

(2009) 08 KAR CK 0107

In the Karnataka High Court

Case No : Writ Petition No's. 17828, 19330 and 19332 of 2007 and 483, 563, 888, 977, 983, 984, 1221, 1438, 1470, 1471, 4275, 6960, 7850, 9404, 30924 and 30929 of 2008

Gadigi Mineral Mining Co. and Others

APPELLANT

Vs

State of Karnataka Commerce and Industry Department, JSW Steel Ltd. (Vijaya Nagar Works) and Union of India (UOI) Ministry of Mines and Others

RESPONDENT

Date of Decision : 28-08-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Mines and Mineral (Development and Regulation) Act, 1957 — Section 11, 11 (2)

Citation : AIR 2010 Kar 43 : (2009) 5 KCCR 3779

Hon'ble Judges : P.D. Dinakaran, C.J.;V.G. Sabhahit, J

Bench : Division Bench

Advocate : M.R. Naik, for Shivarudrappa Shetkar, for Petr., D.L.N. Rao, S.R. Anuradha, K.N. Phanindra, Hegde, Rao, Gangi Reddy, for Petr., K.B. Shivakumar, G.K. Hiregoudar, J.M. Anilkumar, for Petr., .P. Rajendra Kumar Sungay and Basavaraj Karreddy, Prl. Government Advocate, for the Appellant; Basavaraj Karreddy, Prl. G.A. for R1 to R4 and R8, D.L.N. Rao S.R. Anuradha, for R2, R4 to R6, Y. Hariprasad, C.G.S.C. for R1, R3 and R4, S. Shadaksharaiah, for R6, M.A. Vijay, for R5, R6 and R7, Pramod N. Khatavi, for R5, R6 and R7, Uday Holla for R2 to R4 and R5 to R7, K.N. Srinivas, for C/R3, Hemant R. Chandanagoudar, R5, S. Krishnaswamy, Mahantesh C. Kotturshettar, Jayakumar S. Patil, K.N. Phanindra, Hegde, Rao, for the Respondent

Judgement

1. The following questions have been referred to the Full Bench in W.P. No. 17828/2007, by Order of Reference dated 15.07.2009:

(i) In view of proviso to Section 11(2) of the MMDR Act, 1957, whether the applications filed prior to notification made under Rule 59(1) of the M.C. Rules, 1960 require preference over the applications filed pursuant to the notification? and

(ii) Whether the Judgment of the Division Bench dated 12.03.2009 made in Writ

Appeal No. 807/2007 and connected writ appeals, requires reconsideration in view of the proviso to Section 11(2) of the MMDR Act as per which, the applications which had been received prior to the publication of such notification in respect of the lands notifying the areas for grant of mining lease shall be deemed to have been received on the same day for the purpose of assigning priority?

2.1. The essential facts of the case, leading to the Order of Reference of the above questions before this Bench are as follows:

2.2. W.P. No. 17828/2007 is filed under Articles 226 and 227 of the Constitution of India seeking quashing of the order dated 21.09.2007, wherein the Government of Karnataka has recommended to the Central Government for grant of mining lease in favour of M/s. JSW Steel Limited - respondent No. 2 in the writ petition over an area of 188, 128 Hectares in Donimalai Range, Sandur Taluk, Bellary District, for a period of thirty years as per the sketch enclosed to the notification; issue a writ of prohibition restraining respondents 1 and 3 and their agents, servants and subordinates from taking any action of any description, directly or indirectly, in pursuance or to give effect to the impugned order No. CI.92:MMM.2007 dated 21.09.2007 passed by respondent No. 1 and direction to respondent No. 1 to consider the petitioner's application for mining lease in accordance with law after giving a fair and reasonable opportunity to the petitioner.

2.3. According to the petitioner, the State Government issued notification dated 17.02.2003 No. CI.33/MMM. 1994 stating that the mining area set out therein comprised in an extent of 11,620.56 Sq.kms. in the State of Karnataka, which was reserved for exploitation of various minerals in the past, stands de-reserved and in pursuance of the de-reservation, the said area would be thrown open for consideration of grant of mineral concessions as per Rule 59 of the Mineral Concession Rules, 1960 (hereinafter referred to as "the M.C. Rules") by the competent authority in due course. Thereafter, on 15.03.2003, notification bearing No. CI.16.MMM.2003 has been issued by the State Government informing the mining public that the area noted in the annexure to the notification was available for grant under Rule 59 of the M.C. Rules.

2.4. In response to the notification bearing No. CI.16.MMM.2003 dated 15.03.2003, the petitioner submitted application in M.L. No. 839 for grant of mining lease in respect of iron ore in an extent of 798.87 Hectares of forest area in Donimalai range, Sandur Taluk, Bellary District, described at Sl. No. 12 in the annexure to the notification. The State Government also issued another notification dated 15.03.2003 No. CI.33/MMM. 1994 under Rule 59 of the M.C. Rules. Petitioner submitted an application on 14.05.2003 for grant of lease for an area measuring 798.87 Hectares.

2.5. The above said notifications dated 17.02.2003 and 15.03.2003, were challenged in W.P. No. 18445/2003 and connected writ petitions on the ground

that the writ petitioners in those writ petitions, prior to amendment of Section 11 of the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter called "the MMDR Act") by Amendment Act No. 38 of 1999, had made applications for grant of mining lease in respect of the lands, which were notified and in view of the provisions of Section 11 of the MMDR Act, as it stood prior to amendment in 1999, they were entitled to preference on the basis of seniority of their applications and they had vested right of preferential treatment and the said preferential right of consideration on the basis of seniority and preference has been taken away in view of the proviso to Section 11(2) of the MMDR Act after amendment in 1999, which requires that all the applications received pursuant to the said notification and also the applications, which were pending in respect of the same area prior to the date of the notification shall be deemed to have been received on the same day. Therefore, preferential rights of the petitioners, which had accrued to them for having made applications prior to the amendment of Section 11(2) of the MMDR Act, by Amendment Act No. 38 of 1999 is taken away and wherefore, their applications should be considered on priority in preference over the applications filed pursuant to the notification.

2.6. The petitioner further submits that the second respondent submitted application for mining lease only on 18.04.2007 i.e., about 8 years after the said amendment was made to Section 11(2) of the MMDR Act in 1999 and there were several applications, which were filed long before the said amendment. Learned single Judge by order dated 27.11.2006, allowed writ Petition No. 18445/2003 and connected writ petitions and passed the following order:

(i) The applications filed by the petitioners in all these writ petitions shall be considered by the State Government u/s 11(2) of the Act without reference to the first proviso to Section 11(2) of the Act and the impugned notifications in the light of the observations made above.

(ii) Only in the event of not granting the lease in favour of any of the petitioners as referred to in Clause (i) supra; the applications received in pursuance of the impugned notifications in respect of land covered in these writ proceedings, may be considered in accordance with law.

(iii) All the applications pending prior to the impugned notifications and the applications received in pursuance of the impugned notifications, in respect of lands excluding the lands covered under these writ petitions, the State Government is at liberty to consider them in accordance with the proviso to Section 11(2) of the Act.

(iv) In the circumstances as aforesaid, there is no necessity to quash the impugned notifications at the instance of the petitioners.

(v) All these Writ Petitions are disposed of accordingly.

4.1. Aggrieved by the above said order dated 27.11.2006 made in 18445/2003, the State Government preferred Writ Appeal No. 807/2007 and connected writ

appeals. However, no order of interim stay was granted by the Division Bench and wherefore, the direction given by the learned single Judge and also the legal position laid down in the said judgment continued to hold the field and was binding on the State Government. Since the order of the learned single Judge was not complied with, Contempt petition was filed by some of the writ petitioners for enforcement of the judgment and order of the learned single Judge dated 27.11.2006 made in W.P. No. 18445 of 2003.

4.2. In the said Contempt Petition, Secretary to Government of Karnataka filed a reply on 04.01.2007 wherein it was expressly stated that none of the applications for mining lease in respect of the area covered by the notifications impugned in W.P. No. 18445/2003 and connected writ petitions would be taken up for consideration after the disposal of the appeals filed by the State Government, viz. W.A. No. 807/2007 and connected writ appeals.

4.3. However, despite the specific statement made by the Secretary to the Government before this Court in the said contempt proceedings, the State Government proceeded to issue order dated 21.09.2007 recommending the case of the second respondent for grant of mining lease, which is contrary to the affidavit filed by the Secretary to the Government in the Contempt petition and contrary to the directions issued in W.P. No. 18445/2003 and connected writ petitions.

4.4. Therefore, being aggrieved by the said recommendation made by the State Government for grant of mining lease in favour of the second respondent, writ petition No. 17828/2007 was filed before this Court contending that the impugned order recommending the grant of mining lease in favour of the second respondent is illegal in the eye of law as it is contrary to the undertaking given by the Secretary to the Government in the contempt petition as referred to above and also is contrary to the judgment of the learned single Judge dated 27.11.2006 passed in W.P. No. 18445/2003 and connected writ petitions.

4.5. Writ Appeal No. 807/2007 and connected appeals filed against the judgment passed by the learned single Judge in W.P. No. 18445/2003 and connected petitions dated 27.11.2006 were disposed of by the Division Bench on 12.03.2009, confirming the Judgment passed by the learned single Judge dated 27.11.2006.

4.6. Meanwhile, writ petitions were being filed before this Court for grant of mandamus directing the respondents to consider the application of the writ petitioners for grant of mining lease in the light of the judgment passed in W.P. No. 18445/2003 and connected petitions dated 27.11.2006 and on preferential basis notwithstanding the provisions of Section 11(2) of the MMDR Act amended in 1999 and writ of mandamus was issued by this Court.

4.7. Aggrieved by the order of the learned single Judge granting mandamus to consider the applications of the writ petitioners on the basis of the decision of the learned single Judge referred to above in W.P. No. 18445/2003 and connected

Petitions, the State Government has preferred W.A. No. 1438/2007 and connected appeals contending that in view of the proviso to Section 11(2) of the MMDR Act, as amended by Amendment Act No. 38 of 1999, writ petitioners would not be entitled to premium or preference in consideration of their application before consideration of applications received pursuant to the notification issued Rule 59 of the M.C. Rules. Proviso to Section 11(2) of the MMDR Act as amended in 1999 would clearly state in unambiguous terms that all the applications received in response to the notification within the time prescribed in such notification and the applications which had been filed prior to the date of notification and had not been disposed of before the date of the notification, shall be deemed to have been filed on the same day for the purpose of assigning priority.

5. The Division Bench of this Court, by order dated 05.06.2009, in W.A. No. 5026/2008 and connected appeals filed against the order dated 07.08.2008 passed by the learned single Judge in W.P. No. 21608/2005, has narrated the provisions of Section 11(2) of the MMDR Act and has held that all the applications received within the period prescribed in the notification and applications filed before the date of notification and which have not been disposed of, shall be deemed to have been received on the same day and wherefore, the question of granting preference or priority to any of the applications filed before the notification would not arise and recommendation should be made having regard to the factors mentioned in Section 11(3) of the MMDR Act and Rule 35 of the M.C. Rules. Therefore, the order of reference has been made on 15.07.2009 in W.R No. 17828/2007 for consideration of the above referred questions by the Full Bench and accordingly, the matter is placed before this Bench.

6. We have heard the learned senior counsel appearing for the petitioner in W.P. No. 17828/2007 and the learned senior counsel appearing for caveator - respondent No. 2 and also the learned Government Advocate appearing for respondent No. 1 and the Central Government Standing Counsel appearing for respondent No. 3. We have heard the learned Government Advocate appearing for the appellants in W.A. Nos. 1470/2007, 1471/2007, 984/2008, 977/2008 and 983/2008 and also appearing for respondent - State in other writ petitions and the learned Counsel appearing for parties in the writ petitions and the writ appeals. Hence the reference.

7.1. The Learned Government Advocate appearing for appellants in W.A. Nos. 1470/2007, 1471/2007, 984/2008, 977/2008 and 983/2008 and also appearing for respondent - State in other writ petitions submitted that the minerals vest with the State and the State is the owner of the minerals and it is open to the State Government to issue notification and grant mining lease in accordance with the provisions of the MMDR Act and M.C. Rules.

7.2. The mere fact that the applications have been filed prior to the date of the notification would not preclude the Government from issuing notification under

Rule 59 of the M.C. Rules. In view of the provisions of Section 11(2) of the MMDR Act, specially the first proviso to the Sub-section (2) of Section 11 , all the applications received within the time prescribed in the notification and also the applications filed before the date of the notification pending as on the date of the notification, shall be deemed to have been received on the same day.

7.3. The finding of the learned single Judge in W.P. No. 18445/2003 and connected petitions disposed of on 27.11.2006, to the effect that if the applications filed before the date of the notification are considered on priority and the State Government decides not to grant mining lease in respect of those applications, then only, the applications filed pursuant to the notification have to be considered, which has been confirmed by the Division Bench in W.A. No. 807/2007 and connected appeals dated 12.03.2009 is erroneous as proviso to Section 11(2) of the MMDR Act states unambiguously that all the applications received in response to the notification under Rule 59 of the M.C. Rules and the applications filed before the date of the notification and have not been disposed of, shall be deemed to have been filed on the same day.

7.4. The question of giving any priority or preference in respect of the applications filed prior to the date of the notification will be contrary to the provisions of proviso to Section 11(2) of the MMDR Act and wherefore, the decision of the Division Bench in W.A. No. 807/2007 and connected Writ Appeals dated 12.03.2009 confirming the order dated 27.11.2006 passed in W.P. No. 18445/2003 and connected writ petitions by the learned single Judge, requires reconsideration.

7.5. The questions referred for reference to this Bench by order of reference dated 15.07.2009 are required to be answered in accordance with the proviso to Section 11(2) of the MMDR Act as amended in 1999 to the effect that all the applications received pursuant to the notification and also the applications filed prior to the date of the notification and pending as on the date of the notification, shall be deemed to have been received on the same day and the same have to be considered on the basis of the circumstances enumerated in Section 11(3) of the MMDR Act and Rule 35 of the M.C. Rules.

8. Sri D.L.N. Rao, learned senior counsel appearing for the respondent No. 2 in W.P. No. 17828/2007 and other matters submits:

(i) that the order passed by the learned single Judge of this Court dated 27.11.2006 in W.P. No. 18445/2003 and connected petitions confirmed by the Division Bench in W.A. No. 807/2007 and connected appeals, disposed of on 12.03.2009, have to be considered in the light of the facts giving rise to points for determination that arose in the said writ petitions and writ appeals;

(ii) that the petitioners in those writ petitions before the learned single Judge were the applicants, who had filed applications for grant of mining lease in respect of area which were notified in two notifications CI.33.MMM.1994 dated 17.02.2003 and CI.16.MMM.2003 dated 15.03.2003;

(iii) that there is no provision under the MMDR Act for reserving the land for exploitation of minerals by the State prior to 1980 and reservation of land under the notifications issued in 1959, 1961 and 1965 was wholly without jurisdiction and wherefore, the de-reservation of the said reserved area under Notification dated 17.02.2003 was of no avail and was inconsequential;

(iv) that no notification could be issued under Rule 59 of the MC Rules, 1960 and wherefore, proviso to Section 11(2) of the MMDR Act does not apply;

(v) that so far as the applications made pursuant to the notification dated 15.03.2003 in respect of the area, which was held earlier is concerned, since the notification has been validly issued under Rule 59 of the MC Rules, the applications received within the time prescribed under the notification as also the applications received prior to the date of the notification, which are pending, should be deemed to have been received on the same day;

(vi) that in view of the proviso to Section 11(2) of the MMDR Act, the question of giving any preference to the applications filed prior to the notification over the applications filed subsequent to the date of notification would not arise;

(vii) that since both the second respondent and the petitioner in the said writ petition had filed applications for grant of mining lease pursuant to the notification issued under Rule 59 of the M.C. Rules and they did not claim any priority or preference as applicants prior to the date of the notification, the benefit of the order of the learned single Judge in W.P. No. 18445/2003 and connected writ petitions dated 27.11.2006 confirmed in W.A. No. 807/2007 and connected writ appeals disposed of on 12.03.2009 would not be applicable in respect of the notification issued;

(viii) that in respect of land, which had been reserved for mineral exploitation by the State, no notification under Rule 59 of the MC Rules could be issued, as the same was not available for grant of mining lease and licence and therefore, the applications for grant of mining lease received prior to the date of notification needs to be considered on the basis of seniority of the application;

(ix) that the order of the learned single Judge in W.P. No. 18445/2003 and connected writ appeals dated 27.11.2006 confirmed in Writ Appeal No. 807/2007 and connected writ appeals dated 12.03.2009, therefore does not require any re-consideration;

(x) that in W.P. No. 7850/2008, he is representing the writ petitioner, wherein the order passed by the Mines Tribunal has been challenged and since the order impugned in the said writ petition is not passed in accordance with law, the question of granting any priority to the applications filed prior to the date of the notification in respect of land did not arise, and all the applications received pursuant to the notification dated 15.03.2003 and the applications filed earlier to the date of the notification and are pending consideration, have to be considered by treating them as having been received on the same day in view of the factors

mentioned in Section 11(3) of the MMDR Act and Rule 35 of the MC Rules and the order of the Tribunal is made subject to the decision that would be rendered in Writ Appeal No. 807/2007 filed against the order of the learned single Judge dated 27.11.2006 in W.P. No. 18445/2003 and connected writ petitions;

(xi) that the said appeal, viz. W.A. No. 807/2007 has been disposed of on 12.03.2009 and to that extent, in so far as the notification issued on 15.03.2009, in respect of area which had been held earlier is concerned, all the applications received subsequent to the notification within time prescribed and applications filed before the date of the notification had to be considered together and therefore, the order passed by the Tribunal is liable to be quashed; and

(xii) that the question as to whether the State Government had power to reserve any area for mineral exploitation by the State prior to 1980 is pending consideration before the Hon'ble Supreme Court in SLP filed against the Division Bench decision of this Court. Therefore, pending consideration of the said question before the Hon'ble Supreme Court, the matter may be adjourned as the said question is required to be gone into for answering the questions referred to this Bench.

9. Sri K. Srinivasan, learned Counsel appearing for the respondent No. 3 in W.P. No. 7850/2008 argued in support of the order passed by the Mines Tribunal impugned in the said writ petition and has taken us through the order passed by the Tribunal and submitted that the order is passed in accordance with law and the order passed in W.A. No. 807/2007 and connected appeals do not require any reconsideration and since respondent No. 3 had filed application for grant of mining lease prior to the date of notification, his application is to be considered on priority in preference to the applications filed in response to the notification dated 15.03.2003.

10. Sri M.R. Naik, learned senior counsel appearing for respondent No. 2 in W.P. No. 17828/2007 submitted:

(i) that the order impugned in the writ petition recommending grant of mining lease in favour of the second respondent has already been set aside by the Mines Tribunal and is the subject matter of W.P. No. 7850/2008 and since the writ petitioner and the second respondent have filed applications in response to the notification, he does not claim any preferential right over the application filed by the second respondent;

(ii) that in view of proviso to Section 11(2) of the MMDR Act, the order recommending grant of mining lease in favour of the second respondent impugned in the writ petition may be quashed and the competent authority may be directed to consider the application of the petitioner and the second respondent for grant of mining lease in accordance with law;

(iii) that the applicant before the Tribunal (Respondent No. 2 in W.P. No. 7850/2008) is not entitled to preferential treatment or priority as per the

decision of the learned single Judge in W.P. No. 18445/2003 and connected writ petitions dated 27.11.2006 confirmed in Writ Appeal No. 807/2006 and connected writ appeals by order dated 12.03.2009; and

(iv) that applications filed by the second respondent-applicant before the Mines Tribunal and applications filed prior to the date of the notification shall be considered simultaneously as deemed to have been filed on the same day and in view of proviso to Section 11(2) of the MMDR Act.

11. The learned Central Government Standing Counsel submitted that no relief is sought for against the Central Government and the Central Government is arrayed as a formal party in the writ petitions.

12. We have given careful consideration to the contentions of the learned Counsel appearing for the parties referred to above and scrutinized the material on record.

13. Before advertng to the merits of the rival contentions, we have considered the threshold contention of the learned senior counsel that the matter is to be kept in abeyance till the disposal of the SLP by the Hon"ble Supreme Court. At the outset, we are clear that there can be no dispute whatsoever regarding the legal position enunciated in the cases of Chhavi Mehrotra v. Director General, Health Services (1995) 3 SCC 434 and D.K. Trivedi and Sons and Ors. v. State of Gujarat and Ors. AIR 1986 SC 1323 cited by the learned senior counsel. However, in the instant case, it is to be noted that primarily the legal position to be answered by us is with regard to the effect of the amendment to Section 11 of the MMDR Act in the context of several applicants repeatedly approaching this Court seeking for mandamus to the authorities to consider their applications by providing preferential treatment. In this regard, reliance is being placed on the judgment dated 12.03.2009 passed in W.A. No. 807/2007. Since the categorization made by the learned single Judge has been confirmed in the said writ appeal, the same has created ambiguity as against the provision contained in the first proviso to Section 11(2) of the MMDR Act. Hence, the legal position requires to be settled so as to consider the cases which are pending before the Division Bench. Hence, we are unable to accede to the contention of the learned senior counsel.

14. Before considering the contentions of the parties with reference to the material on record to answer the questions referred to this Bench, it is necessary to cull out the provisions of Section 11 of the MMDR Act and Rules 59 and 60 of the MC Rules.

Section 11 of the MMDR Act reads as follows:

11. Preferential right of certain persons- (1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person:

Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be,--

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the reconnaissance permit or the prospecting license;

(c) has not become ineligible under the provisions of this Act, and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period, as may be extended by the said Government.

(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.

(3) The matters referred to in Sub-section (2) are the following-

a) any special knowledge of or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the

industry based on the minerals;

(e) such other matters as may be prescribed.

(4) Subject to the provisions of Sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government after taking into consideration the matters 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.

Notwithstanding anything contained in Sub-section (2), but subject to the provisions of Sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier:

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section.

15. Rule 59 of the M.C. Rules read as follows:

59. Availability of area for regrant to be notified - (1) No area -

(a) which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease; or

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or

(c) in respect of which the order granting a permit or licence or lease has been revoked under Sub-rule (1) of Rule 7A or Sub-rule (1) of Rule 15 or Sub-rule (1) of Rule 31, as the case may be; or

(d) in respect of which a notification has been issued under Sub-section (2) or Sub-section (4) of Section 17; or

(e) which has been reserved by the State Government or u/s 17A of the Act, shall be available for grant unless-

(i) an entry to the effect that the area is available for grant is made in the register referred to in Sub-rule (2) of Rule 7D or Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40, as the case may be; and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the

publication of such notification in the Official Gazette) from which such area shall be available for grant;

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired:

Provided further that where an area reserved under Rule 58 or u/s 17A of the Act is proposed to be granted to a Government Company, no notification under Clause (ii) shall be required to be issued:

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of Sub-section (1) of Section 11, no notification under Clause (ii) shall be required to be issued.

(2) The Central Government may, for reasons to be recorded in writing, relax the provisions of Sub-rule (1) in any special case.

16. Rule 60 of the MC Rules reads as follows:

60. Premature applications - Applications for the grant of a reconnaissance permit, prospecting licence or mining lease in respect of areas whose availability for grant is required to be notified under Rule 59 shall if-

(a) no notification has been issued, under that rule; or

(b) where any such notification has been issued, the period specified in the notification has not expired, shall be deemed to be premature and shall be entertained.

17. In *Amritlal Nathubhai Shah and Others Vs. Union Government of India and Another*, the Apex Court has held thus:

3. It may be mentioned that in pursuance of its exclusive power to make laws with respect to the matters enumerated in entry 54 of list I in the Seventh Schedule Parliament specifically declared in Section 2 of the Act that it was expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent provided in the Act. The State Legislature's power under entry 23 of List II was thus taken away and it is not disputed before us that development had therefore to be in accordance with the Act and the Rules. The mines and minerals in question (bauxite) were however in the territory of the State of Gujarat and, as was stated in the orders which were passed by the Central Government on the revision applications of the appellants, the State Government is the "owner of minerals" within its territory and the minerals "vest" in it. There is nothing in the Act or the Rules to detract from this basic fact. That was why the Central Government stated further in its revisional orders that the State Government had the "inherent right to reserve any particular area for exploitation in the public sector."

18.1. In W.P. No. 18445/2003 and connected petitions, the petitioners have challenged the notifications dated 17.02.2003 and 15.03.2003 referred to above complaining that their preferential right u/s 11(2) of the MMDR Act are affected by those notifications. It may be noted at the outset that the constitutional validity of the first proviso to Section 11(2) of the MMDR Act was not challenged by any of the petitioners. It was the contention of the petitioners in those cases that they had made applications for grant of mining lease and in view of the provisions of Section 11(2) of the MMDR Act before amendment of Section 11 of the MMDR Act which came into effect from 18.12.1999 and as per the provisions which were in existence at the time of filing the applications for grant of mining lease, the applicants, who had filed the applications, would have preferential right over the applicants, who had filed applications subsequently.

18.2. In view of proviso to Section 11(2) of the MMDR Act as per Amendment Act No. 38/1999, which has come into effect from 18.12.1999, once the notification has been issued, the applicants would lose their preferential right and 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 purpose of assigning priority under the said sub-section.

18.3. In our considered opinion, the moment notification has been issued in view of the first proviso to Sub-section (2) of Section 11 of the MMDR Act, the petitioners would lose their preferential right and they are placed on par with the applicants, who filed applications in response to the notification.

18.4. Of course, it was also contended by the writ petitioners that the State Government had no power to reserve the minerals for exploitation by the State prior to 16.01.1980 and the notifications issued during 1959, 1961 and 1963 denotifying the said reservation and throwing the area open for grant of lease by notification dated 17.02.2003 could not be passed.

18.5. Though the applicant-writ petitioner had filed applications much prior to coming into force of the Amendment Act as referred to above, their preferential right is given a go-by moment the notification is issued and they have to stand in a queue with the other applicants for consideration of their claim and this would prejudicially affect the preferential rights which had vested in them u/s 11(2) of the MMDR Act before amendment. Therefore, the petitioners sought for quashing of the notifications and for a direction to the respondents to consider their applications on priority basis in preference over the applications filed later to the date of the applications of the writ petitioners.

19.1. Writ petition No. 18445/2003 and connected petitions were resisted by the respondents therein contending that the provisions of Section 11(2) of the MMDR Act is clear and unambiguous.

19.2. Since the applications filed prior to the notification have not been disposed

of, all the applications which were filed before the date of the notification and the applications received in response to the notification within the prescribed period shall be considered together and this would not cause prejudice to the writ petitioners, who have no vested right for consideration of their claim for grant of mining lease as the State is the absolute owner of the minerals and as owner, it is open to the State to issue notifications so that opportunity would be available to all to competitively apply for grant of mining lease and there shall also be transparency and equal opportunity for the mining public, which would not be available if the applications are scrutinized on priority basis by giving preference to the applications filed earlier and wherefore, notifications have been validly issued in accordance with law. In view of the proviso to Section 11(2) of the MMDR Act, all the applications received subsequent to the notification and the applications filed prior to the date of the notification have to be considered together.

20.1. Learned single Judge clubbed all the writ petitions, wherein the above referred notifications dated 17.02.2003 and 15.03.2003 had been challenged and by common order dated 27.11.2006, held that the State Government had no power to reserve the mining area for exploitation by the State prior to 16.01.1980, when the power was given to the Government for reserving the land for exploitation by the State and therefore, the notifications of the years 1959, 1961 and 1965 were without jurisdiction and the order de-notifying the said land by notification dated 17.02.2003 was inconsequential. The learned single Judge observed that in view of the proviso to Section 11(2) of the MMDR Act, once a notification has been issued in the Official Gazette calling for applications for grant of 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 the said sub-section and wherefore, the learned single Judge held that the point that arose for determination by the Court in the Writ Petitions was as to whether the provisions of Section 11(2) of the MMDR Act as amended by Amendment Act No. 38 of 1999, which has come into effect from 18.12.1999, is prospective and it would take away the right of the preferential right provided in the first part of Sub-section (2) of Section 11 of the MMDR Act, of those applicants, who had filed applications prior to coming into force of the amended provision.

20.2. The learned single Judge observed that the petitioners, in the absence of the notification had a preferential right of consideration of their applications over the applicants, who have made applications subsequent to the date of their applications. The effect of the notification is that the petitioners have lost their preferential right. Notwithstanding the fact that the petitioners are waiting in the queue for decades, after complying with various requirements of law, now they are made to stand along with applicants, who may make an application in pursuance of the impugned notifications.

20.3. No doubt, as held by the Hon"ble Supreme Court in Amritlal Nathubhai Shah (supra), no person has any right to exploit the minerals otherwise than in accordance with the provisions of the Act and the Rules and the State Government is the owner of the minerals within its territory and the minerals vest in it.

20.4. The State Government had the inherent right to reserve any particular area for exploitation in the public sector and the petitioners also claimed preferential right in accordance with the Rules only and the said right is not absolute. Sub-section (5) of Section 11 of the MMDR Act provides that for any special reasons to be recorded, the State Government may grant a lease to an applicant, whose application was received later in preference to an application received earlier subject to the same, the Rules recognize a preferential right.

20.5. The learned single Judge accepted the contention that there was no provision for reserving the land for mineral exploitation by the State prior to 1980 and the notifications issued in the years 1959, 1961 and 1965 reserving the land for mineral exploitation by the State are without jurisdiction and consequently, the notification dated 17.02.2003 pertaining to de-reservation of the land mentioned therein, is also inconsequential and learned single Judge further held that the vested right of preference over the applications filed according to seniority could not be taken away by the proviso to Section 11(2) inserted by amendment Act, 1999 and the petitioners have not challenged the provisions of the MMDR Act and the provisions of Section 11 of the MMDR Act have to be construed and notification gives transparency and opportunity to the public to make applications and to compete.

20.6. The learned single Judge, thus did not set aside the notifications and has issued directions that the applications filed prior to the notification shall be considered without reference to proviso to Section 11(2) of the MMDR Act and the impugned notifications; and in the event of not granting of the lease in favour of the petitioners, the applications received in response to the notification shall be considered in accordance with law and accordingly, allowed the writ petition and the same has been confirmed by the Division Bench in W.A. No. 807/2007 and connected writ appeals, disposed of on 12.03.2009.

20.7. The learned single Judge observed that in view of proviso to Sub-section (2) of Section 11 of the MMDR Act, once a notification has been issued, the question of giving any preference to the applications which have not been disposed of and had been filed earlier to the date of the notification, will have to be considered along with the applications received in response to the notification and all the applications shall be deemed to have been received on the same day.

20.8. The learned single Judge further observed in para 27 of the order as follows:

27. First proviso to Sub-section (2) of Section 11 provides that the applications received prior to the publication of the notification in respect of lands in 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 that sub-section. Thus, once a notification is issued under this proviso calling for applications, persons who have made applications prior to the notification would lose their preferential right and their applications would be considered along with the applicants who filed applications in pursuance of the notification. It is interesting to note that none of these provisions are under challenge and all these provisions are operating in their respective fields. Under these circumstances, it would be appropriate to harmonize the conflicting claims and give effect to these statutory provisions.

20.9. The learned single Judge also appreciated the advantages that would be available by issuing notification calling for applications for grant of mining lease and held that it is in public interest and observed as follows:

28. When the Government throws open the entire extent of mining area for public participation, the bona fides of the Government cannot be disputed. It is in public interest. It leads to transparency. Every citizen would have an equal opportunity to the largesse of the Government. It is an attempt to give equal opportunities to every one in so far as public wealth is concerned. It is in tune with equality clause, enshrined in Article 14 of the Constitution. It would not be proper to scuttle this attempt on the part of the Government by hyper technical interpretation of the provisions. The intention of the Parliament in enacting this provision is to be kept in mind, respected and given effect to. But, at the same time, if these notifications were to affect the interest of persons, by taking away their preferential rights which is provided under Rules, the Court should be slow in giving effect to such an act on the part of the Government....

20.10. The learned single Judge, in the same paragraph, has further observed as follows:

... If the Government by its inaction, lethargic attitude or for any other reason has not been able to dispose of the applications for grant of lease for decades, the applicants cannot be made to suffer. It would amount to conferring a premium on the inaction on the part of the Government. If the applications are waiting in the queue for more than a decade and in some cases for more than two - three decades and they have complied with the legal requirements and the matter is agitated in different forums, if such applicants, for no fault of their's, is now made to stand along with the applicants who would make applications in pursuance of the impugned notifications, it would be a travesty of justice, unfair and unreasonable....

20.11. The learned single Judge further observed in para 30 of the order as follows:

... In the fitness of things and in the facts of this case, it would be appropriate to direct the Government to consider the case of all these petitioners in the background of Section 11(2) of the Act in the light of their preferential right and

excluding the application of first proviso and without reference to the impugned notifications and pass appropriate orders. If in pursuance of the notification any applications are received in respect of the lands for which these petitioners have made applications, only in the event of the petitioners not being granted the lease, their applications could be considered....

20.12. It is to be noted that the learned single Judge has clearly clarified that the above said procedure to be applied in respect of the applications filed prior to the date of the notification in the present case by the writ petitioners would not be applicable to non-parties to the writ petitions and applicable only in respect of the lands, which is the subject matter of the writ petitions.

20.13. The learned single Judge further, in para 31, observed of the order as follows:

... In so far as the applications received in pursuance of the impugned notifications in respect of other lands are concerned, (excluding the lands covered which is the subject matter of these writ petitions) the Government is at liberty to consider all the pending applications before the notification and applications received after notification together as required under proviso to Section 11(2) and pass appropriate orders. This arrangement would advance the cause of justice and equitable. In those circumstances, it would not be necessary to go into the legality of these notifications or for quashing of the same at the instance of the petitioners in all these writ petitions...

20.14. Ultimately, the learned single Judge has passed the following Order:

(i) The applications filed by the petitioners in all these writ petitions shall be considered by the State Government u/s 11(2) of the Act without reference to the first proviso to Section 11(2) of the Act and the impugned notifications in the light of the observations made above.

Only in the event of not granting the lease in favour of any of the petitioners as referred to in Clause (i) supra; the applications received in pursuance of the impugned notifications in respect of land covered in these writ proceedings, may be considered in accordance with law.

All the applications pending prior to the impugned notifications and the applications received in pursuance of the impugned notifications, in respect of lands excluding the lands covered under these writ petitions, the State Government is at liberty to consider them in accordance with the proviso to Section 11(2) of the Act.

(iv) In the circumstances as aforesaid, there is no necessity to quash the impugned notifications at the instance of the petitioners.

(v) All these Writ Petitions are disposed of accordingly.

21.1. The decision of the learned single Judge dated 27.11.2006 was challenged in W.A. No. 807/2007 and connected writ appeals and the Division Bench of this

Court disposed of the appeals by order dated 12.03.2009 confirming the order passed by the learned single Judge in W.P. No. 18445/2003 and connected writ petitions dated 27.11.2006. The Division Bench of this Court while disposing of the said Writ Appeals, held that the finding of the learned single Judge that there was no proviso prior to 16.01.1980 for reserving the land for exploitation by the State and wherefore, reservation of mining area for exploitation by the State Government during 1959, 1961 and 1963 were without jurisdiction and notification dated 17.02.2003 was inconsequential. The Division Bench in its order dated 12.3.2009 in Writ Appeal No. 807 of 2007 etc., further held that in view of the proviso to Sub-section (2) of Section 11 of the Act, once a notification has been issued, 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 and had not been disposed of, have to be considered together and thus observed in para 20 of the judgment as follows:

20. In so far as the second point for consideration, a combined reading of the provisions of Section 11, Rules 59 and 60, it becomes clear that the applications filed prior to the issue of notification inviting applicants in respect of areas which require such a notification will be premature. If the State Government has not disposed of such applications as premature, they continue to remain without being entertained. Then such of those applications which are not disposed of attaining maturity on the happening of the two events viz., relaxation of requirement of Rule 59(1) by the Central Government under Rule 59(2) or issuance of notification under Rule 59(1) inviting applications for grant of mineral concessions will have to be necessarily considered along with the applications received pursuant to the notification.

21.2. The Division Bench in its order dated 12.3.2009 in Writ Appeal No. 807 of 2007 etc., approved the observations of the learned single Judge that in respect of non-writ petitioners, the applications filed prior to the notification have to be considered along with the applications filed in response to the said notification under proviso to Section 11(2) of the MMDR Act and observed in para 24 of the judgment as follows:

24. The learned single Judge, in our view, is right in giving directions to consider the applications of non-writ petitioners, whose applications are pending and not rejected as premature, to be considered along with those applicants, who have filed pursuant to the notification as per the proviso to Section 11(2) of the Act.

21.3. The Division Bench in its order dated 12.3.2009 in Writ Appeal No. 807 of 2007 etc., in para 26 of the judgment, further observed as follows:

26. Since, the aforesaid core issues have been rightly considered and answered by the learned single Judge based on the authoritative pronouncements of the Constitutional Benches of the Hon''ble Supreme Court, we do not find any error having been committed in issuing the directions contained in the impugned order, which are nothing but equitable and consequential directions, taking into

consideration the individual facts and circumstances of each of the writ petitions. Since the core issues that fall for consideration have rightly been considered and answered by the learned single Judge in the order dated 27.11.2006, the other contentions canvassed by the learned Counsel for the appellants, which relate to only the consequential directions, which have been issued in the impugned order, do not survive for consideration. The contentions of the learned Counsel for the appellants would have survived for consideration, had we found fault with conclusion of the learned single Judge with regard to the right of reservation. Having found that no error has been committed by the learned single Judge in that regard, we hold that the contentions with regard to the directions issued by the learned single Judge, do not survive for consideration.

Accordingly, the Division Bench by order dated 12.3.2009 in Writ Appeal No. 807 of 2007 etc., confirmed the order dated 27.11.2007 passed by the learned single Judge in Writ Petition No. 18445/2003 and connected matters.

22.1. That apart, the Division Bench of this Court in W.A. No. 5026/2008 and connected writ appeals by order dated 05.06.2009, had occasion to consider the provisions of Section 11 of the MMDR Act and has laid down that in view of proviso to Sub-section (2) of Section 11 of the MMDR Act, once a notification has been issued, all the applications received during the period specified in such notification and the applications which had been received prior to the date of the notification and had not been disposed of are to be considered as having filed on the same day and the question of giving any preference to the applicants, who had filed applications prior to the date of the notification and whose applications had not been disposed of, would not arise.

22.2. It is also clear from the above referred observations of the learned single Judge in the order passed in W.P. No. 18445/2003 and connected writ petitions dated 27.11.2006 and also the observations of the Division Bench while confirming the said order of the learned single Judge in Writ Appeal No. 807/2007 and connected writ appeals disposed of on 12.03.2009, that the learned single Judge as also the Division Bench have held specifically that in view of the proviso to Section 11(2) of the MMDR Act, which has come into force by Amendment Act No. 32 of 1999 with effect from 18.12.1999, all the applications received in response to such notification within the period specified in such notification and the applications which had been received prior to the publication of the 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 purpose of assigning priority under the said sub-section having regard to the wordings of first proviso to Section 11(2) of the MMDR Act, which is clear and unambiguous, it was the only interpretation that can be given to, for giving effect to first proviso to Section 11(2) of the MMDR Act.

22.3. The wordings of the first proviso to Section 11(2) of the MMDR Act, are clear, plain and unambiguous. They are reasonably susceptible to only one meaning as has also been held by the learned single Judge in W.P. No.

18445/2003 and connected Writ Petitions disposed of on 27.11.2006 and confirmed by the Division Bench in W.A. No. 807/2007 and connected appeals disposed of on 12.03.2009 that all the applications received within the time prescribed in the notification and the applications filed prior to the date of the notification and not yet disposed of, shall be deemed to have been received on the same day for the purpose of assigning priority and Courts are bound to give effect to that meaning irrespective of consequences and the question of construction of Statute does not arise as the Act speaks for itself and Statute has to be given effect to whether Court likes it or not as laid down by the Hon''ble Supreme Court in Gurudevdatla VKSSS Maryadit and Others Vs. State of Maharashtra and Others, .

22.4. That apart, it is clear from the above referred material on record that none of the writ petitioners in W.P. No. 18445/2003 and connected writ petitions had challenged the first proviso to Section 11(2) of the MMDR, Act which has come into effect from 18.12.1999. They had only challenged the notification, which would affect their preferential right. Learned single Judge has also observed in his judgment, as culled out above, that none of the petitioners had challenged the constitutional validity of the first proviso to Section 11(2) of the MMDR Act and wherefore, full effect has to be given to the provisions of the MMDR Act.

22.5. As per the observations made by the learned single Judge, which has been confirmed in the appeal in respect of non-writ petitioners, i.e. the persons who are not parties in the writ petitions decided by the learned single Judge and confirmed in appeal, the interpretation of proviso to Section 11(2) of the MMDR Act by the learned single Judge as confirmed by the Division Bench is to the effect that all the applications received in response to the notification and the applications received prior to the date of the notification and had not been disposed of, shall be deemed to have been received on the same day and shall be disposed of accordingly. Even in the operative portion of the order of the learned single Judge dated 27.11.2006, which has been confirmed in appeal, it has been specifically ordered in Clause (iii) of the operative portion of the order that all the applications pending prior to the impugned notifications and the applications received in pursuance of the impugned notifications, in respect of the lands excluding the lands covered under those writ petitions, the State Government is at liberty to consider them in accordance with the proviso to Section 11(2) of the MMDR Act. However, the said interpretation of proviso to Section 11(2) of the MMDR Act to the effect that once a notification has been issued, all the applications received in response to the said notification within the prescribed time and also the applications which had not been disposed of, shall be deemed to have been received on the same day for the purpose of assigning priority, has been given go-by or dispensed with and the directions have been issued in respect of the writ petitioners that the applications filed by them shall be considered by the State Government on preferential basis u/s 11(2) of the MMDR Act without reference to first proviso to Section 11(2) of the MMDR Act and the impugned notifications and only in the event of not granting of lease in

favour of any of the writ petitioners, the applications received in pursuance of the impugned notifications in respect of land covered in those writ proceedings, may be considered in accordance with law.

22.6. The only reasoning assigned by the learned single Judge for excluding the applicability of proviso to Section 11(2) of the MMDR Act to the writ petitioners is that they had filed applications prior to the date of the notification and they have been waiting in queue for decades and notifications impugned in the writ petitions would affect their preferential right, which they had, prior to the amendment of Section 11(2) of the MMDR Act by Amendment Act No. 38 of 1999 and equity and interest of justice required that such an order should be passed.

22.7. It may be noted that the learned single Judge or the Division Bench has not held that the notifications challenged in the writ petitions are liable to be quashed. However, the learned single Judge without quashing the notifications dated 17.02.2003 and 15.03.2003, has proceeded to issue directions as referred to above for consideration of the applications of the writ petitioners in accordance with the preferential right, which they had, prior to amendment of Section 11(2) of the MMDR Act in 1999.

22.8. It is well settled that interpretation of the provisions of a statute has to be complete in all respects and interpretation would not depend upon the fact as to whether the parties have approached the Court or nonparties to the writ petitions and there cannot be one interpretation in respect of persons who have approached the Court and another interpretation in respect of persons who have not approached the Court i.e., non-parties to the writ petition, as done by the learned single Judge in his order dated 27.11.2006 passed in W.P. No. 18445/2003 and connected writ petitions, which has been confirmed by the Division Bench in W.A. No. 807/2007 and connected writ appeals by order dated 12.03.2009.

22.9. The learned single Judge nor the Division Bench while confirming the order of the learned single Judge have held that the application of the writ petitioners had been disposed of when the notification had been issued on 15.03.2003. The very direction issued by the learned single Judge as confirmed in appeal would show that the direction has been issued for consideration of the applications of the writ petitioners on priority basis in preference to applications received subsequent to the date of notification and that the applications of the writ petitioners had not been disposed of. Therefore, in the absence of any challenge to the provisions of proviso to Section 11(2) of the MMDR Act and the interpretation of the said proviso to Section 11(2) of the MMDR Act by the Division Bench confirming the interpretation of the learned single Judge as referred to above and as the applications of the writ petitioners were pending and not disposed of on the date of the notification and in view of proviso to Section 11(2) of the MMDR Act, it is clear that the question of treating the applications of the writ petitioners in preference to the applications filed later and the applications received in response to the notification is clearly erroneous and

cannot be sustained and the order dated 12.03.2009 passed by the Division Bench in W.A. No. 807/2007 and connected writ appeals confirming the order passed by the learned single Judge in W.P. No. 18445/2003 and connected writ petitions dated 27.11.2006 requires reconsideration as the same suffers from error apparent on the face of the record as referred to above.

23. In view of the above reasoning, we answer the questions referred for consideration of this Bench as follows:

(i) In view of proviso to Section 11(2) of the MMDR Act, 1957, the applications filed prior to notification made under Rule 59(1) of the M.C. Rules, 1960 cannot be given preferential right over the applications filed pursuant to the notification and 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 purpose of assigning priority.

(ii) In view of our answer to question No. 1, the Judgment of the Division Bench dated 12.03.2009 made in Writ Appeal No. 807/2007 and connected Writ Appeals requires reconsideration and the law laid down by the Division Bench while confirming the order of the learned single Judge in W.P. No. 18445/2003 and connected Writ Petitions disposed of on 27.11.2006 to the effect that the applications received prior to the publication of notification shall be considered by the State Government u/s 11(2) of the MMDR Act without reference to the first proviso to Section 11(2) of the Act and the impugned notifications and only in the event of non-granting of the lease in favour of any of the applicants, who had filed applications prior to the date of the notification, the applications received in pursuance of the impugned notification shall be considered in accordance with law, is not sustainable in the eye of law and is overruled.

24. In view of the answer to questions of law referred to this Bench for consideration and in view of the submission of the learned Counsel appearing for the parties that the writ petitions and writ appeals may be directed to be disposed of by the Division Bench in accordance with the answer to the questions by this Bench, we do not propose to dispose of the Writ Petitions or Writ Appeals on merit and Writ Petitions and Writ Appeals shall be posted before the Division Bench for disposal on merit in the light of the answer to the questions referred to above.

25. The questions referred to the Full Bench are ordered accordingly. However, there shall be no order as to costs.