

BHUKIA LEGAL ACTION

Government of India Mines Tribunal

In June 2007 we had challenged the cancellation by the Government of Rajasthan (GOR) of the PL application over Bhukia in the Mines Tribunal, Ministry of Mines, Government of India (GOI). In respect to this, in January 2008, the Tribunal had granted us an *ad interim* Stay on the rejection order of the GOR. The matter was ripe and pending final hearing as all replies and rejoinders had been filed.

In February 2009, instead of getting indications of a final hearing, we received communication regarding an **arbitrary decision** of the Mines Tribunal vacating the *ad interim* Stay, as it felt that we had failed to come out with a *prima facie* case in our favour and also hadn't furnished any evidence or proof of suffering any irreparable loss if the Stay was not granted. **This Stay was vacated without giving us a chance to be heard.** As far as we were concerned this was a blatant disregard of natural justice.

We approached the Mines Tribunal to reconsider its decision, but on getting a negative response, we had no option but to challenge the order of the vacation of the Stay in the Delhi High Court (DHC). After a couple of brief hearings, where the court admitted the matter and issued notice to the Central Government, on the 18th May 2009 the matter was finally heard. The Judge saw the merits in our argument and referred the matter back to the Mines Tribunal with directions for them to hear the Stay application afresh and without prejudice, on 23rd June 2009. The DHC went further and ordered that in the interim, the GOR should not create third party rights over the litigated area.

The Mines Tribunal, under a new Director, showed it was extremely proactive and well versed with Mining Laws. On the 23rd June 2009, as directed by the High Court, it set the date of 3rd July 2009 for hearing the Stay application.

On the 3rd July 2009, the single bench of the Mines Tribunal heard argument from both parties. The Mines Tribunal seemed to be extremely pro industry and development. It was very harsh on the GOR for often abusing their powers and having no respect for the law of the land. Instead of granting a Stay, the Mines Tribunal felt that it would be best to have the matter heard finally and resolved. For this it set a date of 13th July 2009 for final hearing. Seeing merits in our favour and wrong doings of the GOR, the Tribunal also instructed the GOR to consider undertaking to grant us our PL, after which the Mines Tribunal would advise us to withdraw all legal challenges.

On the 13th July 2009 we appeared in front of a double bench of the Mines Tribunal. The matters were heard in detail. The GOR claimed that it was inclined to grant us our PL but could not as certain relevant policy decisions (lifting of tribal ban) were pending cabinet approval.

Post argument, the Mines Tribunal very clearly expressed its view that even if it was inclined to accept the case in our favour, it could not pass any effective order in view of the pending writ petitions in the Rajasthan High Court (RHC). The Director chairing the Mines Tribunal observed that it may be improper for the Tribunal to pass an order in disregard of the reservation notification of the GOR (issued in Nov 2007 reserving 158 sq km for departmental exploration over Bhukia deposit) while the RHC was yet to take a final view on the notification.

Further, the Mines Tribunal felt that we were amply protected by the Stay orders issued by the RHC in the two writ petitions. However, we were able to convince the Mines Tribunal to re-grant a Stay of the impugned orders rejecting our PL application. The Mines Tribunal further advised us to approach them at the earliest once the matter pending before the RHC was resolved, so that they could set us an early date for final hearing and resolve the matter.

The Director was extremely sensitive towards our cause. He claimed that he knew of the Bhukia deposit and considered it to be the best in India. He even told the GOR representatives that they should encourage the development of this deposit as it had immense economic value.

Rajasthan High Court

In the RHC we have filed 2 writ petitions challenging notifications issued by the Mines Department of Rajasthan viz:

- Writ 1:- This challenged the notification issued in November 2007, reserving 158 sq km of area over the Bhukia deposit for departmental exploration, during the pendency of our RP. This petition was filed in January 2008, and the RHC granted a Stay on this notification in April 2008.
- Writ 2:- This challenged the guidelines (insofar as they affect us) issued along with the notification issued in February 2008, lifting the ban of mining and exploration in tribal areas. The guidelines issued under this notification cancel all existing RP & PL applications and call for fresh applications. This petition was filed in February 2008, and in September 2008 the RHC granted an order restraining the GOR from creating third party rights in the said RP area of 207 sq km.

Both matters had been ripe for final hearing for some time, and at a hearing on the 20th April 2009, Justice Maheshwari of the RHC, confirmed both orders issued (as mentioned above) "until further notice" and put both the writs in the roster for final hearing. Ever since then the writs have been coming up for hearing regularly. Some adjournments have been taken by us based on advice of our local counsel. Other adjournments have been taken by the GOR's Additional Attorney General (AAG) on account of him receiving no instructions from the GOR due to the General Elections.

A final hearing was set for the 7th July 2009, and the matters were partly heard on that day, but adjourned to the 9th July 2009 as the AAG wanted to study the written argument submitted to court on the day.

On the 9th July 2009 the matter was again heard. Instead of taking up the writs individually, the Judge went into the facts of both writs. In regard to the November 2007 notification, the Judge seemed to see that the GOR had no right to reserve an area for departmental exploration if it was already under an RP. However, before quashing the notification outrightly, he wanted to understand the implications of the same and how we would benefit, especially since our RP had expired and applications were in the GOI Mines Tribunal.

In regard to writ 2, the Judge went into a bit of history of the implementation of the tribal ban in Rajasthan. We argued that firstly, the tribal ban was never applicable to the State of Rajasthan, and secondly, even if it were, we, on account of our rights pertaining to our granted RP, should be seen as an exception. During this argument itself, the AAG declared in court that the GOR had withdrawn the tribal ban, with effect of the notification issued in February 2008.

Both writs were only part heard and had to be adjourned as the court broke for lunch and both counsels were engaged in front of a special bench of the RHC post lunch. The next date of hearing was scheduled in the week starting 20th July 2009.

While there was no order passed, the important argument that the Judge seems to have registered is that the reservation order of the GOR has no *locus standi* and the tribal ban as admitted by the GOR has been lifted. In the next hearing it was planned to stress these arguments further, show how we have suffered on account of arbitrary decisions of the GOR and hopefully get a good order in our favour. In addition we would bring to the notice of the RHC that the DHC and the Mines Tribunal have seen merits in our case and this should further influence the RHC's order in our favour.

Prior to the next hearing on 20th July 2009 the AAG indicated his unavailability to attend and so the matter was further adjourned to 27th August 2009.

In mid August 2009 the Bar Association of Jodhpur took strike action and refused to appear before the RHC. On the hearing day of 27th August 2009 our Vice President-Commercial appeared in the court where the judge and two clerks were still working and when our case came up for mention the judge was asked for an early hearing date in September 2009. The judge said that was out of the

question because of the continuing strike and also because the judiciary has a two week holiday from mid September 2009. As such he was not prepared to set an early date. The judge set a date for another mention in early October 2009. We will be maintaining close contact with the court registrar to try to ensure our case does not slip down the list.

Government of Rajasthan

The new Congress party government in Rajasthan was elected to power in November 2008, after a landslide win defeating the BJP government. One of the key election agendas of the Congress party was to fight corruption, which has been alleged to have flourished in the previous rule. The image so far of the new government seems to reflect this and they are going strictly by the book. In addition to this, with a push from the newly elected and strong Congress led coalition in the centre, development and upliftment of the poor is becoming the centre of all activity. This is where project like ours would contribute significantly.

We have been in constant touch with officials and ministers in the State and have been explaining and building our case. We have tried to explain to the new administration that development of a gold project in a backward area like Bhukia would bring immense economic resources and prestige to the region and the State. We also try and explain to them that we are good investors, have created rights and will not walk away. We have suffered on account of decisions made by the previous government, but we are willing to overlook that, work productively with the new government and see a world class gold mine developed in the State.

In regard to our project, the new government has been slow in acting and taking firm decisions, but the message they are sending out is clear and consistent. The Minister and the Secretary Mines, have told us on numerous occasions that they are keen on seeing our project develop. They understand that we have rights, we were given an RP and thus should be given a PL, irrespective of the Tribal Ban and the reservation. The Minister has also gone to the extent of saying that he has discussed our project with the Chief Minister.

Internal sources in the ministry have indicated that the government has already initiated the process to de-reserve the area reserved for departmental exploration in November 2007. We understand that the notification has been prepared and is pending cabinet approval. This is a big hurdle in our way. Once de-reserved it would be a positive indication of the intentions of the Government and make our legal struggle easier (if actually at all required then).

In regard to the tribal ban, though it was lifted by the previous government, the new administration has decided, for the moment, to put a hold on processing applications in that area. What we understand is that the new government wants to take credit for development of this area and are working on a proposal to allocate larger resources to this belt.

The Tribal Area Development Minister, who is himself a tribal, has also given us positive indications. He mentioned that opening of the tribal areas for mining is a foregone conclusion, but a policy must be formed before mining permissions are granted.

Thus the signals from the State government is clear; we would sooner than later be given our PL. The matter is pending a final cabinet decision on the tribal area mineral policy.