

SUPREME COURT OF INDIA

State of Karnataka

Vs.

Vedanta Limited (Formerly Known as SESA Sterlite Limited)

Crl.A.No.348-356 of 2018

(A.K.Sikri and Ashok Bhushan,JJ.,)

06.03.2018

JUDGMENT

Ashok Bhushan,J.,

SLP (Crl.) Diary No. 2398 of 2018

1. Delay condoned. Leave granted.
2. This appeal has been filed against the impugned judgment and order of Karnataka High Court dated "04.07.2017 in Writ Petition No. 18941/2016 and Writ Petition Nos. 19328-19335/2016(GM-MM-S). High Court vide its judgment dated 04.07.2017 has allowed the Writ Petitions directing for release of the iron ore in favour of writ petitioners (respondent herein).

3. The brief facts necessary to be noted for deciding this appeal are:

A First Information Report No. 17/2009-10 dated 15.03.2010 was registered for illegal storage of iron ore by violating Sections 2(7)(b)(iv), 62, 80 of the Karnataka Forest Act, 1963 and Rules 143, 162 of the Karnataka Forests Rules, 1969. Judicial Magistrate First Class, Ankola permitted for further inquiry by including Section 24(e) of Karnataka Forest Act, 1963. On 20.03.2010 about 5 Lakhs Metric Tonnes of illegally stocked iron ore has been seized on "as-is- where-is-basis" and seizure report has been submitted to the Judicial Magistrate First Class, Ankola who permitted to retain the same until further orders.

4. Another case registered was CBI Crime No. RC 17(A)/2012. Chargesheets were filed after investigation in Special C.C. No. 268/2013, Special C.C. No. 11/2014, Special C.C. No. 14/2014, Special

C.C. No. 15/2014, Special C.C. No. 36/2014, Special
C.C. No. 37/2014, Special C.C. No. 38/2014, Special
C.C. No. 53/2014, Special C.C. No. 54/2014.

The State filed an application under Section 451/457 Cr.P.C. in the aforesaid cases before the XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCH-34), seeking permission to dispose off 56 heaps of iron ore lying at the Belekeri Port approximately weighing 2,72,713.347 Metric Tonnes by e-tender.

5. Notices were published in the newspapers inviting the filing of application for the interim disposal of seized 56 heaps of iron ore at Belekeri Port by Dy. Conservator of Forests, Karwar on 29.03.2015. The XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCH-34) after considering the application passed an order on 08.05.2015 allowing the application under Section 451/457 Cr.P.C. permitting the applicant/State to dispose off the seized iron ore through e-tender on certain terms and conditions as enumerated in the order.

6. Against Order passed on 08.05.2015, Writ Petition No. 18941/2016 and Writ Petition Nos. 19328- 19335/2016(GM-MM-S) were filed by the respondents in the High Court of Karnataka at Bangalore. In the Writ Petition following prayers were made:

PRAYER

Wherefore, for the reasons and circumstances stated to hereinabove, it is most humbly prayed that this Hon'ble Court may be pleased to:

(i) Issue a Writ of Certiorari or any other appropriate Writ or Order or direction setting aside the Order dated 08.05.2015 passed by the Court XXXII Additional City Civil & Sessions Judge & Special Judge for CBI Cases in Bangalore (CCH 34) in Spl. C.C. Nos. 268/2013, 11, 14, 15, 36, 37, 38, 53 & 54 of 2014 vide Annexure - A & all further consequential proceedings thereto, only in so far as the petitioner is concerned, in the interest of justice and equity.

(ii) Issue a Writ of Mandamus or any other appropriate Writ or Order or Direction, directing the 2nd,3rd, 4th & 5th Respondents to consider the representation dated 04.02.2016 08.02.2016 & 24.02.2016 submitted by the petitioner vide Annexure -'P','P1' & 'P2' and permit the petitioner to remove and transport the entire quantity of approximately 34.544 Metric Tonnes of iron ore from Belekeri Port premises to the Pig Iron Plant of the petitioner at Amona in State of Goa by endorsing the Mineral Dispatch Permits & Forest Transit Passes & without insisting on any further payment of Royalty, in the interest of justice and equity.

(iii) Issue such other appropriate Writ or Order or Direction as deemed fit under the facts and circumstances of the case, in the interest of justice and equity."

7. The State filed an objection in the Writ Petitions opposing the prayers made in the Writ Petitions. The High Court vide its judgment and order dated 04.07.2017 allowed the Writ Petitions. The State aggrieved by the judgment of the High Court has come up in this appeal.

8. We have heard Shri B.P.S. Patil learned Senior Advocate for the appellant and Shri Dhruv Mehta, Advocate for the respondent.

9. Learned counsel for the appellant in support of the appeal contends that the High court committed error in allowing the Writ Petitions and directing release of the iron ore in favour of the writ petitioner. It is contended that the basis of the judgment of the High Court is the final report accepted by learned CBI Judge vide Order dated 15.12.2015 which has nothing to do with the proceeding in which, an Order was passed by Special Judge CBI on 08.05.2015. It is contended that the High Court on wrong premise has allowed the Writ Petitions. It is submitted that the writ petitioners themselves have filed an application in the Special C.C. Nos. 268/2013, 11, 14, 15, 36, 37, 38, 53 & 54 of 2014 under Section 451/457 Cr.P.C. dated 08.03.2016, praying for directing the release in favour of the applicant company herein entire quantity of about 34544 Metric Tonnes of iron ore, belonging to the applicant company seized on 20.03.2010, which application was subsequently, withdrawn.

10. Learned Senior Counsel for the appellant submits that Crime No. 2/2014 dated 11.07.2014 in which final report was submitted and accepted by XXXII Additional City Civil and Sessions Judge and Special Judge for Prevention of Corruption Act at Bangalore City was a case which was registered by Special Investigation Team of Karnataka Lokayukta, was altogether a different case, unconcerned with proceeding under which an application under Section 451/457 Cr.P.C. has been allowed.

11. Learned Counsel appearing for the respondent refuting the submission of the Senior Counsel for the appellant contends that the investigations were carried out by the CBI in pursuance of the directions passed by this Court in Writ Petition (C) No. 562/2009 and under the orders of this Court Special Investigation Team, Karnataka Lokayukta, Bangalore carried on investigations and registered a case with Karnataka Lokayukta SIT Police Station, being Crime No. 2/2014 in which proceeding after thorough investigation, a final report dated 08.10.2015 was submitted by SIT, which was accepted by the Court on 15.12.2015. No offence having been found proved against the respondent, High Court has rightly directed for release of iron ore seized in favour of the respondent. Respondent's claim for release of iron ore is confined to the quantity of about 34544 Metric Tonnes of iron ore belonging to the respondent company that has been seized on 20.03.2010 and lying at the plot allotted to applicant-company by Shree Mallikarjun Shipping Pvt. Ltd in Belekeri Port Area. He submitted that the claim of above iron ore is different from that seized and pending in case No. 189/2010.

12. We have considered the submissions of the learned counsel for the parties and have perused the record.

13. High Court in the impugned judgment has based its decision of allowing the Writ Petition and directing the release of the iron ore in favour of the respondent on the final report being accepted by the learned CBI Judge by Order dated 15.12.2015. High court has further noticed that this Court directed on 07.09.2012 to CBI to investigate into illegally

stocked iron ore in pursuance of which direction, SIT was constituted and final report was submitted. Paragraphs 10 and 15 of the judgment of the High court are the entire consideration of the High Court for allowing the Writ Petition. It is useful to extract the Paragraphs 8 to 15 of the judgment which is to the following effect:

"8. Accordingly, a Special Investigation Team (SIT, for short) was appointed by the State. They submitted a final report, which is in favour of the writ petitioner. The final report has been accepted by the learned CBI Judge by an order dated December 15, 2015.

9. Mr. K. N. Phanindra, learned advocate, seeks a direction for release of the materials in favour of his client.

10. Mr. V. G. Bhanuprakash, learned additional government advocate, submits that a case of theft is pending and, therefore, the seized materials could not be released in favour of the petitioner.

11. In the wake of the final report being submitted by the SIT, we do not find any impediment to release the iron ore in favour of the petitioner. An inventory has to be prepared and, thereafter, the iron ore shall be released in favour of the writ petitioner, immediately. The entire process must be completed by four weeks.

12. The writ petitions are, therefore, allowed.

13. Mr. Phanindra, at this stage, expresses an apprehension that the authorities may claim royalty.

14. When the material is in the port area, it is presumed that royalty has, already, been paid, otherwise transport permit would not have been granted. Therefore, his apprehension is unfounded.

15. We make no order as to costs.

Sd/- CHIEF JUSTICE

Sd/-

JUDGE"

14. The investigation which was carried out by SIT was registered as Crime No. 2/2014. The respondent in his compilation has filed a notice issued under Section 91 Cr.P.C. to the Managing Director/Director of M/s SESA Goa Limited, presently, M/s Vedanta Limited (respondent). Notice dated 21.08.2014 refers to the Order of this Court and registration of Crime No. and it is useful to extract the opening paragraph of the notice issued to the respondent dated 21.08.2014:

" KARNATAKA LOKAYUKTA

Special Investigation Team

No. SP2/CR/02/2014/SIT/KLA/03 DATE: 21.08.2014

POLICE NOTICE (U/S 91 Cr.P.C.)

Special Investigation Team, Karnataka, Lokayukta, Bangalore, is investigating the cases of illegal mining of Iron ore in Karnataka State on the orders of the Hon'ble Supreme Court (Writ Application No. 562/2009 IA 189 dated 16.09.2013) and that of the Govt. of Karnataka. In this regard a case is registered against your company in KLA SIT Police Station Cr. No. 02/2014 u/s 379, 420 r/w 120(b)IPC & 13(2), r/w 13(1)(d) PC Act & 21, 23 r/w 4(1)(a) MMRD Act 1957.

In this connection, you are requested to direct a competent official conversant with the activities/transactions of your company (M/s. Mineral Enterprises Limited No. 49,3rd Floor Khanija Bhavana, Race Course Road,) to appear before the undersigned at 10.30 hrs on 30.8.2014 at the office of Special Investigation Team, ATIC Building, University of Veterinary Science, Hebbal, Bangalore along with the following original documents/data. The said official may also carry soft copy of the data/tables/charts of the information as mentioned below.

15. It was in the aforesaid proceeding that final report was submitted on 08.10.2015. The respondent has filed a copy of the order sheet of XXXII Additional City Civil and Sessions Judge and Special Judge for Prevention of Corruption Act at Bangalore City in Crime No. 2/2014 where filing of the final report is noticed and Court also directed for issue notice to the complainant returnable by 15.12.2015. On 15.12.2015, the Court in Crime No. 2/2014 passed the following order:

"Complainant by name Sri Manjunatha Annigeri, Superintendent of police attached Special Investigation Team, Karnataka Lokayuktha, Bengaluru is present and submits that he has gone through the records which disclosed that no case is made out against all the accused at the conclusion of investigation. He submits that he has no objection to accept the 'B' report. I have gone through the records. It is seen that according to the Investigating Officer, there is no convincing evidence to arrive at conclusion that allegations against all the accused are made out. After having gone through the 'B' report I find that there are no grounds to proceed further against all the accused and accordingly 'B' report is accepted. (V. G. BOPAIAH) XXIII ACC and Spl. Judge, Bangalore City."

16. From the above, it is clear that the final Report which was accepted on 15.12.2015, was final report in case Crime No. 2/2014 which was registered after the investigation by SIT in pursuance of order of this Court passed in Writ Petition No. 562 of 2009 and in the above case, no offence was found against the respondent.

17. The Order dated 08.05.2015 was passed allowing the application under Section 451/457 Cr.P.C. of the State in Special C.C. No. 268/2013 and C.C. No. 11, 14, 15, 36, 37, 38, 53 & 54 of 2014 which is mentioned in the operative portion of the order itself. It is useful to extract the operative portion of the Order dated 08.05.2015 which is to the following effect:

" ORDER

The Application filed by the State Government U/ss. 451/457 of Cr.P.C., are allowed permitting the Applicant/State to dispose off the seized iron ore through e-tender with the following terms and conditions:

1. The auction of the property shall be through e-tender under the supervision of the 'Monitoring committee' constituted by the Hon'ble Supreme Court.
2. The e-tender auction shall be conducted by involving the CBI Authorities and under intimation to the Lokayukta Department.
3. The e-tender auction shall be conducted only after measurement of the quality and quantity of each of the 56 iron ore heaps separately through mines and Geology Department.
4. The e-auction shall be conducted after taking samples of each of the 56 iron ore heaps separately for which Panchanama shall be drawn.
5. The e-auction process is over the disposal off the iron ore be covered by videography.
6. The auction amount shall be deposited immediately with the Court in Spl. CC. No. 268/2013 and a copy of the document for having deposited the amount be kept in connected cases.
7. The DMG shall keep records of the exact quantity of iron ore transported by the successful bidder of the property. The Original of the Order be kept in Spl. CC. No. 268/13 and a copy thereof be kept in Spl. CC. Nos. 11/14, 14/14, 15/14,36/14, 37/14, 38/14, 53/14 & 54/14.

(Directed to the Judgment Writer, transcribed by the corrected and then signed and pronounced by me in the open court on this 8th day of May 2015),

Sd/-08/05 (Pradeep S. Balikal) XXXII Addl. City Civil and Sessions Judge and Spl. Judge for CBI Cases, Bangalore"

18. From the above, it is clear that Order dated 08.05.2015 was passed in different proceedings which proceedings commenced by registration of FIR dated 15.03.2010, Ankola Police Station Crime No. 189/2010. After investigation by CID/CBI chargesheets were filed, which were the cases as referred above. Iron ore which was directed to be

released by Order dated 08.05.2015 was iron ore seized on 20.03.2010. In the additional documents filed by the appellant, IA filed on behalf of the respondent under Section 451/457 Cr.P.C. dated 08.03.2016 has been brought on record. It is useful to extract the prayer made in the application of the respondent, which is to the following effect:

" PRAYER

Wherefore, it is prayed that this Hon'ble Court be pleased to allow the above application and direct the release in favour of the applicant company herein, of about 34,544 MT of Iron Ore belonging to the applicant company that has been seized on 20.03.2010 and is lying at the plot allotted to applicant company by Shree Mallikarjun Shipping Private Limited in Belekeri Port area, in the interest of justice & equity.

Place: Bangalore Date 08.03.2016

Applicant

[Anand Prakash Dubey, Advocate for Applicant
Head-Finance, (K.N. Phanindra)]

Iron Ore Karnataka]

19. It is, thus, clear that seizure of the iron ore was not in case Crime No. 2/2014 in which final report has been accepted on 15.12.2015 rather seizure of the iron ore was in different proceeding in which proceeding Order dated 08.05.2015 was passed. When release of iron ore on an application filed by the State under Section 451/457 Cr.P.C. was in different proceeding, there was no effect or consequence of acceptance of the final report vide Order dated 15.12.2015 in case Crime No. 2/2014 and the High Court committed error in allowing the Writ Petition on the strength of the final report accepted on 15.12.2015. We have already extracted the entire consideration of the High Court while allowing the Writ Petition from paragraphs 8 to 15 of the judgment. High Court while allowing the Writ Petition had only relied on acceptance of the final report by CBI Judge dated 15.12.2015 which as has been noted above, was not relevant with regard to Order dated 08.05.2015 passed by the trial court.

20. Learned Senior Counsel for the appellant has also brought on record subsequent judgment of the High Court where High Court in Writ Petition filed against the same Order dated 08.05.2015 by another writ petitioner has disposed off the Writ Petition granting liberty to that Writ Petitioner to approach Jurisdictional Criminal Court for release of the seized iron ore by establishing its existence and ownership rights. Reference has been made to the Order of the Karnataka High Court dated 20.11.2017 in Writ Petition Nos. 29527-29531 of 2017 and Writ Petition Nos. 29881-29884 of 2017 filed as Annexure P-11.

21. In result of foregoing discussion, we are of the view that order and judgment of the High Court is wholly unsustainable and is hereby set aside. We, however, observe that it shall be open for the respondent to file an appropriate application before the XXXII Additional City Civil and Sessions Judge and Special Judge for CBI Cases, Bangalore (CCH-34), for release of seized iron ore by establishing its existence and its ownership right over the same, which

may be considered by Jurisdictional Criminal Court in accordance with law. The Criminal Appeal is allowed.