

M/s A. R. C. Cement Ltd. and Others

Vs

State Of U. P. and Others

Writ Petition (Civil) Nos. 12451, 12017, 12346, 12377 of 1985, 1056 of 1986, C.M.P. Nos. 36815, 40238, 40239, 40276 of 1985, 21021 of 1986, SLP (C) No. 11844 of 1986

(CJI Ranganath Misra, G. N. Ray, Dr. A. S. Anand JJ)

20.11.1991

ORDER

1. The petitioner is a private cement manufacturing concern. It was located within the Mussoorie and Dehradun Development Authority's jurisdiction. In terms of the Court's decision that the said area would not be used for any manufacturing process which would affect the environment by pollution, under Court's orders the manufacturing process has been stopped. As there was already a huge investment, we agreed to monitor the shifting of the factory and made detailed directions on September 20, 1991. Pursuant to those directions possibility of shifting to other areas has been explored and now UPSMDC - a Corporation of the State of U.P. and the petitioner have come to a general understanding on some aspects and these have been placed before us. On our suggestion, a written memorandum has been submitted and the points of agreement are : (i) UPSMDC shall supply limestone to the petitioner of a minimum of 1.7 lakh tons per year, for a period of 20 years from their limestone mines lying in the district of Mirzapur, Sonbhadra locally known as Khajrahath, Blocks 6 and 7 to their units. These areas are already on lease with the UPSMDC under the Mining Development and Regulation Act of 1967 and the lease, as we understand, is expiring in 2002 A.D. Since we are of the view that a fixed terms below 20 years would not be viable and the UPSMDC does not have a lease for that period, we are inclined to require the U.P. State Government to give a renewal of the existing lease to UPSMDC, which is a State owned concern for a further term of 20 years from the date of expiry of the lease. That would enable our order to work out.
2. In the event of failure on the part of the UPSMDC to supply the minimum assured quantity per year, the company would be entitled to operate the mines on behalf of the UPSMDC to the extent of the shortfall or to a point of approximation thereto. The parties will have liberty to apply to this Court in the event of non-supply or the alternative not working out satisfactorily.
3. UPSMDC shall make such other modifications and amendments in the terms and conditions of the agreement for the supply of limestone to the petitioner company as may be required by the financial institutions having contracts or agreements with the petitioner company. In the event of there being any particular difficulty, the matter may be considered by the Court, if moved.
4. UPSMDC has held out an assurance against termination of the agreement for the guaranteed period and if at any point of time, in the opinion of UPSMDC, for a supervening situation, this arrangement has to be terminated, it should be only with prior leave of the Court.
5. There are certain other aspects which have yet to be negotiated. We have not thought it proper to bring them as matters for determination of the Court and would leave the same to the parties to

negotiate and work out.

6. All these arrangements are on the stipulation that the company is to shift its existing factory to the new site and in the event of the factory not being shifted, the terms which we have indicated above, are not intended to be implemented.

7. These leave still one bigger question for consideration and that is to what alternative use the standing factory is to put to. There is some amount of dispute as to whether the factory is located in the cultivable zone as claimed by Mr. Yogeshwar Prasad, for the State Government. As maintained by the petitioner's counsel the Master Plan indicates this area to be residential and there is affirmation of this position in the stand taken by the State of U.P. in a suit of the petitioner and in proceedings taken by the government against the petitioner. We do not intend to express any final opinion on this aspect and we would leave it to the parties to negotiate. We would, however, reiterate our earlier view that allowing the construction to go waste would indeed be a national wastage. Every effort should be made by the petitioner and the State of U.P. working conjointly to find out a suitable alternate use of this area with the construction. We hope and trust that without loss of time and in realisation of the responsibilities of the State Government in the matter under the admitted position of it being a welfare State, the dispute would be brought to an end as early as possible.

8. The writ petition and SLP are disposed of but we reiterate that the parties will be liberty to move the Court.

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