(2002) 12 SC CK 0005

In the Supreme Court Of India

Case No : Civil Appeal 8501 of 2002

Indian Charge Chrome Ltd. and Another APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 17-12-2002

Acts Referred:

Mineral Concession Rules, 1960 — Rule 59, 59(1), 59(2)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(4), 17(2), 17(4), 5(1)

Citation : (2003) 1 ALD 91 : (2002) 10 JT 583 : (2003) 1 OLR 619 : (2003) 2 SCC 533 : (2002) 5 SCR 295 Supp

Hon'ble Judges : G. B. Pattanaik, C.J;S. B. Sinha, J;K. G. Balakrishnan, J

Bench : Full Bench

Advocate : P. Chidambaram, Ashok H. Desai, D.A. Dave, V.A. Bobde and G.L. Sanghi, Anuradha Dutt, Ekta Kapil, B. Vijaya Lakshmi Menon, K.K. Lahiri, Ashok Parija, Ejaz Maqbool, Ujjwal Kr. Jha, Aslam Ahmed, Ranjan Kr. Jha, Gourav Kejriwal, Jana Kalyan Das, A. Subba Rao, Sunita Sharma, D.S. Mahra, Raj Kumar Mehta, M. Sarada, Ajay Choudhary and S.B. Upadhyay, for appearing partie, for the Appellant;

Judgement

Pattanaik, C.J.—Leave granted.

2. This appeal by grant of special leave is directed against the decision of the Orissa High Court dated 18th of May, 2001, dismissing the appellant''s writ petition which had been filed against the recommendation of the State of Orissa dated 28.1.1999, seeking approval of the Government of India u/s 5(1) of the Mines and Minerals (Regulation and Development) Act, 1957 [hereinafter referred to as ''the Act''], in respect of 84.881 Hectares of land, bearing chromite in Village Kalarangiata, Kaliapani in Sukinda Tahsil of Jaipur District, Orissa, in favour of M/s. Nava Bharat Ferro Alloys Limited. The writ petition which had been filed in Delhi High Court and since transferred to this Court is directed against the order of approval of the Government of India dated 9.7.2001, in respect of the self-same area on the basis of the recommendation made by the State

Government.

3. A large chunk of land about 50 Sq. Meters had been granted for mining operation in favour of TISCO in the year 1952. A lease deed had been executed in respect of 1813 Hectares for chromite extraction in favour of TISCO for a period of 20 years on 12.1.1953. In 1973, the State of Orissa, renewed the grant in respect of 1261.476 Hectares in favour of TISCO. The aforesaid lease was to expire on 3.10.1991. Before its expiry, TISCO applied for a second renewal for 20 more years u/s 8(3) of the Act and the State of Orissa had recommended the Central Government for a second renewal in respect of the entire area, but for a reduced period of 10 years. The Central Government however granted approval for renewal in respect of half of the area namely 650 Hectares in favour of TISCO and further directed that the balance area would be made available to other industries in accordance with the provisions of the Act and the Rules. This order of the Central Government was challenged by TISCO in the Orissa High Court in O.G.C. No. 7729 of 1993. In that writ petition, the rival claimants appeared and made their claims. The High Court, therefore, by its Judgment dated 4.4.95, decided that the entire matter requires reconsideration by the Central Government. This order of the High Court was assailed in this Court by TISCO in SLP No. 10830/1995. The Central Government, pursuant to the observations made by the Orissa High Court in its Judgment, appointed an Export Committee under the Chairmanship of Shri S.D. Sharma, to examine the matter and assess the requirements of several aspirants. The said Sharma Committee gave a Report on 16.5.1995, by which TISCO was recommended for an area of 406 Hectares. The Sharma Committee also took into consideration the claims of other claimants and assessed their respective need, but did not undertake the task of recommending any area for being granted as lease in favour of any of those claimants. The Central Government, on the basis of the Report of the Sharma Committee, passed an order on 17.8.1995, requesting the State Government to take necessary steps for grant of 406 Hectares in favour of TISCO for a period of 20 years. The Central Government also further directed that the application for mining lease by 4 other applicants namely, Jindal, Ferro, IMFA and Ispat Alloys could be considered in respect of balance area of 855.476 hectares. The Central Government relaxed the provisions of Sub-rule (1) of Rule 59 of the Mineral Concession Rules, on account of urgent need of the four applicants referred to earlier. The SLP filed by TISCO stood disposed of by Judgment of this Court since AIR1996SC2462 . On 29th of June, 1997, the State Government recommended to the Central Government for grant of lease to 4 claimants in respect of the balance area of 855.476 hectares on the basis of 50 per cent of their respective requirements, which had been assessed by the Sharma Committee and further directed that the rest of the area should be thrown upon for consideration of the claims of all other claimants along with the 4 claimants. This order of the State Government dated 29.6.1997 was assailed in Orissa High Court in O.G.C. No. 12302 of 1997 and the High Court dismissed the same. The aforesaid Judgment of the Orissa High Court was assailed in this Court by one of

the four claimants and this Court also dismissed the same since 1999(105)ELT4(SC) . The State of Orissa in the meantime had appointed a Committee under the Chairmanship of Shri Jagdish Prasad Dass to examine as to how the remaining area of 436.295 hectares will be granted and if so, in whose favour. On 28.1.1999, the State Government recommended the grant of 84.881 hectares in favour of respondent Nava Bharat, which was assailed by the present appellant in the Orissa High Court. The High Court having dismissed the writ petition filed by the appellant, the present appeal has been preferred in this Court.

4. While the SLP filed by the appellant was pending in this Court, the State Government took a decision to withdraw its earlier recommendation in favour of Nava Bharat and decided that the entire balance area of 436.295 hectares could be granted to its own public sector undertaking, the Orissa Mining Corporation.

5. Mr. P. Chidambaram, the learned senior counsel contends that in view of the changed policy of the State Government which fact can be taken note of by this Court as a subsequent event, the so-called recommendation in favour of Nava Bharat, which is the subject matter of challenge in the civil Appeal, no longer remains valid and implement able and, therefore, the matter can be disposed of on that basis on taking cognizance of the subsequent events that have happened. In support of this contention, reliance had been placed on the decisions of this Court in case of . The learned counsel further urged that no legal right has accrued in favour of Nava Bharat, on the basis of the so-called recommendation of the State Government as well as the approval of the same by the State Government until and unless a formal lease deed is executed. According to him, the aforesaid recommendation of the State Government as well as the order of approval of the Central Government at the most can be said to have created an inchoate right in favour of Nava Bharat, but no vested right exists in favour of Nava Bharat. It is then urged that in view of the observations made by this Court in the case 1999(105)ELT4(SC) , it was obligatory on the part of the State Government to consider the question of grant of the balance 436.295 hectares only on receipt of the recommendation of Dass Committee and the State Government was not entitled to pick up any one application and grant any area in favour of any applicant and such pick up and grant in favour of Nava Bharat constitutes an infraction of the direction given by this Court in its Judgment 1999(105)ELT4(SC) . It was further contended that assuming the State could, as owner, exercise its power in favour of any applicant, the recommendation made for giving priority to a later applicant must be supported by special reasons to be recorded, as provided u/s 11(4) as well as u/s 5(1) of the Act. In the absence of any such special reasons in the case in hand for giving priority to Nava Bharat in terms of Section 11(4), the recommendation itself is vitiated and the High Court committed error in rejecting the said contention. According to him, the so-called reasons contained in the Note dated 5.8.88 could be the reasons satisfying the requirements of Section 5(1) of the Act and cannot be the reasons for giving priority u/s 11(4). The learned counsel further urged

that the Central Government having indicated the deficiency in the recommendation of the State Government by letter dated 27th June, 2001, the so-called reply of the State Government on 30th of June, 2001 was in fact not on the authority of the State Government and on the other hand was a reply by an officer of the Government. That being so, in the eye of law the deficiency pointed out by the Central Government had not been cured and the Central Government could not have accorded the approval on that basis. Coming to the mistake committed by the Central Government in its approval dated 9th of July, 2001, which is the subject matter of challenge in the transferred writ petition, Mr. Chidambaram contends that the same is vitiated due to non-application of mind and the Central Government also has not recorded any reason in terms of Rule 59(2) of the Minerals Concessions Rules and no special case has bene made out in favour of Nava Bharat. According to the counsel, the earlier relaxation made on 17.8.1995 was only for 4 of the applicants, whose case were treated as special case and that relaxation made u/s 5(2) will not enure to the grant in favour of Nava Bharat in the case in hand. The learned counsel also contended that the State Government having indicated that the subsequent reply of 30th of June, 2001 was not under the authority of the Government, the approval of the Central Government, on the basis of an unauthorised clarification, is vitiated and that approval cannot be sustained.

6. Mr. Ashok Desai, the learned senior counsel appearing for the respondents Nava Bharat, contended that the alleged subsequent decision of the State Government to exploit the entire balance area through a public sector undertaking namely, Orissa Mining Corporation, was not approved by the Central Government and the Central Government in its letter dated July 19, 2002, has already communicated the same and, therefore, the so-called subsequent decision of the Government, keeping the areas reserved for exploitation through its own public sector undertaking, cannot be held to be a subsequent event, on which the cases in hand can be disposed of. He further contended that it is the appellant, who assails the legality of the decisions of the High Court, upholding the recommendation made by the State Government as well as the legality of the approval made by the Central Government to the said recommendation. That being so, the so-called subsequent event would be of no consequence. Mr. Desai also contended that Rule 59 of the Mineral Concession Rules deals with availability of areas for re-grant to be notified when such area was previously held or which is being held under a prospecting licence or a mining lease. Sub-rule (2) of Rule 59 empowers the Central Government to relax the provisions of Rule (1) for reasons to be recorded in writing. Such relaxation is made in respect of the area and in the case in hand, this has been made on 17.8.1995, when the question of consideration for grant in respect of the four other applicants cropped up. That being the position, no further relaxation was required. He then contended that even if such relaxation can be held to be required, the same has been done in the case in hand by the Central Government. With regard to the contention of Mr. Chidambaram that the State Government did not indicate any

special reasons for picking up the case of Nava Bharat, as required u/s 11(4) of the Act, Mr. Desai contends that the State Government did indicate in its Order dated 5th of August, 1998, the special reasons for recommending the grant in favour of Nava Bharat Ferro Alloys, the same being under the Industrial Policy of 1996, preference has to be accorded in the matter of grant of PL/ML to local industrial units in the State and Nava Bharat is one such industry and also Nava Bharat Ferro Alloys is the only chrome based industry which does not have any captive area. The order further indicates that the State Government decided to give preference to Nava Bharat which was really starving and was in dire need of raw materials. This being the position, the contention of Mr. Chidambaram that there was no special reasons, is wholly unsustainable. According to Mr. Desai, when pursuant to the letter of the Union Government, the Secretary intimated the reasons on 30th of June, 2001, it was not necessary for him to submit the file to the Minister concerned inasmuch as the reasons had been recorded by the Chief Minister himself. According to Mr. Desai, it is the existence of reasons, that is the requirement and those reasons being there, which was duly looked into by the High Court, the contention of Mr. Chidambaram that the intimation of reasons was unauthorised, cannot be sustained. On the question that by Judgment of this Court, the State Government was not entitled to pick and choose any applicant before the receipt of the Expert Committee''s Report, Mr. Desai contends that neither there is any such observation in the Judgment of this Court in 1999(105)ELT4(SC) , which has been made clear in the order dated 10th of August, 2000, when an application for clarification was filed, which was registered as I.A. No. 2 of 2000. Mr. Desai also further urged that the Central Government having accorded the approval to the recommendation of the State Government, proposing to grant of 84.881 hectares to Nava Bharat, the contention of the petitioner in the transferred writ petition that the said order of approval is contrary to the relevant provisions of the Act and the Rules, is wholly unsustainable. Mr. Desai lastly contended that the State Government having produced the relevant file, which was seen by the Orissa High Court, while disposing of the Judgment and the same having been produced in this Court, the Court may examine the file and if it is satisfied that all the formalities had been duly complied with, then the jurisdiction of this Court need not be invoked, even if there is some error in communicating the decision by an officer of the State.

7. In view of the rival submissions at the Bar, four questions arise for our consideration:

1. Whether the so-called reservation of the entire area for being exploited by the Orissa Mining Corporation puts an end to the right of the respondents and the appeal as well as the writ petition could be disposed of on that ground?

2. Whether in fact there has been any relaxation of the provisions of Rule 59(1) by the Central Government under Rule 59(2) in respect of the area in question and if so, once the relaxation having been granted, further any relaxation when the question of grant in favour of Nava Bharat cropped up?

3. Was there really any reasons recorded by the State Government in terms of Section 11(4) of the Act for treating the application in the preferential manner? and lastly

4. Whether the Judgment of this Court since 1999(105)ELT4(SC) , prevented the State Government to take the case of any individual applicant and considered the same on its own merits, before receipt of the recommendation of the Committee, which had been set up to find out the requirements of the respective claimants and submit the recommendation thereto?

8. So far as the first question is concerned, at the outset, it may be stated that it is the appeal of a rival claimant against the Judgment of the Orissa High Court, holding the recommendation made by the State Government in favour of the respondents Nava Bharat to be legal and the original petition which was filed in the Delhi High Court and which stood transferred to this Court, is against the order of approval passed by the Central Government. To consider the legality of the same, the so-called subsequent event of reservation is of no consequence. This Court is not called upon to answer the question whether the respondents Nava Bharat has any right to the lease-hold area in which case possibly, it could have examined as to whether that right still subsists or not, in view of the so-called order of reservation in favour of the Orissa Mining Corporation. There is no dispute with the proposition that a Court can always take up the subsequent even into consideration and either grant or refuse the release on the score, but that principle is of no application to the case in hand inasmuch as this Court is not going to enforce any right of the respondents Nava Bharat, but on the other is merely examining the legality of the recommendation made by the State Government as well as the legality of the approval thereto made by the Central Government. That apart, even the so-called subsequent decision of the State Government to reserve the entire area for being exploited through the public sector undertaking namely the Orissa Mining Corporation was not accepted by the Central Government, which is apparent from the statement of the Ld. Advocate General in a writ petition which had been filed before the Orissa High Court as well as the copy of the letter dated 18th of July, 2002 of the Government of India in the Ministry of Coal and Mines, that was produced before us in this Court. In this view of the matter, the so-called subsequent event also does not exist in the eye of law. The counsel appearing for the State however submitted that the Government of Orissa is pursuing the matter but unless and until the Central Government accords approval of the reservation, the so-called reservation in favour of the Orissa Mining Corporation would not come into existence. Consequently the first question that arises for consideration, must be answered against the appellant.

9. Coming to the second question, Rule 59 of the Mineral Concession Rules, operates when an area which was previously held under a prospecting licence or a mining lease or which was reserved by the Government or any local authority for any purpose other than mining or in respect of which the order granting a

permit or lease has been revoked or in respect of which a notification has been issued under Sub-section (2) or Sub-section (4) of Section 17 when becomes available for grant. The underlying principle engrafted under Rule 59 is a transparency when the area is made available for re-grant, so that all persons interested can make their application and those applications can be dealt with, in accordance with the provisions of the Act and the Rules. Sub-rule (2) of Rule 59 however empowers the Central Government for reasons to be recorded in writing to relax the provisions of Sub-rule (1). The relaxation is in respect of an area, which was previously held under a mining lease or a prospecting licence. In the case in hand, we are not concerned with other clauses of Rule 59(1). When the entire area had been held by Tisco under a mining lease and when Tisco was granted renewal only in respect of 406 hectares and the balance area became available and the Central Government directed that the application for mining lease by four other applicants could be considered, finding the urgent need of those four applicants, including the present appellant, the Central Government relaxed the provisions of Sub-rule (1) of Rule 59. The balance area from out of the previously held area of Tisco, thus being made available for grant of mining leases in favour of intended applicants and the Central Government having relaxed the provisions of Sub-rule (1), it was not necessary to again exercise that power under Sub-rule (2) out of the balance area excluding the area granted in favour of the four applicant the present respondents could be granted an area of 84.881 hectares. That apart, the question of consideration of other applicants, including the case of the appellant for grant of mining lease was being done pursuant to the Judgment of this Court. Then again when the impugned order of approval was granted by the Central Government, the Central Government did exercise the power under Sub-rule (2) of Rule 59 and approved the recommendation made in favour of respondent Nava Bharat. In that view of the matter, we do not see any force in the contention of Mr. Chidambaram that there has been an infraction of Rule 59(2) inasmuch as no special case has been made out for grant in favour of Nava Bharat. We answer the second question accordingly.

10. Coming to the third question, it is no doubt true that Section 11 provides for a preferential right of certain persons and Sub-section (4) thereof postulates that the State Government may, for any special reasons to be recorded, grant permit or mining lease to an applicant, whose application was received later in preference to an applicant whose application was received earlier. Be it be stated that a Committee of Expert Body was considering the respective need of all the applicants, after the Judgment of this Court in Tisco''s appeal, in the light of the order of the Central Government dated 17.8.1995. The State Government had already granted after assessing the needs of the four claimants namely IMFA, the present appellant, FACOR, ICCL, ISPAT and recommended on the basis of their need at 50% and this 419.18 hectares had been allotted out of 855.476 hectares, which was the balance area that was available for grant after the renewal in favour of Tisco. That being the position and while the matter was

being considered by the Expert Committee, the Government of Orissa and consider the case of Nava Bharat Ferro Alloys Ltd. and the Chief Minister on 14.8.1998, recommended grant of mining lease in favour of Nava Bharat Ferro Alloys, taking into account of fact that they have already established a ferro chrome plant in the State, but they do not have any mining lease for chromium in their favour. We have examined the relevant file ourselves and we find detailed discussion in that respect in the note sheet and the order of the Chief Minister thereon. The aforesaid order of the Chief Minister was reiterated again by order dated 14.1.99 and finally on 28.1.99, the recommendations were sent to the Central Government for approval. On the aforesaid premises, we are unable to accept the contention of Mr. Chidambaram that there were no special reasons in terms of the provisions contained in Sub-section (4) of Section 11 for grant of a preferential right in favour of Nava Bharat Alloys. We, accordingly hold that the State Government did record the reasons in accordance with the requirements of Sub-section (4) of Section 11, while recommending in favour of Nava Bharat Ferro Alloys and the provisions of Section 11(4) must be held to have been duly complied with.

11. The last question that requires consideration is the import and extent of the Judgment of this Court in the case of Ferro Alloys Corporation Ltd. and Anr. v. Union of India and Ors , . In the aforesaid case, which had been filed by one Ferro Alloys Corporation, one of the four beneficiaries in whose favour 419.181 hectares of land had been granted, out of the total balance area of 855.476 hectares of land on the basis of 50% respective requirement and that order of the State Government had been assailed in a writ petition filed in the Orissa High Court. That writ petition being dismissed, the matter had been carried to the Supreme Court. One of the questions for consideration was whether the order of the State Government dated 29.6.1997 was in any way conflict with the earlier order of the Central Government dated 17.8.1995, as upheld by the Supreme Court in Tisco''s case. This Court, on consideration had observed that on a conjoint reading of the order of the State of Orissa and the notification dated 16.11.98, appointing Shri Jagdish Prasad Dass, as Chairman of the Committee to assess the requirement of chrome ore of needy applicants and the subsequent order of the State Government, granting 419.181 hectares in favour of four claimants, the balance of the available area to the extent of 436.295 hectares could be considered for being granted to other applicants, including the four applicants in whose favour there has bene a grant to the extent of 419.181 hectares, on the basis of 50% assessment of their need. There has been an observation that the balance area will have to be taken into consideration by Shri Jagdish Prasad Dass as well as by the State of Orissa for grant of mining lease to other claimants, whose applications are pending scrutiny and while doing so, the Committee of the government will have to take into consideration the remaining 50% assessed needs for further grant of mining lease to FACOR as well as to three other applicants. Relying upon the aforesaid observations, the contention of Mr. Chidambaram for the appellant was that it was not permissible for the

State Government to pick up any single applicant''s application, as has been done in the case of Nava Bharat Ferro Alloys and consequently, the so-called recommendation in favour of Nava Bharat as well as the approval of the Central Government, is in contravention of the direction of this Court in the aforesaid Judgment. We are however unable to accept this submission. The State as the owner of the property is entitled to exercise its powers in respect of mineral wealth in accordance with the provisions of the Act and the Rules and the observations of this Court in the aforesaid case, merely indicate that while considering the cases of all other applicants in respect of the remaining area, the cases of the four applicants, who had been granted mining lease on the basis of their 50% need should also be considered. The aforesaid Judgment of this Court does not put any fetter on the power of the State Government in exercising the preferential right u/s 11 and in considering the case of Nava Bharat for the special reasons in terms of Section 11(4) of the Act, as already stated. This is more apparent from the order that was passed on an interlocutory application being filed by the Nava Bharat as well as the State of Orissa being I.A. Nos. 1 and 2 on 10th of August, 2000, wherein the Court observed that the so-called observations in the Judgment in Ferro Alloys Corporation in paragraph 50, will not in any way be construed to be pre-empting any decision of the High Court of Orissa in the pending writ petition in O.J.C. No. 1830 of 1999. Be it be stated that by that date, the writ petition filed by the appellant against the recommendation of the Government of Orissa dated 28.1.99 was pending and the High Court dismissed the said application, against which the present appeal has been preferred. On examining the Judgment of this Court in 1999(105)ELT4(SC) , we do not find anything stated therein, which can be construed to mean that the State Government was injuncted to consider the case of any individual applicant in accordance with law, as has been done in the case of the respondent Nava Bharat Ferro Alloys Ltd., nor are we in a position to accept the submission that an individual applicant could not have been considered before the recommendation of the Committee, which had been set up to find out the requirements of the respective claimants. To hold that way would tantamount to denuding the State Government of its power as the owner of the minerals to deal with mineral resources of the State in accordance with the provisions of the Act and the Rules framed thereunder. We would accordingly answer the question No. 4 against the appellant. We also do not find any infirmity with the approval of the Central Government made, which is the subject matter of the writ petition that had been filed in the Delhi High Court and which stands transferred to this Court. In the aforesaid premises, the appeals as well as the T.C. stand dismissed.