IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 9120/2008 & CMs 17536/2008, 164/2009

Reserved on: 19th May 2010
Decision on : 20th July 2010

S.K. SARAWAGI & CO. PVT. LTD. & ANR ..... Petitioners
Through: Mr. Rajiv Nayar, Senior Advocate with
Mr. Rishi Aggarwal, Mr. Nikhil Rohatgi and
Mr. Akshay Ringe, Advocates

versus

UOI & ORS ..... Respondents
Through: Ms. Anjana Gosain with
Ms. Veronica Mohan, Advocate for R-1/UOI.
Mr. C.S. Vaidyanathan, Senior Advocate with
Mr. Atul Jha, Advocate for R-2/State of Chhattisgarh.
Mr. U.U. Lalit, Senior Advocate with
Mr. Akshay Dharamdhikari, Mr. Dheeraj Malhotra
and Mr. M.K. Singh, Advocates for R-3.

CORAM: JUSTICE S. MURALIDHAR

1. Whether reporters of local paper may be allowed to see the judgment? No
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the digest? Yes

JUDGMENT
20.07.2010

Introduction

1. An order dated 16th December 2008 of the Mines Tribunal, dismissing the Petitioners' Revision Application No. 12(2)/2006-RC-II and 12(3)/2006-RC-II, is challenged in the present writ petition. The said revision application was filed against an order dated 5th May 2005 passed by the Government of Chhattisgarh, Respondent No. 2 herein, rejecting the two applications filed by the Petitioners for grant of prospecting licence (PL); one application for iron-ore in respect of 147 hectares area in forest Compartment Nos. 369(P) and 370(P) in forest village: Maro &

Durgukondal Range, Tehsil: East Bhanu Pratappur Forest Division, District: Kanker, Chhattisgarh and another application for 207 hectares in forest Compartment Nos. 371(P), 372(P), 373(P) in forest village: Bangachar, Durgukondal Range, Tehsil: East Bhanu Pratappur Forest Division, District: Kanker, Chhattisgarh. By the order dated 5th May 2005, Respondent No. 2 granted PL to Respondent No. 3 Pushp Steel and Mines Limited (PSML) and to M/s Singhal Enterprises (Respondent No. 4 herein) respectively.

2. As far as the Petitioner is concerned, it is aggrieved to the extent that the grant of PL to Respondent No. 3 overlaps an area of 354 hectares for which the Petitioner had made an application. In other words, the Petitioner has no grievance as regards the grant to Respondent No. 3 of PL in respect of the difference between the extent of 705 hectares for which the Respondent No. 3 has been granted PL and 354 hectares which overlaps the area for which the Petitioner had made an application for grant of PL.

3. In the revision application, the Petitioner had also challenged the letter dated 19th October 2005 of the Central Government granting approval to Respondent No. 3 under Section 5(1) of the Mines and Mineral (Development and Regulation) Act, 1957 [hereafter `the MMDR Act'].

Background Facts

4. The background facts are that the Petitioners filed two separate applications with the Respondent No. 2 for grant of PLs with regard to the

iron-ore in Compartment Nos. 369(P) and 370(P) on the one hand and Compartment Nos. 371, 372 and 373 on the other in village Maro and Bangachar.

5. In its application, the Petitioner described itself as mine owners and exporters of minerals and ores and the extent applied for was 207 hectares. In Column No. 16 it was indicated that the Petitioner was undertaking mining for the last four decades in the State of Andhra Pradesh. The Petitioner states that it started operations of its sponge iron unit in 2004 in the State of Chhattisgarh after investing more than Rs. 25 crores from its own resources.

6. On 2nd June 2004 Respondent No. 3 PSML was incorporated at New Delhi with a paid up share capital of Rs. 1 lakh by two individuals Mr. Atul Jain and Mr. Sanjay Jain both brothers. On the same day, i.e., 2nd June 2004, Respondent No. 3 filed two applications with Respondent No. 2 for PLs in Compartment Nos. 366, 369 to 375 and for Compartment Nos. 355 to 358. It is stated that on 27th December 2004, Respondent No. 3 filed another application in respect of Compartment Nos. 366, 369 to 375 and for Compartment Nos. 355 to 358 in the same area for a mining lease (`ML').

7. On 7th January 2005, a Memorandum of Understanding ('MoU') was entered into between Respondents 2 and 3 for setting up a sponge iron unit with an annual capacity of 3,15,000 tones per annum with a captive

power plant of 20 mega watt and had a total project cost of Rs. 308 crores. It was agreed in terms of the MoU that Respondent No. 3 will set up the above projects in the State of Chhattisgarh for which Respondent No. 2 and its agencies would "extend all necessary assistance and fullest cooperation for successful implementation of the projects." Respondent No. 3 was to commence the implementation of the project not later than two years from the date of the MoU. On its part, Respondent No. 3 was to facilitate through the Chhattisgarh State Industrial Development Corporation ('CSIDC') procuring optimum land free from encumbrances. Under clauses B(iv) and B(v) Respondent No. 2 was to undertake making recommendations "to the concerned Ministry of the Government of India for coal linkage/allotment of suitable captive coal mine in Chhattisgarh subject to availability", and "for linkage/allotment of captive iron-ore mines in Chhattisgarh subject to availability."

8. On 9th March 2005 Respondent No. 2 issued a notice under Rule 12 of the Mineral Concession Rules, 1960 ('MCR') to four parties, namely, the Petitioner herein, M/s Jaiswal Neco Ltd., Prakash Industries Ltd., and M/s Vandana Global Ltd., for a hearing on the applications made for grant of PL in Compartment Nos. 372, 373, 374, 377, 378, 381, 390, 391, 392 and other areas in Village Maro and Bangachar. The date of the hearing was fixed as 22nd March 2005 at 3pm. It is stated that neither of the Respondents 3 and 4 were present at the public hearing. At the public hearing the Petitioner was not informed that there were other claimants for the PL for these areas. Respondent No. 2 also did not inform the Petitioner and the three others that an MoU had been entered into between

Respondent No. 3 and Respondent No. 2.

9. The order dated 5th May 2005 passed by the Respondent No. 2 mentioned that applications for grant of PL in respect of iron-ore in the above forest compartments, i.e., 355, 356, 357, 358, 364, 365, 366, 369, 370, 371, 372, 373, 374 and 375 of forest village Hahaladi of Michgaon-Lohatar Forest Range of Bhanu Pratappur Forest Division, District: Kanker had been received from 26 parties. The list sets out the name of the Petitioner at serial Nos. 9 and 10, that of Respondent No. 4 at serial No. 5, and Respondent No. 3 at serial Nos. 17, 18, 25 and 26. In para 3 of the order dated 5th May 2005, it is mentioned that a decision had already been taken granting permission of mineral concession to six applicants which included the Petitioner. It is stated that a decision had been taken by the State Government to give preference to those applications who had already set up their units based on iron-ore and/or those units "who are taking effective steps to set up their units." (the original of the order dated 5th May 2005 is in Hindi and a translated version has been filed one each by the Petitioners and Respondent No.3). It was decided as a policy that units that had already set up their industries based on iron-ore and/or those had already been given a mineral concession, were not to be granted mineral concessions for the areas under consideration. The only two categories that were considered for grant of PL were those applicants, who had established industry based on iron-ore and had not been given a mineral concession earlier and those applicants who intended to set up an industry based on iron-ore and had initiated "effective steps" for setting up industries and had not been given any mineral concessions earlier. This

was given as the explanation for deviating from the requirement of Section 11(1) of the MMDR Act that preference had to be given to an applicant who had applied earlier. The Petitioner was considered as having fallen in the category of applicants in respect of whom a decision had already been taken to grant mineral concession. Respondent No. 4 fell in the second category and Respondent No. 3 in the third category, i.e., in the category of an applicant, who had already taken effective steps for setting up an industry based on iron-ore and had not been granted any mineral concession earlier. Accordingly, while rejecting all the other applications including that of the Petitioners, the PL was granted to Respondents 3 and 4 in the compartment numbers as indicated hereinbefore.

10. On the same date i.e. 5th May 2005, a letter was addressed by Respondent No. 2 to the Secretary, Ministry of Mines, Government of India (Respondent No. 1) for grant of its approval under Section 5(1) of the MMDR Act for grant of ML of an iron-ore in favour of Respondent No. 3 of 215 hectares out of Compartment Nos. 355, 356, 357 and 358 and PL for 705.33 hectares out of Compartment Nos. 366, 369, 370, 371, 372, 373, 374 and 375. It is submitted that at this stage the Petitioner was not given a copy of the order dated 5th May 2005. It was not even aware that Respondents 3 and 4 were among the applicants for the grant of PL. On 6th September 2005 on the basis of the revision application filed by the Petitioner, the Central Government, i.e., Respondent No. 1 directed Respondent No. 2 to provide the Petitioner information concerning the rejection of its application. On 19th October 2005 the Central Government

granted approval in respect of Respondent No. 3 under Section 5 (1) of the MMDR Act as regards the prospective licence. On 12th May 2006 it granted another approval under Section 5(1) for the mining lease in favour of Respondent No. 3.

11. The Petitioner states that it was only on 31st December 2005 that it received a copy of the order passed by Respondent No. 2 on 5th May 2005. On receipt of the said order on 8th February 2006, the Petitioner filed a fresh revision petition challenging the said order dated 5th May 2005. Notice was issued by the Mines Tribunal on the said petition on 8th March 2006. Although the Mines Tribunal had fixed the hearing of the previous revision petition on 31st March 2006 it was not heard even on the adjourned dates. The Petitioner filed Civil Writ Petition No. 5260 of 2006 in this Court. On 6th November 2006, an order was passed by the Court directing the Mines Tribunal to dispose of the revision petition expeditiously. However, the revision petition was not taken up for hearing immediately. It was heard finally on 9th February 2007 and orders were reserved.

12. Although according to the Petitioner the revision petition had already been finally heard, it received a notice on 5th September 2007 from the Mines Tribunal, informing it of the hearing that was to take place. No hearing took place as scheduled. Pursuant to an order passed by this Court in the WP (C) No. 2671 of 2008 filed by the Petitioner, the Mines Tribunal was directed to pronounce the judgment within a period of four weeks from 1st May 2008. It is stated that on 29th May 2008 the Petitioner

appeared before the Mines Tribunal and also filed its written submissions. When again the Mines Tribunal failed to pronounce the judgment, the Petitioner filed a further writ petition being W. P. (C) No. 7824 of 2008 in this Court.

Impugned order of the Mines Tribunal

13. Finally, pursuant to the order passed by this Court on 5th December 2008, the Mines Tribunal passed the impugned order on 16th December 2008 dismissing the Petitioner's revision petitions. The Mines Tribunal held as follows:

> (i) No public hearing as such was envisaged under Rule 12 of the MCR.
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> (ii) When the Central Government granted prior approval under Section 5(1) of the MMDR Act "it implied that prior approval under Section 11(5) as well as 5(1) has been granted by the Central Government." Therefore, the matter was not required to be referred to the Central Government twice: once when seeking approval under Section 5(1) of the MMDR Act and again while seeking approval under Section 11(5) of the MMDR Act.
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> (iii) The non-inclusion of the names of the parties whose applications had already been considered and the notice issued to the Petitioner and four others was not violative of any of the Petitioners' rights. The grievance, if at all, could be made by the parties whose names were not included in the list.
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> (iv) During the hearing, Respondent No. 2 clarified that an in-principle decision had already been taken to grant PL to the Petitioner over an area of 182 hectares area elsewhere in the State and therefore the non-grant to it of PL for the area in question was

not illegal.

14. The Petitioner withdrew Writ Petition (C) No. 7824 of 2008 reserving liberty to challenge the order dated 16th December 2008. The present writ petition has thereafter been filed. At the hearing on 24th December 2008 this Court directed the Respondents to maintain status quo pursuant to the letters dated 19th October 2005 and 12th May 2006. By a subsequent order dated 9th January 2009, this Court clarified that the status quo order only covered the area that would have been claimed by the Petitioner in its application for PL. It was clarified that so far as the balance area, constituting the difference between the 705.33 hectares granted to Respondent No. 3 and the overlapping area with which the Petitioner, was concerned, it was open to Respondent No. 3 to act upon such PL in accordance with law.

Submissions of Counsel

15. This Court has heard the submissions of Mr. Rajiv Nayar, the learned Senior counsel appearing for the Petitioners and Mr. C.S. Vaidyanathan, the learned Senior counsel appearing for Respondent No. 2 and Mr. U.U. Lalit, the learned Senior counsel appearing for Respondent No.3.

16. It is submitted by Mr. Nayar on behalf of the Petitioners as under:

(a) The grant of PL to Respondent No. 3 was illegal inasmuch as no prior approval of the Central Government was separately accorded under the proviso to Section 11(5) of the MMDR Act; the approval for the purpose of Section 11(5) of the MMDR Act is different from the approval by the Central Government under

Section 5 (1) of the MMDR Act.

(b) The principles of natural justice were not adhered to inasmuch as there was no disclosure to the Petitioner of the fact that there were other applicants apart than the four parties to whom the notice of hearing issued under Rule 12 of the MCR was sent. Therefore, the impugned order of Respondent No. 2 was not transparent.

(c) The meeting of 9th March 2005 was obviously an eye-wash since only two months earlier, an MoU had been entered into between Respondents 2 and 3. By undertaking in the said MoU that it would make recommendation to the Central Government for grant of the PL, it was plain that the MoU was by-passing the MMDR Act. The issue was, therefore, pre-determined and the hearing under Rule 12 MCR was an eye-wash.

(d) Respondent No.3 had done nothing on the ground to qualify for the grant of PL. On the contrary, the Petitioner has expanded the capacity of its plant from 60,000 MTPA to 1,07,600 MTPA. The records of Respondent No. 2 show that the incorporation certificate of the Respondent No. 3 was not filed along with the application although it was mandatory. They had also not filed the required income-tax returns. They did not even have a permanent account number (PAN) as mandated by the income-tax authorities.

(e) Till such time the Central Government did not pass an order on 19th October 2005 the paid-up capital of Respondent No. 3 was only Rs. 1 lakh. Thereafter certain shareholders not concerned with the mining business purchased shares from Respondent No. 3 company at a huge premium.

(f) There was no justification for Respondent No. 2 State Government to enter into an MoU with the entity that had no previous experience whatsoever.

(g) Undue favour has been shown to Respondent No. 3 inasmuch as it had to take effective steps under the Industrial Development Regulation Act, 1951 ('IDR Act') and the New Industrial Policy of 1991 before venturing into setting up an industrial unit for sponge iron unit. An Industrial Entrepreneurship Memorandum ('IEM') was compulsorily to be filed by the Respondent No. 3 before setting up a unit. However, till 5th May 2005 Respondent No. 3 did not produce any such IEM. The only step taken by Respondent No. 3 was that it purchased a land at the cost of Rs. 66,69,684/- on 9th January 2005. Even applying the common parlance meaning of 'effective steps' Respondent No.3 had not taken any such effective steps.

(h) Sections 11(5) and 5(1) of the MMDR Act operated in different fields and therefore separate approvals were required to be taken. Reliance is placed on the judgments in ***Hindustan Aluminium Corporation Ltd. v. State of Bihar 1991 (3) SCC 428***; ***Indian Charge Chrome v. Union of India 2003 (2) SCC 533***; ***Indian Charge Chrome v. Union of India 2005 (4) SCC 67*** and ***Indian Charge Chrome v. Union of India 2006 (12) SCC 331***.

(i) The mere entering into an MoU was not enough to satisfy the requirement of grant of PL. Unless effective steps were taken to set up the sponge iron unit, Respondent No. 3 could not have been granted any preferential treatment. Reliance is placed on the judgments in ***Indian Thermal Power Ltd. v. State of M.P. (2000) 3 SCC 379*** and ***Edward Keventers (Successors) Pvt. Ltd. v. Union of India AIR 1983 Delhi 377***.

(j) The grant of PL is like grant of a State largesse and this cannot be done when it is against public interest and public good. Respondent No. 3 had not mobilized any operations of mining or even running a unit, had no workers, no funds, no technical

experience but was still granted a PL by Respondent No. 2 overriding the Petitioner's prior claim under Section 11(3). This was unreasonable. Reliance is placed upon the decisions in ***Haji T.N. Hassan Rawther v. Kerala Financial Corporation 1988 (1) SCC 166***.

(k) When the impugned order dated 5th May 2005 was passed by Respondent No. 2 on the presumption of grant of alternate land to the extent of 182 hectares for the purposes of PL was already sanctioned, it was not known to the Petitioner at that point in time. While the claim by Respondent No. 3 is that the said decision was taken on 31st March 2005 itself. According to the Petitioner, the said decision was taken only on 17th May 2005 after passing of the impugned order of 5th May 2005. This fact is in any event not specifically mentioned in the impugned order. It is submitted that the Respondent No. 3 did not have any technical capability or financial capacity to justify the grant of the PL in its favour by Respondent No. 2.

17. On behalf of Respondent No. 3, Mr. Lalit submitted as under:

(i) Respondent No. 2 has by its policy divided the applicants for grant of PL into three categories. The policy was non-arbitrary and uniform in its application. It is stated that the said policy has also not been challenged by the Petitioner. It is submitted that having got the benefit of grant of 182 hectares of land for PL purposes, the Petitioner cannot question the grant of PL under the very same policy in favour of Respondent No. 3.

(ii) Under Section 11(2) of the MMDR Act, the Petitioner as a prior applicant has only a preferential right to be considered and no absolute right to be granted PL. Reference is made to the judgment in ***Dharambir v. Union of India (1996) 6 SCC 702*** and ***Indian Metals & Ferro Alloys v. Union of India 1992 Supp (1) SCC 91***.

(iii) There is no violation of Rule 12 of the MCR or the principles of natural justice. Rule 12 does not envisage a public hearing at all. It is submitted that the Respondent No. 2 did not act arbitrarily as it gave cogent reasons why it was rejecting the applicants' applications and why it was granting PL to 2 out of the 26 applicants.

(iv) The approval granted by the Central Government was both for the purposes of Section 5(1) as well as Section 11(5) of the MMDR Act. These constituted the special reasons why the rule of seniority in terms of Section 11(1) was not adhered to.

(v) Respondent No. 3 has in the affidavit filed by it listed out so-called "effective steps" taken by it for the purposes of the policy decision of the State Government:

> "a) Obtained an IEM from the Ministry of Commerce and Industry, Government of India (No. 2187/SIA/IMO/2004 dated 17.06.2004). The IEM was amended on 14.01.2006 as the proposed location of the project was changed from District Bilaspur to District Durg after acquiring land from CSIDC. Since the issue of IEM has been raised by the Petitioner for the first time in their Written Submissions, a copy of the IEM along with the amended IEM is annexed hereto and marked as Annexure R3-A.
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> b) Entered into an MoU committing to establishing an integrated steel plant for the production of special steels for manufacture of automotive components with a captive power plant with an investment of about Rs. 380 crores on 07.01.2005. (The capability and bona fide of the applicant is considered by State before entering into the MoU)
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> d) Prepared and submitted a project report clearly providing product mix and details, end use of raw material, value addition and quantum of raw material to be used.
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> e) Procured developed industrial on 19.01.2005 and a sum in excess of Rs. 60 lacs along with the bank guarantee of about Rs. 48 lacs was deployed for the same (as opposed to a less expensive but more time consuming option of acquiring rural land and processing change of land use).

f) Applied for and procured allocation of water (another important consumable in making steel) for the proposed plant.

g) Applied for grant of mining lease for a coal block to the state government on 03.03.2005 and 28.03.2005.

h) A coal block was eventually secured in the year 2007."

(vi) The approval granted by the Central Government is both under Section 5(1) as well as Section 11(5) of the MMDR Act and that since the proviso to Section 11(5) and Section 5(1) operate in the same field, i.e., First Schedule minerals, hence a composite approval is not contrary to the Act as long as all the factors relevant for the exercise of granting approval under Section 5(1) and 11(5) have been accounted for.

(vii) The order rejecting an application need not contain detailed reasons. Reference is made to the decision in ***M.J. Sivani v. State of Karnataka AIR 1995 SC 1770***. A plea of equity is also raised showing that in the last three years Respondent No. 3 has spent almost 40 crores of rupees and incurred liability of Rs. 30 crores for establishing the proposed sponge iron unit. It is submitted that it would be inequitable to now cancel the grant of PL to Respondent No. 3. It is further pointed out that the Petitioner has not revealed that it has been granted a mining lease for iron-ore in the State of Karnataka by proposing an investment of Rs. 50 crores. Further it had entered into an MoU with the State of Chhattisgarh in 2007.

(viii) At the hearing on 23rd March 2005 before the Respondent No. 2, the Petitioner had merely made a statement of having a captive plant without disclosing the details of its capacity. The application also did not disclose any expansion plans or investment incurred or proposed. On the other hand, the Petitioner kept improving its case from time to time. Therefore, it was not clear on the date Respondent No. 2 passed the impugned order, i.e., 5th May 2005

whether the Petitioner was in any event better qualified for grant of PL. It is submitted that the reference to the IDR Act was misplaced and that since the MMDR Act was a complete code in itself as has been held in the ***State of Assam v. Om Prakash Mehta (1973) 1 SCC 584***, there was no need for the State Government to look to the IDR Act for guidance.

18. The Respondent No. 2 has produced the entire record before this Court for its perusal. It is submitted that it was a single composite application given by the State Government before the Central Government for approval both under Section 5 and 11(5) of the MMDR Act. There was no bar for the grant of approval under both provisions in one composite order.

Issues for determination

19. On the basis of the above submissions, following issues arise for consideration:

(a) Whether in relation to minerals specified in the First Schedule to the MMDR Act, for the purposes of grant of a PL, can there be a composite approval by the central government or are two separate approvals required: one under Section 5(1) and another under Section 11(5) MMDR Act?

(b) Whether for the purposes of Rule 12 MCR is it an essential requirement of the principles of justice that each applicant for a PL must be informed of all the other applications made?

(c) Whether the policy devised by Respondent No. 2 the State Government for consideration of the applications of the Petitioner and other applicants was a rational one?

(d) Whether the decision of the State government to reject the Petitioner's application and grant of PL to Respondent No. 3 and the approval of such decision by the Central government is justified both in law as well as on facts?

(e) Notwithstanding the answers to the above issues, is the Respondent No. 3 entitled to equitable relief?

Issue (a): Central Government approval

20. The first issue concerns the prior approval by the Central Government to the grant of a PL by the State Government in terms of Section 5(1) of the MMDR Act and the previous approval by the Central Government to the proposal by the State government to depart from the seniority rule in the grant of PL for special reasons in terms of the proviso to Section 11(5) of the MMDR Act.

21. The fact that iron ore is a mineral specified in the First Schedule to the MMDR Act makes the grant of the above prior approvals of the Central Government mandatory. For the purposes of Section 5(1), the fact that the PL is granted in respect of a mineral specified in First Schedule is the essential focus. Given the importance of the enlisted minerals, the legislative intent is that there should be a two-stage review; first at the level of the State Government and the next at the level of the Central Government. The language of Section 5(1) makes this mandatory. The

context of Section 11(5) is, however, different. Where the State Government for any special reasons seeks to deviate from the rule of seniority and award PL to an applicant who may have applied later than other eligible earlier applicants, the prior approval of the Central Government has to be obtained. Here again the language of Section 11(5) indicates that this prior approval is mandatory. However, as far as Section 11(5) is concerned, the focus is on the person in respect of whom the departure from the seniority rule deviation has been made.

22. The decision in ***Indian Charge Chrome v. Union of India 2003 (2) SCC 533*** was reviewed by a Bench in ***2005 (4) SCC 67*** and the case came to be decided afresh by the judgment reported in ***2006 (12) SCC 331***. The last mentioned judgment did not deal with the issue whether separate orders will have to be passed by the Central Government in exercise of its powers under the proviso to Section 5(1) and the proviso to Section 11(5) of the MMDR Act. In other words, the question whether one composite order could be passed by the Central Government granting prior approval as envisaged in both provisions referred to, was not an issue in the above case. This Court finds that the decisions in ***Dr. T. Nandagopal v. State of A.P. AIR 1988 AP 199***; ***Barium Chemicals Ltd. v. Govt. of India AIR 1987 AP 267*** and ***State Govt. of Mysore (now Karnataka) v. Union of India AIR 1984 Delhi 260*** do not deal with it either.

23. The Petitioner has placed reliance upon a notification dated 24th June 2009 issued by the Ministry of Mines, Government of India in File No.

7/60/2006-MIV to urge that there cannot be a composite approval granted by the Central Government under both the provisions. A copy of the said notification has been placed along with the rejoinder filed by the Petitioner in response to the counter affidavit of the Union of India dated 26th May 2009. The stand taken by the Union of India in its above affidavit was that the "Central Government considered the proposal of the State Government by invoking Section 11(5) of the Act and accorded approval under Section 5(1) of the Act which is evident from the letter of the Central Government conveying prior approval vide letter number 5/56/2005-MIV dated 19.10.2005." It must in fact at this stage be noticed that the above stand of the Union of India is not helpful in understanding whether the composite approval can be granted by the Central Government under both the provisions. The confusion is further compounded by the fact that in the last portion of the letter dated 5th May 2005 written by the State Government to the Central Government, a reference is made only to Section 5(1) of the MMDR Act whereas in the top of the said letter in para 7, the State Government indicates that it has invoked the provisions of Section 11(5) of the MMDR Act.

24. Having perused the letters dated 5th May 2005 and 19th October 2005 of the State Government and Central Government respectively, it appears to this Court that both letters refer to both Section 5(1) as well as Section 11(5) of the MMDR Act. The approach adopted was apparently on the understanding that there could be a composite approval under both provisions granted by the Central Government.

25. There is nothing to indicate that there cannot be a composite approval granted by the Central Government, if indeed the State Government makes a proper case for invoking Section 11(5) of the MMDR Act, which certainly includes the Central Government considering such proposal as well as the special reasons explained by the State Government in the letter it forwards to the Central Government. Theoretically, therefore, it is not possible to accept the contention of the learned Senior counsel for the Petitioner that there cannot be a composite approval. The first issue is therefore answered by holding that there can be a composite prior approval by the Central Government both in terms of the proviso to Section 5(1) and the proviso to section 11(5) MMDR Act. However, for the purposes of granting an approval under the proviso to Section 5(1) of the MMDR Act, the Central Government will have to keep in view a different set of considerations than for the purposes of granting approval under the proviso to Section 11(5) the MMDR Act.

Issue (b): Rule 12 MCR

26. As regards the question whether there had to be a public hearing in terms of Rule 12(1) of the MCR, this Court is unable to accept the conclusion of the Mines Tribunal that there is no such requirement. It appears that as a matter of practice, an opportunity of hearing is indeed given by the State Government. It is strange why the State Government did not mention the name of Respondent No. 3 as one of the noticees for the hearing. It was argued on behalf of Respondent No. 3 that an applicant only has a right of consideration of its application and there is no requirement for such applicant to know who the other applicants in the

fray were. Considering that this is a question of distribution of public resources, it is in the fitness of things that every applicant knows who the other applicants in the fray are. An applicant may be able to provide to the State Government valuable information about its competitor which may not otherwise be easily forthcoming from such competitor. It would be in the best interests of the State Government that it has the entire facts concerning all the applicants. Considering that this is an activity involving distribution of public largesse, greater transparency would ensure that the decisions to be taken in the first stage by the state government and the next stage by the Central Government are not arbitrary and are based on valid and relevant materials.

Issue (c): Validity of the State Government's policy

27. The impugned decision dated 5th May 2005 refers to a policy of the state government not to give preference to such of those applicants who had set up steel plants and who had been already granted a PL in respect of an area elsewhere in the State and to prefer those who had not been granted PL yet, and were in the process of setting up and had taken "effective steps" to set up a steel plant.

28. It does appear that the policy makes a classification of two distinct categories of applicants and that such classification is based on an intelligible differentia. As long as the policy is intended to be uniformly applied, no fault can be found with a decision of the state government to treat the two categories differently for the purposes of distribution of state largesse. Maybe the policy was in the best interest of the state, was in

public interest as it encouraged competition and gave a chance to a larger number of players. However, it will not be enough for the Respondents to show that the state government's policy was valid, which perhaps it was, but whether such policy has been rightly applied to arrive at a fair and just decision in accordance with law. In other words the scope of the present proceedings is not to determine the validity of the policy of the State government as much as the validity of the decision taken by applying such policy.

29. Having said that, this Court would like to emphasise that such a policy, on the basis of which the applications for grant of PL were to be evaluated, had to be made known in advance to the applicants. In other words, it would not be a fair or just procedure for an applicant not to know of the criteria on the basis of which its application is going to be examined. In the present case, the policy of the State Government, even if taken to be valid, could not have been suddenly conceived at the time of examination of the applications. It is like setting the rules of the game after the game has commenced. The fairness of the procedure adopted is very much a part of the whole exercise. Examined from that perspective, the impugned decision of the State Government must be held not to satisfy the criteria of procedural fairness. The State Government could have told the applicants even at the oral hearing that it proposed to apply such a policy. There is nothing to indicate that it did.

30. This Court therefore holds that although the State government's

policy, on the basis of which the impugned decision dated 5th May 2005 was arrived at, may be valid, it was necessary for such policy to have been made known to all the applicants prior to inviting applications or even at the time of the hearing. The issue is disposed of accordingly.

Issue (d): Validity of the decisions of the State and Central governments

31. The key issue in the present case concerns the validity of the order dated 5th May 2005 passed by Respondent No. 2 State government and the order dated 19th October 2005 passed by Respondent No. 1 Central Government and consequently the validity of the order of the Mines Tribunal which affirms both orders.

32. Beginning with the order of the Central Government, this Court finds that it does not give any reasons whatsoever as to why the Central Government is agreeing with the State Government's proposal. If indeed the focus of the proviso to Section 5(1) of the Act is on the mineral and the proviso to Section 11(5) of the Act is on the person in whose favour the concession has been made, then the aforementioned letter dated 19th October 2005 does not reflect this distinction at all.

33. The Central Government also does not appear to have considered the special reasons furnished by the State Government in granting the PL in favour of Respondent No. 3. As already noticed, it only talks of the approval being granted in terms of the proviso to Section 5(1) of the Act. The affidavit of the Union of India also does not explain what factors

weighed with the Central Government. The affidavit in any event cannot improve upon the order dated 19th October 2005 which will have to itself state the reasons that weighed with the Central Government.

34. In the affidavit filed by the Central Government it is explained thus:

> "The Central Government considered the proposal in terms of the provision of the Act while taking into account the multiple applicants on a non-notified area and where preference had been given to a later applicant. In the instant proposal the State Government had invoked the provision of Section 11(5) of the Act. The area under consideration was reserved by the State Government and the same was de-reserved for grant of area to a private company which intended to setup mineral based industry in the area. The recommended applicant had signed a Memorandum of Understanding (MoU) with the State Government for incurring an expenditure of Rs. 380 crores. The applicant company had proposed to set up a sponge iron/integrated steel plant having annual capacity of 4 lakh tones in the State. The company had taken a number of initiatives for establishment of plant. The State Government decided to give priority to those applicants which had either set up mineral based industry or had taken effective steps for the same but not granted areas for ML/PL. The State Government had not considered the cases of those applicants which had been granted areas/decided to grant areas even if they had set up the industry or were in the process of doing the same. Keeping in view the above position, the Central Government considered the proposal of the State Government by invoking Section 11(5) of the Act and accorded approval under Section 5(1) of the Act"

35. The factor that appears to have weighed with the Central Government

is that the "company had taken a number of initiatives for establishment of plant." The Central Government appears not to have made any enquiries or sought any clarification from the State Government. The Central Government has in its order dated 19th October, mechanically repeated everything the State Government had said in its letter dated 5th May 2005.

36. That takes us to the state government's order dated 5th May 2005. The translated copy of the letter dated 5th May 2005 of the State Government merely states in para 7 that "in view of the facts mentioned in paragraphs 4, 5 and 6 above, by invoking provisions of Section 11[5] of the M.M.D.R. Act, it has been decided to grant permission to M/s Singhal Enterprises" in respect of the area measuring 159 hectares out of Compartment Nos. 364 to 366. Similarly a "decision has also been taken to grant M.L. of iron-ore in favour of M/s Pushp Steel & Mining Pvt. Ltd., on 215 Hectares of compartment nos. 355 to 358.....". A decision "has also been taken to grant P.L. in favour of M/s Pushp Steel & Mining Pvt. Ltd., on 703.33 hectares....."

37. In para 6, the factors that weighed with the State Government as regards Respondent No. 3 are stated as under:

> "6. Whereas M/s Pushp Steel & Mining Pvt. Ltd., has executed an MOU with the State Government that this company will invest a sum of Rs. 380 Crores in the State and the said company has already taken lands from Chhattisgarh State Industrial Development Corporation in Borai Industrial area of District Durg and setting up of industry on the said lands is

> underway. Apart from this, this Company in its MOU has also proposed to set up a 4 Lakh tonne annual capacity sponge iron/integrated steel plant which will manufacture special steel. This company has desired that since they will be needing iron ore within next 15 months, therefore, their M.L. on 215 Hectares of compartment nos. 355, 356, 357 and 358 may kindly be sanctioned and P.L. be also sanctioned on the other area applied for by them."

38. An analysis of the above reasons shows that the fact that the MoU entered into with the State Government in which Respondent No. 3 undertook to invest a sum of Rs. 380 crores was considered. Second, the fact that the Respondent No. 3 had already got land from the CSIDC was another central factor. The third was that the steps for setting up the industry were "underway". The fourth was that the Respondent No. 3 had proposed to set up the 4 lakh ton annual capacity sponge iron integrated steel plant. However, the policy of the State Government as explained in para 4 required Respondent No. 3 to have already taken "effective steps" by 5th May 2005. The only effective step which para 6 talks of is the fact that the Company had already taken land from the CSIDC.

39. The affidavit of Respondent No. 3 listing out all the steps taken by it shows that as on 5th May 2005 the only step taken till that date was the purchase of land from the CSIDC. According to Mr. Lalit the Respondent No. 3 had also got the water connection as on 9th January 2005. However, the other steps were all taken subsequently. This Court is unable to appreciate how the State Government could have on 5th May 2005 concluded that the above two steps were "effective steps" towards

establishing a sponge iron and steel plant. However there is an even more serious problem with the decision of the state government.

40. What is really striking is that the order dated 5th May 2005 passed by the State Government does not make any mention of the fact that Respondent No. 3 was incorporated on 2nd June 2004 with a share capital of Rs. 1,00,000/-. The persons who promoted the company in New Delhi were businessmen with absolutely no previous experience in the field of mining or setting up any sponge iron steel plant. On that very day i.e. 2nd June 2004, Respondent No. 3 filed the two applications for grant of PL in Chhattisgarh over a thousand miles away from Delhi. This Court has been shown the record of the State Government containing the original application filed by Respondent No. 3. What is significant is that the date of the application is itself left blank. The application required Respondent No. 3 to clearly indicate the status of its income-tax returns and the particulars of the mobilization of the funds. For this purpose, the application had to be accompanied by affidavits. Obviously these affidavits, one of which had to state that "updated income-tax returns have been filed", could not have been filed on 2nd June 2004. It is inconceivable that a company which came into existence that very morning could furnish any information about its income tax returns or its experience. In fact, the other affidavits as required in Column 6A and 6B were also dated subsequently. It beats imagination how a company which was incorporated in New Delhi on 2nd June 2004 could have on that very day submitted an application in Chhattisgarh for grant of PL. Secondly, it is inconceivable how such a company could be considered for grant of PL

when the criteria laid down, as reflected in the form prescribed for the purpose by the State Government, indicates that the applicant should have some prior experience in mining. Significantly, in response to the question in Column 16 - whether the applicant intends to supervise the work and his previous experience of prospecting mining, Respondent No. 3 merely indicated: "technical personnel shall be employed." There is no denying the fact that as on the date of making of the application, i.e., on 2nd June 2004, there was no question of Respondent No. 3 having had any previous experience of mining since in fact Respondent No. 3 was incorporated on that very day, i.e., 2nd June 2004. No satisfactory explanation has been offered either by the State Government or by the Respondent No. 3 itself in this regard. In the above circumstances, its application made on 2nd June 2004 for grant of PL over an area of 974 hectares could not have been entertained at all.

41. None of the above factors are reflected in the notings on the file as contained in the records produced by the State Government. On what basis the State Government concluded that a company incorporated on 2nd June 2004 and which had entered into an MoU on 7th January 2005 could be stated to have already taken "effective steps" is not clear. Although Mr. Lalit argued at length to show the steps that Respondent No.3 had taken "after" 5th May 2005, he did not have any answer to the obvious question: how could a company within a few hours of being incorporated in New Delhi on 2nd June 2004 submit an application in Chhatisgarh on that very day for grant of PL and also satisfy the criteria for grant of PL? And then within a few months thereafter an MoU is signed by Respondent No. 2

with Respondent No. 3 assuring it that Respondent No. 2 will make every effort to ensure that a PL is granted to it. These questions do not have convincing answers and whatever explanation has been offered does not satisfy the judicial conscience. It does not lend the needed assurance that the decision dated 5th May 2005 of the State government was taken in a just and fair manner and for valid and relevant reasons.

42. The other response of Mr. Lalit, was to point out why the Petitioner is hardly the entity to question the credentials of Respondent No. 3 as it was no better either in terms of experience or suitability. It was urged that the Petitioner was a "forum shopper", a "habitual litigant", and had made "false statements not borne out by the record". The poser of Respondent No. 3 was basically this: who is the Petitioner to ask whether the PL in its favour was validly granted?

43. The response of accusing the accuser is not unknown in these kinds of matters. It is very likely that an applicant whose application has been rejected is the one who questions both the validity of such rejection as well as the grant of PL to the successful applicant. The challenge having been laid to the grant of PL in favour of Respondent No. 3, one question that needs to be answered is whether Respondent No. 3 was qualified for such grant? It is not enough for Respondent No. 3 to show that the Petitioner was in any event not qualified. That might at best negate the prayer by the Petitioner that it, and not Respondent No. 3, should have been granted the PL. That would still not save the grant of the PL to Respondent No. 3. This is indeed a question of distribution of state

largesse to the best qualified applicant.

44. The other point made was that in any event the Petitioner was the beneficiary of a grant of PL in respect of 182 hectares elsewhere and therefore could have no complaint about either the policy under which such grant was made or the decision of the State government to grant Respondent No. 3 a PL. The records and notings were produced to show that the in-principle decision to grant a PL to the Petitioner in respect of 182 hectares was taken on 30th March 20005 itself. As already noticed, much of this happened even without the knowledge of the Petitioner. None of the applicants, apart from perhaps Respondent No. 3, knew of the new policy of the State government under which many of them would be disqualified from being granted a PL. At no point prior to 5th May 2005 were they informed of such decision. And still, it is not clear how this could in anyway justify the grant of PL to Respondent No. 3 if it was otherwise not entitled to it? The Petitioner may not succeed in getting the PL for itself but is not prevented on that score from asking for invalidation of the grant of PL to Respondent No. 3.

45. Therefore, even accepting the argument that it was open to the State Government to devise a policy classifying the applicants into three distinct categories and that its decision to treat each of those categories differently is legitimate and not arbitrary, this Court is satisfied that the decision to grant a PL to Respondent No. 3 was not in accordance with law.

46. At the cost of repetition, it requires to be noted that the Central

Government in the instant case does not appear to have asked any questions whatsoever of the State Government. A reading of its order dated 19th October 2005 as well as the affidavit filed by the Central Government in this Court indicates that it has merely accepted whatever was stated by the State Government in the letter dated 5th May 2005. In other words, it made no other enquiries to satisfy itself that Respondent No. 3 complied with the conditionalities as set out by the State Government in para 4 of the letter dated 5th May 2005. The order passed by the Central Government was a mechanical one.

47. Consequently, even if this Court is not prepared to accept the submission of the learned Senior counsel for the Petitioner that no composite approval could have been granted by the Central Government under both provisions, as far as the facts and circumstances of the present case are concerned, the approval granted by the Central Government by its order dated 19th October 2005 was vitiated for more than one reason. Respondent No. 3 being a company with no experience whatsoever in mining, having been incorporated only on 2nd June 2004, could not possibly have made an application on that very date. Secondly, it had not taken any "effective steps" for establishing the sponge iron plant, apart from paying for a plot of 29 acres of land allotted to it by the CSIDC on 9th January 2005 within two days of its entering into an MoU with the State Government on 7th January 2005. Therefore Respondent No. 3 could not be stated to have satisfied the requirement of the policy of the State government. In the considered view of this court, the requirement under Section 11(5), that there should be special reasons for deviating from the

rule of seniority, cannot be said to be satisfied in the present case.

48. This Court finds that the Mines Tribunal failed to examine whether the order of Respondent No. 2 in favour of Respondent No. 3 was validly made. It wrongly formulated a question whether the Petitioner was entitled to any priority since it already had an iron-ore plant elsewhere. The challenge was to the grant of PL in favour of Respondent No. 3. Therefore, even if the policy of the State Government was validly formulated, the decision in favour of Respondent No. 3 in terms of the said policy was not justified. This aspect of the matter is not addressed at all by the Mines Tribunal. The Mines Tribunal also clearly did not take into consideration the peculiar facts which raise serious doubts as to how the application of Respondent No. 3 made at the very date on which it was incorporated could have been considered by Respondent No. 2.

49. Consequently the decision dated 5th May 2005 of Respondent No. 2 insofar as the grant of the PL to Respondent No. 3 over an area of 354 hectares which is the overlapping portion for which the Petitioner also applied, is held to be unsustainable in law. To the same extent the order dated 19th October 2005 of Respondent No.1 Central Government approving the order of the State government and the impugned order dated 16th December 2008 of the Mines Tribunal are also held to be unsustainable in law. Issue (d) is answered accordingly.

Issue (e): Equitable considerations

50. Extensive arguments were advanced on behalf of Respondent No. 3 on

the basis of equity to state that since the Petitioner had been granted alternative land to the extent of 182 hectares elsewhere, and that too under the same policy of Respondent No. 2, it cannot possibly object to the grant of PL in favour of the Respondent No. 3. It was urged that since Respondent No. 3 had made considerable investment in the project over the past several years, its PL should not at this stage be invalidated.

51. The above submissions are not acceptable for more than one reason. As already noted, the fact that alternative land has been allotted to the Petitioner in terms of a decision taken on file on 30th March 2005 might negate the claim of the Petitioner but will not per se justify the grant of a PL in favour of Respondent No. 3. Secondly, since the Petitioners' challenge is limited to the extent of the overlap of 354 hectares, the grant of PL to the extent of the balance 351 hectares remains untouched. It is therefore not as if the grant of PL in favour of Respondent No. 3 to the entire extent is getting invalidated. This in the view of this Court constitutes sufficient balancing of equities in favour of Respondent No. 3.

52. For the above reasons, the petition succeeds partly to the extent that the issuance of a PL in favour of the Respondent No. 3 to the extent of 354 hectares, for which the Petitioner had also applied, and the other consequential orders are declared invalid. In view of the limited relief granted, it is not necessary for this Court to undertake the exercise of comparing the relative merits of the Petitioner and Respondent No. 2. This decision will not automatically result in the Petitioner being awarded a PL in respect of the 354 hectares. Respondent No. 2 will have to issue a

consequential order consistent with this judgment and will have to again undertake a fresh exercise for grant of PL to the above extent of 354 hectares in accordance with law.

Conclusion

53. For the aforementioned reasons, this Court:

(a) holds the decision dated 5th May 2005 of Respondent No. 2 insofar as the grant of the PL to Respondent No. 3 over an area of 354 hectares which is overlap portion for which the Petitioner also applied, to be unsustainable in law and to that extent sets it aside;

(b) holds the order dated 19th October 2005 of Respondent No.1 Central Government approving the order dated 5th May 2005 of Respondent No. 2 and the impugned order dated 16th December 2008 of the Mines Tribunal to the above extent to be unsustainable in law and sets them aside;

(c) directs Respondent No. 2 to issue, within a period of four weeks, consequential orders consistent with this judgment and thereafter undertake, if it so decides, a fresh exercise for award of a PL to the extent of the above extent of 354 hectares in accordance with law.

54. The writ petition is disposed of in the above terms with no orders as to costs. All the pending applications stand disposed of.

S. MURALIDHAR, J.

JULY 20, 2010
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