

Chowgule and Company Private Limited Vs. Goa Foundation & Ors.

Civil Appeal No. 839 of 2020 arising out of SLP(C) No. 12449 of 2018
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Full judgment text

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[Civil Appeal No. 839 of 2020 arising out of SLP(C) No. 12449 of 2018]

[Civil Appeal No. 840842 of 2020 @ SLP(C) Nos.1232812330/2018]

[Civil Appeal No. 843 of 2020 @ SLP(C) No. 3028/2020 @ Diary No(s).17815/2018]

[Civil Appeal No. 844846 of 2020 @ SLP(C) No. 2571125713/2018]

[Civil Appeal No. 847 of 2020 @ SLP(C) No. 24831/2018]

[Civil Appeal No. 848 of 2020 @ SLP(C) No. 24830/2018]

[SLP(C) No. 22035/2019 SLP(C) Nos. 12449, 1232812330, D. No(S).17815, 2571125713, 24831, 24830 of 2018]

1. Delay condoned.
2. Permission to file Special Leave Petition (Civil) D.No.17815 of 2018 is granted.
3. Leave granted.
4. The factual scenario and the questions of law involved being common, all these appeals are being heard and decided together.
5. The present proceedings have a chequered history.
6. Since the Government of India received information about the rampant exploitation of natural resources in Iron Ore mining sector in the State of Goa, it appointed Justice M.B. Shah, a former judge of this Court, as a Commission of Inquiry under Section 3 of the Commissions of Inquiry Act, 1952, by a Notification dated 22.11.2010.
7. Justice Shah visited Goa and after calling for and receiving information from various authorities as well as mining leaseholders, submitted reports to the Government of India on 15.3.2012 and 25.4.2012. The reports were tabled in Parliament on 7.9.2012 along with an Action Taken Report. Consequently, the Government of Goa passed an order dated 10.9.2012 restraining/suspending all mining operations in the State with effect from 11.9.2012. The Ministry of Environment and Forest (MoEF) of the Government of India also kept in abeyance the environmental clearances granted to 139 mines (actually 137 mines - the figure of 139 on account of some duplication) in the State of Goa by an order dated 14.9.2012.
8. Subsequent to the reports given by Justice Shah, a writ petition came to be filed by Goa Foundation in this Court being W.P.(C) No.435 of 2012. The writ petition, being in the nature of public interest litigation, prayed, inter alia, for directions to the Union of India and the State of Goa to take steps to terminate the mining leases where mining was carried out in violation of various statutes. So also, various writ petitions came to be filed in the Bombay High Court by several mining leaseholders challenging the reports of Justice Shah and the consequent orders passed by the State of Goa and the Union of India. All those petitions came to be transferred to this Court to be heard along with W.P. (C) No. 435 of 2012 filed by Goa Foundation.
9. All those petitions came to be decided by this Court by judgment and order dated 21.4.2014 [Goa Foundation vs. Union of India & Others1] (hereinafter referred to as "Goa Foundation") wherein this Court , amongst other conclusions arrived at, held that all iron ore and manganese ore leases had expired on 22.11.2007 and any mining operation carried out by the mining leaseholders after that date was illegal. It was also held, that all the mining leaseholders had enjoyed a first deemed renewal of the mining lease and for a second renewal an express order was required to be passed in view of and in terms of Section 8(3) of

the Mines and Minerals (Development and Regulation) Act, 1957.

For a second renewal of the mining lease, it was held, that the State Government must apply its mind and record reasons for renewal being in the interest of mineral development and the necessity to renew the mining lease and the same should also be in conformity with the Constitutional provisions. It was also held, that the decision taken by the State of Goa could be examined by way of judicial review. It was also held, that the order dated 10.9.2012 of the Government of Goa suspending mining operations and the order dated 14.9.2012 of the MoEF, Government of India) directing the environmental clearances granted to the mines in the State of Goa to be kept in abeyance were proper and, as such, not required to be interfered with and that they would continue till decisions are taken to grant fresh leases and fresh environmental clearances for mining projects.

10. Thereafter, quite independent of the cases pending in this Court, writ petitions were filed by several mining leaseholders in the Bombay High Court praying either for consideration of their applications for a second renewal of the mining lease or for the grant of a mining lease on second renewal. The High Court heard those writ petitions and by its judgment dated 13.8.2014 directed the State of Goa to execute the lease deeds in favour of the leaseholders who had already paid stamp duty pursuant to the orders of the government in accordance with the Goa Mineral Policy 2013 and to consider the applications of other leaseholders in accordance with the conditions laid down by this Court in Goa FoundationI (supra). This order of the High Court was made a subject matter of challenge in Goa Foundation v. Sesa Sterlite Limited and Others² (hereinafter referred to as "Goa FoundationII"). The said challenge came to be decided by this Court vide judgment and order dated 7.2.2018 (Goa FoundationII).

11. It will be apposite to refer to the conclusions and directions given by this Court in Goa FoundationII (supra) while deciding the said challenge. "Conclusions and directions 154. In view of our discussion, we arrive at the following conclusions. 154.1. As a result of the decision, declaration and directions of this Court in Goa Foundation [Goa Foundation v. Union of India, (2014) 6 SCC 590] , the State of Goa was obliged to grant fresh mining leases in accordance with law and not second renewals to the mining leaseholders.

154.2. The State of Goa was not under any constitutional obligation to grant fresh mining leases through the process of competitive bidding or auction.

154.3. The second renewal of the mining leases granted by the State of Goa was unduly hasty, without taking all relevant material into consideration and ignoring available relevant material and therefore not in the interests of mineral development. The decision was taken only to augment the revenues of the State which is outside the purview of Section 8(3) of the MMDR Act. The second renewal of the mining leases granted by the State of Goa is liable to be set aside and is quashed.

154.4. The Ministry of Environment and Forests was obliged to grant fresh environmental clearances in respect of fresh grant of mining leases in accordance with law and the decision of this Court in Goa Foundation [Goa Foundation v. Union of India, (2014) 6 SCC 590] and not merely lift the abeyance order of 14/9/2012.

154.5. The decision of the Bombay High Court in Lithoferro v. State of Goa [Lithoferro v. State of Goa, 2014 SCC OnLine Bom 997 : (2015) 3 AIR Bom R 32] (and batch) giving directions different from those given by this Court in Goa Foundation [Goa Foundation v. Union of India, (2014) 6 SCC 590] is set aside.

154.6. The mining leaseholders who have been granted the second renewal in violation of the decision and directions of this Court in Goa Foundation [Goa Foundation v. Union of India, (2014) 6 SCC 590] are given time to manage their affairs and may continue their mining operations till 15/3/2018. However, they are directed to stop all mining operations with effect from 16/3/2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted.

154.7. The State of Goa should take all necessary steps to grant fresh mining leases in accordance with the provisions of the Mines and Minerals (Development and Regulation) Act, 1957. The Ministry of Environment and Forests should also take all necessary steps to grant fresh environmental clearances to those who are successful in obtaining fresh mining leases. The exercise should be completed by the State of Goa and the Ministry of Environment and Forests as early as reasonably practicable.

154.8. The State of Goa will take all necessary steps to ensure that the Special Investigating Team and the Team of Chartered Accountants constituted pursuant to the Goa Grant of Mining Leases Policy, 2014 give their report at the earliest and the State of Goa should implement the reports at the earliest, unless there

are very good reasons for rejecting them.

154.9. The State of Goa will take all necessary steps to expedite recovery of the amounts said to be due from the mining leaseholders pursuant to the showcause notices issued to them and pursuant to other reports available with the State of Goa including the report of Special Investigating Team and the Team of Chartered Accountants."

[Emphasis supplied by us]

12. It is the directions given in paragraph 154.6 in Goa FoundationII (supra) which has given rise to the present appeals. By the direction in paragraph 154.6 (supra), this Court gave time to the mining leaseholders, who were granted the second renewal, to manage their affairs permitting them to continue their mining operations till 15.3.2018. By the said direction, they were directed to stop all mining operations with effect from 16.3.2018.

13. It is nobody's case that any of the mining leaseholders have continued the mining operations after 15.3.2018. The only question, that arises for consideration is as to whether the minerals which were mined prior to 15.3.2018, can be permitted to be transported by the mining leaseholders or not.

14. Construing the directions of this Court in paragraph 154.6 (supra) as restricting the mining operations till 15.3.2018 and not restricting the transport of the minerals already mined till 15.3.2018, the State of Goa by a decision dated 21.3.2018 decided to permit the mining leaseholders to pay the royalty on the mineral which was already mined till 15.3.2018 and transport the same.

15. Being aggrieved by the said decision, the Goa Foundation filed Writ Petition No. 3 of 2018 before the High Court of Bombay at Goa. In the said petition, an interim order dated 28.3.2018 came to be passed whereby, the transportation of all minerals was suspended.

16. The Division Bench of the Bombay High Court at Goa while finally hearing the matter after elaborate discussion arrived at the following finding: "...According to our respectful interpretation thus, when the Supreme Court mandated five weeks' time for arranging the affairs, it meant completion of transportation as well."

17. Observing the aforesaid, the Division Bench quashed and set aside the decision of the State of Goa dated 21.3.2018 permitting transportation of royalty paid iron ore. The Division Bench also held, that the State Government should take decision regarding its ownership rights, as a custodian of the mineral resources, and regarding its power to take possession, to sell and dispose of iron ore in question and utilise the proceeds for public purpose.

18. Being aggrieved thereby, various appeals/petitions are filed before this Court. We may briefly set out the challenges and reliefs claimed in each of the matters. Appeal arising out of SLP(C) 12449 of 2018 The appellant/petitioner claims, that the appellant's ore was being loaded for being shipped for export which came to be stopped in view of the interim order passed by the Division Bench of the High Court dated 28.3.2018. The grievance of the appellant is that the protection order dated 4.4.2018 passed by this Court in Special Leave Petition (Civil) Nos. 84838484 of 2018 (to which we will refer subsequently) did not extend to it as it was not a party in the said SLP. The appellant, therefore, prays to permit the appellant to load on the barges and on the vessels, the iron ore which is royalty paid and which is brought on the jetties on or before 15.3.2018 so that it can be transported to their destinations. Appeals arising out of SLP(C) Nos. 1232812330 of 2018 The appellant's case is identical with the appellant in earlier appeal i.e. Appeal arising out of SLP(C) No.12449 of 2018.

The iron ore mined by the appellant was in the process of being loaded in a ship at High sea through barges. However, due to the interim order of the High Court dated 28.3.2018 passed in Writ Petition (Civil) No.3 of 2018, the appellant had to stop the same. The appellant is also not covered by the order dated 4.4.2018 (supra) passed by this Court. The appellant, therefore, prays for a similar direction as sought by the appellant in Appeal arising out of SLP(C) No.12449 of 2018. Appeals arising out of SLP(C) D. No.17815 of 2018 The appellant herein deals in export of iron ore. The appellant claims to have entered into an international contract for export of ore and accordingly had made preparation and loaded barges to be transported to vessel berthed at High sea. However, in view of the interim order dated 28.3.2018 (supra) it could not carry forward the said operations. The appellant is also not covered by the order dated 4.4.2018 (supra) passed by this Court as it was not a party in the SLP.

The appellant also claims the same reliefs as sought by the appellant in Appeal arising out of SLP(C) No.12449 of 2018. Appeals arising out of SLP(C) Nos. 2571125713 of 2018 The appellants herein are engaged in trade of minerals. The appellants had purchased iron ore from the mine of some leaseholders. After purchasing, they have transported the same to their jetties and stockyards on or before 15.3.2018. The appellants in pursuance of the order passed by this Court dated 11.5.2018 (to which also we will refer subsequently) are praying for permission to transport ore lying at jetties and stockyards on their sale. Appeals arising out of SLP(C) Nos.24831 and 24830 of 2018 The appellants in both these appeals herein submit, that though they have extracted the iron ore prior to 15.3.2018, it is lying either at the stockyard or at the pithead and, therefore, seek permission to transport the same.

19. We have heard Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellant in lead matter [i.e. Appeal arising out of SLP(C) No.12449 of 2018], Shri Gourab Banerji, learned Senior Counsel and Mr. Yashraj Singh Deora, learned counsel for the other appellants. We have heard Shri A. N.S. Nadkarni, learned Additional Solicitor General appearing for the State of Goa, Shri Vikramjit Banerjee, learned Additional Solicitor General appearing for the Union of India and Mr. Prashant Bhushan, learned counsel for the Goa Foundation.

20. Shri Mukul Rohatgi, learned Senior Counsel appearing for the appellant would submit, that the perusal of paragraph 154.6 of the judgment of this Court in Goa FoundationII (supra) would clearly show, that what was permitted by this Court was continuation of mining till 15.3.2018. He submits, that there is a specific prohibition in the said paragraph that after 15.3.2018 no mining activity could be carried on. He, therefore, submits, that what was done by this Court was to specifically prohibit mining after 15.3.2018. However, the order did not postulate restriction on transport of the iron ore which was already mined in the period of five weeks i.e. from 7.2.2018 [the date of the judgment and order of this Court passed in Goa FoundationII (supra)] to 15.3.2018. He would submit, that the perusal of the order of this Court dated 4.4.2018 (passed in SLP(C) No.84838484 of 2018 and connected matters) and 11.5.2018 [passed in SLP(C) No.12449 of 2018 and connected matters] would clearly show, that the intent of paragraph 154.6 (supra) was to prohibit the mining from 16.3.2018 and not the transportation of the ore which was already mined prior to 15.3.2018.

21. Shri Rohatgi, relying on Rule 12(1)(gg) of the Minerals (Other than Atomic and Hydro Carbons Energy Minerals) Concession Rules, 2016 (hereinafter referred to as "the said Rules), would further submit, that the legislative policy is to grant six calendar months to remove ore mineral extracted from the date of the expiry or sooner termination of the lease term. He, therefore, submit, that taking into consideration the legislative policy, it is necessary that the mining leaseholders be permitted to transport the iron ore mineral which is already mined by them. He submits, that the finding of the High Court that paragraph 154.6 (supra) also prohibits transportation of the mineral which is already mined prior to 15.3.2018, is not only totally incorrect but is in ignorance of the orders passed by this Court dated 4.4.2018 and 11.5.2018.

22. The learned counsel appearing for the State of Goa also submits, that the State has no objection for transportation of the mineral which is mined prior to 15.3.2018 and on which the royalty is paid to the Government.

23. Shri Prashant Bhushan, learned counsel for the Goa Foundation, vehemently opposed the appeals. He would submit, that the mining leases of the various lessees had already expired in 2007. They were illegally continuing their mining operations. He submits, that the same has been found in the judgment of this Court in Goa FoundationI (supra). He further submits, that in Goa FoundationII (supra) this Court also found that there was rampant illegal excavation and, therefore, such stringent directions were issued by this Court. He submits, that the Division Bench of the High Court has rightly construed the words "to manage their affairs" used by this Court in paragraph 154.6 (supra) to include all activities relating to mining and transportation thereof. He submits, that the lessees in the period of seven weeks from 7.2.2018 till 15.3.2018 have extracted 2.2 MT of iron ore. It is submitted, that if the permission is granted to transport this iron ore, it will amount to giving a premium for illegal activity of the leaseholder. He, therefore, vehemently submits, that all appeals are liable to be dismissed.

24. To appreciate the entire controversy, we have to consider what is the import of paragraph 154.6 of the judgment of this Court in Goa FoundationII (supra). The direction given in the said paragraph are twofold. Firstly, the mining leaseholders are given time to manage their affairs and to continue their mining operations till 15.3.2018. The second is a negative direction. They are directed to stop all mining operations with effect from 16.3.2018 until fresh mining leases (not fresh renewals or other renewals) are granted and fresh environmental clearances are granted.

25. Applying the principle of plain and literal interpretation, the direction would stop all mining activities from 16.3.2018. However, from the date of the order i.e. 7.2.2018 till 15.3.2018, the lessees were permitted to continue with the mining activities and manage their affairs.

26. As could be seen, after the Government of Goa had taken a decision to permit the royalty paid iron ore to be transported which was mined prior to 15.3.2018 by its decision dated 21.3.2018, the Goa Foundation had approached the High Court and the High Court had stayed the said direction by its interim order dated 28.3.2018. The said interim order dated 28.3.2018 reads thus: "11. In the meantime, there shall be an ad interim relief in terms of the bracketed portion of prayer clause (d), which reads thus: "Pending hearing and final disposal of this petition, a direction to the State Government to order an immediate suspension of transport of all minerals related to the mining activity of 88 leaseholders....."

27. Being aggrieved thereby, a Special Leave Petition (Civil) Nos. 84838484 of 2018 came to be filed before this Court. The matter came up for hearing before the same Bench which had delivered the judgment in Goa FoundationII (supra). An order dated 4.4.2018 came to be passed by the same Bench of this Court in the said Special Leave Petition (Civil) Nos. 84838484 of 2018. The said order dated 4.4.2018 passed in Special Leave Petition (Civil) Nos. 84838484 of 2018 reads thus: "It is categorically stated by learned counsel for the petitioners that the iron ore which is sought to be loaded on the vessels in the Port area in Goa is royalty paid and it was removed and brought to the jetties on or before 15th March, 2018.

Under these circumstances, we are of the view that the iron ore which is royalty paid and which is lying on the jetties on or before 15th March, 2018 should be permitted to be loaded on the barges and on the vessels so that they can be transported to their destinations. The State of Goa will ensure and confirm that only that iron ore is loaded which is royalty paid and which is lying in the jetties on or before 15th March, 2018. Insofar as the other issues are concerned, since the matter is already pending in the High Court, we do not propose to deal with them and leave it to the High Court to adjudicate. The special leave petitions are disposed of"

28. An identical order dated 11.5.2018 came to be passed by the same Bench in the present lead appeal arising out of SLP(C) No. 12449 of 2018, which reads thus: "Issue notice. Mr. Shishir Deshpande and Mr. Prashant Bhushan, learned counsel accept notice. We have heard learned counsel for the parties at some length. It is categorically stated by learned counsel for the petitioners that the iron ore which is sought to be loaded on the vessels in the Port area in Goa is royalty paid and it was removed and brought to the jetties on or before 15th March, 2018. Under these circumstances, we are of the view that the iron ore which is royalty paid and which is lying on the jetties on or before 15th March, 2018 should be permitted to be loaded on the barges and on the vessels so that they can be transported to their destinations.

The State of Goa will ensure and confirm that only that iron ore is loaded which is royalty paid and which is lying in the jetties on or before 15th March, 2018. Insofar as the other issues are concerned, since the matter is already pending in the High Court, we do not propose to deal with them and leave it to the High Court 3 to adjudicate. An allegation has been made by learned counsel appearing for Goa Foundation that rampant mining took place after the order passed on 7th February, 2018 till 15th March, 2018. We would like to have full details about the mining that has taken place during the period from 7th February, 2018 till 15th March, 2018. We make it clear that there will be no movement of iron ore until further orders except the iron ore which has reached the jetties. List the matter in the third week of July, 2018."

29. It could thus be seen, that the Division Bench which had delivered the judgment in Goa FoundationII (supra) by subsequent orders dated 4.4.2018 and 11.5.2018 has permitted the iron ore which was royalty paid and which was lying on the jetties on or before 15.3.2018 to be loaded on the barges and on the vessels so that it can be transported to their destinations.

30. It will also be relevant to refer to Rule 12(1)(gg) of the said Rules. 12. Terms and conditions of a mining lease.(1) Every mining lease shall be subject to the following conditions: (a) (gg) the lessee may, after paying the rents, rates and royalties payable under the Act and rules made thereunder or under the lease deed, at the expiry or sooner termination of the lease term or within six calendar months thereafter (unless the lease is terminated for default of the lessee, and in that case at any time not less than three calendar months nor more than six calendar months after such termination) take down and remove for its own benefit, all or any ore mineral excavated during the currency of the lease, engines, machinery, plant, buildings structures, tramways, railways and other works, erection and conveniences which may have been erected, set up or placed by the lessee in or upon the leased lands and which the lessee is not bound to

deliver to the State Government or which the State Government does not desire to purchase."

31. A perusal of clause (gg) of Rule 12(1) of the said Rules would reveal, that on the expiry or sooner termination of the lease term, six months period is granted to the lessees to remove for its own benefit, all or any ore mineral excavated during the currency of the lease, engines, machinery, plant, buildings, structures, tramways, railways and other works, erections and conveniences which may have been erected, set up or placed by the lessee in or upon the leased lands. An exception is carved out in case of lease being terminated for default of the lessee wherein, period so to be granted is not less than three months and not more than six calendar months after such termination. However, it is subject to the lessee paying the rents, rates and royalties payable under the Act and the Rules made thereunder.

32. Taking overall view of the matter i.e. paragraph 154.6 of the judgment of this Court in Goa FoundationII (supra); the orders dated 4.4.2018 and 11.5.2018 passed by the same Bench which delivered the judgment in Goa FoundationII (supra) permitting the minerals/iron ore to be transported which were royalty paid and which was lying on the jetties on or before 15.3.2018; and the legislative policy granting six months' period for removal of the mineral for the benefit of the lessees, we find that the view taken by the Division Bench of the Bombay High court is not correct. If this Court in Goa FoundationII (supra) intended to prohibit the mining as well as transportation of the minerals/iron ore with effect from 16.3.2018 nothing precluded it from doing so. However, the words used were that the lessees are permitted to manage their affairs and are permitted to continue mining till 15.3.2018.

The only prohibition contained in the said order after 15.3.2018 is for carrying out mining operations. Not only this but the same Bench which has decided the Goa FoundationII (supra) itself on two occasions has permitted the mineral to be transported from the jetties. We do not find, that there is any rationale in differentiating between the iron ore which is either at the jetties or at the stockyards or pitheads, if the same is mined prior to the date of the prohibition i.e. 15.3.2018. There is no doubt that the ownership of the ore is that of the party that has raised the ore. The ore which has been permitted to be transported is on condition of payment of royalty. We see no reason why the owners should not be allowed to transport their own ore.

33. It will not be out of place to mention here the specific stand of the State Government before the High Court that the State is monitoring to ensure that only such of the mineral is permitted to be transported which is mined prior to 15.3.2018.

34. We are, therefore, inclined to allow all the appeals. Order accordingly. We set aside the impugned judgment and order dated 4.5.2018 passed by the High Court and uphold the decision of the State of Goa dated 21.3.2018, which permits transportation of mineral/iron ore which is mined prior to 15.3.2018.

35. Needless to state, that the transportation of the mineral would be only in respect of such minerals on which royalty is paid. The appellants/mining leaseholders would be permitted to transport the royalty paid ore/mineral from the jetties/stockyard or pitheads on the basis of the valid transit permits issued to them by the competent authority of the State Government.

36. Taking into consideration the legislative policy as contained in clause (gg) of Rule 12(1) of the said Rules, we direct that all such transportation shall be completed within a period of six months from today.

37. It is needless to state that all other directions contained in paragraph 154 of the judgment of this Court in Goa FoundationII (supra) shall be strictly complied with by the State of Goa.

38. All pending applications including the application for intervention shall stand disposed of.

SLP(C) No. 22035/2019

39. Detagged. To be listed before the appropriate Bench in its due course.

1 (2014) 6 SCC 590

2 (2018) 4 SCC 218

Source disclosure: Complete sanitized public judgment text retained for research. Official-primary replacement and later-history closure remain pending.

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