
(2009) 06 JH CK 0023
In the Jharkhand High Court

Brahmi Impex Ltd.

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 26-06-2009

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 10, 11, 12

Citation : AIR 2010 Jhar 31

Hon'ble Judges : Ajit Kumar Sinha, J

Bench : Single Bench

Judgement

Ajit Kumar Sinha, J.—The present writ petition has been preferred for the following reliefs:

A. For issuance of an appropriate writ and / or writs of and / or in the nature of Mandamus commanding respondent Nos. 1 to 7 to declare that the application of petitioner No. 1 for grant of prospecting license for mining the Ankua Iron Ore Mines has been made on 20th March 2007 and not on 28th March 2007,

B. For issuance of an appropriate writ and / or writs or and / or in the nature of Mandamus commanding respondent Nos. 1 to 7 to declare that the application of petitioner No. 1 for grant of prospecting license for mining the Ankua Iron Ore Mines has been made within time and for a direction upon the said respondents to consider and allow the same,

C. For issuance of an appropriate writ and / or writs of and / or in the nature of Mandamus commanding respondent Nos. 3 to 7 to recommend the case of petitioner No. 1 to respondent Nos. 1 and 2 for grant of prospecting lease for mining the Ankua Iron Ore Mines,

D. For issuance of an appropriate writ or writs of and / or in the nature of Mandamus commanding respondent Nos. 1 & 2 to grant prospecting license to petitioner No. 1 for mining the Ankua Iron Ore Mines,

E. For issuance of an appropriate writ or writs of and / or in the nature of

Mandamus commanding respondent Nos. 1 to 7 to treat all applicants for grant of prospecting license in respect of Ankua Iron Ore Mines equally and without any discrimination,

F. For issuance of an appropriate writ or writs of and / or in the nature of Prohibition restraining the respondent Nos. 1 to 7 from permitting respondent Nos. 8, 9 and 10 to carry on any mining activities of any nature whatsoever at the Ankua Iron Ore Mines,

G. For issuance of an appropriate writ or writs of and / or in the nature of Prohibition restraining respondent Nos. 1 to 7 from giving any effect or further effect to the decision taken to award any prospecting license in favour of respondent Nos. 8, 9 and 10 in respect of the Ankua Iron Ore Mines,

H. For issuance of an appropriate writ or writs of and / or in the nature of Prohibition restraining respondent Nos. 8, 9 and 10 from acting upon and / or in furtherance of any prospecting license granted in favour of respondent Nos. 8, 9 and 10 for mining the Ankua Iron Ore Mines,

I. For issuance of an appropriate writ or writs of and / or in the nature of Certiorari commanding respondent Nos. 1 to 7 to certify and produce all necessary documents before this Hon'ble Court so that conscionable justice may be done upon perusal thereof.

2. Before dealing with the merits of the matter and the facts of the case it is necessary to bring on record the details of the respondents arrayed in the present writ petition as there has been subsequent impleadment as well as deletion from time to time. Respondent Nos. 1 & 2 is Union of India whereas respondent Nos. 3 to 7 represents the State of Jharkhand. Respondent Nos. 8 to 10 are the private respondents namely Tata Steel Limited, M/s. Jindal Steel Limited and M/s. Essar Steel (Jharkhand) Ltd. respectively. Subsequently M/s JSW Steel Limited preferred an I.A. No. 3031 of 2007 for intervention and they were added as respondent No. 11. However, in reply to the I.A. the petitioner made a categorical statement that no relief has been claimed against them and they are not the contesting parties and thus they can be deleted. The matter came up for hearing on 3.9.2008 and the learned Counsel for the petitioner Mr. Joy Saha made an oral prayer to delete Respondent No. 9 also. An order was passed deleting the name of respondent No. 10 from the memo of parties and the second I.A. No. 1935 of 2008 was accordingly disposed of. Likewise today the counsel for the petitioner in view of its own affidavit in reply to the I.A. no 3031 of 2007 preferred by JSW Steel Limited prays to delete them from the array of respondent as no relief has been claimed against them. Considering the aforesaid facts, respondent No. 11 and respondent No. 9 as prayed for are also deleted. Thus the only contesting private respondent left is M/s Tata Steel Limited as respondent No. 8.

3. The facts in brief are set out as under:

In the instant case there is a serious dispute with regard to the date on which petitioner No. 1 applied for grant of prospecting license for mining the Ankua Iron Ore Mines and accordingly a declaration has been sought for issuance of a writ of mandamus to declare that the application of petitioner No. 1 for prospecting license has been made on 28th March, 2007 and not on 28th March, 2007.

4. Prayer No. "A" and "B" is for declaration of the date of application for prospecting license as 20th March 2007 instead of 28th March, 2007. Prayer No. "C" and "D" is for recommending the case of petitioner No. 1 for grant of prospecting lease for mining the Ankua Iron Ore Mines. Prayer "E" relates to treating all the applicants for grant of prospecting license on an equal level field. Prayer "F", "G" and "H" is for issuance of a writ of prohibition restraining respondent Nos. 1 to 7 from permitting respondent Nos. 8, 9 and 10 to carry on any mining activity. However, now this prayer vis-a-vis 9 & 10 does not hold good since they have been deleted from the array of contesting respondents.

5. The petitioner is a limited company which had initially applied for grant of mining lease in respect of Iron Ore and Manganese Ore at Ankua Mouza, District-West Singhbhum, Jharkhand pursuant to a notification published by the State Government on 9th January, 2005. The petitioner is interested in setting up an integrated steel and captive power plant in the State of Jharkhand for which it was imperative to have a steady flow and / or source of supply of iron ore. On or about 9th February, 2007 a Memorandum of understanding was entered into between the Government of Jharkhand and the petitioner for setting up an integrated steel and captive power plant in the State of Jharkhand and the final lease was to be executed only after it acquired the required land and invested at least 25% of the project cost in plant and machinery on site.

6. It appears that applications in the meanwhile were also made by the private parties from time to time for grant of prospecting license in respect of the aforesaid block. The learned Counsel for the petitioner submits that a notice was issued selectively to certain chosen few and / or nominated parties to attend a hearing on 22nd March, 2007 for grant of prospecting license in respect of the said Ankua Block. There were altogether 11 parties who were given notice excluding the petitioner.

7. The learned Counsel Shri Joy Saha, submits that the petitioner had also preferred an application on 20th March, 2007 which was duly received by the office of the Deputy Commissioner, West-Singhbhum, Chaibasa, Government of Jharkhand on the same day and the petitioner through his representative Mr. C.K. Singhania also attended the hearing held by the State Government authorities on 22nd March, 2007 for grant of prospecting license. However, the petitioner was excluded from grant of prospecting license in respect of the said Ankua Block on the ground that their application was received by the authorities concerned on 28th March, 2007-2008 i.e. after the date of hearing which was fixed for 22nd March, 2007.

8. The main contention raised by the learned Counsel appearing on behalf of the petitioner is that the State Government was bound to maintain transparency in the selection process and was duty bound to assign reasons for selecting and or recommending any case for grant of prospecting license. It has also been contended that the procedure adopted by the State Government was arbitrary, illegal and a colourable exercise of power prompted by extraneous consideration and gratification. It has further been submitted that there was no cut off date for moving the application and there was no guideline or criteria prescribed on the basis of which weightage could be given for recommending a party for grant of prospecting license.

9. It has also been submitted that the notice dated 13.3.2007 was issued to a limited few without any publication or any advertisement. The learned Counsel for the petitioner further submits that the entire exercise of discretion by the State authorities in absence of any criteria and/or guideline was arbitrary, illegal.

10. The learned Counsel has also referred to and relied upon the following judgements to support his contention.

1. Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, .
2. Ramana Dayaram Shetty Vs. International Airport Authority of India and Others, .
- 3 Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others, .
4. Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council, .
5. M. Nagaraj and Others Vs. Union of India (UOI) and Others, .

11. The main grievance of the petitioner is that his representative appeared and was heard on 22nd of March, 2007 but in the chart published the name of the petitioner does not even figure nor any reason has been assigned and there is no reference about the criteria or guidelines or the basis for grant of prospecting license and the entire action was thus wholly arbitrary and illegal. He has also contended that irrespective of prayer 1 and 2 his application was to be considered since there was no cut off date. He has referred to Section 11 and in particular Section 11(4) as introduced of Mines and Mineral (R&D) Act 1957 to support his contention. He has also referred to Rule 74 -75 of the Mineral Concession Rule, 1960 that the State and others were required to issue notification giving the details of areas and land in question.

12. Sri Gaurav Banerjee, learned Sr. Counsel appearing for the contesting private respondent No. 8 submits that the prayer in its form and substance is not maintainable in a writ jurisdiction under Article 226 of the Constitution and even otherwise the petitioner cannot be allowed to pick and choose the contesting respondents since it has arrayed them as respondent Nos. 9, 10 and 11 and later

chose to delete them.

13. He further submits that u/s 10, 11 and 12 of M.M. (R&D) Act, 1957 it will be relevant to distinguish the application for grant of prospecting license with mining lease. Prospecting license is for an area of land which is a virgin land and where the possibility is sought to explore unlike a mining lease which is definite in nature. He further submits that there was one person, namely, C.K.Singhanian who had appeared for four parties on 22nd March, 2007 including Jagdamba fiscal Services Ltd, Maa Chandi Durga Ispat Ltd., Adhunik Corporation Ltd. and the petitioner herein and none of them were recommended. However, except for the petitioner no one has challenged it. He also submits that Form "D" was asked for under Rule 10(4) and 23(4) of the Mineral Concession Rule and page 107 of the writ petition was not even challenged.

14. He has also submitted that there are serious disputed question of fact, allegation of forgery and pre-dating of letters which cannot be adjudicated in the present writ petition. He further submits that there was no requirement of any cut off date or notification for the sole reason that it was for a prospecting license and that is why the applications were filed from time to time and were finally considered on dates fixed as per the availability of application. He further submits that the name of Tata Steel does not figure in the list of the applicants in the hearing which took place on 22nd March, 2007 as this case was already heard on 6th of December, 2006 and thus, there was no need for them to appear again on 22.3.2007.

It has also been submitted that all the applications which were pending at that point of time were considered and Section 10, 11 and 12 nowhere requires or mandates any notification to be issued for prospecting license. The only requirement u/s 11(2) is to give preference to such applicants whose application have been received earlier.

15. He further refers to and relies upon Rule 59 and 60 of the Mineral Concession Rule to support his contention that in prospecting license the area in question is virgin and thus there can be no prior notification otherwise Section 11(2) and 11(4) of the M.M.R.D. Act will become redundant and that is why Rule 74 requires issuance of notification by the State when it itself prospects a mining area to inform the public that the area in question is reserved. In case of prospecting license there is no specified mining area and the application are to prospect a virgin area yet to be explored for mining purposes. It is just like as walk in for interview because they have to explore the area which are virgin for prospecting license.

16. The learned Advocate General appearing on behalf of the State of Jharkhand submits that during the course of hearing on 22.3.2007 the petitioner was allowed to be heard provisionally subject to verification of the date of his application. He also refers to annexure-"F" at page 44 in the counter-affidavit which is a letter dated 23.3.2007 issued by D.M.O. Chaibasa who has stated that

the petitioner was putting pressure for giving him a back dated acknowledgement of his letter. He further submits that u/s 10 read with 11(2) of the Act an application can be entertained for prospecting license without issuance of any notification and there is no such statutory requirement. He has further submitted that there is a change in stand from time to time by the petitioner. Initially the petitioner submitted that they had applied on 20.3.2007, thereafter, they stated to have applied on 21.3.2007 whereas the petitioner actually applied on 26.3.2007. He further submits that on 21.3.2007 it was the State Government Holiday and the calendar is also annexed at page-45. He further submits that even according to the petitioner the representative C.K.Singhania had the common knowledge since he represented four persons on the date of hearing and in any case even the petitioner in its rejoinder has stated that they had the knowledge about grant of prospecting license in the 1st week of March, 2007 itself.

17. He has further submitted that this is a gross case of tampering, forgery and pre-dating the date of application and the petitioner by bribing an officer got it done who has been proceeded against by the State. The representative was provisionally allowed to appear and the same was subject to verification of the date of application.

18. I have considered the rival submission, the pleadings and the case law on the issue. The fact remains and even admitted by the learned Counsel for the petitioner that the statute or the M.M.R.D. Act and in particular 10, 11 and 12 does not contemplate or demand any notification or publication inviting applications for prospecting license. There is no dispute with regard to the settled law that the guidelines should be there and there should be transparency since the matter involved State largess. However, it goes without saying that in the instant case the prospecting license should not be equated with the mining lease or license. In a case of prospecting license the applicants are to explore the virgin land and thus the question of earmarking or notifying the area in question where mining can be done does not arise and under the scheme of the provisions of the M.M.R.D. Act it is rightly not reflected nor required to give any prior notice and or issue notification and or advertisement.

19. The application of the petitioner for prospecting license of iron and manganese ore was given on 26.3.2007 and even in the statutory application register maintained in the office of District Mining Officer under Rule 21 of the Mineral Concession Rules, 1960 the receiving and signature was recorded accordingly. There is no dispute that the receipt in Form "D" of the Mineral Concession Rules, 1960 was granted in favour of the applicant only on 28.3.07 which was duly received by the petitioner. Rule 10 of the Mineral Concession Rules, 1960 provides for acknowledgment of application and the State Government has duly authorized the Dy. Commissioner and District Mining Officer to receive the application for prospecting license and grant Form "D" receipt as per law. Rule 10 of the Mineral Concession Rules, 1960 is quoted as

under:

10. Acknowledgement of application:

(1) Where an application for the grant or renewal of a prospecting license is delivered personally, its receipt shall be acknowledged forthwith.]

(2) Where such application is received by registered post, its receipt shall be acknowledged on the same day.

(3) In any other case, the receipt of such application shall be acknowledged within three days of the receipt.

(4) The receipt of every such application shall be acknowledged in Form D.

20. On perusal of annexure 5 of the writ petition it will be evident that the claim of the petitioner about receipt having been granted by the Office Clerk of the office of Dy. Commissioner is not in statutory Form "D" and the Acknowledgment receipt as provided under the Mineral Concession Rules, 1960 was also lacking. Further 21.3.07 was a holiday for "Sarhul" and thus, the contention to have applied for prospecting licence a day before the meeting is on the face of it incorrect and misleading. The production of earlier Form "D" acknowledgement receipt was forged and fake. The representative of the petitioner insisted and coerced to accept his application on a back date and the same was duly informed by the District Mining Officer and the matter was referred to the Secretary, Mines. Even in the statutory form "D" acknowledgement receipt dated 26.3.07/28.3.07 it was specifically mentioned that "this application has been filed after 22.3.2007 on which the hearing was fixed by Secretary, Mines, Mines & Geology Deptt., Jharkhand, Ranchi".

21. It is a matter of record that the mining lease application of the petitioner subsequent to the Gazette Notification has not yet been disposed of and the same is pending till date and it is also a subject matter of the Writ Petition (C) No. 3530 of 2006 wherein the claim of the other applicants including this petitioner have been kept in abeyance pending final hearing of the matter and thus it is a separate issue.

22. The fact remains that altogether 23 different applicants had suomotto filed 40 prospecting license application and the same was considered u/s 11 of the Mines and Minerals (Development and Regulation) Act, 1957 and the recommendation by the State Government was based upon Section 11(3) of the Mines and Minerals (Development and Regulation) Act, 1957 was based on comparative statement of merit. Even Section 11(2) of the Mines and Minerals (Development and Regulation) Act, 1957 provides as under:

2. Subject to the provisions of Sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a

mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and the State Government has invited applications by notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such notification and the applications which had been received prior to the publication of such notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this Sub-section:

Provided further that where any such applications are received on the same day, the State Government, after taking into consideration the matter specified in Sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

On reading the aforesaid it will be evident that when the area is yet to be notified in the official Gazette by the State Government then the application received earlier for prospecting license shall have preferential right to be considered for grant of prospecting license. It will be evident from perusal of Rule 59 and 60 of the Mineral Concession Rule, 1960 that when an area is available for regrant the same has to be notified. But if it is for an area which is yet to be notified unlike a case for regrant or renewal which is definite then it will be on the basis of the date of application for grant of prospecting license. Even the reliance to Rule-74 and 75 of the Mineral Concession Rules, 1960 is misplaced and misconceived. Rule 74 require issuance of notification where prospecting operations are to be undertaken by Geological Survey of India and Rule 75 requires issuance of notification when prospecting or mining operation is undertaken by State Government. The object of issuance of notification is to reserve the area in question.

23. The Judgment referred to and relied upon by the learned Counsel for the petitioner is also misplaced and misconceived in the facts and circumstances of the case. In *Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others*, it has been clearly held that Section 11 tries to enunciate a simple general principles of first come first serve. Learned Counsel for the petitioner referred to and relied upon para 34 of the said judgment to suggest that there should be a clear guideline and procedure which is not in dispute and Subsection 4 of the Act was accordingly inserted by way of an amendment made on 19.12.1999. However, Section 11(4) of the Act will apply when the area is specified. The judgement reported in *Reliance Energy Limited and Another Vs. Maharashtra State Road Development Corporation Ltd. and Others*, does not apply to the facts of the present case since that related to a tender where the Hon'ble Supreme Court emphasized the need for judicial review and the same was justified by

constitutional principle which governed the proper exercise of public power in a democracy to protect non discrimination and uphold Article 14 and the facts that Article 14 will apply to Government policy also. But in the instant case the petitioner has not made out a case to suggest that there was discrimination or he was similarly situated as compared to others and was still not considered. The reliance by the learned Counsel at Aggarwal and Modi Enterprises Pvt. Ltd. and Another Vs. New Delhi Municipal Council, is misconceived and misplaced since the matter related to disposal of public property wherein it was rightly held that invitation for participation in public auction ensures transparency and it would be free from bias and discrimination. It is well settled that invitation for participating in public auction provides for not only transparency but also augments the offer and thus it was necessary but in the instant case there was neither any disposal of any specific public property nor auction of public property for which invitation is required in stead it was for exploration of virgin land for prospecting license based on first come first serve.

24. Even reliance made in Ashwani Kumar and Others Vs. State of Bihar and Others, is misconceived and misplaced and does not apply to the facts of this case. Reasons have been assigned as provided u/s 11(1) & (2) of the Act on the principles of first come first serve and secondly the petitioner had applied after the date of interview whereas the others who were considered applied much earlier. Even though there is no cut off date but still the application were being given from time to time and the last date of hearing was fixed on 22.2.2007 and the petitioner had the knowledge of the same and his representative was allowed provisionally to appear when he actually made a false statement and misled the authorities that he had applied on either 20th or 21st of March, 2007 which was later found to be a false statement based on forged document.

25. In any case there is a serious disputed question of fact with regard to the date of application and serious allegation of forgery, predating using coercive method and bribing officers have been levelled against the petitioner and the same cannot be adjudicated in a writ jurisdiction under Article 226 of the Constitution of India. There is no dispute about the fact that all the applicants who were considered had applied for prospecting license much earlier to the petitioner and much earlier to the date of interview. Not a single case has been cited where the application of a subsequent date was considered for grant of prospecting license and thus the allegation of discrimination is unsustainable. Admittedly the date on which the hearing took place i.e. 22.3.2007 the representative of the petitioner was allowed to participate provisionally but later upon scrutiny it was found that his application was of 26.03.07 and form "D" was issued on 28.03.07 and was accordingly not recommended. After having participated and found ineligible he cannot subsequently challenge the procedure of selection and or recommendation for prospecting license. The law in this regard is well settled and Estoppel by Conduct will apply against the petitioner.

26. The petition is also bad for non-joinder of necessary parties. The petitioner

has challenged the entire process of grant of Prospecting License by the State Government pursuant to the hearings held on 04.12.2006 and 22.03.2007. On the other hand, the petitioner has deleted the other contesting respondents (M/s Essar Steel Limited and M/s Jindal Steel Wire Limited), who were clearly necessary parties as they have also been granted prospecting license pursuant to the very same process. If the process is challenged to be bad, then all the parties who are beneficiaries have to be necessarily impleaded as consequence of holding a process to be bad in law is that all the licenses granted to various parties have to be cancelled.

27. For issuance of a prospecting license in respect of a virgin area, which has not been prospected earlier and the mineral reserve has not been otherwise established, the Act and the Rules do not and cannot indeed provide for issuance of a notification in the Official Gazette mandatorily for inviting applications for mineral development. A true and correct reading of the Act and the Rules would show that in such a situation, the State Government would consider applications within the parameters of Section 10 & 11 of the Act and take an appropriate decision after hearing under Rule 12. In contrast, where it is a case of re-grant, the statute requires and demands that there be a notification in the Official Gazette and the provisions of Section 11(4) read with Rules 59 and 60 are followed. In the course of arguments, it had been conceded that under the statutory scheme of the Act and the Rules, a notification is not mandatory for grant of a prospecting license, particularly since it is admittedly not a case covered under Rules 59, 60, 74 or 75.

28. Even the contention of the petitioner in the writ petition that the area for which prospecting license has been recommended is the same area in respect of which the State Government had earlier issued a notification on 9.1.05 inviting mining lease is on the face of it incorrect and misleading. In their rejoinder affidavit it has been specifically admitted that the application for mining lease in 2005 and the application for prospecting license in 2007 covered distinct and different areas.

29. The case of the petitioner was not considered since there was no application of the petitioner as on the date of hearing either on 04.12.2006 or on 22.03.2007. The cut off date is inherent in the Scheme of the Act as on date of hearing, the application must have been received. This would be clear from a conjoint reading of Section 10(3) and Rules 10, 11 and 12 of the Mineral Concession Rules.

30. There was no application of the petitioner on 22.03.2007, but such an application was made only on 26/28.03.2007. Form D issued under Mineral Concession Rules is the only evidence of such receipt of the application. The application for prospecting license was to be made u/s 10(1) of the Act. Under Sub-section (2) of Section 10, an acknowledgement of the receipt of the application has to be sent within the prescribed time and as per the prescribed form, as indicated in Rule 10 of the Rules and Form D. Only then, Section 10(3)

applies. It is only on receipt of an application that the State Government considers such prospecting license with a view to grant or refuse to grant the same. The fact remains that 21st of March was holiday for "Sarhul", secondly even in the Statutory Form-"D" acknowledgement receipt dated 26.3.2007/28.3.2007 it was specifically mentioned that this application has been filed after 22.3.2007 which was the date of hearing as fixed by the Secretary, Mines and Geology Department, Jharkhand, Ranchi. Thus the contention about the non-receipt of any notice and the rejection on the ground that the application for prospecting license was not there on the date of interview dated 22.3.2007 appears to be justified.

Thus, the decision of the State Government not to include the writ petitioner's application in the comparative chart is unexceptional and is consistent with law. In fact, had the said application been considered along with the applications for which the hearing had been conducted on 22.03.2007, then such action of the State Government would have been contrary to Section 10(3) of the Act, which requires any hearing under Rule 12 "after" receipt of the application.

31. Section 11 of the Act, which deals with preferential right, comes into application only when there is an overlap. Section 11(4), on which much emphasis has been made by the writ petitioners is invoked only when there is a notification in the Official Gazette about the area in question. Section 11(4) is not at all applicable to the present situation.

32. Even the contention raised by the learned Counsel for the petitioner that Rule-74 and 75 of the Mineral Concession Rules, 1960 provides for issuance of notification for grant of prospecting or mining operation is misplaced and misconceived for the reason that Rule-74 is for issuance of notification where prospecting operations are to be undertaken by the Geological Survey of India and Rule-75 is for prospecting or mining operation undertaken by the State Government itself. It will be clear on reading Rule 74 (2) where it bars the State Government to grant any prospecting license or mining lease to any other person of an area or a part thereof in relation to which a notification has been issued under Sub- Rule (i). This is for the reason that the area is earmarked and has to be declared as reserved and the same analogy cannot apply where the area itself has not been notified in the official gazette and that is why application for prospecting license is meant for a virgin area and not a definite area as provided u/s 11(2) of the Mines and Mineral Development Act, 1957.

33. Considering the aforesaid facts and circumstance of the case, I find no merit in the writ petition and the same is accordingly dismissed.