

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

I.A No.22

IN

WRIT PETITION (CIVIL) NO.562 OF 2009

SAMAJ PARIVARTANA SAMUDAYA & ORS.

Petitioner(s)

VERSUS

STATE OF KARNATAKA & ORS.

Respondent(s)

Date: 23/09/2011 This Matter was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE AFTAB ALAM
HON'BLE MR. JUSTICE SWATANTER KUMAR

Mr. Shyam Divan, Sr. Adv. (A.C.)
Mr. A.D.N. Rao, Adv. (A.C.)
Mr. Siddharth Chaudhary, Adv. (A.C.)

For Petitioner(s)

Mr. Prashant Bhushan, Adv.
Mr. Pranav Sachdeva, Adv.

For Respondent(s)

For Karnataka:

Mr. Raju Ramachandran, Sr. Adv.
Ms. Anitha Shenoy, Adv.
Ms. Rashmi Nandakumar, Adv.
Mr. Gautam, Adv.

Ms. C.K. Sucharita, Adv.

Ms. Aparna Bhat, Adv.

Mr. S.N. Terdal, Adv.

For FIMI:

Mr. Sunil Dogra, Adv.
Ms. Kiran Suri, Adv.
Ms. Aparna Mattoo, Adv.
Mr. S.J. Amith, Adv.

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- 2 -

Mr. Krishnan Venugopal, Sr. Adv.
Ms. Kiran Suri, Adv.
Mr. K.N. Phanindra, Adv.

For Sesa Goa:

Mr. C.A. Sundaram, Sr. Adv.
Ms. Kiran Suri, Adv.
Mr. K.N. Phanindra, Adv.
Ms. Aparna Mattoo, Adv.
Mr. S.J. Amith, Adv.

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Mr. K.N. Phanindra, Adv.
Ms. Aparna Mattoo, Adv.
Mr. S.J. Amith, Adv.

M/s. Suresh A. Shroff, Advs.

Mr. G.N. Reddy, Adv.

Mr. A.K. Sharma, Adv.

Mr. Sanjay R. Hegde, Adv.
Mr. Anil Kumar Mishra, Adv.

Mr. Jay Savla, Adv.
Mr. D. Julius Raimei, Adv.
Mr. Sumit Ghosh, Adv.
Ms. Renuka Sahu, Adv.

Mr. Shekhar G. Devasa, Adv.
Mr. Sagar Kumar Pradhan, Adv.
Mr. Rohit Pandey, Adv.
Mr. Aljo K. Joseph, Adv.
Mr. D.K. Garg, Adv.

Mr. Sashi Karan Shetty, Adv.
Dr. Sushil Balwada, Adv.

Mr. F.S. Nariman, Sr. Adv.
Mr. Sunil Dogra, Adv.
for M/s. Lawyers Knit and Co., Adv.

Mr. Badri Vishal, Adv.
Mr. B.S. Iyengar, Adv.
for M/s. AP & J Chambers, Adv.

For Mysore Minerals
Ltd.

Mr. Balaji Srinivasan, Adv.
Mr. A.K. Vasanth, Adv.
Mr. B.D. Vivek, Adv.

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- 3 -

Mr. Mahesh Agarwal, Adv.
Mr. Rishi Agarwal, Adv.
Mr. E.C. Agrawala, Adv.
Mr. Akhil Anand, Adv.
Mr. Pravin Sehrawat, Adv.
Ms. Neeha Nagpal, Adv.
Mr. Gaurav Goel, Adv.

For All India Mini
Blast Furnace Assn.

Mr. Aspi Chinoy, Sr. Adv.
Mr. R.S. Suri, Sr. Adv.
Mr. N.L. Ganapathi, Adv.
Mr. K.S. Prasad, Adv.
Ms. Pallavi Tayal, Adv.

Mr. S. Ganesh, Sr. Adv.
Mr. Syed Naqvi, Adv.
Ms. Namrata Kapoor Sharma, Adv.
Mr. Prem Prakash, Adv.
Ms. Tina Chakma, Adv.

Mr. K.K. Venugopal, Sr. Adv.
Mr. Arvind Savant, Sr. Adv.
Mr. Sanjeev K. Kapoor, Adv.
Mr. Rajat Jariwal, Adv.
for M/s. Khaitan & Co., Adv.

Mr. D.L.N. Rao, Sr. Adv.
Mr. S.K. Kulkarni, Adv.
Mr. M. Gireesh Kumar, Adv.
Mr. Ankur S. Kulkarni, Adv.

For NMDC Ltd.:

Mr. Parag P. Tripathi, ASG.
Mr. K. Raghavacharayulu, Adv.
Mr. Devadatt S. Kamat, Adv.
Mr. Anand Sukumar, Adv.

Mr. Bhupesh Kumar Pathak, Adv.
Ms. Meera Mathur, Adv.

UPON hearing counsel the Court made the following
O R D E R

Learned Amicus Curiae points out that it would be useful if this Court could modify it's Order dated 2nd September, 2011, which was passed on ...4/-

- 4 -

the basis of the Report of Central Empowered Committee ['CEC', for short] dated 1st September, 2011, in which certain recommendations were made by CEC. By the said Order dated 2nd September, 2011, the recommendations of CEC dated 1st September, 2011, have been accepted, subject to certain clarifications. Learned Amicus Curiae suggests that it's recommendations may be re-produced. Accordingly, the recommendations contained in the Report dated 1st September, 2011, are being re-produced hereinbelow:

"Pursuant to this Hon'ble Court's order dated 26.8.2011 this Report is being filed by the CEC regarding the modalities for sale and keeping the accounts of the sale proceeds of about 25 million MT (MMT) of the existing stock of iron ore pertaining to the various mining leases in the Districts of Bellary, Chitradurga and Tumkur. Copies of the representations on the subject received by the CEC from the various associations and individuals had been made available to the Learned Amicus Curiae and the Learned Attorney General for their consideration. Detailed discussions were held between the Learned Attorney General, the Learned Amicus Curies Mr. Shyam Divan and Mr. A.D.N. Rao, representatives of the MoEF and Members of the CEC on 1.9.2011 and this report reflects the consensus arrived at.

2. The following modalities for the sale of the existing stock of iron ore, keeping the account of the sale proceeds and related issues are submitted for the consideration of this Hon'ble Court:

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- 5 -

- i) the quantity of 1.5 million MT of iron ore per month, as per the breakup given at ANNEXURE-R1 to this Report, will be sold;
- ii) this quantity will be sold through e-auction(s). For this purpose the mining lease-wise/grade-wide reserve price will be fixed after taking into consideration the sale price obtained/ fixed by the NMDC;
- iii) the steel and associated industries, who have been wholly/partly dependent on the iron ore from Karnataka, will be eligible to participate in the e-auction of iron ore for their own use. No middlemen/traders will be eligible to participate in the e-auction and no

exports will be permissible;

- iv) the pelletisation and beneficiation plants may participate in the e-auction provided that the iron ore so purchased, after processing/value addition, is made available only to the steel and associate industries. No exports will be permissible;
- v) the physical verification of the existing stock of the iron ore will be carried out before e-auction so as to determine the quantity of iron ore of different grades physically available;
- vi) the terms and conditions and the procedure being followed for e-auction of low grate iron ore by the NMDC (A copy is enclosed at ANNEXURE-R-2 to this Report), with appropriate changes will be used for the purpose of e-auction and delivery and transportation of the auctioned iron ore;

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- 6 -

- vii) the e-permit system for the issue of transit passes (Mineral Dispatch Permit/trip sheet) will be followed. The weigh bridges will be linked with the online e-permit system. The transportation route will be determined in such a way so as to ensure that the trucks transporting the iron ore pass through at least one check post having weigh bridge and where the quantity of the iron ore being transported will be verified with reference to the quantity loaded in the truck;
- viii) the successful bidder will, in addition to the sale price of the iron ore, be required to pay the applicable royalty (at 10% of the market price), Forest Development Tax, sales tax, cess and other applicable charges;
- ix) the sale price along with the royalty applicable taxes and other charges will first be deposited in the designated bank account(s) in the nationalised bank(s). Out of the above, the royalty, taxes and other charges payable on the sale price will be paid under the respective "Heads of Receipts" to the Government and the balance amount, after payment of the service charges for e-auction, will be invested in fixed deposit(s) in the nationalized bank(s). The accounting of the receipts and payments, mining lease-wise, will be maintained under double entry system;
- x) it is submitted that in respect of the mining leases found (by the Joint Team) to be involved in illegal mining no

amount towards the sale price may presently be disbursed to them. In respect of the mining leases where the Joint Team has not found any illegality (as per the list enclosed at ANNEXRE-R-3 to this Report), presently 80% of the sale price may be disbursed to the respective lease holders and the balance 20% of the sale price may be retained;

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- 7 -

xi) a Committee comprising of Mr. Deepak Sharma, Additional Principal Chief Conservator of Forest, Karnataka Forest Department, Dr. U.V. Singh, Chief Conservator of Forest, Karnataka Forest Department and Mr. H.R. Srinivasa, Director, Mines & Geology, Government of Karnataka may be constituted (hereinafter called the 'Monitoring Committee') for dealing with the various issues related to the sale and the transportation of the existing stock of iron ore, keeping account of the sale proceeds and related issues. The above said three officers are at present functioning as Members of the Joint Team constituted by the Hon'ble Court by order dated 6.5.2011;

xii) the Monitoring Committee will have the powers and responsibilities for/to:

- (a) physical verification of the existing stock of the iron ore of various grades in each of the mining lease;
- (b) decide upon the frequency of auctions for a month (and within the month), prescribe the terms and conditions of the auction (including Prior Registration of eligible buyers and their capacities), fixation of the reserve price, including regarding the payment of the EMD, period of transportation, transport route, size of each lot (of various grades of iron ore in each mining lease), procedure for delivery of the iron ore sold, issue of bulk permit, the Mineral Dispatch Permit (trip sheet) and Form No. 27 (Forest Permit). It is suggested that the Monitoring Committee may fix the lot size after taking into consideration the quantum of iron ore that can be transported by the railways in one rake (each rake is estimated to carry about 4012 MT of iron ore based on the assumption that a rake normally has 59 wagons/boxes and the capacity of each wagon/box is approximately 68 MT);

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- 8 -

- (c) the receipt of sale price, royalty, taxation of applicable charges in bank account(s) maintained in the nationalized bank(s), investment in the fixed deposits in the nationalized bank(s), payment of royalty, taxes and applicable charges, payment of

service charges for e-auction, investment of the balance amount in the fixed deposits with the nationalized bank(s) and its disbursement as per the directions of this Hon'ble Court;

- (d) co-opt the respective Deputy Commissioner and the Superintendent of Police of the concerned District as special invitees for keeping an effective check on the movement of trucks carrying iron ore including surprise checks and other associated activities; and
- (e) to consider complaints with regard to hoarding and to debar a particular party/ industry from taking part in the e-auction if (i) the quantity of iron ore being purchased by it is found to be in excess of its actual requirement and which consequently is adversely affecting the availability of iron ore to the other eligible buyers and (ii) non compliance of the terms and conditions of e-auction.
- xiii) in the event of any violation of the terms and conditions regarding loading, lifting and transportation of the quantity sold by e-auction, the purchaser will be liable for deterrent action including imposition of the penalty and/or debarring him from taking part in future auctions. and
- xiv) the MSTC Ltd., a Mini Ratna Category I, Public Sector Enterprise under the administrative control of Ministry of Steel, Government of India be engaged for conducting e-auction. For the reasons set out hereafter, service charge of 0.3% may be fixed as payable to the MSTC Ltd.

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- 9 -

3. In this regard a copy of the profile of the MSTC Ltd. is enclosed at ANNEXURE-R-4 to this Report. The MSTC Ltd. has been engaged by the NMDC for e-auction of its low grade iron ore. The MSTC Ltd. has vide their letter dated 30th August, 2011 sought service charge of 0.6% of the sale value/ auction value plus the applicable service tax and the cess thereon (enclosed at ANNEXURE-R-5 to this Report). On the other hand the MMTC, which is a Public Sector Undertaking under the administrative control of the Ministry of Commerce & Industry, has vide its letter dated 30th August, 2011 shown its willingness to take up the work of e-auction at a flat rate of 0.1% of the sale price realized (copy enclosed at ANNEXURE-R-6 to this Report). In the premiss, service charge of 0.3% appears to be fair and reasonable.
4. It is also recommended that the Monitoring Committee may not be allowed to utilize any part of the sale proceeds or interest thereon except for depositing the royalty, taxes and other applicable charges, payment

of the service charges towards the e-auction service and payment to the lessees as per para 2 (x) above. The CEC may for the present be permitted to release funds to the Monitoring Committee for meeting the expenditure towards monitoring, online linking of weigh bridges with e-permit system and related activities. The amount paid by the CEC may be reimbursed to it in due course of time and as per directions of this Hon'ble Court.

5. The above modalities for sale and keeping the account of the sale proceeds of the existing stock of the iron ore may also be made applicable in respect of the manganese ore available in the respective mining leases.

This Hon'ble Court may please consider the above Report and may please pass appropriate orders in the matter."

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- 10 -

Thus, Order passed by this Court on 2nd September, 2011, be read with this Order so as to provide more clarity on the aspect of recommendations made by CEC on 1st September, 2011, and their acceptance by this Court.

[T.I. Rajput]
A.R.-cum-P.S.

[Madhu Saxena]
Assistant Registrar