

(2015) 02 DEL CK 0278

In the Delhi High Court

Case No : LPA 202/2011, CM Nos. 5542, 12135/2012 and LPA 205/2011

Jayaswal NECO Industries Ltd.

APPELLANT

Vs

Sarda Energy and Minerals Ltd. and Others

RESPONDENT

Date of Decision : 24-02-2015

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11(2), 19,
3(c), 3(d), 3(g)

Citation : AIR 2015 Delhi 115 : (2015) 5 FLT 477

Hon'ble Judges : G. Rohini, C.J.;Rajiv Sahai Endlaw, J.

Bench : Division Bench

Advocate : G.C. Bharuka, Senior Advocate, Devashish Bharuka, Jasmeet Kaur and Kaushik, for the Appellant; Ratan Kumar Singh, J.K. Chaudhary, Vinod Chawla, Shashi Bhushan and Akshay Malhotra, Advocates for the Respondent

Final Decision : Dismissed

Judgement

G. Rohini, C.J.—Since common questions of fact and law arise for consideration, these two appeals are heard together and disposed of by this common judgment.

2. M/s. Jayaswal Neco Industries Ltd. is the appellant in both the appeals. LPA 202 of 2011 is directed against the order of the learned Single Judge dated 28.01.2011 in W.P.(C) No 2757 of 2008 whereas LPA 205 of 2011 is directed against the order dated 18.02.2011 in W.P.(C) No. 1038 of 2011.

Background:

3. The matter relates to grant of Prospecting Licence under the Mines and Minerals (Development and Regulation) Act, 1957 (for short "the Act") for the purpose of exploring Iron Ore deposits in Boria Tibbu area of Rajnandgaon District, which initially situated in the State of Madhya Pradesh. By virtue of Madhya Pradesh Reorganization Act, 2000, State of Chhattisgarh has been formed and thus with effect from 01.11.2000 Boria Tibbu area forms part of

State of Chhattisgarh.

4. Prior to formation of State of Chhattisgarh, the appellant/Jayaswal Neco Industries Ltd. as well as M/s. Sarda Energy and Minerals Ltd. (arrayed as respondent No. 1 in LPA 202/2011 and as respondent No. 3 in LPA 205/2011) filed applications for grant of prospecting licence over Boria Tibbu area of Rajnandgaon District. On 04.10.1996, it was decided by the State of Madhya Pradesh to reject the application dated 20.09.1993 of M/s Jayaswal Neco Industries Ltd. and to grant the prospecting licence in favour of M/s. Sarda Energy and Minerals Ltd. on the basis of its application dated 25.04.1995. An order to that effect was passed by the State of Madhya Pradesh on 31.12.1997. Another application of M/s. Jayaswal Neco Industries Ltd. dated 22.05.1990 for prospecting license in respect of the very same area was also rejected by the State of Madhya Pradesh by order dated 12.04.1999.

5. However, the State of Chhattisgarh which was formed on 01.11.2000 took up the issue of grant of prospecting licence over the Boria Tibbu area afresh and by order dated 04.03.2002 rejected the application of M/s. Sarda Energy and Minerals Ltd. dated 25.04.1995. On 05.03.2002, the State of Chhattisgarh decided to grant PL in favour of M/s. Jayaswal Neco Industries Ltd. on the basis of its application dated 22.05.1990. After obtaining the prior approval of the Central Government granted PL in favour of M/s Jayaswal Neco Industries Ltd. was accordingly granted on 28.02.2003. Aggrieved by the same, M/s. Sarda Energy and Minerals Ltd. though preferred a Revision Petition, the same was dismissed by the Mines Tribunal by order dated 05.02.2008. Assailing the said order, M/s. Sarda Energy and Minerals Ltd. filed W.P.(C) No. 2757/2008 and the same was allowed by the learned Single Judge by order dated 28.01.2011.

6. Thereafter, on 17.02.2011, M/s. Jayaswal Neco Industries Ltd. filed W.P.(C) No. 1038 of 2011 challenging the rejection of its application for grant of PL by the State of Madhya Pradesh by order dated 12.04.1999 as confirmed by the Mines Tribunal by order dated 31.12.2001. The said writ petition was dismissed by the learned Single Judge by order dated 18.02.2011 on the ground of laches.

7. Hence, these two appeals by M/s. Jayaswal Neco Industries Ltd. against the orders dated 28.01.2011 and 18.02.2011 in W.P.(C) Nos.2757 of 2008 and 1038 of 2011 respectively.

8. Before advertng to the controversy involved and the contentions advanced by the learned counsel for the parties, it is necessary to notice some more facts leading to the filing of the present appeals.

Facts:

9. M/s. Jayaswal Neco Industries Ltd. (the appellant in both the appeals) filed an application for Prospecting License (PL) on 22.05.1990 for the purpose of exploring iron ore deposits over an area of 154.700 hectares in Boria Tibbu area of Rajnandgaon District in the State of Madhya Pradesh (subsequently formed as

State of Chhattisgarh) . In terms of Rule 11(1) of Mineral Concession Rules 1960 (for short "the Rules") , as it stood at the relevant point of time, the application dated 22.05.1990 was deemed to have been rejected and aggrieved by the same, the appellant (hereinafter referred to as "Jayaswal Neco Ltd.") filed a revision which was allowed by order dated 22.10.1994 and the matter was remanded to the State Government for consideration afresh.

10. By that time Jayaswal Neco Ltd. by way of abundant caution filed another application dated 20.09.1993 for PL in respect of the very same area. M/s. Sarda Energy and Minerals Ltd. (for short "Sarda Minerals Ltd.") also made an application dated 25.04.1995 for grant of PL over 124.020 hectares of land which is overlapping the area of 154.07 hectares in respect of which Jayaswal Neco Ltd. sought PL vide applications dated 22.05.1990 and 20.09.1993.

11. On 04.10.1996, the Government of M.P. considered all the pending applications for PL in respect of Boria Tibbu area including the application dated 20.09.1993 of Jayaswal Neco Ltd. and the application dated 25.04.1995 of Sarda Minerals Ltd. It appears that Jayaswal Neco Ltd. had stated that it was not interested in obtaining PL for iron ore in Rajnandgaon District since it had already been sanctioned PL for large area in Bastar District. Accordingly, by order dated 31.12.1997 passed by the State of M.P., the PL was granted in favour of Sarda Minerals Ltd. and the application of Jayaswal Neco Ltd. dated 20.09.1993 was dismissed. Assailing the order dated 31.12.1997, Jayaswal Neco Ltd. filed a Revision Petition which was dismissed as time barred by the Mines Tribunal by order dated 04.02.1999. The said order remained unchallenged and admittedly became final.

12. The first application of Jayaswal Neco Ltd. dated 22.05.1990 which was revived by virtue of the order of the revisional authority dated 22.10.1994 was not considered on 04.10.1996 and therefore, no order was passed on the said application on 31.12.1997 while granting PL in favour of Sarda Minerals Ltd. The said application dated 22.05.1990 was thus subsequently considered and was dismissed by the State of M.P. by a separate order dated 12.04.1999 and the same was also confirmed on revision by the Mines Tribunal by order dated 31.12.2001. The said order remained unchallenged for a long time and ultimately on 17.02.2011, i.e., after about 10 years, Jayaswal Neco Ltd. chose to file W.P. (C) No. 1038 of 2011.

13. In the meanwhile, in pursuance of the order dated 31.12.1997 granting PL in favour of Sarda Minerals Ltd., the necessary approval of the Central Government in terms of Section 5(1) of the Act was granted on 06.10.1998. However, their request for grant of clearance under Section 2 of the Forest (Conservation) Act, 1980 was kept pending for a long time and ultimately, the same was granted on 22.05.2003 by the Government of India, Ministry of Environment and Forest.

14. While so, the State of Chhattisgarh, which was formed on 01.11.2000 by virtue of Madhya Pradesh Reorganization Act, 2000, took up the issue of grant of

PL over the Boria Tibbu area treating the applications of both Jayaswal Neco Ltd. dated 22.05.1990 and Sarda Minerals Ltd. dated 25.04.1995 as pending. On 01.02.2002, it was decided by the State of Chhattisgarh to reject the application of Sarda Minerals Ltd. dated 25.04.1995 and to grant PL to Jayaswal Neco Ltd. Apparently, while taking the said decision, the State of Chhattisgarh did not take note of the fact that the State of Madhya Pradesh by its order dated 12.04.1999 had already rejected Jayaswal Neco Ltd.'s application dated 22.05.1990 and the same was confirmed on Revision by the Mines Tribunal by order dated 31.12.2001.

15. In pursuance of its decision dated 01.02.2002, the State of Chhattisgarh by letter dated 05.03.2002 sought approval of the Central Government for grant of PL in favour of Jayaswal Neco Ltd. over an area of 86.380 Hectares in Compartment No. 534 and 536 of Rajnandgaon District and the approval was accorded by the Central Government on 08.08.2002. Accordingly, PL was granted to Jayaswal Neco Ltd. on 28.02.2003.

16. The above said decision of the State of Chhattisgarh was informed to Sarda Minerals Ltd. by letter dated 03.04.2003 stating that its PL application was rejected since a mining lease had been granted to it for iron ore in the said area. Immediately thereafter, by letter dated 15.04.2003 Sarda Minerals Ltd. informed the State of Chhattisgarh that on the basis of its application dated 25.04.1995, the State of Madhya Pradesh had already granted PL in its favour on 31.12.1997 and that the approval of the Central Government and the clearance as required under Section 2 of the Forest (Conservation) Act, 1980 were granted on 06.10.1998 and 22.05.2003 respectively. It was also pointed out that the revision application of Jayaswal Neco Ltd. against the order of State of M.P. rejecting its application dated 22.05.1990 was dismissed by the Mines Tribunal by order dated 31.12.2001 and that it remained unchallenged.

17. On 06.06.2003, Sarda Minerals Ltd. had also filed a Revision Petition along with an application for stay before the Mines Tribunal assailing the rejection of its PL application by the State of Chhattisgarh. While filing its response to the said revision, the State of Chhattisgarh enclosed the copies of the orders dated 04.03.2002 rejecting the PL application of Sarda Minerals Ltd. dated 25.04.1995. The Mines Tribunal by order dated 05.02.2008 dismissed the revision application of Sarda Minerals Ltd. holding that the order of the State of Chhattisgarh dated 04.03.2002 did not suffer from any legal infirmity. As against the order of the Mines Tribunal dated 05.02.2008, Sarda Minerals Ltd. filed W.P.(C) No. 2757/2008 and the same was allowed by the learned Single Judge by order dated 28.01.2011.

18. It may also be mentioned that in the meanwhile Jayaswal Neco Ltd. made an application dated 07.04.2003 for grant of Mining Lease (ML) in respect of 51 Hectares in Boria Tibbu area out of 86.38 Hectares for which PL was granted in its favour. The said application was forwarded by the State of Chhattisgarh on 04.06.2003 seeking prior approval of the Government of India as required under

Section 5(1) of the Act for grant of Mining Lease over an area of 47 Hectares. In pursuance thereof, the Government of India granted the approval by order dated 30.06.2003. Thereafter, by order dated 28.07.2003, the Indian Bureau of Mines (IBM) had also approved the Mining Plan submitted by Jayaswal Neco Ltd. in terms of Rule 22(4) of the Mineral Concession Rules, 1960 and on 01.07.2004, the forest clearance was granted by the Ministry of Environment and Forest.

19. It was primarily contended by Sarda Minerals Ltd./petitioner in W.P.(C) No. 2757/2008 that the State of Chhattisgarh ought not to have reopened the issue of grant of PL over the Boria Tibbu area and could not have reviewed the order of the State of Madhya Pradesh granting PL in favour of Sarda Minerals Ltd. It was also contended that there were no pending applications by the date of formation of State of Chhattisgarh and therefore, the question of rejecting the application of M/s. Sarda Minerals Ltd. and granting PL in favour of M/s. Jayaswal Neco Ltd. did not arise at all.

20. On the other hand, it was contended by M/s. Jayaswal Neco Ltd. that the writ petition itself had been rendered infructuous since the PL granted in favour of M/s. Jayaswal Neco Ltd. had already been worked out and on the basis of the report of prospecting M/s. Jayaswal Neco Ltd. was granted Mining Lease on 04.06.2003 which remained unchallenged. It was also contended that the State of Chhattisgarh was justified in taking up the issue of grant of PL afresh after the formation of the State of Chhattisgarh since by virtue of the order dated 31.12.1997 passed by the State of MP, M/s Sarda Minerals Ltd. was allowed prospecting operations only for a period of 2 years within which period M/s. Sarda Minerals Ltd. failed to obtain Forest Clearance and did not carry out the prospecting operations. The further contention was that the order dated 31.12.1997 by the State of MP being an administrative order, the power to review such an order was always available and the State of Chhattisgarh had rightly reconsidered the issue of grant of PL in respect of the area in question.

21. The learned Single Judge did not accept any one of the objections raised by M/s. Jayaswal Neco Ltd. and allowed the W.P.(C) No. 2757/2008 thereby setting aside the order dated 05.02.2008 passed by the Mines Tribunal as well as the orders dated 04.03.2002 and 05.03.2002 passed by the State of Chhattisgarh. Thus, it was held that the order of the State of MP dated 31.12.1997 as concurred with by the Central Government by order dated 06.10.1998 granting PL in favour of M/s. Sarda Minerals Ltd. on the basis of its application dated 25.04.1995 stood revived and therefore the State of Chhattisgarh and the Central Government shall issue consequential orders within a period of 4 weeks. While arriving at the said conclusion, the learned Single Judge recorded the following findings in the order under appeal dated 28.01.2011:

(i) that the order of the State of Madhya Pradesh dated 12.04.1999 rejecting the first application of Jayaswal Neco Ltd. dated 22.05.1990 for prospecting licence as well as the order dated 31.12.1997 rejecting the second application dated 20.09.1993 having become final by virtue of the orders of the Mines Tribunal

dated 31.12.2001 and 04.02.1999 respectively, there was no pending application for consideration by the State of Chhattisgarh on 01.02.2002.

(ii) the State of Chhattisgarh was bound by the decisions already taken by the State of Madhya Pradesh in terms of Section 79 of the Reorganization Act read with Adaptation of Laws Order, 2001. Consequently, it was not open to the State of Chhattisgarh to issue notice to Sarda Minerals Ltd. and Jayaswal Neco Ltd. for hearing on 01.02.2002 on the application filed by M/s. HEG for grant of PL in the area.

(iii) the interim order passed by the Mines Tribunal on 04.08.1999 in the Revision Petition filed by Jayaswal Neco Ltd. challenging the rejection of its first application dated 22.05.1990 by the State of Madhya Pradesh did not amount to revival of the said application, particularly in view of the fact that the revision petition was ultimately dismissed on 31.12.2001.

(iv) the State of Chhattisgarh failed to note the fact that as on 01.02.2002 when it resumed its consideration of the question of grant of PL either the first application dated 22.05.1990 or the second application dated 20.09.1993 made by Jayaswal Neco Ltd. was pending.

(v) the action of the State of Chhattisgarh in reopening the disposed of applications of Sarda Minerals Ltd. and Jayaswal Neco Ltd. was without authority of law, particularly in view of the fact that the order of State of Madhya Pradesh dated 31.12.1997 was also followed by the order of the Central Government dated 06.10.1998 granting prior approval to the PL in favour of Sarda Minerals Ltd.

(vi) the exercise of consideration of an application for PL and the consequential grant or rejection of such application being a quasi judicial exercise and not merely an administrative exercise, the same cannot be reviewed by the State of Chhattisgarh.

(vii) the order of the State of Chhattisgarh dated 04.03.2002 is also unsustainable in law since it was in violation of the principles of natural justice.

Contentions Advanced:

22. Assailing the order of the learned Single Judge dated 28.01.2011 in W.P. No. 2757/2008, it is contended by Sri G.C. Bharukha, the learned senior counsel appearing for the appellant that the order dated 31.12.1997 recommending grant of PL to M/s. Sarda Minerals Ltd. by the State of MP was void in view of Section 19 read with Section 11(2) of the MMDR Act. It is also contended that M/s. Sarda Minerals Ltd. having participated in the proceedings for consideration of the applications for grant of PL by the State of Chhattisgarh without raising any objection for such reconsideration, is estopped from challenging the order of the State of Chhattisgarh granting PL in favour of the appellant. In support of the said submission, the learned senior counsel relied upon *Prasun Roy Vs. Calcutta Metropolitan Development Authority and Another*, , *Suneeta Aggarwal Vs. State*

of Haryana and Others, and Manish Kumar Shahi Vs. State of Bihar and Others, .

23. It is also contended by the learned senior counsel that the issue of grant of PL in respect of the area in question has become academic in view of the subsequent developments culminating in grant of Mining Lease to the appellant. Placing reliance upon Joint Action Committee of the The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others, , the learned senior counsel further contended that since M/s. Sarda Minerals Ltd. did not challenge the subsequent order of the State of Chhattisgarh dated 04.06.2003 granting ML in favour of the appellant, the learned Single Judge ought to have dismissed the writ petition in limine declining to grant any relief to the petitioner.

24. Shri G.C. Bharuka, the learned senior counsel appearing for the appellant also contended that the grant of Prospecting Licence (PL) and the grant of Mining Lease (ML) under the scheme of the Act are two different and distinct stages and that the same are independent. It is contended that one can be granted ML even if he was neither granted PL nor did prospecting and that what all is required to establish while making an application for ML is the existence of mineral content in the area, which can even be otherwise than by means of prospecting. It is contended that the appellant had produced sufficient evidence of existence of mineral content in the area and that he had also produced the mining plan approved by IBM. Pointing out that ML was granted in favour of the appellant on 04.06.2003 and the same was also approved by the Government of India on 30.06.2003 and that the said orders remained unchallenged, it is contended by the learned senior counsel for the appellant that the PL granted in favour of M/s Sarda Minerals Ltd. by the State of Madhya Pradesh has in fact become redundant. Thus, according to the learned senior counsel, the writ petition ought to have been dismissed as infructuous. It is also contended that the order under appeal declaring that the order of State of Madhya Pradesh granting PL in favour of M/s. Sarda Minerals Ltd. stood revived and that the respondents shall take further steps within a period of four weeks is erroneous and contrary to the very scheme of the Act.

25. It is also sought to be contended that in view of the Prospecting Report submitted by the State of Chhattisgarh read with the Mining Plan approved by IBM and particularly in view of the fact that Sarda Mineral Ltd. is already running an iron ore mine adjacent to the disputed area, the existence of mineral deposits in Boria Tibbu area remains undisputed and, therefore, grant of ML in favour of the appellant is in accordance with law.

26. The further contention is that though prior approval for grant of PL in favour of the M/s. Sarda Mineral Ltd. was granted, no PL agreement was executed as required under Rule 15 of the Rules and in fact the prior approval was a conditional order under which it was a pre-requisite to obtain forest clearance. Since, no such forest clearance was granted to Sarda Minerals Ltd., the grant of

PL by the State of Chhattisgarh in favour of Jayaswal Neco Ltd. cannot be held to be illegal on any ground whatsoever.

27. We have also heard Sh.Ratan Kumar Singh, the learned counsel appearing for the Respondent No. 1/3 (Sarda Mineral Ltd.) and the learned counsel appearing for the State of Chhattisgarh. In the light of the submissions made by the learned Counsel for both the parties, the following questions arise for consideration by us.

Points for consideration:-

i) Whether the conclusion of the learned Single Judge that the action of the State of Chhattisgarh in reconsidering the applications of M/s Jayaswal Neco Ltd. and M/s. Sarda Energy and Minerals Ltd. for grant of PL which were already disposed of by the State of Madhya Pradesh is without authority of law suffered from any infirmity.

ii) Whether the learned Single Judge is justified in deciding the validity of the PL granted in favour of M/s. Jayaswal Neco Ltd. rejecting the contention that the said PL worked itself out since M/s. Jayaswal Neco Ltd. was already granted mining lease on the basis of the report of prospecting in respect of the very same area.

Point No. (i) :

28. The State of Chhattisgarh has been formed with effect from 01.11.2000. Prior to that Boria Tibbu area of Rajanandgaon District formed part of State of Madhya Pradesh. Two applications were made by M/s Jayaswal Neco Ltd. for grant of PL in respect of the area in question. The first application dated 22.05.1990 initially stood rejected in terms of the deeming provision under Rule 11(1) of the Rules as it stood at the relevant point of time. It is no doubt true that on a revision filed by it the State Government by order dated 22.10.1994 remanded the matter to the State Government for fresh consideration of the application dated 22.05.1990. However, by the time the said application was taken up for consideration by the State of Madhya Pradesh, the PL was already granted in favour of M/s Sarda Minerals Ltd. and therefore, the application dated 22.05.1990 was dismissed by order dated 12.04.1999. So far as the application dated 28.09.1993 is concerned, it was considered and rejected by the State of Madhya Pradesh following due process of law by order dated 31.12.1997 and by the same order the PL was granted in favour of M/s. Sarda Minerals Ltd. The Revision Petition filed by M/s. Jayaswal Neco Ltd. against the said order dated 31.12.1997 was dismissed as time barred by the Mines Tribunal by order dated 04.02.1999. Thus, by the date of formation of the State of Chhattisgarh on 01.11.2000, no application of M/s. Jayaswal Neco Ltd. was pending and moreover, the PL in respect of the said area was already granted in favour of M/s. Sarda Minerals Ltd. Rule 12(1) of the Rules which provides for refusal of application for a prospecting licence reads under:-

"12. Refusal of application for a prospecting licence - (1) The State Government may, after giving an opportunity of being heard and for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a prospecting licence over the whole or part of the area applied for."

29. A plain reading of the above provision which mandates a hearing before the rejection of an application for grant of PL makes it clear that the exercise of consideration of an application for PL is quasi judicial but not merely administrative. In *Province of Bombay Vs. Kusaldas S. Advani and Others*, , it was held

"If a statute empowers an authority, not being a court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie* and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act."

30. The same principle has been reiterated in *State of Orissa Vs. Dr. (Miss) Binapani Dei and Others*, and *A.K. Kraipak and Others Vs. Union of India (UOI) and Others*, .

31. In the light of the settled principle of law noticed above, we have no hesitation to conclude that the order dated 31.12.1997 passed under Rule 12(1) by the State of M.P. is a quasi judicial order and cannot be reviewed by the State of Chhattisgarh. Particularly in view of the provisions of the Adaptation of Laws Order, 2001 which was notified in terms of Section 79 of Madhya Pradesh Re-organization Act, 2000, the State of Chhattisgarh is bound by the order of the State of M.P. dated 31.12.1997. It may be true that M/s. Sarda Minerals Ltd. failed to carry out the prospecting operations since there was delay in grant of forest clearance as required under the Forest (Conservation) Act, 1980, however, the same cannot be a ground for rejection of the PL that was already approved by the Central Government under Section 5(1) of the Act. It is also relevant to note that the rejection order passed by the State of Chhattisgarh dated 04.03.2002 was not on the ground that M/s. Sarda Minerals Limited failed to carry out the prospecting operations pursuant to the PL granted by the State of M.P. As held in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the law is well settled that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise.

32. It may also be added that the fresh decision by the State of Chhattisgarh in March, 2002 to reject the application of M/s. Sarda Minerals Ltd. and to grant PL in favour of M/s. Jayaswal Neco Ltd. was evidently taken without notice to M/s. Sarda Minerals Ltd. As noticed above, Rule 12(1) of the Rules expressly provides for giving an opportunity of being heard to the applicant before his application for

PL is refused. Since no such opportunity was given, the order of rejection dated 04.03.2002 on the face of it is against the mandatory statutory provision apart from being in violation of the principles of natural justice.

33. The further contention of the appellant that M/s. Sarda Minerals Ltd. having participated in the hearing for grant of PL by the State of Chhattisgarh is estopped from challenging the decision taken by the State of Chhattisgarh is equally untenable. The specific case of M/s. Sarda Minerals Ltd. is that the hearing took place for disposal of an application of one M/s H.E.G. Ltd. for grant of PL in another area and that they were not aware of the proposal for grant of fresh PL by the State of Chhattisgarh till they received the letter of the State of Chhattisgarh dated 03.04.2003 stating that its PL application was rejected since a ML had been granted to it for iron ore in the said area. There is nothing on record to contradict the said plea and, therefore, the principle of waiver on the ground of participation of M/s. Sarda Minerals Ltd. in the proceedings cannot be made applicable to the case on hand. The decisions in Prasun Roy's case (supra) , Manish Kumar Sahi's case (supra) and Suneeta Aggarwal's case (supra) are clearly distinguishable on facts and not applicable to the case on hand.

34. Therefore, we do not find any justifiable reason to interfere with the conclusion of the learned Single Judge that the action of the State of Chhattisgarh in re-considering the PL application of M/s. Jayaswal Neco Ltd. and M/s. Sarda Energy and Minerals Ltd. which were already disposed of by the State of Madhya Pradesh is without authority of law. Consequently, the learned Single Judge had rightly declared that the order of State of Madhya Pradesh dated 31.12.1997 and the subsequent orders of Central Government dated 06.10.1998 and 22.05.2003 stood revived.

35. The above said conclusion of the learned Single Judge is based on findings of fact which were recorded on proper appreciation of the material available on record. In exercise of the powers of the appellate Court under the Letters Patent such findings of fact warrant no interference by the Division Bench.

Point No. (ii) :

36. At the cost of repetition it may be mentioned that the State of Chhattisgarh granted a Mining Lease (ML) in favour of M/s. Jayaswal Neco Ltd. on the basis of its application dated 07.04.2003 in respect of 47 hectares in Boria Tibbu area out of 86.38 hectares for which PL was granted earlier in its favour. The Government of India granted approval for the same by order dated 30.06.2003 and the forest clearance was also granted by the Ministry of Environment and Forests on 01.07.2003. The mining plan submitted by M/s. Jayaswal Neco Ltd. was also approved by the Indian Bureau of Mines in terms of Rule 22(4) of the Mineral Concessions Rules, 1960. Accordingly, on 28.07.2003, the State of Chhattisgarh granted Mining Lease to M/s. Jayaswal Neco Ltd. and pursuant thereto M/s. Jayaswal Neco Ltd. claims to have been conducting the mining operations.

37. The word "Prospecting License" is defined under Section 3(g) of the Act as a license granted for the purpose of undertaking prospecting operations. Section 3(h) defines "prospecting operations" as any operations undertaken for the purpose of exploring, locating or proving mineral deposits. So far as Mining Lease is concerned, Section 3(c) provides that it is a lease granted for the purpose of undertaking mining operations. The word "mining operations" is defined under Section 3(d) as any operations undertaken for the purpose of winning any mineral. Thus, it is clear that the purpose of grant of prospecting license is for undertaking the operations for exploring, locating or proving mineral deposits whereas the purpose of grant of mining lease is for carrying on the operations for the purpose of winning the mineral. It is also clear that prospecting operations are undertaken pursuant to a license granted whereas the mining operations can be only in pursuance of the Mining Lease granted therefor. Section 5(2) of the Act provides that no mining lease shall be granted by the State Government unless it is satisfied that there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area. A reading of Section 5(2)(a) shows that prospecting operations are not a condition precedent for grant of Mining Lease and it is sufficient if the existence of mineral contents has been established otherwise than by means of prospecting such area.

38. In the light of the legal position noticed above, it is contended by the learned senior counsel for the appellant that the entire purpose of prospecting under the Act is only to prove or locate mineral reserves and in the present case since the existence of mineral in the area in question is undisputed and even the State Government had admitted the said fact in its counter filed in W.P.(C) No. 78/2009, the learned Single Judge ought to have refused to go into the question of the validity of the PL granted in favour of M/s. Jayaswal Neco Ltd. since the said question, in view of the subsequent events, has become academic.

39. It is no doubt true that during the pendency of the proceedings before the Mines Tribunal M/s. Jayaswal Neco Ltd. was granted the Mining Lease on 28.07.2003 by the State of Chhattisgarh. However, it is clear from the material available on record that the said ML was granted only on the basis of Prospecting Report submitted by M/s. Jayaswal Neco Ltd. pursuant to the PL dated 28.02.2003 granted to it by the State of Chhattisgarh. It is also relevant to note that it was pleaded by the State of Chhattisgarh that the Prospecting Report submitted by M/s. Jayaswal Neco Ltd. was not a genuine document and that, in fact, no prospecting had been carried out by it. Thus, though there appears to be a doubt with regard to the fact as to whether M/s Jayaswal Neco Ltd. had actually carried out the prospecting operations, the fact remains that the ML was granted in its favour only on the basis of the PL dated 28.02.2003 granted by the State of Chhattisgarh.

40. That being so, once the PL granted by the State of Chhattisgarh is held to be

illegal and the PL granted in favour of M/s. Sarda Minerals Ltd. by the State of MP stood revived, the ML that has been granted in favour of the appellant has been rendered void. The mere approval of the mining plan submitted by the appellant by IBM as required under Rule 22 of the Rules is of no consequence since the very basis of the grant of ML is held to be illegal. The ratio laid down in Joint Action Committee of the Air Line Pilots' Association of India (ALPAI) case (supra) has no bearing on the issue involved in the case on hand and, therefore, the said decision in no manner supports the contention of the appellant.

41. Similarly, the preferential right claimed by the appellant under Section 11(2) of the Act is also untenable since its applications dated 22.05.1990 and 28.09.1993 for grant of PL though were received earlier, both the said applications were rejected by the State of Madhya Pradesh and the same attained finality by the date of the fresh consideration by the State of Chhattisgarh. Hence, the contention that the order dated 31.12.1997 is void in view of Section 19 of the Act is without any substance. At any rate, since the order dated 31.12.1997 was upheld by the Mines Tribunal by order dated 04.02.1999 and the same remained unchallenged and attained finality, it is not open to the appellate to re-agitate the said issue at this stage.

42. Therefore, the contention of the appellant that it is not open to this Court to go into the validity of the PL granted over the area in question is untenable and the same is accordingly rejected.

43. For the aforesaid reasons, we do not find any justifiable reason to hold that the order of the learned Single Judge dated 28.01.2011 in W.P.(C) No. 2757/2008 suffered from any infirmity warranting interference by us.

44. So far as the order dated 18.02.2011 in W.P.(C) No. 1038/2011 which is assailed in LPA No. 205/2011 is concerned, evidently the said writ petition was filed challenging the order of the Mines Tribunal that was passed ten years ago. The only explanation offered by the petitioner was that he did not realise that it was required to challenge the impugned order dated 31.12.2001 passed by the Mines Tribunal. As rightly held by the learned Single Judge the said explanation is not at all satisfactory and unacceptable. Hence, the learned Single Judge is justified in dismissing the writ petition on the ground of laches. The said order which is in accordance with the settled principles of law warrants no interference on any ground whatsoever.

45. In the result, both the appeals are dismissed. There shall be no order as to costs.