17. That I have myself gone through the contents of this Counter Affidavit and have understood the same.



अमल अधिकारी (खनन)
Deponent
 बरका-सयाल क्षेत्र
 Staff Officer(Mining)
 Barka-Saval

Identified by

B. B. Raj
 07/02/2024

Ed. No. 686/94



Signature Identified
 by the Advocate

VERIFICATION

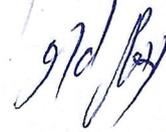
I, Ajay Kumar Mehta, Staff Officer (Mining) Saunda D, G.M. Office Sayal, District Ramgarh, State- Jharkhand, PIN – 829133, do hereby verify that the contents of Paragraph 1 to 16 are true to my knowledge and belief derived from the records of the case and I have not suppressed any material fact.

Date:- 07.02.2024

Place:- Ranchi


DEPONENT

अमल अधिकारी (खनन)
बरका-सयाल क्षेत्र
Staff Officer(Mining)
Barka-Saya




07/02/2024

