

(2009) 06 KAR CK 0041

In the Karnataka High Court

Case No : Writ Appeal No's. 5026, 5024, 5028, 5032, 5050, 5051, 5052, 5053, 5064, 5065, 5066, 5068, 5077, 5145, 5146, 5078, 5084 and 5085 of 2008 and 888, 6087, 6086, and 6012 of 2009

Jindal Vijayanagar Steels Ltd., Now known as JSW Steel Ltd.
and Others

APPELLANT

Vs

MSPL Limited, The State of Karnataka and Union of India
(UOI) and Others

RESPONDENT

Date of Decision : 05-06-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 39, 47, 48A, 51A (g)
Mines and Mineral (Development and Regulation) Act, 1957 — Section 11 (2), 11 (3), 11 (4)

Citation : (2009) 4 KCCR 2566

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

Bench : Division Bench

Advocate : D.L.N. Rao, Arun Kumar Varma and S.R. Anuradha, in W.A. Nos. 5026, 5028, 5050 and 5051/2008, K.N. Phanindra, in W.A. Nos. 5024, 5145 and 5146/2008 and 888 and 6087/2009, T.P. Rajendra Kumar Sungay, in W.A. No. 5032/2008, Nalini Chidambaram and S.R. Anuradha, in W.A. Nos. 5052 and 5068/2008, L.M. Chidanandayya, in W.A. Nos. 5053, 5064, 5065 and 5066/2008 and 6012/2009, K. Shashikiran Shetty, in W.A. Nos. 5077 and 5078/2008 and 6086/2009, D. Leelakrishnan, in W.A. No. 5084/2008 and Jagdish Patil, in W.A. No. 5085/2008, for the Appellant; Krishnan Venugopal M.M. Swamy, for R.1, Udaya Holla, General, B. Veerappa, Additional Government Advocate for R.2 and R.3 and Aravind Kumar, Asst. Solicitor General for R.4 in W.A. Nos. 5024, 5026, 5028, 5032, 5050, 5051, 5052, 5053, 5064, 5065, 5066, 5068, 5077, 5145, 5146, 5078, 5084 and 5085/2008 and 888, 6087 and 6086/2009, S.R. Anuradha, for R.5, R.6 and R.7 in W.A. Nos. 5024, 5064, 5065, 5066, 5077, 5084 and 5085/2008, D. Leelakrishnan, for R.1 in W.A. Nos. 5050 and 5051/2008, K.N. Phanindra in W.A. Nos. 5064, 5065 and 5077/2008 and Basavaraj Karedy, Government Advocate for R.2 and R.3 in W.A. No. 6012/2009, for the Respondent

Final Decision : Dismissed

Judgement

I. CORE ISSUES

1. The above batch of writ appeals are directed against the order dated 7th August, 2008 made in writ petition No. 21608 of 2005, raising the following core issues for our consideration:

(i) Whether it is proper for this Court to exercise its power of judicial review under Article 226 of the Constitution of India to adjudicate on the policy decision with respect to substantial development of the State and quash the notification made under Rule 59(1) of the Mineral Concession Rules, 1960 (for short "MC Rules") notifying the area available for mining iron ore?

(ii) Whether the application, for grant of mining lease for an area, without a notification under Rule 59(1) of the MC Rules, 1960 notifying the said area as available for mining, can be considered for grant of mining lease u/s 11(2) of the Mines and Minerals (Development & Regulation) Act, 1957, (for short "MMDR Act") as, such application is premature and shall not be entertained as per Rule 60 of the MC Rules, 1960? and

(iii) Whether granting mining lease in consideration of Rule 35 of the MC Rules falls outside the purview of the matters specified u/s 11(3) of the MMDR Act?

II. BACKDROP OF THE LIS

2.1. The factual matrix of the case which led the first respondent herein (writ petitioner) to file Writ Petition No. 21608 of 2005, is as hereunder:

2.2. The first respondent herein (writ petitioner), is a public limited company, registered under the Companies Act, 1956. It has industries in mining, power generation through non-conventional energy sources and industrial gases. It also proposes to set up an iron and steel plant. Hence, it made an application on 24th May, 2001 to the Director of Mines and Geology for grant of mining lease of iron ore over an extent of 298.5 hectares, in Eddinpada, which is known as Kumaraswamy Range Forest, Sandur Taluk, Bellary District.

2.3. The said extent of land viz., 298.5 hectares was previously held under a mining lease by M/s. Sandur Manganese and Iron Ore Ltd. [hereinafter referred to as "SMIORE"] since 1950 and thereafter, surrendered to the State.

2.4. As per Rule 59(1) of the MC Rules, no area, which was previously held or which is being held under a reconnaissance permit or a prospecting licence or a mining lease, shall be available for grant, unless:

(i) an entry to that effect is made in the Register under Rule 7D(2), 21(2) and 40(2) of the MC Rules, and

(ii) the availability of the area for grant is notified in the official gazette, as provided under Rule 59(1) of the MC Rules.

2.5. However, Rule 59(2) empowers the Central Government to relax the provisions of Rule 59(1) for reasons to be recorded in writing, in any special case.

2.6. The State Government, therefore, by its letter dated 30th August, 2001, on receipt of the request made by the first respondent herein (writ petitioner) dated 24th May 2001, requested the Central Government to relax the conditions set out in Rule 59(1) of the Rules in favour of the first respondent herein (writ petitioner), exercising the powers under Rule 59(2) of the MC Rules.

2.7. When the said recommendation was under consideration of the Central Government, one Zia Ulla Shariff, who was also an applicant for grant of mining lease over a part of the same area, i.e. 298.5 hectares, in Kumaraswamy Range Forest in Sandur Taluk, filed W.P. No. 35915 of 2001 before this Court, seeking for a declaration that he is entitled for grant of mining lease in his favour. In the said Writ Petition No. 35915 of 2001, Zia Ulla Shariff impleaded the first respondent herein (writ petitioner) as well as the Union of India as respondents.

2.8. However, the Central Government, by letter dated 21st December 2001, returned all the proposals pending before it, including the application filed by the first respondent herein (writ petitioner), to the State Government for resubmitting them after undertaking a Regional Environment Impact Assessment based on the carrying capacity of the region and the likely impact of particular mining lease on the area.

2.9. On 13th May, 2002, SMIORE filed a revision petition before the Central Government under Rule 54 of the MC Rules challenging the proposal of the State Government dated 30th August, 2001.

2.10. While the said revision petition was pending, SMIORE also filed writ petition No. 22767 of 2002 before this Court seeking a mandamus to the Central Government to consider its revision petition. But the Central Government rejected the revision petition filed by SMIORE on 29th July, 2003, and therefore, the writ petition No. 22767 of 2002 filed by SMIORE was also dismissed on 4th February, 2004 as infructuous.

2.11. In the meanwhile, the State Government issued notification on 15th March, 2003, which is impugned in the present writ petition, notifying the areas available for grant of mining lease of iron ore under Rule 59(1) of the MC Rules, including the area referred to above viz., an extent of 298.5 hectares in Eddinpada, Kumaraswamy Range Forest, Sandur Taluk, Bellary District.

2.12. The first respondent herein (writ petitioner), therefore, applied for mining lease of the said area, viz. 298.5 hectares in Eddinpada, Kumaraswamy Range Forest, Sandur Taluk, Bellary District, of course, registering its objection for including the said area in the Notification dated 15th March, 2003, as the State Government had already recommended to the Central Government to relax the procedure contemplated under Rule 59(1), by exercising the power under Rule 59(2) of the MC Rules.

2.13. Rule 26 of the MC Rules requires the State Government to give an opportunity of being heard and to record the reasons in writing and communicate

the same before refusing to grant or renew the mining lease over the whole or part of the area applied for. Accordingly, the Director of Mines and Geology, by proceedings dated 19th July, 2003, gave an opportunity of being heard to the first respondent herein (writ petitioner) as per Rule 26(1) of the MC Rules. The first respondent herein (writ petitioner) appeared before the Director of Mines and Geology on 16th August, 2003 and also made a detailed representation dated 16th August, 2003 staking its claim.

2.14.1. In the said representation dated 16th August, 2003, the first respondent herein (writ petitioner) represented that:

- (i) it has forty years of experience in exploration of mining and marketing of minerals, viz. iron ore;
- (ii) it is interested in banking, industrial gases, power generation, industrial financing, etc, and is successfully running these businesses with vast investible resources;
- (iii) it contributes more than Rs. 300 lakh per year to the State Exchequer by way of Royalty;
- (iv) it earned foreign exchange to the tune of US \$ 35 million in the year 2003;
- (v) it has safe and scientific mining practices; and is the winner of numerous awards by the State Government and Central Government;
- (vi) it has experienced employees and advisors in exploration and mining operation; and
- (vii) it requires the impugned mine for their captive consumption for the steel plant which it proposes to set up.

2.14.2. Since the first respondent herein (writ petitioner) satisfies the matters specified u/s 11(3) of the MMDR Act viz., special knowledge, financial resources, technically qualified staff etc., and Section 11(5) empowers the State Government, for any special reasons to be recorded, to grant 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, of course, with the prior approval of the Central Government, in respect of the mines specified in the First Schedule, the first respondent herein (writ petitioner) requested the State Government to exercise the power conferred u/s 11(5) of the MMDR Act to grant the mining lease in its favour for the reasons stated above.

2.15. By proceedings dated 18th November, 2003, the State Government authorised the Director to hear the applicants as required under Rule 26(1) of the MC Rules; and thus the Director of Mines and Geology, by proceedings dated 18th November, 2003, required the first respondent herein (writ petitioner) to appear and represent in person regarding its application for mining lease of the area applied for.

2.16. While so, the writ petition filed by Zia Ulla Shariff, viz. W.P. No. 35915 of 2001, in which the first respondent herein (writ petitioner) was also a party respondent, was disposed of by order dated 29th March, 2004 as hereunder:

9. In view of the subsequent notification issued by State Government dated 15.3.2003 notifying that the "area is available for grant", the State Government is now expected not only to consider the applications pending before it and also the applications that may be filed pursuant to the aforesaid notification notwithstanding the earlier recommendation made by the second respondent.

2.17. Pursuant to the said order dated 29th March, 2004 in writ petition No. 35915 of 2001, the first respondent herein (writ petitioner) was again directed to appear before the Director on 31st May, 2004 and the first respondent herein (writ petitioner) thus appeared on 31st May 2004 before the Director and filed another representation dated 31st May, 2004, similar to the one dated 16th August, 2003.

2.18.1. As there were more than one applications for the same area, an opportunity was given to all the applicants to represent before the Hon'ble Chief Minister on 12th October,

2.18.2. The first respondent herein (writ petitioner) appeared before the Hon'ble Chief Minister on 12th October, 2004 and made a representation dated 12th October, 2004, in addition to the reasons stated in the earlier representations dated 16th August, 2003 and 31st May, 2004 staking its claim over 298.5 hectares in Eddinpada, Kumaraswamy Range Forest, Sandur Taluk, Bellary District applied by it for mining of iron ore, claiming that:

(i) it is willing to make more investments in Karnataka State despite favourable conditions in Tamilnadu, Maharashtra, Orissa and Andhra Pradesh;

(ii) it has developed the best iron ore mine in the State by deploying the best practice;

(iii) the resources available in the existing area could not support its future investment plan in the State;

(iv) it proposes to invest Rs. 1000 Crore in a one million MT specialty steel plant in the State;

(v) it also proposes to invest a five million MT integrated steel plant in the State over a span of five years for Rs. 10,000 Crore and the said project could be undertaken only if iron ore is assured by granting of mining lease applied by it;

(vi) it proposes to invest Rs. 150 Crore for non-conventional energy generation in the next three years;

(vii) it proposes to invest Rs. 750 Crore for generating of 160 MW of wind power in the next six months;

(viii) it proposes to use the iron ore from the mining lease applied for the

proposed steel plant as captive consumption, which would result in value addition in the State; and

(ix) its case, therefore would be considered under Sections 11(3) and 11(5) of the MMDR Act granting the mining lease for the special reasons mentioned above.

3.1. In continuation of the said hearings and in compliance of Rule 26(1) of the MC Rules, the Government, by proceedings dated 6th December, 2004, impugned herein, after examining the merits of all the applicants in accordance with Section 11 of the MMDR Act and Rule 35 of the MC Rules, found two applicants, viz. the appellants herein (respondents 4 and 5 in the writ petition) i.e. M/s. Jindal Vijayanagar Steels Limited (JSVL) and M/s. Kalyani Steels Limited, to be most appropriate for grant of mining lease over an area of 200.73 hectares and 179.70 hectares respectively for a period of twenty years and requested the approval of the Central Government u/s 5(1) of the MMDR Act.

3.2. The order dated 6th December, 2004 reads hereunder:

"GOVERNMENT OF KARNATAKA No. CI/111/MMM/2004 Karnataka Government Secretariat M.S. Building Bangalore, dt. 6.12.2004

From

Secretary to Government (Mines, SSI & Textiles) Commerce and Industries Department Bangalore - 560 001

To

The Secretary to Government of India Ministry of Coal and Mines Departments of Mines Shastri Bhavan New Delhi

Sir, Sub: Mining lease applications filed by M/s. Jindal Vijayanagar Steels Limited and M/s. Kalyani Steels Limited in Kumaraswamy range of Sandur Taluk of Bellary District.

With reference to the above subject, I am directed to state that in Notification No. CI 16 MMM 2003 dated 15.3.2003, certain "held/surrendered" areas (in which sufficient ore reserves are available) were notified for information of mining-interested public that the same were available for grant of mining lease under Rule 59 of the Mineral Concession Rules, 1960. In response to this notification, 111 applications were received in respect of SI. No. 1 of the said notification.

All the applications were examined in accordance with Section 11 of Mines & Minerals (Development & Regulation) Act, 1957, and Rule 35 of Mineral Concessions Rules, 1960. All other aspects of scrutiny like arrears of royalty, etc., if any, limitation of area that can be leased to an applicant were also looked into. The Hon'ble Chief Minister, who is also in charge Minister for Mines heard the applicants under Rule 26(1) of Mineral Concessions Rules, 1960 on 25.10.2004 and 4.11.2004. A copy of the entire proceedings of the hearing taken by the

Hon"ble Chief Minister is enclosed for reference.

Based on the above hearing and after examination of other provisions of Mines and Minerals (Development and Regulation) Act, 1957 and Mineral Concession Rules, 1960, the following two applications are found to be most appropriate:

(1) M/s. Jindal Vijayanagar Steels Limited - for grant of mining lease over an area of 200.73 hectares of iron ore; and

(2) M/s. Kalyani Steels Limited - over an area of 179.70 hectares.

(*Application for mining lease is filed in the name of M/s. Kalyani Ferrous Industries Limited. In their letter dated 28.5.2004, they have intimated that the High Court, Mumbai, vide order dated 15.1.2004, has permitted Kalyani Ferrous Industries Limited to merge with M/s. Kalyani Steels Limited with effect from 5.2.2004. Hence, mining lease recommended in favour of M/s. Kalyani Steels Limited. A copy of the High Court order is also enclosed)

Both these companies have their own steel plants and at the time of setting up their steel plants, the Government had made a commitment of giving mining leases to meet their requirements of raw material i.e. iron ore. Copies of the orders are also enclosed for ready reference.

The application fee and preliminary charges of Rs. 3,500.00 (Rs. 1,000 + Rs. 2500) have been credited to Government account by both the applicants. The applied area for mining falls under forest area.

The applicant companies have to submit Mining Plan duly approved by Indian Bureau of Mines, consent of Karnataka State Pollution Control Board, clearance from Karnataka Forest Department and Environmental Certificate from Ministry of Environment and Forests, Government of India.

The following documents are enclosed for sanction of mining lease in favour of two applications as above.

(i) Mining lease applications dated 16.4.2003

(ii) Income tax clearance certificate

(iii) Sketch showing the area recommended.

In view of the above, it is requested to obtain and communicate the approval of Government of India as per Section 5(i) of Mines and Minerals (Development and Regulation) Act, 1957 for the grant of mining leases in favour of M/s. Jindal Vijayanagar Steels Limited for over an area of 200.73 hectares and M/s. Kalyani Steels Limited (M/s. Kalyani Ferrous Industries Limited) for over an area of 179.70 hectares in Kumaraswamy Range of Sandur Taluk of Bellary District for a period of 20 years each respectively as per the sketch enclosed.

Yours faithfully Sd/- (K.N. Krishna Murthy) Addl. Secretary to Government (Mines) Department of Commerce and Industries"

3.3. The details of consideration and evaluation of the inter se merits of the applications made by the first respondent herein (writ petitioner) and the appellants herein (respondents No. 4 and 5 in the writ petition), u/s 11 of the MMRD Act and Rule 35 of the MC Rules, as weighed in the proceedings dated 6th December, 2004 read hereunder:

No.CI.111.MMM.2004:

The Sandur Manganese and Iron Ore Limited, Sandur held a mining lease over an extent of 29.20 Sq. Miles for Manganese and Iron ore for a period of 20 years from 01.01.1954. At the time of renewal in the year 1974, the lease was renewed for only 18.20 sq. miles. the balance of area being mostly Iron ore was deleted for reservation for Public sector mining in terms of Government of India letter No. 7(57) : 73. M.VI dated 19.9.1973. Out of 18.20 Sq. Miles, an area of 770.00 hectares was left with M/s. the Sandur Manganese and Iron Ore Limited and the balance of area was taken over by the Government. Some individuals and Companies were applying for grant of mining lease in the surrendered area. The State Government also sent recommendations to Government of India for grant of Mining lease by relaxation of Rule 59(1) of MCR, 1960 as required under Rule 59(2) of MCR, 1960. The Government of India directed the State Government to notify such areas for information of Public as per Rule 59(1) of MCR, 1960 vide its letter No. 4/28/2000. M.VI dated 04.01.2001 and returned the proposals sent by the State Government. Accordingly, the State Government vide Notification No. CI.16 : MMM. 2003 dated 15.03.2003, notified the areas. The area under consideration of grant of mining lease is Sl. No. 1 of the Notification of 15.3.2003. the total area in SI. No. 1 (Kumaraswamy range) is 530.00 hectares.

One Mr. Zia Ulla Shariff filed a writ petition, stating that he had earlier applied for ML over an extent of 380.00 hectares in Kumaraswamy range and obtained a stay from the High Court in writ petition No. 35915/2001 dated. 29.3.2004. Therefore, the Government examined the possibilities of granting mining lease in the remaining 150.00 hectares, which was not covered by the stay orders of the Court. The Government after considering the applications received in response to the notification decided to grant mining lease in favour of M/s. Kariganoor Iron Ore Steel Limited over an extent of 149.00 hectares in Kumaraswamy Range and sought the concurrence of the Government of India vide Government letter No. CI.17:MMM.2004 dated. 11.2.2004.

The writ petition filed by Mr. Zia Ulla Shariff was disposed of with a direction to consider his application in accordance of law along with other applications. According to the judgment it was necessary to consider the applications filed for grant of mining lease over the area in question before the issue of notification on 15.3.2003 along with the applications received in response to the notification dated. 15.3.2003. 21 applications were filed for grant of mining lease over the area in question before the notification was issued and 90 applications were received in response to the notification. In all, there were 111 applications to be

considered for grant of mining lease.

Notice under Rule 26(1) of MCR, 1960 was issued to all the applicants to appear before the Hon"ble Chief Minister of Karnataka on 12th October, 2004 at 4.00 p.m. to make presentation for sanction of mining lease in their favour. Due to unavoidable circumstances the hearing could not be held on that day and was adjourned to 16th October 2004. Again on 16th, the proposed hearing could not be held due to unforeseen circumstances. The applicants were again issued notice to appear before the Hon"ble Chief Minister on 25th October, 2004 at 4.00 p.m. Again a hearing notice was issued on 29.10.2004 to such of those applicants who did not attend the hearing on 25th October, 2004 to attend the hearing on 4.11.2004 at 11.30 a.m. The Hon"ble Chief Minister heard the applicants who attended the hearing in person.

On 12.10.2004, the hearing was adjourned. Out of 111 applicants, 85 applicants attended the hearing and 75 applicants gave their written representations. On 16.10.2004, the hearing was again adjourned, 72 applicants attended, 9 applicants submitted their written representations. The hearing was held on 25.10.2004, 76 applicants attended and 27 applicants submitted their written representations.

Out of 111 applications, 55 are companies/firms and 30 are individuals. Out of 111 applications, 11 have given more than one application in the name of their sister companies/partner firms etc. All applications were examined u/s 11(5) of MM (D&R) Act, 1957 with a view to provide an opportunity to all the applicants who have filed their applications on subsequent days, i.e. after 16.4.2003. The specified In Section 11(3) for grant of mining lease are:

- (a) any special knowledge of, or experience in reconnaissance operations, prospecting operations, 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 proposed to make in the mines and in the industry based on the minerals.
- (e) such other matters as may be prescribed.

The Particulars/details of the applicants is furnished below:

Name of the Sl. No individuals/ Details Companies/Firms :Individuals: Shri/ Smt. 1-18 xxx xxx xxx xxx xxx xxx The applicant does not have a mining lease in Karnataka. The 19 Zia Ulla Shariff applicant proposed to invest Rs. 10.00 The applicant desires to export the ore for local supply. 20 to 30 xxx xxx xxx xxx xxx xxx

8. Out of the 30 individuals who have applied for mining lease only 3 applicants hold mining lease in the state. The remaining 27 applicants do not hold any mining lease. The details furnished by the applicants in their written submission and oral submissions have been considered. Some of the individuals are local people and have past experience in mining. Some of them are qualified engineers. They requested for consideration of their application for grant of mining lease. Most applicants have indicated that they would be exporting ore or would be supplying it to the local market. None of them have indicated any proposals for the value addition to the ore. Even applicants who are already holding lease have also indicated that they would be exporting the ore or would be supplying the ore to the local market. Therefore, these applicants do not merit consideration for grant of mining lease.

9. A total number of 55 companies/firms have applied for mining lease. The particulars/details of the company/firms:

-----	Name of the Sl. No
individuals/	Companies/Firms
Details	
-----	31 to 69 XXX XXX
XXX XXX XXX XXX -----	
70 M/s. Jindal They do not hold any mining Vijayanagar Steel leases in Karnataka. They Limited: have established a steel Sister Concerns: plant in Toranagallu and 1. M/s. South- have invested about Rs. 7000 west mining crores already. The Company Limited has requested mining lease for 2. M/s. Euro its captive consumption. The Ikons Iron and JVSL has filed in all four Steels (P) Ltd. applications for this area. Three 3. M/s. Vijaya- of the applications were filed nagar Minerals prior to the issue of notification Pvt. Ltd. and one application after the issue of the notification. A separate application in the name of M/s. Euro Ikons Iron and Steels (P) Ltd. has been filed for this area. M/s. Vijayanagar Minerals Pvt. Ltd. is a joint venture company with M/s. JVSL and M/s. MML The MML holds a lease over an extent of 87.50 hectares. The joint sector company is mining this area.	
-----	71 M/s. MSPL Ltd.
The company holds mining lease over an extent of 722.94 hectares in its name and in the name of Ramghad Mines and Minerals Pvt. Ltd. which is its sister concern. M/s L.R. Industries is also a sister concern of M/s. MSPL Ltd. The company has been awarded ISO 9001 and 14001 certificates for scientific mining done by them. Vide Government letter No. CI.15. MMM.04 dated 9.2.2004 an area of 218.20 hectares has been recommended to Government of India in favour of M/s. MSPL in Kumaraswamy Range. Company has earned foreign exchange of more than USD 70 million during 2003-04. The company has been awarded "State award for excellence in exports" by the Government of Karnataka and "Indira Priyadarshini Vrikshamltra award" for exemplary work in the field of afforestation and waste land development by the Government of India in September 2004. The company proposes to establish 1 million MT speciality steel plant immediately in the state with an investment of Rs. 1000	

crore. The company also proposed investment of Rs. 10000 crores in the next five years in a 5 million MT Integrated steel plant. Vide Government letter No. CI.59.MMM. 2001 dated 30.8.2001 an area of 298.5 hectares in Swamimalai range, Sandur Taluk, Bellary District was recommended in favour of M/s. MSPL Ltd. in relaxation of Rule 59(1) of MCR 1960 and a proposal was sent to Government of India accordingly.

----- 72. M/s. Kalyani
This Company do not have a mining Ferrous Industries lease in Karnataka. They propose Ltd. to invest Rs. 575 crores. The application submitted for grant of mining lease is in the name of M/s. Kalyani Ferrous Industries Ltd. The company has subsequently merged with M/s. Kalyani Steels Limited. The company is already having a steel plant in Ginigera, Koppal Taluk and District. The Company has already invested about Rs. 600 crores and put up a 3.5 lakh tones steel plant at Ginigera. The company proposes to commission and MW power plant at Ginigera with investment of Rs. 35 crores. The company proposes to commission a Coke Oven Plant which is under construction at Dharwad with an investment of Rs. 45 crores. The company proposes to increase the steel capacity to 4.5 lakh TPA from the existing 3.5 lakhs TPA by an additional investment of Rs. 100 crores. Immediately on completion of 4.5 lakh TPA the company proposes to expand the plant to increase the capacity to 8 lakhs TPA with investment of Rs. 350 crores. Therefore the company requests for sanction of mining lease over an area of 530 hectares in Kumaraswamy range for its captive consumption. At the time of putting up the plant, the Government have extended the incentives and concessions to M/s. Kalyani Steels Ltd. One of the incentives offered vide G.O. No. CI 12.SPC.95 dated 25.1.95 was that the company will apply for granting lease to the Department of Mines and Geology for an area bearing 40 million MT iron ore reserves.

----- 73 to 85
XXX XXX XXX XXX XXX XXX

10. Out of the 55 Companies/Firms who have applied for mining lease only 12 companies/firms hold mining leases In the State. Most of the companies/firms holding mining lease have indicated that they would be using the ore for export and for supplying It to the local market. Some of the firms/companies have indicated that they would establish sponge iron factories or steel units and have therefore requested for allotment of the mining lease. But these applicants have not yet established their units for value addition. Some of the companies have already established their units in the State and they have requested for sanction of mining lease for using the ore for captive purpose for value addition to the ore. The interest of such companies who have already established their units linked to these anchor units and are in need of raw material for their use, needs to be considered. It also helps the State Government to earn more revenue if there is value addition to the ore. The employment opportunities will be increased not only by direct employment offered by the companies, but also by

way of indirect employment facilities caused by establishing production units.

11. Some of the firms who are willing to invest huge amount in mining industry have also indicated that they require the mines for export and for supplying it to the local market. Some of the companies have already established their units in Karnataka by investing huge amount. At present they are depending upon local market for their raw materials i.e. iron-ore. They have requested that since they have invested huge amount and established their units in the state, they be given preference over others for allotment of mining leases. Since the request of such of the companies is for captive consumption and for value addition, they deserve consideration over others.

12. In Karnataka, the following industries have established steel plants:

(1) xxx xxx xxx

(2) M/s. Jindal Vijayanagar Steels Limited:-They have established an integrated steel plant at Toranagallu at a cost of about Rs. 7000.00 crores and a power and oxygen plant at a cost of Rs. 2000.00 crores. It is a public limited company in which the Government of Karnataka holds Rs. 50.00 crores as equity. While approving the project of M/s. JVSL, Government have committed to allot Iron ore mines within the reserves of about 100 million tones per annum. The plant Is under production since the last four years. For the installed capacity of the plant, about 2.8 to 3 million tones of iron ore per annum is required.

They have also commissioned the beneficiation plant to treat low grade high alumina iron ore fines. In view of this the larger quantum of ore is required for the sustainable working of the plant for another SO years. They are planning to invest around Rs. 100.00 Crores for systematic and scientific mining.

M/s. Jindal Vijayanagar Steel Limited has entered into a joint venture with Mysore Minerals Limited, a Government of Karnataka undertaking. The joint venture company M/s. Vijayanagar Minerals Limited is mining over an area of 87. SO hectares.

(3) M/s. Kalyani Ferrous Industries Limited:- M/s. Kalyani Ferrous Industries Limited has merged with M/s. Kalyani Steels Limited. The company has established an integrated iron and special steel manufacturing unit at Ginigera, Koppal Dist. They are manufacturing pig iron. The installed capacity of the plant is 0.4 million tones per annum and have plans to enhance this to about 0.5 million tones per annum. They have invested about Rs. 550.00 crores for the plant and the annual turn over is about Rs. 700.00 crores. The plant was commissioned during 1998 and at present, it is producing pig iron. For the captive consumption, they need about 1 million tonne of Iron ore per annum. They have plans to Invest about Rs. 10.00 crores for systematic and scientific mining.

At present, they do not have any mining lease in the State for iron ore. However, M/s. Kalyani Ferrous Industries Limited has been given a raising contract by M/s

Mysore Minerals Limited (a Government of Karnataka Undertaking) over an extent of 80 ha for a period of 20 years commencing from 1999 in Subbarayanahalli area for the mining of iron ore.

(4) M/s. Euro Ikons and Iron and Steel Pvt. Ltd.:—This company is a sister-concern of M/s. Jindal Vijayanagar Steel Limited. The company has already commissioned a blast furnace at Torangallu with a capacity of 9 lakh tones per annum. They have already invested about Rs. 230 Crores in the plant.

At present, they do not have any mining lease in the State for iron ore.

(5) xxx xxx xxx

13. Rule 35 of Mineral Concession Rules, 1960, provides for preferential rights for certain persons. The Rule states as follows:

Where two or more persons have applied for reconnaissance permit or a prospecting licence or a mining lease in respect of same land, the State Government shall, for the purposes of Sub-section (2) of Section 11, consider, besides the matters mentioned in Clauses (a) to (d) of Sub-section 3 of Section 11, the end use of the mineral by the applicant.

14. It is desirable to allot the mining areas to applicants who have already established their plants in the State by investing huge amounts. The Ore requirement for production of 1 ton steel is about 1.6 tones of iron ore.

15. In view of the provisions of Rule 35 of the Mineral Concession Rules, 1960, and taking into consideration all the documentary evidence submitted by the applicants, their representations during the oral hearing, their existing investments and their proposed investments, mining lease u/s 11(5) of the MM (D&R) Act, 1957, in favour of the following applicants is recommended:

(1) Part A of Sketch measuring an extent of 200.73 hectares in favour of

Jindal Vijayanagar Steel Ltd. (2) Part B of Sketch measuring an extent of 179.70 hectares in favour of

Kalyani Ferrous Industries Ltd. Sd/- (N. DHARAM SINGH) Chief Minister {emphasis supplied}

III. CHALLENGES IN THE WRIT PETITION

4. Aggrieved by the notification dated 15th March, 2003 and the proceedings dated 6th December, 2004 referred to above, the first respondent herein (writ petitioner) filed W.P. No. 21608 of 2005 seeking:

(i) a writ of certiorari to quash the communication No. C.I/111/MMM/2004 dated 6th December, 2004 issued by the State Government in so far as it recommends the grant of mining lease to appellants herein (Respondents No. 4 and 5 in the writ petition);

(ii) Issue a Writ, Order or Direction to the Respondent No. 1 to grant mining lease for the area mentioned in Serial No. 1 of the Notification No. CI.16 MMM 2003, Bangalore dated 15th March, 2003 to the first respondent herein (writ petitioner) to the extent of 298.5 hectares as sought by the first respondent herein (writ petitioner) in its application No. 997 AML 2003; and

(iii) in the alternative, direct the Respondent Union of India to consider and dispose of the petitioner's representations dated 16th August, 2003 and 31st May, 2004 before passing any order on the proposal of the State of Karnataka contained in its communication No. CI/111/ MMM/2004 dated 6th December, 2004.

IV. CONTENTIONS OF THE FIRST RESPONDENT HEREIN (WRIT PETITIONER)

5. According to the first respondent herein (writ petitioner):

i) the area applied for by the first respondent herein (writ petitioner) in application No. 96/2001 ought not to have been included in the notification dated 15th March, 2003 as the State Government itself had recommended the said area to the Central Government to relax the procedure contemplated under Rule 59(1) by exercising their power under Rule 59(2) of the MC Rules;

ii) the impugned proceedings dated 6th December, 2004 is contrary to the directions of this Court in W.P. No. 35915/2001 dated 29th March 2004, whereunder the State Government was expected to consider only the applications filed by Zia Ulla Shariff, South West Mining P. Ltd., Vijayanagar Minerals (P) Ltd., SMIORE and Euro Ikon Iron and Steel (P) Ltd., the present petitioner and any other applications filed pursuant to the Notification dated 15th March 2003, but not that of the first respondent herein (writ petitioner) who applied before issuance of the notification dated 15th March, 2003;

iii) as per Section 11(2) of the MMDR Act, where the State Government has not notified the area for grant, and two or more persons have applied for grant, the applicant whose application was received earlier, shall have the preferential right to be considered for the grant over the applicant whose application was received later. The first proviso to Section 11(2), provides for inviting applications by the State Government by notification for the area available for grant. All the applications received during the period specified in such notification, and the applications which had been received prior to the publication of the notification but not disposed of, shall be deemed to have been received on the same day. According to the first respondent herein (writ petitioner), the areas required to be notified u/s 11(2) and the areas referred to in the first proviso of Section 11(2) inviting applications for grant of lease are not the areas which are required to be notified under Rule 59(1) of the MC Rules;

iv) the power to issue notification under Rule 59(1) of the MC Rules notifying the area available for mining iron ore is traceable to Section 11(4) of MMDR Act and therefore, even though applications received during the period as specified in

such notification u/s 11(4), which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day, in the light of the matters provided u/s 11(3) of the MMDR Act, the applications filed prior to the issuance of notification u/s 11(4) read with Rule 59(1) of the MC Rules ought not to have been considered, as they are premature and shall not be entertained as per Rule 60 of the MC Rules;

v) the State Government failed to appreciate the merits of the first respondent herein (writ petitioner) while considering the matters specified u/s 11(3) of the MMDR Act;

vi) Clause (d) of Section 11(3) of the MMDR Act enables to take into account the investment which the applicant proposes to make and not investment already made by the applicant; and therefore the State Government ought not to have taken into consideration the investment already made by the appellants herein (respondents 4 and 5 in the writ petition) while making the impugned recommendation dated 6th December, 2004;

vii) the matters referred to u/s 11(3) of MMDR Act for evaluating and giving preferential consideration would prevail over Rule 35 of MC Rules and therefore, the State Government erred in applying Rule 35 of MC Rules for giving preference to the appellants herein (respondents 4 and 5 in the writ petition) as against the first respondent herein (writ petitioner), while passing the impugned proceedings dated 6th December, 2004;

viii) assuming that Rule 35 of MC Rules is also applicable, the State Government failed to apply its mind that the mining of iron ore and exporting the same to gain foreign exchange, being a stand-alone industry by itself, satisfies the "end-use" theory contemplated under Rule 35 of MC Rules and therefore, the impugned proceedings dated 6th December, 2004 suffers from non-application of mind;

ix) similarly, assuming that the application filed by the first respondent herein (writ petitioner) prior to the notification issued under Rule 59(1) of MC Rules could also be considered, the State Government ought to have given preference to the first respondent herein (writ petitioner) in view of the merits submitted by the first respondent herein (writ petitioner) in its representations dated 16th August, 2003, 31st May, 2004 and 12th October 2004, which satisfy the requirements contemplated u/s 11(3) of the MMDR Act, and preferred the first Respondent herein (writ petitioner) u/s 11(5) of the MMDR Act for the said merits as special reasons, and failure to prefer the first respondent herein (writ petitioner) vitiates the impugned proceedings dated 6th December, 2004; and

x) preferring and recommending the appellants herein (Respondents 4 and 5 in the Writ petition) to the Central Government for granting mining lease, by proceedings dated 6th December, 2004 is in gross violation of Section 11(3) of the MMDR Act as the first respondent herein (writ petitioner) possess special knowledge of, experience in mining operation and financial resources and also

employed fully qualified technical staff and propose to invest in the industry based on minerals.

V. CONTENTIONS OF THE STATE GOVERNMENT IN THE WRIT PETITION

6. The State Government resisted the contentions of the first respondent herein (writ petitioner) contending that:

(i) the petition is not maintainable and the same is liable to be dismissed as the petitioner has not exhausted efficacious alternative remedy of revision as provided under Rule 54 of MC Rules, before the Central Government;

(ii) the State Government issued notification notifying the area available for grant of lease as required under Rule 59(1) of the MC Rules on 15th March 2003 and all the applications applied for the areas notified have been duly considered in accordance with the provisions of Section 11(3) of the MMDR Act and Rule 35 of the MC Rules;

(iii) the Chief Minister, who was also in-charge of Mines and Geology heard the applicants as required under Rule 26 of the MC Rules on 25th October, 2004 and on 4th November, 2004; and after carefully considering all relevant matters specified u/s 11(3) of the MMDR Act and the merits under Rule 35 of the MC Rules recommended the appellants herein (respondents 4 and 5 in the writ petition) for grant of mining lease, by proceedings dated 6th December, 2004.

(iv) the State Government has rightly considered the application filed by the first appellant herein (respondent No. 4 in the writ petition), applied prior to the notification dated 15th March, 2003; and

(v) the proceedings dated 6th December, 2004 is only a proposal and ultimately, the decision of the Central Government either to accept or reject the recommendation is final.

VI. CONTENTIONS OF THE CENTRAL GOVERNMENT IN THE WRIT PETITION

7. According to the Central Government, it has examined the proposals of the State Government on merits and found that:

(i) the State Government has selected the applicants, in terms of Section 11(3) of the MMDR Act and Rule 35 of the MC Rules;

(ii) the State Government has rightly considered all the applications received prior to the date of notification dated 15th March, 2003 issued under Rule 59(1) of the MC Rules; and

(iii) the Central Government has conveyed its prior approval to the proposal received in favour of first appellant herein (respondent No. 4 in the writ petition) on 27th June, 2006 and in favour of second appellant herein (respondent No. 5 in the writ petition) on 5th June, 2006 and the action of the Central Government has not been challenged by the first respondent herein (writ petitioner).

VII. CONTENTIONS OF THE APPELLANTS (RESPONDENTS 4 AND 5 IN THE WRIT PETITION)

8. The appellants herein (respondents No. 4 and 5 in the writ petition) contended that:

- (i) the writ petition is not maintainable in view of efficacious alternate remedy of filing revision petition u/s 30 of the MMDR Act read with Rule 54 of the MC Rules;
- (ii) Section 11(2) of the MMDR Act enables the State Government to consider the application filed before the issuance of notification under Rule 59 of the MC Rules;
- (iii) Rule 60 of the MC Rules cannot be read in isolation and contrary to Section 11(2), as otherwise Section 11(2) of the MMDR Act and Rule 59(2) of the MC Rules would become redundant;
- (iv) the appellants herein (respondents 4 and 5 in the writ petition) have already set up integrated Steel plant and first respondent herein (writ petitioner) only proposes to set up Steel plant, if mining lease is granted to it;
- (v) the first respondent herein (writ petitioner) is already having mining lease for 750 Hectares and its sister companies are also having mining leases, which by itself would be sufficient to meet the requirements of the writ petitioner's proposed Steel plant;
- (vi) the State Government having satisfied that the appellants herein (respondents 4 and 5 in the writ petition) possess:
 - (a) special knowledge of experience in mining operation;
 - (b) the finance resource;
 - (c) qualified technical staff employed; and
 - (d) investment to make in the mines and the industry based on the mines,rightly found that they are more preferable than the first respondent herein (writ petitioner) with reference to the matters prescribed u/s 11(3) of the MMDR Act;
- (vii) that apart, the State Government has also rightly applied Rule 35 of the MC Rules and found the appellants herein (respondents 4 and 5 in the writ petition) are preferable against the first respondent herein (writ petitioner) by considering the "end-use" of the minerals by the respective applicants;
- (viii) the State Government after giving full opportunity and in compliance of Rule 26 of the MC Rules, rightly recommended for grant of mining lease to the appellants herein (respondents 4 and 5 in the writ petition); and
- (ix) viewed from any angle, the appellants herein (respondents 4 and 5 in the writ petition) are more deserving, meritorious than the first respondent herein (writ petitioner) for grant of impugned mining lease.

VIII. ISSUES DEALT BY THE LEARNED SINGLE JUDGE

9.1. In the light of the above rival claims, the learned single Judge framed the following questions for his consideration:

- (i) Whether the State Government can consider an application, which was not filed in response to the notification issued under Rule 59 of the M C Rules, in respect of land notified as available for grant of mining lease?
- (ii) Whether the State Government acted legally and bona fide while considering the applications for grant of impugned mining lease?

IX. FINDINGS. DECISIONS AND DIRECTIONS OF THE LEARNED SINGLE JUDGE

9.2. The learned Single Judge, by his order dated 7th August, 2008 held the first question in negative, in favour of the first respondent herein (writ petitioner) and against the appellants herein (respondents No. 4 and 5), and with reference to the second question, it is held that the Government failed to act legally and bona fide in considering the applications for grant of impugned mining lease and accordingly, quashed the impugned proceedings dated 6th December, 2004.

9.3. That apart, the learned Single Judge also framed yet another self-posed question, viz.

- (iii) Whether the notification dated 15th March, 2003, notifying the areas available for mining lease, is opposed to public interest, viz. the conservation of forest wealth, protected by the provisions of Forest (Conservation) Act, 1980 and Rules framed thereunder?

9.4. The learned Single Judge, by order dated 7th August 2008, while answering the said question related to the public interest referred to above, held that the issuance of the notification dated 15th March, 2003 itself is contrary to the public interest viz., the conservation of forest wealth.

9.5. The learned single Judge also held that the permission for grant of mining lease by the Central Government u/s 2 of the FC Act is definitely neither an answer nor a substitute for the requirement of the State Government to protect and conserve the forest wealth.

9.6. Accordingly, the learned Single Judge in his order dated 7th August, 2008 issued the following directions:

- (a) The State Government should always make a clear distinction between forest area and non-forest area while granting mining leases;
- (b) The State Government should always show awareness to the existing forest whether declared as reserved forest or otherwise and if there is an existing forest in any area, the first and the foremost effort should be to conserve the forest;
- (c) If the area has already been declared as reserved forest area, it should normally be retained without being disturbed and only if the State Government is

fully satisfied that there is inevitable need justifying de-reservation and to permit a non-forest activity, that should be examined keeping in view the nature of non-forest activity proposed to be carried out in the forest area, the impact and consequence of such non-forest activity in the forest area, the extent of actual forest being damaged or destroyed, as to the duration over which such forest has developed in the area, whether the forest is in a unique and endangered biosphere, whether there is an imminent need to conserve such forest, if it is a unique type of forest or an endangered type of biosphere.

(d) Mining activity being, undisputedly, very deleterious activity for preserving and conserving forest, mining activity should be totally avoided in forest areas;

(e) Conserving forest can also achieve the object of conserving the mineral embedded in the earth beneath the forest growth and it is not as though the mineral is lost and therefore the State Government to bestow attention to this aspect of conserving mineral also.

(f) The State Government should make a very scientific and conscious evaluation of the consequences of losing precious forest as to whether it is so very imminent and inevitable for exploiting the mineral for being used in the production of the mineral for country's purpose and development and such related aspects should always be examined and only if it is found that the benefits of exploiting mineral far outweigh the losses due to the destruction of forest and there is imminent need for the mineral, then alone, the State Government should think of notifying even a forest area owned by the state Government as one available for lease to carry out mining operations in the area.

(g) Mining operation being undisputedly capable of causing immense pollution, ecological imbalance and even environmentally disastrous, the State Government should always undertake a scientific study of ways and means to avoid such possibilities. The mineral if can be obtained by non mining activity or can be obtained by any other means that should be explored and not to resort to mining operation in forest areas.

(h) As there is an imminent need to conserve existing forest, State Government is directed to put an hold on all mining activities in forest areas, undertake a scientific study of effects and consequences of continued mining in such forest areas, the impact of mining activity on the entire forest, need for conserving forest growth, need for protecting forest growth and if the forest growth comprises of any endangered flora or fauna or comprises of a rare biosphere with kinds of flora and fauna found only the area, the impact of mining on such flora and fauna and only after such an evaluation and on being satisfied that all precautions are followed, permit a non-forest activity on the land.

(i) All the mining leases granted during the pendency of the above writ petition before this Court and under the notification dated 15.3.2003 (Annexure-B to the writ petition) being leases granted during the pendency of the writ petition and as it is not in dispute that the State Government has not shown its awareness to

the need or necessity to conserve forest in the notified areas, particularly with large tracts of forest coming under the category of reserved forest, these leases cannot be sustained and are quashed hereby by issue of a writ or certiorari.

(j) In respect of all other mining leases not covered under the notification dated 15.3.2003 but in forest areas, reserved forest or non-reserved forest, the State Government is required to follow the above directions and till a scientific evaluation is made and the imminent need for carrying out mining operations in the forest area is established and only if it is established that it is inevitable for carrying on the mining operations even at the cost of losing forest, then alone, leases can be permitted to work, otherwise, the State Government is directed to take steps for cancellation of such leases by following the procedure envisaged under the Act and the Rules and in terms of the conditions stipulated for resumption of the lease under the mining lease itself.

(k) The State Government should always bear in mind that the larger public interest will outweigh the smaller individual or personal interest or business interest of the lessees who would have taken mining leases of the areas for commercial production and from the business angle and the prospects of existing lessees incurring losses or losing profit cannot come in the way of State Government pursuing rightful action for protecting the forest wealth, for conserving and retaining endangered species of flora and fauna and even to retain a biosphere of unique nature developed in nature over millions of years which once interfered or destroyed will be lost to mankind for ever.

(l) The State Government is hereby directed not to embark on granting any mining leases in forest areas as a matter of rule and only as an exception, forest areas may be notified for grant of mining leases, after fully establishing the imminent and inevitable need for exploiting the mineral and if it is found such exploitation is in the national interest for making available mineral which otherwise cannot be obtained for the nation building activities including defence, research or other scientific activities.

(m) The State and the Central Governments may also consider the possibilities of nationalization of mining industry so that the private profit motive does not come in the way of protecting environment, conserving forests and to avoid ecological disasters, so that the Government once becomes aware that the mining operations are deleterious to this cause, it can without any hassle, straightaway stop mining activities.

9.7. The learned Single Judge, thus, by order dated 7th August, 2008:

(i) held that the State Government ought not to have considered the applications which are not filed in response to the notification dated 15th March, 2003 issued under Rule 59(1) of the MC Rules; and

(ii) quashed the notification dated 15th March, 2003 as well as proceedings of

the State Government dated 6th December, 2004 on the ground that the Government failed to act legally and bona fide.

9.8. It is further held that mining activity should be totally avoided in the forest land and directed the State Government to put an hold on all mining activities in the forest land.

9.9. The learned single Judge also held that all the mining leases granted during the pendency of the writ petition, pursuant to the notification dated 15th March, 2003 could not be sustained, and therefore directed the State Government to take steps for cancellation of all other mining leases not covered under the notification dated 15th March, 2003 but which are in the forest area - (reserved or non-reserved), by following the procedure under the Act; and not to embark on granting mining leases in the forest land as a matter of rule and only as an exception, forest land should be notified for granting the mining lease.

9.10. The learned single Judge, thus directed, by order dated 7th August, 2008, the State Government and Central Government to consider the possibility of nationalizing the mining industries, so that, private profit motive would not come in the way of protecting environment.

X. CONSEQUENCE OF THE ORDER AND DIRECTIONS OF THE LEARNED SINGLE JUDGE DATED 7th AUGUST. 2008 AND FILING OF THE PRESENT APPEALS:

10.1. The order and directions of the learned single Judge dated 7th August, 2008, therefore, stirred the entire mining industry, as, not only the mining leases recommended in favour of the appellants herein (respondents 4 and 5 in the writ petition) and all the mining leases granted pursuant to the notification dated 15th March, 2003, but also the mining leases granted in the forest land before the issuance of the said notification were all directed to be cancelled. Hence, the order of the learned Single Judge dated 7th August, 2008 gave way for filing of above batch of writ appeals.

10.2. Heard Mr. D.L.N. Rao, learned Senior Counsel for the appellants herein (respondents 4 and 5 in the writ petition), Mr. Krishnan Venogopal, Senior counsel for the first respondent herein (writ petitioner), Mr. Udaya Holla, learned Advocate General for the State and Mr. Aravind Kumar, learned Assistant Solicitor General for the Central Government.

10.3. We also heard Mrs. Nalini Chidambaram, learned senior counsel and other learned Counsel for the appellants in the other connected appeals supporting the contentions of Mr. D.L.N. Rao.

11.1. All the learned senior counsel appearing for the appellants as well as the respondents argued challenging the reasons and findings of the learned Single Judge in quashing the notification dated 15th March, 2003 and also issuing directions to the State Government to cancel all the mining leases that were granted in the forest lands, whether pursuant to or before the issuance of the impugned notification dated 15th March, 2003.

11.2. According to them, the finding and decision on the self-posed question, viz.,
(iii) Whether the notification dated 15th March, 2003, notifying the areas available for mining lease, is opposed to public interest, viz. the conservation of forest wealth, protected by the provisions of Forest (Conservation) Act, 1980 and Rules framed thereunder?

is opposed to the doctrine of sustainable development.

11.3. It is also contended that:

(i) the learned Single Judge ought not to have quashed the mining leases in the forest land merely on the ground that the said mining area available for lease is located in the forest land, as the same were not challenged by whomsoever;

(ii) the learned single Judge erred in interfering with the policy decision of the State Government with respect to sustainable development in granting mining leases in the forest land; and

(iii) the finding that the permission for granting the mining lease by the Central Government u/s 2 of the FC Act, is definitely neither an answer nor a substitute for the requirement of the State Government to protect and conserve the forest wealth, is also illogical as the FC Act and the Rules framed thereunder empowers the Central Government to decide such issues.

XI. SUBMISSIONS MADE ON BEHALF OF THE APPELLANTS:

12.1. Mr. D.L.N. Rao, learned senior counsel for appellants herein (respondents 4 and 5 in the writ petition) reiterating the submissions made before the learned single Judge, contends that:

(i) the applications applied for the grant of mining lease before the issuance of notification under Rule 59(1) of the MC Rules dated 15th March, 2003, are entitled to be considered in view of first proviso to Section 11(2) of the MMDR Act as the same shall be deemed to have been received pursuant to the notification under Rule 59(1) of the MC Rules;

(ii) the power to issue notification, notifying the areas available for mining lease and inviting applications for the same is traceable to Section 11(2) of the MMDR Act, and therefore, the applications made before issuance of such notification, but not considered, are deemed to have been made after the issuance of notification, and are entitled to be considered along with the applications received pursuant to the notification, in the light of the matters specified u/s 11(3) of the MMDR Act;

iii) merely because the first respondent herein (writ petitioner) applied for the impugned lease and the State Government recommended the same for relaxation of Rule 59(1) of the MC Rules by exercising power under Rule 59(2) of the MC Rules, by itself would not be a bar for the State Government to notify the same area as available for mining lease under Rule 59(1) of the MC Rules and

invite the applications for mining lease u/s 11(2) of the MMDR Act;

iv) merely because there was no notification under Rule 59(1) of the MC Rules, the appellants herein (respondents 4 and 5 in the writ petition) are not barred to apply before the issuance of the notification; but the moment the notification was issued, notifying the area available for mining lease under Rule 59(1) of the MC Rules and the applications are invited for the same u/s 11(2) of the MMDR Act, even though applications applied before the issuance of the said notification are premature and shall not be entertained as per Rule 60 of the MC Rules, are entitled to be considered after the issuance of the notification, in the light of the matters prescribed u/s 11(3) of the MMDR Act;

v) Section 11 of the MMDR Act and Rules 59 and 60 of the MC Rules are to be read harmoniously and therefore, there is no inconsistency or conflict whatsoever between Section 11(2) of MMDR Act and Rules 59 and 60 of the MC Rules;

vi) as per the order of this Court dated 29th March, 2004 in Writ Petition No. 35915 of 2001, the applications pending before the State Government and also the applications filed pursuant to the notification are expected to be considered by the State Government;

vii) the finding of the learned Single Judge that the Government have not considered the applications in a comprehensive manner, is not correct, because even according to the first respondent herein(writ petitioner) they have been given sufficient opportunity of being heard, as contemplated under Rule 26(1) of the MC Rules and the State Government have considered the rival claims of the appellants as well as the first respondent herein (writ petitioner) as per Section 11(3) of the MMDR Act and Rule 35 of the MC Rules and after due consideration, recommended to the Central Government to grant mining lease in favour of the appellants, viz., M/s. Jindal Vijayanagar Steel Limited to an extent of 200.73 hectares and in favour of M/s. Kalyani Ferrous Industries Limited to an extent of 179.70 hectares, giving reasons in writing, by impugned proceedings dated 6th December, 2004;

viii) the finding of the learned Single Judge that the State Government has not acted legally and bonafide, is incorrect and illogical;

ix) the first respondent herein (writ petitioner) is already having 722.94 hectares for its mining operation and therefore the same is sufficient for its captive consumption for the steel plant proposed to be established by it at the cost of Rs. 1000 Crore;

x) on the other hand, the appellants herein (respondents No. 4 and 5 in the writ petition) applied for 200.73 hectares and 179.70 hectares respectively in order to meet their current needs of captive consumption of iron ore for running their existing steel plants with an investment of Rs. 7000 Crore and 600 Crore respectively;

xi) the appellants herein (respondents 4 and 5) having established huge steel

plants are entitled for preference in grant of mining lease as against the first respondent herein (writ petitioner) as per Section 11(3) of the MMDR Act and Rule 35 of the MC Rules; and the State Government policy is also in favour of granting mining lease taking into consideration the end-use of the minerals by the applicants and its value addition; and

(xii) Mr. D.L.N. Rao also invited our attention to amendments brought in to Section 11 by the Amendment Act 38 of 1999 which came into effect from 18th December, 1999 and the amendment brought to Rule 60 of the MC Rules, with effect from 17th January, 2000, wherein the words- "and the fee, if any, paid in respect of any such application shall be refunded" alone were omitted from Rule 60 of the MC Rules.

XII. SUBMISSIONS MADE ON BEHALF OF THE STATE GOVERNMENT IN WRIT APPEALS:

13.1. Mr. Udaya Holla, learned Advocate General, appearing for the State Government, reiterating the submissions made before the learned Single Judge, supported the contentions made by Mr. D.L.N. Rao on behalf of the appellants herein (respondents 4 and 5 in the writ petition).

13.2. The learned Advocate General submits that even before the first proviso to Section 11(2) of the MMDR Act was introduced in the year 1999, the premature applications, viz., applications made before publication of the notification under Rule 59 of the MC Rules and before the expiry of the period specified in the notification, were considered under Rule 60 of the MC Rules as premature and they shall not be entertained. Therefore, the Legislature was conscious of Rule 60 of the MC Rules, but still introduced the first proviso to Section 11(2) of the MMDR Act to enable the Government to consider the applications that were applied, before the publication of the notification inviting the applications for mining lease for the area notified as available for mining lease, but not disposed of, are deemed to have been received pursuant to the notification and shall be considered in the light of Section 11(3) of the MMDR Act.

13.3. In the instant case, the learned Advocate General submits that the applications received before publication of the notification dated 15th March, 2003 were also considered u/s 11(3) of the MMDR Act and the State Government has rightly examined and considered the inter se relative merits of all the parties in terms of Section 11(3) of the MMDR Act as well as Rule 35 of the MC Rules, and, by proceedings dated 6th December 2004, recommended for grant of 200.73 hectares in favour of M/s. Jindal Vijayanagar Steel Ltd., and 179.70 hectares in favour of M/s. Kalyani Ferrous Industries Ltd. respectively, for the approval of the Central Government u/s 5 of the MMDR Act.

13.4. The learned Advocate General further submits that apart from the fact that the mining operation is a "stand-alone" industry, the State is also committed to encourage the utilization of iron ore mined for use in their own industries established in the State and for value addition of the same.

13.5. Hence, there is no illegality or irregularity either in issuing the notification dated 15th March, 2003 notifying the area available for grant of mining lease or in the proceedings dated 6th December, 2004.

XIII. SUBMISSIONS MADE ON BEHALF OF THE CENTRAL GOVERNMENT

14.1. Sri Aravind Kumar, learned Assistant Solicitor General, appearing for the Central Government, reiterating the submissions made before the learned single Judge, submits that:

(i) the State Government has selected the applicants, in terms of Section 11(3) of the MMDR Act and Rule 35 of the MC Rules;

(ii) the State Government has rightly considered all the applications received prior to the date of notification dated 15th March, 2003 issued under Rule 59(1) of the MC Rules; and

(iii) the Central Government has conveyed its prior approval to the proposal received in favour of first appellant herein (respondent No. 4 in the writ petition) on 27th June, 2006 and in favour of second appellant (respondent No. 5 in the writ petition) on 5th June, 2006 and the action of the Central Government has not been challenged by the first respondent herein (writ petitioner).

XIV. SUBMISSIONS MADE ON BEHALF OF THE FIRST RESPONDENT HEREIN (PETITIONER IN THE WRIT PETITION):

15.1. Mr. Krishnan Venugopal, learned senior counsel appearing for the learned Counsel for first respondent herein (writ petitioner), reiterating the contentions made before the learned single Judge challenging the proceedings dated 6th December, 2004, contends that:

(i) the applications made prior to notification dated 15th March, 2003 are premature and the same shall not be entertained as per Rule 60 of the MC Rules.

(ii) the State Government having already recommended for relaxation of Rule 59(1) of the MC Rules, exercising the power conferred on it under Rule 59(2) of the MC Rules, ought to have preferred the first respondent herein (writ petitioner) as against the appellants herein (respondents 4 and 5 in the writ petition) considering the inter se merits u/s 11(3) of the MMDR Act;

(iii) Mr. Krishnan Venugopal, inviting our attention to the representations, 16th August, 2003, 31st May, 2004 and 12th October, 2004, claims that the first respondent herein (Writ Petitioner):

(a) has forty years of experience in exploration of mining and marketing of minerals, viz. iron ore;

(b) is interested in banking, industrial gases, power generation, industrial financing, etc, and is successfully running these businesses with vast investable resources;

- (c) contributes more than Rs. 300 lakh per year to the State Exchequer by way of Royalty;
- (d) earned foreign exchange to the tune of USD 35 million in the year 2003;
- (e) has safe and scientific mining practices; and is the winner of numerous awards by the State Government and Central Government;
- (f) has experienced employees and advisors in exploration and mining operation; and
- (g) requires the impugned mine for their captive consumption for the steel plant which it proposes to set up.
- (h) is willing to make more investments in Karnataka State despite favourable conditions in Tamilnadu, Maharashtra, Orissa and Andhra Pradesh;
- (i) has developed the best iron ore mine in the State by deploying the best practice;
- (j) proposes to invest Rs. 1000 Crore in a one million MT specialty steel plant in the State;
- (k) proposes to invest a five million MT integrated steel plant in the State over a span of five years for Rs. 10,000 Crore and the said project could be undertaken only if iron ore is assured by granting of mining lease applied by it;
- (l) proposes to invest Rs. 150 Crore for non-conventional energy generation in the next three years;
- (m) proposes to invest Rs. 750 Crore for generating of 160 MW of wind power in the next six months;
- (n) it proposes to use the iron ore from the mining lease applied for the proposed steel plant as captive consumption, which would result in value addition in the State;
- (o) that the resources available in the existing area could not support its future investment plan in the State; and
- (p) the case of the first respondent herein (writ petitioner), therefore would be considered under Sections 11(3) and 11(5) of the MMDR Act granting the mining lease for the special reasons mentioned above.
- (iv) as per Section 11(3) of the MMDR Act, no weightage could be given to the existing industries and investments because Section 11(3)(d) of the MMDR Act contemplates only to take into consideration the investment which the applicants propose to make in the mines and in the industries based on minerals; and
- (v) in any event, the State Government ought to have preferred the first respondent herein (writ petitioner) as they have:

- i) special knowledge;
- ii) experience in the mining operation;
- iii) sufficient financial resource; and
- iv) employed qualified technical staff.

XV. ISSUES:

16.1. We have given our careful consideration to the submissions of the learned Counsel appearing for all the parties.

16.2. Upon the rival contentions made, the following substantial issues arise for our consideration:

(i) Whether it is proper for this Court to exercise its power of judicial review under Article 226 of the Constitution of India to adjudicate on the policy decision with respect to substantial development of the State and quash the notification made under Rule 59(1) of the Mineral Concession Rules, 1960 (for short "MC Rules") notifying the area available for mining iron ore?

(ii) Whether the application, for grant of mining lease for an area, without a notification under Rule 59(1) of the MC Rules, 1960 notifying the said area as available for mining, can be considered for grant of mining lease u/s 11(2) of the Mines and Minerals (Development & Regulation) Act, 1957, (for short "MMDR Act") as such application is premature and shall not be entertained as per Rule 60 of the MC Rules, 1960? and

(iii) Whether granting mining lease in consideration of Rule 35 of the MC Rules falls outside the purview of the matters specified u/s 11(3) of the MMDR Act?

(iv) Whether the proceedings dated 6th December, 2004 suffers from:

- i. irregularity,
- ii. illegality,
- iii. discrimination,
- iv. arbitrary and unreasonable exercise of power, and
- v. violates the principles of natural justice?

(v) To what relief the parties are entitled to?

XVI. CONSIDERATION, ANALYSIS AND FINDINGS:

17.1 ISSUE (I):

Whether it is proper for this Court to exercise its power of judicial review under Article 226 of the Constitution of India to adjudicate on the policy decision with respect to substantial development of the State and quash the notification made under Rule 59(1) of the Mineral Concession Rules, 1960 (for short "MC Rules")

notifying the area available for mining iron ore?

17.2. Article 39 of the Constitution of India contemplates that the State shall direct its policy towards securing that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment. Article 47 of the Constitution refers to the duty of the State to raise the level of nutrition and standard of living and to improve the public health. As per Article 48A of the Constitution, the State shall ensure to protect and improve the environment and the said Directive Principles of State Policy is meant to protect the fundamental rights conferred under Articles 14 and 21 of the Constitution, viz. Equality before law and Protection of life and personal liberty. Whereas the fundamental duty conferred under Article 51A(g) of the Constitution, points out the obligation of the citizen to protect and improve the environment.

17.3. Articles 39, 47, 48A and 51A(g) of the Constitution of India read as follows:

39. Certain principles of policy to be followed by the State.:

The State shall, in particular, direct its policy towards securing:

(a) to (b)

(b) that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment;

(c) to (f)

47. Duty of the State to raise the level of nutrition and the standard of living and to improve public health.- The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

48-A. Protection and improvement of environment and safeguarding of forests and wildlife.- The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.

51-A. Fundamental duties.- It shall be the duty of every citizen of India:

(a) to (f)

(g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

(h) to (k)

17.4. Right to healthy environment is the legitimate expectation, an aspect protected under Article 14 of the Constitution of India. Right to healthy environment is also a part of right to life protected under Article 21 of the

Constitution of India.

17.5. The "first generation" rights are generally political rights such as those found in international convention on Civil and Political rights; that the "second generation" rights are social and economic rights as found in the International Covenant on Economics, Social and Cultural Rights; and that the "third generation" rights, in today's emerging jurisprudence, encompass a group of collective rights demanding rights to healthy environment and giving rise to the principle of State's responsibility to protect the environment and this responsibility is clearly enunciated in the United National Conference on the Human Environment, Stockholm 1972 (Stockholm Convention) to which India was a party (vide Intellectuals Forum, Tirupathi Vs. State of A.P. and Others,).

17.6. There is no doubt about the fact that there is a responsibility bestowed upon the Government to protect and preserve the environment, as undoubtedly, hygienic environment is an integral facet of the right to a healthy life and it would be impossible to live without a humane and healthy environment (vide Bahadur Singh Vs. State of Madhya Pradesh and Another,).

17.7. While the right to clean environment is a guaranteed fundamental right under Articles 14 and 21 of the Constitution of India, the right to development through industrialization equally claims priority under fundamental rights, particularly under Articles 14, 19 and 21 of the Constitution of India. Therefore, there is a necessity for a sustainable development harmonizing both the needs and striking a golden balance between the right to development and right to clean environment - A Concept of Sustainable Development, an integral part of Articles 14 and 21 of the Constitution of India (vide N.D. Jayal and Another Vs. Union of India (UOI) and Others,).

17.8.1 Before proceeding further, a sharp and detailed reference on the concept of sustainable development is inevitable.

17.8.2. As observed by the Apex Court in A.P. Pollution Control Board v. M.V. Nayudu 1992(2) SCC 718 and in Vellore Citizens Welfare Forum Vs. Union of India and others, the concept of Sustainable Development is explained as follows:

(i) The Stockholm Conference of 1972 refers to the inter-generational equity Principles-1 and 2, as follows:

Principle 1: Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations.

Principle 2: The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate.

(ii) Several international conventions and treaties have recognized the above principles and, in fact, several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present.

(iii) The inadequacies of science result from identification of adverse effects of a hazard and then working backwards to find the causes. Secondly, clinical tests are performed, particularly where toxins are involved, on animals and not on humans, that is to say, are based on animal studies or short-term cell-testing. Thirdly, conclusions based on epidemiological studies are flawed by the scientist's inability to control or even accurately assess past exposure of the subjects. Moreover, these studies do not permit the scientist to isolate the effects of the substance of concern. It is the above uncertainty of science in environmental context, that has led international conferences to formulate new legal theories and rules of evidence. The "uncertainty" of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992.

(iv) The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the environment for its own sake. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential. The precautionary principle was recommended by UNEP Governing Council (1989). However, summing up the legal status of the precautionary principle, one commentator characterized the principle as still "evolving", for though it is accepted as part of the international customary law, "the consequences of its application in any potential situation will be influenced by the circumstances of each case".

(v) The traditional concept that development and ecology are opposed to each other is no longer acceptable. "Sustainable Development" is the answer. In the international sphere, "Sustainable Development" as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987 the concept was given a definite shape by the World Commission on Environment and Development in its report called "Our Common Future". The Commission was chaired by the then Prime Minister of Norway, Ms. G.H. Brundtland and as such the report is popularly known as "Brundtland Report".

(vi) In 1991 the World Conservation Union, United Nations Environment Programme and Worldwide Fund for Nature, jointly came out with a document called "caring for the Earth" which is a strategy for sustainable living. Finally, came the Earth Summit held in June 1992 at Rio which saw the largest gathering of world leaders ever in the history -deliberating and chalking out a blueprint for

the survival of the planet. Among the tangible achievements of the Rio Conference was the signing of two conventions, one on biological diversity and another on climate change. These conventions were signed by 153 nations. The delegates also approved by consensus three non-binding documents namely, a Statement on Forestry Principles, a declaration of principles on environmental policy and developmental initiatives and Agenda 21, a programme of action into the next century in areas like poverty, population and pollution.

(vii) Earlier, the concept was based on the "assimilative capacity" rules as revealed from Principle 6 of the Stockholm Declaration of the U.N. Conference on Human Environment, 1972. The said principle assumed that science could provide policymakers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and it presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th Principle of the U.N. General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the "precautionary principle", and this was reiterated in the Rio Conference of 1992 in its Principle 15.

Principle 15.- In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for proposing cost-effective measures to prevent environmental degradation.

(viii) During the two decades from Stockholm to Rio "Sustainable Development" has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting ecosystems. "Sustainable Development" as defined by the Brundtland Report means "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs". The "Sustainable Development", therefore, is a balancing concept between ecology and development, has been accepted as a part of the customary international law though its salient features have yet to be finalized by the international law jurists. Some of the salient principles of "Sustainable Development", as culled out from Brundtland Report and other international documents, are Inter-Generational Equity, Use and Conservation of Natural Resources, Environmental Protection, the Precautionary Principle, Polluter Pays Principle, Obligation to Assist and Cooperate, Eradication of Poverty and Financial Assistance to the developing countries.

(ix) In Vellore Citizens Welfare Forum Vs. Union of India and others, , a three-Judge Bench of the Apex Court referred to the "Precautionary principle" in environmental matters. Kuldeep Singh, J. after referring to the principles evolved in various international conferences and to the concept of "sustainable development", stated that the precautionary principle, the polluter-pays principle

and the special concept of onus of proof have now emerged and govern the law in our country too, as is clear from Articles 47, 48-A and 51-A(g) of our Constitution and that, in fact, in the various environmental statutes, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. These principles have now become part of our law. Thus, it was held that "The Precautionary Principle" and "The Polluter Pays Principle" are essential features of "Sustainable Development".

(x) The "Precautionary Principle"- In the context of the municipal law -means:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The "onus of proof" is on the actor or the developer/industrialist to show that his action is environmentally benign.

(xi) "The Polluter Pays Principle" has been held to be a sound principle by the Apex Court, in *Indian Council for Enviro-Legal Action and Others Vs. Union of India (UOI) and Others*, . The Court observed:

... we are of the opinion that any principle evolved in this behalf should be simple, practical and suited to the conditions obtaining in this country.

The Apex Court further observed:

... once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. The rule is premised upon the very nature of the activity carried on....

Consequently the polluting industries are absolutely liable to compensate for the harm caused by them to villagers in the affected area, to the soil and to the underground water and hence, they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas. The "Polluter Pays Principle" as interpreted by this Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable Development" and as such the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing the damaged ecology. The Precautionary Principle and the Polluter Pays Principle have been accepted as part of the law of the land. Article 21 of the Constitution of India guarantees protection of life and personal liberty.

(xii) Apart from these constitutional mandates under Articles 14, 21 of the

fundamental rights, 47, 48A of the directive principles of State Policy and 51A(g) of the Fundamental Duty, to protect and improve the environment there are plenty of post-independence legislations on the subject but more relevant enactments for our purpose are the Water (Prevention and Control of Pollution) Act, 1974 (the Water Act), the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) and the Environment (Protection) Act, 1986 (the Environment Act). The Water Act provides for the constitution of the Central Pollution Control Board by the Central Government and the constitution of the State Pollution Control Boards by various State Governments in the country. The Boards function under the control of the Governments concerned. The Water Act prohibits the use of streams and wells for disposal of polluting matters. It also provides for restrictions on outlets and discharge of effluents without obtaining consent from the Board. Prosecution and penalties have been provided which include sentence of imprisonment. The Air Act provides that the Central Pollution Control Board and the State Pollution Control Boards constituted under the Water Act shall also perform the powers and functions under the Air Act. The main function of the Boards, under the Air Act, is to improve the quality of the air and to prevent, control and abate air pollution in the country. The Environment (Protection) Act, 1986 was also enacted for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substances, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health.

17.9. The question is - whether interest of economy or protection of environment or both, for a sustainable development of the State?

17.10. By very concept, "sustainable development" differs from "economic growth". "Development" is not synonymous with "Growth". "Growth" implies expansion or quantitative change but the "development" includes the qualitative component along with quantity. That is why "Sustainable Development" is preferred to economic growth. Of course, economic growth also contributes to improve the quality of life; but the true development should aim to provide quality well-being of the people and human dignity, unaffected by globalization, which plays a major role in global economy, transferring goods and raw materials from one place to another for industrialization, unconcerned with local economy of the people. "Sustainable development", therefore, means sustaining human development worldwide. While the object of the economic growth is the need of the day, the aim of sustainable development is to improve the need of quality life for not only today's generation but also for the future generation.

17.11. Consumerism is the centrifugal force of globalization. While the economic growth aims at the quantity-based consumerism, the sustainable development aims at the quality-based consumerism. While excessive consumption leads to environmental degradation and enables only the rich to have a quality life, the poor are unable to meet the basic needs, the Sustainable Development and consumption ensures equity among the people.

17.12. Like maintenance of environmental protection, the quality lifestyle of the human being also requires improvement; otherwise, there will be set-back in the quality lifestyle of the human being. Until recently, the economic growth was the only measure to decide the quality of life; and such economic growth intends only the needs of the present generation; but, the economic development meets the need of the present without compromising the ability of the future generations to meet their own needs; and such economic development, which takes care of the future generation is called as sustainable development carrying three components viz.

- (i) concern for the environment while framing the economic policies;
- (ii) understanding the true meaning of the development; and
- (iii) commitment to equity viz. reducing the gap between the have's and have not not only the equity among the people living contemporarily in various parts of the world; but also the equity among generations with reference to the use of natural resources, which has to be achieved by strict liability for pollution control, applying "precautionary principle", "polluter-pays" theory and "public trust doctrine".

17.13 Traditionally, the economic growth only promotes consumerism, whereas sustainable development, as coined by World Commission on Environment and Development, which is also known as "Brundtland Commission", ensures to preserve the natural resources for the next generations also. While economic growth and protection of environment are considered contrary in nature, the sustainable development aims to bring them together for the benefit of the mankind - past, present and future, reminding the fact "today is yesterday's tomorrow and tomorrow's yesterday."

17.14. Sustainable development, therefore, aims at improving human well-being along with the protection of environment. Sustainable development would meet social, economic and political challenges, such as:

- (i) lack of environmental ethics, lack of basic services like sanitation, drinking water, healthcare, etc. as social challenges;
- (ii) unequal consumption of resources, environmental hazards caused by industrial sectors, displacement of traditional and local economy by the global ones as economic challenges; and
- (iii) the policies of the Government interstate relationship and international business competition as political challenges.

17.15. The sustainable development and the sustainable consumption would ensure fair distribution among the present and future generations and prevent excessive exploitation of natural resources. The concept of sustainable development/ sustainable consumption, emphasizes the views of natural resources be at equal rate which can be substituted or replaced. Sustainable

development means not only economic growth, but also covers a broad spectrum of peoples' education, health, nutrition, organization of discipline and honest labour. Development through science and technology, that commensurate with environmental resources, is an ideal goal for all societies. Of course, the transformation of the natural resources would bring the benefits of the economic development and enhance the quality of life, but if the same causes incalculable harm to the natural environment, that by itself, will be harmful to human life. Therefore, economic development and environmental protection should complement with each other. Such sustainable development can be achieved by industry and industrialization through eco-friendly science and technology. The eco-friendly science and technology is opposed to the mere dollar-friendly approach.

17.16. Sustainable development, thus, in the course of economic development through industrialization by eco-friendly science and technology, takes environment also into account and minimizes the environmental damage. Sustainable development involves changing methods not only in production and consumption to suit the sustainability of the environment, but also change in the attitude and value system. It balances the economic growth and environmental ethics, viz. shouldering greater responsibility to safeguard the natural resources and prospects of the future generation. Sustainable development can be achieved only when equilibrium is maintained, with the economic, social and environmental needs. It is the uninterrupted and unfettered development, despite overlapping economic, social and environmental circles.

17.17. A State, therefore, is expected to be cautious of these socio-economic political challenges while framing policies for sustainable development. Sustainable development requires a strong political and administrative will to implement dynamic and flexible policies to meet the challenges of world-wide economic activities, which is otherwise called as "Globalization". As a static will or rigid policy would hamper the development or damage the environment, the State should have a dynamic political or administrative will and flexible policies for a broad-based sustainable development.

17.18. Now, turning to the other side of the coin of "Sustainable Development", we must never overlook the basic aim of our country, viz., to make India into a powerful model industrial country.

17.19. The industrialization, which is intended for mass production of goods, changes the way of business and the very lifestyle. While globalization takes over, the local and traditional economy slowly disappears.

17.20. The socio-political reasons contribute much for economic policies relating to industrialization and globalization. In the process of technological development and economic growth, both the developed and the developing nations are exploiting the natural resources and damaging the environment. While the underdeveloped and developing countries propose to meet the basic needs of the

people, the developed nations attempt to achieve better living and standard of their people. In either case, there is depletion of non-renewable resources and destruction of environment.

17.21. Industrialization" means conversion of raw materials into finished products for domestic consumption as well as a source of foreign exchange. It provides for local employment and increases the connectivity and improves the standard of lifestyle. Such improvement has to be ensured not only for contemporary generation, but also for the future generation; and the environmental nature also has to be protected as a stock of physical and social resource for the future human need.

17.22. The main object of economic development is to improve the level of living. The living standards are measured by the availability of food, shelter, education, health, sanitation and social services, etc. However, the link between economy and ecology also cannot be ignored, because of economic development through industrialization and globalization. The environmental resource also constitutes a natural capital. It is true, economic development may tempt to persuade short-term policies for profit maximization. But, such short-term policies, in the event of ignoring environmental ethics, would only result in disasters. To assess the economic status of the country, the environmental management has also to be taken into consideration. The economic aspects of environmental management, therefore, require successful and responsible enterprise by adopting sustainable policies.

17.23. Industrialization alone can generate the wealth required for taking care of the people, as is the mandate of the Directive Principles of our Constitution. Nobody can dispute the need for protecting the environment, as everyone is entitled to pure air and water. Greenery should be protected to ensure pure air. Trees and forests have to be protected for ensuring regular rainfall and preventing soil erosion. Wild life has to be protected for maintaining ecological balance.

17.24. Environmental ethics is undoubtedly the basis for environmental management, because all individuals have a fundamental right to live and of well-being. Even though money and material become important issues, and the industrial revolution has brought tremendous growth of economy and promoted the profit and share prices, one should not forget that environmental ethics forms a basic scale for human activity - whether economic, social or political. Environmental ethics, therefore, mean relative responsibility not only towards fellow human being but also to the natural world that contributes flora, fauna and physical elements such as air, water, minerals, etc. and to prevent environmental degradation.

17.25. But, there should not be a tug-of-war between industrialization and environment protection. Industrialization should certainly ensure a good environment. Thus, without compromising any harm to the environment,

industrialization should also grow, otherwise, we would not be in a position to meet the economic challenges particularly in the context of globalization.

17.26. The environmental degradation, many a times, is not included in the economic accounting system, as it does not provide a method of attaching monetary value to the environmental components. In other words, the policies which are intended for economic development should provide for cost Incurred in terms of environmental degradation which is called "green-accounting". The conventional accounting should thus be replaced by "green-accounting" and the assessment of economic growth by such green-accounting will be realistic sustainable development.

17.27.1 In this connection, it is relevant to keep in mind that in the Seventh Schedule of the Constitution in Union List entry 54 provides for regulation of mines and minerals development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest. On account of this provision, it became imperative to have a separate legislation viz., The MMDR Act, in order to provide for regulation of mines and development of minerals. The mines and minerals vests with the State Government and the forest belong to the State Government, and the Central Government, either under the MMDR Act or under the FC Act, do not have any hold, any right or ownership over the minerals or forest. But, still by operation of the MMDR Act and FC Act there is a need to get prior approval of the Central Government, as both the Acts were enacted by the Parliament by exercising legislative competency under entry 54 of List I of the Seventh Schedule.

17.27.2. Section 2 of the MMDR Act is a declaration as to the expediency of Union control and the same reads as hereunder:

2. Declaration as to the expediency of Union control.- It is hereby declared that it is 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 hereinafter provided.

17.27.3. That apart, as per Section 4 of the MMDR Act, no person shall undertake any reconnaissance, prospecting or mining operations in any area, except under and in accordance with the terms and conditions of license or as the case may be, of mining lease, granted under this Act and the rules made thereunder; However, Section 5 of the MMDR Act contemplates that no mining lease can be granted by the State Government without the prior approval of the Central Government.

17.27.4. Section 18 deals with the development of minerals and the same reads as hereunder:

18. Mineral Development.- (1) It shall be the duty of the Central Government to take all such steps as may be necessary for the conservation and systematic

development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations and for such purposes the Central Government may, by notification in the Official Gazette, make such rules as it thinks fit.

(2) In particular, and without prejudice to the generality of the foregoing power such rules may provide for all or any of the following matters, namely:

(a) the opening of new mines and the regulation of mining operations in any area;

(b) the regulation of the excavation or collection of minerals from any mine;

(c) the measures to be taken by owners of mines for the purpose of beneficiation of ores, including the provision of sustainable contrivances for such purpose;

(d) the development of mineral resources in any area;

(e) the notification of all new borings and shaft sinkings and the preservation of bore-hole records, and specimens of cores of all new bore-holes;

(f) the regulation of the arrangements for the storage of minerals and the stocks thereof that may be kept by any person;

(g) the submission of samples of minerals from any mine by the owner thereof and the manner in which and the authority to which such samples shall be submitted; and the taking of samples of any minerals from any mine by the State Government or any other authority specified by it in that behalf;

(h) the submission by the owners of mines of such special or periodical returns and reports as may be specified, and the form in which and the authority to which such returns and reports shall be submitted;

(i) the regulation of prospecting operations;

(j) the employment of qualified geologists or mining engineers to supervise prospecting or mining operations;

(k) the disposal or discharge of waste slime or tailings arising from any mining or metallurgical operations carried out in a mine;

(l) the manner in which and the authority by which directions may be issued to the owners of any mine to do or refrain from doing certain things in the interest of conservation or systematic development of minerals or for the protection of environment by preventing or controlling pollution which may be caused by prospecting or mining operations;

(m) the maintenance and submission of such plans, registers or records as may be specified by the Government;

(n) the submission of records or reports by persons carrying on prospecting or mining operations regarding any research in mining or geology carried out by

them;

(o) the facilities to be afforded by person carrying out prospecting or mining operations to persons authorised by the Central Government for the purpose of undertaking research or training in

(p) the procedure for and the manner of imposition of fines for the contravention of any of the rules framed under this section and the authority who may impose such fines; and

(q) the authority to which, the period within which, the from and the manner in which applications for revision of any order passed by any authority under this Act and the rules made thereunder may be made, the fee to be paid and the documents which should accompany such applications.

(3) All rules made under this section shall be binding on the Government.

{emphasis supplied}

17.27.5 In view of the crystal-clear declaration u/s 2 of the MMDR Act and the intention for the development of minerals as provided u/s 18 of the MMDR Act, an obligation is cast on the Central Government to take steps for the systematic development of minerals in India and, for such purpose, to make rules. There is no obligation cast upon the Central Government to exploit minerals but the obligation is to ensure that such exploitation takes place in a systematic manner (vide Kartar Singh Bhadana Vs. Hari Singh Nalwa and Others,). It is to achieve this obligation, MMDR Act and the MC Rules provide wide opportunity to the applicants, so that, no application for grant or renewal of mining lease shall be refused on the ground of incomplete details or want of material particulars and such applicant should be required to comply with such omissions and material particulars and the State Government has to give an opportunity of being heard and record the reasons in writing and communicate the same to the applicant, if it proposes to refuse to grant or renew the mining lease as per Rule 26 of the MC Rules. Accordingly, a systematic method is provided for considering, evaluating and dealing with the applications for grant or renewal of mining lease for mineral development.

17.27.6. Sections 2 and 18 of the MMDR Act referred to above also emphasise the authority of the Central Government in the matter of regulation of mines and development of minerals:

(i) in public interest;

(ii) for conservation and systematic development of minerals in India; and

(iii) for protection of environment by preventing or controlling any pollution which may be caused by prospecting or mining operations.

17.27.7. When the statute thus provides for conservation and systematic development of minerals and for protection of environment by preventing or

controlling any pollution and empowers the Central Government to regulate the mines and development of minerals systematically, it may not be proper for this Court to unilaterally conclude that these provisions and the procedure followed and the power exercised thereunder, would not protect the environment.

17.28. In this connection, it is relevant to extract the salient features of study report of the NEERI with reference to the impugned mining operation and iron ore in Kumaraswamy range hill region, which reads as hereunder:

6.0 Biological Environment

Rich bio-diversity of plant species and birds has been recorded in the study area. The hilly region e.g. Kumaraswamy range is mostly covered by good forest cover. Large number of medicinal plants has been recorded well dispersed throughout the area. However, wildlife is observed to be very poor. Rare and endangered species recorded in the area are Leopard, Sloth Bear, Wolf, Indian Pangolin (In Sandur forest) and four species of birds (common Peafowl, Great Indian Bustard, spoonbill, White Stork) and two species of reptiles (Indian Python and Monitor Lizard).

The plant diversity over the entire study area is good, but local diversity is less at most of the places except in Kumaraswamy Range. The density of trees is less in and around mining areas, labour colonies/townships, and at easily accessible areas showing the impact of biotic pressure.

Some of the mine owners have carried out plantations for the last 8-10 years on the overburdens and degraded forestland. Bellary forest division has allocated about 100 ha of forest area near Somalpura-Sandur for conservation of medicinal plants.

In order to mitigate the impacts arising due to mining activities on biological environment, large scale of forestation both by mine owners and forest department needs to be undertaken on degraded forest land, in and around villages, towns, labour colonies, on overburdens and rejuvenated abandoned mine areas. Relevant technical details are given in the report. Apart from this, propagation of medicinal plants needs to be established at different places with suitable resources. The dwindling wildlife can be protected by providing them suitable habitats in non-mineral area and by providing adequate protection and adopting conservation measures.

17.29. It is only after taking into consideration the clearance given by NEERI, the Government has notified the land available for granting mining lease.

17.30.1 In this regard, it is apt to refer to the provisions of the FC Act. The FC Act was enacted with a view to check further deforestation.

17.30.2 Section 2 of the FC Act, reads as hereunder:

2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.-Notwithstanding anything contained in any other law for the time being

in force in a State, no State Government or other authority shall make except with the prior approval of the Central Government, any order directing,:

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organisation not owned, managed or controlled by Government;

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

(Explanation.- For the purposes of this Section "non-forest purpose" means the braking up or clearing of any forest land or portion thereof for:

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not Include any work relating or ancillary to conservation, development and management of forests and wild-life, namely, the establishment of check-posts, fore lines, wireless communications and construction of fencing, bridges and culverts, dams, waterholes, trench marks, boundary marks, pipelines or other like purposes.

{emphasis supplied}

17.30.3 Rule 3 of the Forest (Conservation) Rules, 2003 (for short "FC Rules") provides for composition of the Forest Advisory Committee. Rule 3A of the FC Rules provides for constitution of the Regional Empowered Committee.

17.31. The "user agency" means, any person or organization or company or Department of the Central or the State Government who makes an application for diversion or de-notification of the forest land for any non-forest purposes and using forest land for non-forest purposes in accordance with the permission granted by the Central Government under the Act or the Rules.

17.32. Rule 6 of the FC Rules prescribes the procedure to be followed for seeking approval of the Central Government u/s 2 of the FC Act and a careful reading of the same makes it clear that the Forest Advisory Committee or the Regional Empowered Committee, as the case may be, shall strictly scrutinize the application for the approval of the Central Government either for using the forest land for non-forest purpose or for granting the lease of the forest land to any person or authority not owned, managed or controlled by the Government.

17.33. A careful reading of the FC Act and the Rules framed thereunder, makes it

clear that no State Government or authority shall pass any order that the forest land or any portion thereof may be used for any non-forest purpose, or any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by the Government, without the prior approval of the Central Government.

17.34. When such a power is conferred on the authorities to scrutinize, examine and consider applying their mind before granting the approval as contemplated u/s 2 of the FC Act, it may not be proper to hold that the authorities so constituted for such specific purpose for granting approval or permission for the use of the forest land for the non-forest purpose and granting lease of the forest land, would not, by itself, be an answer or substitute for conservation of forest growth or forest wealth.

17.35. The aim of the environmental management is, to minimize the environmental degradation along with the maximizing economic growth, by adopting appropriate economic policies that will enhance the ecological and environmental maintenance, and economic efficiency and development through eco-friendly technologies.

17.36. On the other hand iron ore is a major raw material for the steel industry and India ranks fifth in terms of iron ore reserves and is a leading producer and exporter of iron ore in the world after Australia, Brazil and CIS Countries and the Karnataka State is the chief exporter of iron ore amongst the Indian States. The huge resource base of Magnetite ore is available at Western Ghats in Karnataka State.

17.37. When the State Government thus came forward with a policy decision to pave way for a sustainable development through systematic development of minerals on one hand and protecting environment on the other, by exercising its statutory powers conferred under MMDR Act and FC Act and the Rules framed thereunder, in our considered opinion, it may not be proper for this Court to exercise the power of judicial review conferred under Article 226 of the Constitution of India to quash the notification dated 15th March, 2003 of the State Government even without any pleadings to that effect. It is a settled law that it will not be proper for this Court to exercise the power of judicial review under Article 226 of the Constitution of India to interfere with the policy decision of the Government (vide *India Charge Chrome Ltd. v. Union of India* (2006) 12 SCC 331. Similarly, in the case of *Federation of Railway Officers Association and Others Vs. Union of India (UOI)*, , the Apex Court reiterated the scope of the judicial review and examined the policy evolved by the Government is limited and the Court shall not interfere with such policy decision unless such policies are inconsistent with the constitution and the laws or arbitrary, irrational and amounts to abuse of process.

17.38. The Apex Court in the case of *Union of India (UOI) and Others Vs. Jai*

Prakash Singh and Another, , deprecated the practice to declare a policy to be arbitrary, in a case where there is no challenge to the legality at all. Further, in the case of Union of India (UOI) Vs. R. Bhusal, , the Apex Court at para 7 held as follows:

The Supreme Court again reiterated that if there was no challenge to the applicable policy regulations under which the petitioner was found to be unfit, the High Court could not have delved upon the legality of the policy.

17.39. In the instant case also, the learned Single Judge despite the fact that there is no challenge by whomsoever to the notification dated 15th March, 2003 made under Rule 59(1) of the MC Rules, has interfered with the same and quashed the notification as well as the mining leases and further directed the State Government to take appropriate steps to cancel the mining leases granted without reference to the notification dated 15th March, 2003 which are totally outside the scope of the Writ Petition and the same is contrary to the ratio laid down by the Apex Court in Sri M. Purandara and Others Vs. Mahadesha S. and Others, , that it is not proper for High Court to enlarge the subject matter of adjudication.

17.40. The findings of the learned Single Judge that the very notification dated 15th March, 2003 is opposed to public interest, viz., forest growth and forest wealth and the permission granted u/s 2 of the FC Act will not be an answer or substitute to the conservation of the forest growth and forest wealth are, therefore, unsustainable in law and they are contrary to the well settled principles relating to economic sustainable development of the State; and in any event, we are of the considered opinion that the learned Single Judge ought not to have rendered such findings without a proper lis between the parties.

17.41. The order of the learned single Judge quashing the notification as well as the mining leases granted pursuant to the notification without even affording an opportunity to the parties concerned is contrary to the law laid down by the Apex Court in the case of Sanjeev Coke Manufacturing Company Vs. Bharat Coking Coal Limited and Another, which reads thus:

11. We confess the case has left us perplexed. In the first place, no question regarding the constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 appears to have arisen for consideration in that case. The question was about the nationalisation and take-over by the Central Government of a certain textile mill under the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974. The validity of some of the provisions of that Act was impugned. The Act had been included in the Ninth Schedule to the Constitution by the Constitution (Thirty-ninth Amendment) Act, 1975. The validity of Article 31-B which provides immunity to the Acts and Regulations specified in the Ninth Schedule from attack based on inconsistency with the fundamental rights was challenged and that question, therefore, directly arose for consideration. The question was, however, not decided in the Minerva Mills

case. Section 39 of the Sick Textile Undertakings (Nationalisation) Act, 1974, had also declared that the Act was enacted for giving effect to the policy of the State towards securing the principles specified in Clause (b) of Article 39 of the Constitution. Article 31-C of the Constitution which had been introduced into the Constitution by the Constitution (Twenty-fifth Amendment) Act, 1971 expressly provided that "notwithstanding anything contained in Article 13, no law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 shall be deemed to be void on the ground that it is inconsistent with, or takes away or abridges any of the rights conferred by Article 14, Article 19 or Article 31". The Sick Textile Undertakings (Nationalisation) Act, 1974 was passed, we may mention here, before the Constitution (Forty-second Amendment) Act came into force. In order, therefore, to challenge the provisions of the Sick Textile Undertakings (Nationalisation) Act, 1974 on the ground of inconsistency or abridgement or taking away of the fundamental rights conferred by Article 14 or Article 19, it was necessary for the petitioners to challenge the constitutional validity of the Constitution (Twenty-fifth Amendment) Act, 1971 by which Article 31-C was first introduced into the Constitution. That, however, was not open to the petitioners because of the decision of this Court in Kesavananda Bharati case. It was so conceded to by the learned Counsel who appeared for the petitioners in the Minerva Mills case. The counsel who appeared, however, chose to question the constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 by which the immunity afforded by Article 31-C was extended by replacing the words "the principles specified in Clause (b) or Clause (c) of Article 39" by the words "all or any of the principles laid down in Part IV". No question regarding the constitutional validity of Section 4 of the Constitution (Forty-second Amendment) Act, 1976 arose for consideration in the case, firstly, because the immunity from attack given to a law giving effect to the policy of the State towards securing the principles specified in Clause (b) or Clause (c) of Article 39 was given by the Constitution (Twenty-fifth Amendment) Act, 1971 itself and secondly because the Sick Textile Undertakings (Nationalisation) Act had been enacted before the Constitution (Forty-second Amendment) Act, 1976. Yet, counsel successfully persuaded the Court to go into the question of the validity of Section 4 of the Constitution (Forty-second Amendment) Act. An objection was raised before the Court by the learned Attorney-General that the Court should not concern itself with hypothetical or academic questions. The objection was overruled on the ground that the Forty-second Amendment was there for anyone to see and that the question raised was an important one dealing with not an ordinary law, but, a constitutional amendment which had been brought into operation and which of its own force permitted the violations of certain freedoms through laws passed for certain purposes. We have serious reservations on the question whether it is open to a court to answer academic or hypothetical questions on such considerations, particularly so when serious constitutional issues are involved. We (Judges) are not authorised to make disembodied pronouncements on serious and cloudy Issues of constitutional policy without battle lines being

properly drawn. Judicial pronouncements cannot be immaculate legal conceptions. It is but right that no important point of law should be decided without a proper lis between parties properly ranged on either side and a crossing of the swords. We think it is inexpedient for the Supreme Court to delve into problems which do not arise and express opinion thereon.

{emphasis supplied}

17.42. In the instant case, the impugned notification dated 15th March, 2003 itself was issued, as contemplated u/s 11(2) of the MMDR Act read with Rule 59(1) of the MC Rules, and therefore, it would not be proper for this Court to interfere with such policy decision by exercising the power of judicial review conferred under Article 226 of the Constitution of India.

17.43. As already observed, the State Government decided to issue notification u/s 11(2) of MMDR Act and 59(1) of MC Rules, based on the clearance from the NEERI. But the learned Single Judge has completely overlooked the said report and not given any credence as to the awareness of the State Government to the said report.

17.44.1. The learned Single Judge having admitted the adequacy of the statutory provisions u/s 2 of the FC Act and under Rule 6 of the FC Rules as well as Section 5 of the MMDR Act and the report of the NEERI, erred in rendering a finding that the State lacks awareness as to the conservation of forest and environmental protection.

17.44.2. Once the expert body like NEERI has given a clearance, it may not be proper for this Court to sit over the judgment on such clearance which ensures the inter-generational equity. It is for the State Government to take appropriate policy decision as to the need for industrialization and to provide for mining lease for iron ore for captive consumption of the steel plants established and proposed to be established and it may not be proper for this Court to apply the principle of prohibition of such policy decision as held by the Apex Court in the case of Consumer Education and Research Society Vs. Union of India and Others, and the same reads as under:

7. It was held by the Supreme Court that reduction of the sanctuary area was correct owing to Kutch being a backward area and the need for industrialization. The Court applied and accepted the principles of protection and principles of polluters-pay, keeping in mind the concepts of sustainable development and inter-generational equity. It was held that it is not proper to apply principles of Prohibition in such a case.

17.44.3. When the State Government, only after the clearance by the NEERI, an expert body, has taken a conscious policy decision to issue notification u/s 11(2) of the FC Act read with Rule 59 of the MC Rules to notify an area available for mining lease, which of course, could be granted only after prior approval of the Central Government and Section 2 of the FC Act and approval u/s 5 of MMDR

Act, it may not be appropriate for this Court to interfere with such decisions of the State Government, nor to quash the notification, nor to direct that mining activity should be totally avoided in the forest area.

17.44.4. We are, therefore, of the considered opinion that the learned Single Judge completely overlooked the power conferred on the Central Government for giving clearance u/s 2 of the FC Act, which is required to be taken only after the decision is taken by the State Government to grant the mining lease in favour of a particular party. But for the clearance, which is mandatory u/s 2 of the FC Act, no mining operation can be carried out. In other words, even after the preliminary decision of the State Government in favour of granting mining lease, still the Central Government can refuse the forest clearance. Therefore, we are unable to appreciate the finding that such clearance u/s 2 of the FC Act is neither a substitute nor a reason, as sufficient statutory safeguards are provided under the FC Act and the Rules framed thereunder, and the same cannot be lightly disregarded by this Court.

17.45. We are also satisfied that the learned Single Judge has failed to take into consideration the conditions to be imposed while granting the mining lease in the forest land for non-forest purpose, viz,

- (i) the lessee shall plant twice the number of trees which they would be felling;
- (ii) the lessee shall pay a substantial amount of "Net Present Value" (NPV) per hectare based on the nature of the forest; and
- (iii) the lessee shall ensure compensatory afforestation and pay substantial amount towards afforestation per hectare satisfying the concepts of precautionary principle, polluter-pays, green accounting and public trust doctrine, which are essential for substantial development as held by the Apex Court (vide Vellore Citizens Welfare Forum Vs. Union of India and others, and Consumer Education and Research Society Vs. Union of India and Others, .

17.46. Again the Apex Court in K.M. Chinnappa and T.N. Godavarman Thirumalpad Vs. Union of India (UOI) and Others, emphasized the need to strike a fine balance between projects of public utility and adverse effect on ecology and environment and held that a comparative hardship to be balanced and the convenience and benefit to a larger section of people to get primacy over comparative lesser hardship has to be preferred.

17.47. The Apex Court in Bahadur Singh Vs. State of Madhya Pradesh and Another, reiterated the need of striking a fine balance between the developmental needs and protection of environment.

17.48. When the Country is emerging as one of the major power in the global arena, the question is, is it reasonable to obstruct such sustainable development? It is settled law that a balance between the environmental protection and the developmental activities could only be maintained by strictly following the principles of sustainable development. This is the development

strategy that caters to the needs of present without negotiating the ability of upcoming generations to satisfy their needs.

17.49. In any event, in respect of economic matters, it may not be proper for this Court to interfere with the policy decision of the Government by exercising power under Article 226 of the Constitution of India (vide BALCO Employees Union (Regd.) Vs. Union of India and Others, , and M.P. Oil Extraction and Another Vs. State of M.P. and Others,).

17.50. The directions of the learned Single Judge, viz.

- (i) to put an hold on all mining activities in the forest area;
- (ii) all the mining leases granted during the tenancy of the application, pursuant to the notification dated 15th March, 2003 could not be sustained, and are therefore, quashed;
- (iii) to take steps for cancellation of all other mining leases not covered under the notification dated 15.3.2003 but which are in the forest lands - (reserved or non-reserved), by following the procedure under the Act;
- (iv) not to embark on granting mining leases in the forest area as a matter of rule and only as an exception, forest area should be notified for granting the mining lease; and
- (v) the State and Central Governments to consider the possibility of nationalizing the mining industries so that the private profit motive would not come in the way of protecting environment.

are, in our considered opinion, untenable, illogical and contrary to the well settled principles laid down by the Apex Court relating to Sustainable Development of the State.

18. For all these reasons, Issue (I) is answered in the negative. Accordingly we hold that:

- (i) it may not be proper for this Court to interfere with the policy decisions of the Government;
- (ii) the quashing of the notification dated 15th March, 2003 is illegal; and
- (iii) the consequential directions (a) to (m) in paragraph-150 of the order of the learned Single Judge, dated 7th August, 2008, impugned herein, are set aside.

XV- ISSUE (II)

Whether the application, for grant of mining lease for an area, without a notification under Rule 59(1) of the MC Rules, 1960 notifying the said area as available for mining, can be considered for grant of mining lease u/s 11(2) of the Mines and Minerals (Development & Regulation) Act, 1957, (for short "MMDR Act") as such application is premature and shall not be entertained as per Rule

60 of the MC Rules, 1960? and

19.2.1. For deciding Issue (II), it is apt to refer to the following statutory provisions:

19.2.2. The Mines and Minerals (Development and Regulation) Act, 1957 is enacted to provide for the Development and Regulations of Mines and Minerals.

19.2.3. The following provisions of the MMDR Act are relevant to be referred to:

Section 3: Definitions.- In this Act, unless the context otherwise requires,:

(a) to (f) xxx xxx xxx

(g) "prospecting license means a licence granted for the purpose of undertaking prospecting operations;

(h) "prospecting operations" means any operations undertaken for the purpose of exploring, locating or proving mineral deposits;

(ha) "reconnaissance operations" means any operations undertaken for preliminary prospecting of a mineral through regional, aerial, geophysical or geochemical surveys and geological mapping, but does not include pitting, trenching, drilling (except drilling of boreholes on a grid specified from time to time by the Central Government) or sub-surface excavation;

(hb) "reconnaissance permit" means a permit granted for the purpose of undertaking reconnaissance operations

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Section 5; Restrictions on the grant of prospecting licences or mining leases.- (1) A State Government shall not grant a reconnaissance permit, prospecting licence or mining lease to any person unless such person:

(a) is an Indian national, or company as defined in Sub-section (1) of Section 3 of the Companies Act, 1956 (1 of 1956); and

(b) satisfies such conditions as may be prescribed:

Provided that in respect of any mineral specified in the First Schedule, no reconnaissance permit, prospecting licence or mining lease shall be granted except with the previous approval of the Central Government.

Explanation.- For the purposes of this sub-section, a person shall be deemed to be an Indian national,:

(a) in the case of a firm or other association of individuals, only if all the members of the firm or members of the association are citizens of India; and

(b) in the case of an individual, only if he is a citizen of India.

(2) No mining lease shall be granted by the State Government unless it is

satisfied that-

(a) 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; and

(b) there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits In the area concerned.

Section 6:- Maximum area for which a prospecting licence or mining lease may be granted.- (1) No person shall acquire in respect of any mineral or prescribed group of associated minerals in a State:

(a) one or more prospecting licences covering a total area of more than twenty - five square kilometres; or

(aa) one or more reconnaissance permit covering a total area of ten thousand square kilometres;

Provided that the area granted under a single reconnaissance permit shall not exceed five thousand square kilometres; or

(b) one or more mining leases covering a total area of more than ten square Kilometres:

Provided that if the Central Government is of opinion that in the interests of the development of any mineral, It is necessary so to do, it may, for reasons to be recorded by it, in writing, permit any person to acquire one or more prospecting licences or mining leases covering an area in excess of the aforesaid total area;

(c) any reconnaissance permit, mining lease or prospecting licence in respect of any area which is not compact or contiguous;

Provided that if the State Government is of opinion that in the interests of the development of any mineral, it is necessary so to do, it may, for reasons to be recorded in writing, permit any person to acquire a reconnaissance permit, prospecting licence or mining lease in relation to any area which is not compact or contiguous.

(2) For the purposes of this section, a person acquiring by, or in the name of, another person a reconnaissance permit, prospecting licence or mining lease which is intended for himself shall be deemed to be acquiring it himself,

(3) For the purposes of determining the total area referred to in Sub-section (1), the area held under a reconnaissance permit, prospecting licence or mining lease by a person as a member of a co-operative society, company or other corporation or a Hindu undivided family or a partner of a firm, shall be deducted from the area referred to in Sub-section (1) so that the sum total of the area held by such person, under a reconnaissance permit, prospecting licence or

mining lease, whether as such member or partner, or individually, may not, in any case, exceed the total area specified in Sub-section (1).

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Section 10: Application for prospecting licences or mining leases.-

(1) An application for a reconnaissance permit, prospecting licence or mining lease in respect of any land in which the minerals vest in the Government shall be made to the State Government concerned in the prescribed form and shall be accompanied by the prescribed fee.

(2) Where an application is received under Sub-section (1), there shall be sent to the applicant an acknowledgment of its receipt within the prescribed time and in the prescribed form.

(3) On receipt of an application under this section, the State Government may, having regard to the provisions of this Act and any rules made thereunder, grant or refuse to grant the permit, licence or lease.

Section 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 licence

(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 ft 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; and

(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.

(5) 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.

Section 12: Registers of prospecting licences and mining leases.- (1) The State Government shall cause to be maintained in the prescribed form:

- (a) a register of applications for prospecting license
- (b) a register of prospecting license
- (c) a register of applications for mining leases;
- (d) a register of mining leases;
- (e) a register of applications for reconnaissance permits; and
- (f) a register of reconnaissance permits,

in each of which shall be entered such particulars as may be prescribed.

(2) Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix.

{emphasis supplied}

20.1. The State Government shall not grant reconnaissance permit, prospecting licence or mining lease to any person, except with the prior approval of the Central Government and no mining lease shall be granted by the State Government unless it is satisfied that there is mining plan duly approved by the Central Government, or by the State Government, in respect of such category of mines as may be specified by the Central Government, for the development of mineral deposits in the area concerned, as per Section 5 of the MMDR Act.

20.2. As per Section 10 of the MMDR Act, application for the reconnaissance permit, prospecting licence or mining lease shall be made to the State Government in the prescribed Form. On receipt of such application the State Government can grant or refuse to grant the permit, licence or lease as per the provisions of the Act and any Rules made thereunder.

20.3. Section 11(1) of the MMDR Act prescribes the following qualifications for claiming their preferential right for obtaining the prospecting licence or mining lease, viz.

- (i) the permit holder or the licensee has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;
- (ii) has not committed any breach of terms and conditions of the reconnaissance permit or the prospective license
- (iii) has not become ineligible under the provisions of the Act; and

(iv) has not failed to apply for prospecting licence or mining lease within three months after the expiry of reconnaissance permit.

20.4.1. Section 11(2) provides that where the State Government has not notified the area for the grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and two or more persons have applied for reconnaissance permit, prospecting licence or mining lease, the applications received earlier shall have preferential right over the applications received later, i.e. preference should be given based on the date of application.

20.4.2. But, the first proviso to Section 11(2) of the MMDR Act states that, where an area is available for reconnaissance permit, prospecting licence or mining lease and the State Government has invited applications by notification 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 and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority.

20.4.3. The second proviso to Section 11(2) of the MMDR Act provides that where any such applications are received on the same day, the State Government may grant reconnaissance permit, prospecting licence or mining lease to such one of the applicants as they deem fit after taking into consideration the matters u/s 11(3)(a) to (e) of the MMDR Act.

20.4.4. As per Section 11(4) of the MMDR Act, all the applications received during the period as specified in the notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications were received on the same day after taking into consideration the matters referred to u/s 11(3) of the MMDR Act.

20.4.5. Section 11(5) of the MMDR Act empowers the State Government for any special reasons to be recorded, to grant 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, of course, with the prior approval of the Central Government in respect of minerals specified in the First Schedule.

21.1. A comparative analysis of Sections 11(2) and 11(4) of the MMDR Act would make it clear that Section 11(2) is applicable when the State Government has not notified the area available for the grant and in such case, applications received earlier would be preferred as against the applications received later.

21.2. As per the first proviso to Section 11(2) of the MMDR Act, the applications made prior to the notification, shall also be deemed to be received on the same day pursuant to the notification notifying the area available for grant and inviting application for the same.

21.3. The second proviso to the said Section provides that, where any such

applications are received on the same day, the State Government may grant reconnaissance permit/prospecting license lease, as the case may be, to such one of the applicants, taking into consideration the matters specified u/s 11(3) of the MMDR Act.

21.4. As per Section 11(4) of the MMDR Act all the applications received during the period specified in the notification shall be considered simultaneously as if they were received on the same day, after taking into consideration the matters specified u/s 11(3) of the MMDR Act.

22. A harmonious reading of these provisions would make it clear that all the applications, whether made prior to the notification or after the notification, or whether they are received during the period specified in the notification which shall not be less than thirty days, shall be deemed to have been received on the same day pursuant to the notification and all such applications shall be considered simultaneously, after taking into consideration the matters specified in Section 11(3). In other words, only if no notification is made as to the availability of area for grant, and when two or more persons have applied, the applications received earlier shall have preference over the later ones.

23.1. The Central Government, by exercise of the power conferred u/s 13 of the MMDR Act, framed the Mineral Concession Rules, 1960.

23.2. Rule 26 provides the procedure to be followed for the refusal of the application for grant or renewal of the mining lease and the same reads as hereunder:

26. Refusal of application for grant and renewal of mining lease.-

(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 mining lease over the whole or part of the area applied for.

(2) An application for the grant or renewal of a mining lease made under Rule 22 or Rule 24A, as the case may be, shall not be refused by the State Government only on the ground that Form I or Form J, as the case may be, is not complete in all material particulars, or is not accompanied by the documents referred to in Sub-clauses (d), (e), (f), (g) and (h) of Clause (i) of Sub-rule 22.

(3) Where it appears that the application is not complete in all material particulars or is not accompanied by the required documents, the State Government shall, by notice, require the applicant to supply the omission or, as the case may be, furnish the documents, without delay and in any case not later than thirty days from the date of receipt of the said notice by the applicant.

(emphasis supplied)

23.3. Rule 35 of the MC Rules provides for preferential right of certain persons and the same reads as hereunder:

35. Preferential rights of certain persons.- Where two or more persons have applied for a reconnaissance permit or a prospecting licence or a mining lease in respect of the same land, the State Government shall, for the purpose of Sub-section (2) of Section 11, consider besides the matters mentioned in Clauses (a) to (d) of Sub-section (3) of Section 11, the end use of the mineral by the applicant.

(emphasis supplied)

23.4.1. Rule 59 of the MC Rules deals with the availability of the area for re-grant to be notified and the same reads as hereunder:

Rule. 59. Availability of area for re-grant 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) or 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 Cause (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.

{emphasis supplied}

23.4.2. Rule 58 of the MC Rules was substituted by notification GSR 146, dated 16th January, 1980 and then omitted by notification GSR 449(E) dated 13th April, 1988. Similarly, amendments were also brought to Rule 59 by amendment notification GSR 146 dated 16th January, 1980 and by amendment notification GSR 56(E) dated 17th January, 2000.

23.4.3. Prior to these amendment notifications, Rules 58 and 59 of the MC Rules read as follows:

58. Availability of areas for regrant to be notified.- No area which was previously held or which is being held under a prospecting licence of a mining lease or in respect of which an order had been made for the grant thereof but the applicant has died before execution of a licence or lease, as the case may be, or in respect of which the order granting licence of lease has been revoked under Sub-rule (1) of Rule 15 or Sub-rule (1) of Rule 31, shall be available for grant unless:

(a) an entry to the effect is made in the register referred to in Sub-rule (2) of Rule 21 or Sub-rule (2) of Rule 40, as the case may be, in ink; and

(b) the date from which the area shall be available for grant is notified in the Official Gazette at least thirty days in advance.

59. Availability of certain areas for grant to be notified.- In the case of any land which is otherwise available for the grant of a prospecting licence or a mining lease but in respect of which the State Government has refused to grant a prospecting licence or a mining lease on the ground that the land should be reserved for any purpose other than prospecting or mining for minerals, the State Government shall, as soon as such land becomes again available for the grant of a prospecting or mining lease, grant the licence or lease after following the procedure laid down in Rule 58.

23.5.1 Rule 60 of the MC Rules reads thus:

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 not be entertained.

23.5.2. As in the case of Rules 58 and 59, amendments were also brought to Rule 60 by amendment notification GSR 146 dated 16th January, 1980 and by

amendment notification GSR 56(E) dated 17th January, 2000.

23.5.3. Prior to those amendments, Rule 60 of the MC Rules read as follows:

60. Premature applications.- Applications for the grant of a prospecting licence or mining lease in respect of the areas in which:

- (a) no notification has been issued under Rule 58 or Rule 59; or
- (b) If any such notification has been issued the period specified in the notification has not expired

shall be deemed to be premature and shall not be entertained and the fee, if any paid in respect of any such application shall be refunded.

23.6. As per Rule 59 of the MC Rules, 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 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; and
- (ii) the availability of the area for grant is notified in the official gazette.

However, these requirements are not necessary:

- (i) 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;
- (ii) where an area reserved under Rule 58 or u/s 17A of the Act is proposed to be granted to a Government company;
- (iii) 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; and
- (iv) where the Central Government relaxes the provisions of Sub-rule (1) in any special case for the reasons to be recorded in writing.

23.7. As per Rule 60 of the MC Rules, the applications for grant of permit, licence

or lease in respect of areas whose availability is required to be notified under Rule 59(1) shall be deemed to be premature and shall not be entertained, if:

(i) no notification has been issued, under that rule viz., Rule 59(1) of the MC Rules; or

(ii) where any such notification has been issued, the period specified in the notification has not expired.

24.1. Mr. Krishnan Venugopal, learned Senior counsel appearing for the first respondent herein (Writ Petitioner) seriously contends that since the impugned area is an area previously held, the same shall not be available for grant unless it is notified under Rule 59 of the MC Rules. Therefore, the application applied for the impugned area whose availability is required to be notified under Rule 59 of the MC Rules and, if no such notification has been issued for that area, such application made prior to the notification is premature and shall not be entertained as per Rule 60 of the MC Rules.

24.2. Mr. Krishnan Venugopal, learned senior counsel also invites our attention to Section 11(1) of the MMDR Act which confers preferential right to reconnaissance permit holder or prospecting licensee over any other person for obtaining the prospecting licence or mining lease, as the case may be, in respect of the land where reconnaissance permit or prospecting licence has been granted to the said permit holder or prospecting licensee, provided the State Government is satisfied that:

(i) permit holder and licensee, as the case may be, has undertaken reconnaissance operation or prospecting operation, as the case may be, to establish mineral reserves in the land;

(ii) has not committed breach of any of the conditions of reconnaissance permit or prospecting license

(iii) has not become ineligible under the provisions of the Act; and

(iv) has not failed to apply for prospecting licence or mining lease.

24.3. According to Mr. Krishnan Venugopal, learned senior counsel, since Section 11(2) is subject to Section 11(1), the notification inviting applications for the area referred to under the first proviso to Section 11(2) only refers to the area for which reconnaissance permit or prospecting licence has already been granted to the permit holder or licensee u/s 11(1); but shall not refer to the area previously held or being held, which is specifically governed under Rule 59(1) of the MC Rules.

24.4. Mr. Krishnan Venugopal, contends that the first proviso to Section 11(2) of the MMDR Act is not at all applicable for the grant of impugned mining lease, as the impugned area was previously held and for which a notification is required to be issued as area available for mining lease as per Rule 59(1)(a) of the MC Rules. It is, therefore, contended that as per Rule 60 of the MC Rules, the

application applied for the impugned area which is required to be notified under Rule 59(1) of the MC Rules is premature, and shall not be entertained, if no such notification has been issued.

24.5. Mr. Krishnan Venugopal, learned senior counsel, also invites our attention to Section 10(3) of the MMDR Act, as per which, application shall be made to the State Government for grant of mining lease; and the State Government may grant or refuse to grant permit, licence or lease to the applicant having regard to the provisions of the MMDR Act and any rules made thereunder. According to Mr. Krishnan Venugopal, as per Rule 60 of the MC Rules, an application made before the issuance of notification for an area which is required to be notified as available for grant under Rule 59(1) of the MC Rules is premature and shall not be entertained,

24.6. We are unable to appreciate these contentions of Mr. Krishnan Venugopal appearing for the first respondent herein (writ petitioner) because, "It is a settled law that it may not be proper to exercise the power of judicial review, either under Article 226 or Article 227 of the Constitution, to add or omit, to ignore or draw an inference contrary to any provision of a statute, when there is no ambiguity or conflict among the provisions of a statute. The rule of construction requires that every provision of a statute shall be given effect to, without harming other; and all the provisions of a statute shall be construed harmoniously to hold them constitutionally valid and workable, by avoiding anomaly or inconsistency, opting for a purposive construction and interpreting a statute in a reasonable manner. Because purposive interpretation can be adopted by reading the statute as a whole and the correct interpretation is one that harmonizes the word at the best with the object of the statute. "A right construction of the Act", said Lord Porter, "can only be attained if its whole scope and object together with an analysis of its wording and the circumstances in which it is enacted are taken into consideration." (referred to Prem Chand Jain and Another Vs. R.K. Chhabra, . In order to understand the true purpose and object, and reason and spirit of every provision of a statute, the Court is constrained to combine both literal and purposive approaches....

...All and every provision of the statute must always be read as a whole and harmoniously, and one provision of the Act should be construed with reference to the other provisions in the same Act so as to make a consistent enactment of the whole statute. It is a settled law such a harmonious construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute, as it is the duty of the Court to avoid "a head on clash" between two Sections of the same Act, (refer to Commissioner of Income Tax Vs. Hindustan Bulk Carriers, "whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise" (refer to Krishan Kumar Vs. State of Rajasthan and others, The provision of a statute cannot be used to defeat the other provision unless it is impossible to effect reconciliation between them." (vide Judgment of the Larger Bench of seven

Judges in Writ Appeal No. 1585 of 2007 (GM-CPC) and connected matters disposed of on 13.3.2009).

{emphasis supplied}

24.7. It is settled law that Rules cannot control the effect of the Act and the Court has to iron out the crease and see that the intention of the legislation is given effect to.

24.8. When the language of the first proviso to Section 11(2) of the MMDR Act is plain and unambiguous, the same can neither be omitted nor be ignored nor be substituted. Section 11 of the MMDR Act was introduced in spite of existence of Rule 60 of the MC Rules.

24.9. The Court has to see:

- (a) what was the law before the Act is enacted or amended;
- (b) what was the mischief or defect for which the law did not provide;
- (c) what is the remedy that the Act has provided; and
- (d) what is the reason of the remedy.

24.10. The Court must adopt the construction which suppresses the mischief and advances the remedy (vide Raipur Development Authority Vs. Anupam Sahkari Griha Nirman Samiti and Others, In seeking legislative intention, the Judges should not only listen to the voice of the legislature but also listen attentively to what the legislature does not say (vide Gwalior Rayons Silk Mfg. (Wvg.) Co. Ltd. Vs. Custodian of Vested Forests, Palghat and another,).

24.11. If that be so, since Section 11 of the MMDR Act was introduced by Act 38 of 1999 with effect from 18th December 1999 despite existence of Rule 60 of the MC Rules, the intention of the legislature that "even though applications are made for grant of lease for an area prior to the publication of notification required under Rule 59(1) of the MC Rules to notify the area as available for grant and once such notification has been issued, the applications made prior to the publication of notification and had not been disposed of, and the applications received during the period specified in the notification shall be deemed to have been received on the same day for the purpose of assigning priority u/s 11(3) of the MMDR Act" should be given due consideration. Otherwise, the very intention of the Parliament to remedy the defect would be defeated.

24.12.1. Once the Parliament has introduced first proviso to Section 11(2) of the MMDR Act, it may not be proper for this Court to substitute the words of the statute ignoring the intention of the legislature which could be primarily gathered from the language used in first proviso to Section 11(2) of the MMDR Act.

24.12.2. The Apex Court in Reserve Bank of India v. Peerless General Finance and Investment Co. Ltd. and Ors. reported in AIR 1987 SC 1023 at paragraph 33 held as follows:

Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, In the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place.

{emphasis supplied}

24.13.1. It is also settled law that a construction which reduces the statute to futility should be avoided.

24.13.2. The Apex Court in the case of Commissioner of Income Tax Vs. Hindustan Bulk Carriers, observed as follows:

14. A construction which reduces the statute to a futility has to be avoided. A statute or any enacting provision therein must be so construed as to make it effective and operative on the principle expressed in the maxim *ut res magis valeat quam pereat* i.e. a liberal construction should be put upon written instruments, so as to uphold them, if possible, and carry into effect the intention of the parties. [See Broom's Legal Maxims (10th Edn.), p. 361, Craies on Statutes (7th Edn.), p. 95 and Maxwell on Statutes (11th Edn.), p.221.]

15. A statute is designed to be workable and the interpretation thereof by a court should be to secure that object unless crucial omission or clear direction makes that end unattainable.

16. The courts will have to reject that construction which will defeat the plain Intention of the legislature even though there may be some inexactitude in the language used.

17. If the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility, and should rather accept the bolder construction, based on the view that Parliament would legislate only for the purpose of bringing about an effective result. The principles indicated in the said cases were reiterated by this Court in *Mohan Kumar Singhania v. Union of India*.

18. The statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a

consistent enactment of the whole statute.

19. The court must ascertain the intention of the legislature by directing its attention not merely to the clauses to be construed but to the entire statute; it must compare the clause with other parts of the law and the setting in which the clause to be interpreted occurs. Such a construction has the merit of avoiding any Inconsistency or repugnancy either within a section or between two different sections or provisions of the same statute. It is the duty of the court to avoid a head-on clash between two sections of the same Act.

20. Whenever it is possible to do so, it must be done to construe the provisions which appear to conflict so that they harmonise. It should not be lightly assumed that Parliament had given with one hand what it took away with the other.

21. The provisions of one section of the statute cannot be used to defeat those of another unless it is impossible to effect reconciliation between them. Thus a construction that reduces one of the provisions to a "useless lumber" or "dead letter" is not a harmonised construction. To harmonise is not to destroy.

{emphasis supplied}

24.14. When the purpose and object of the MMDR Act is to protect the development and regulation of mines and minerals in public interest and in tune of such legislative purpose, object and intention, Section 11 of the MMDR Act was amended by Amendment Act of 38 of 1999, to consider all the applications applied during the period specified in the notification notifying the area available for grant and inviting applications for grant as well as the applications applied prior to the publication of such notification, as, if both are received on the same day pursuant to the notification for the purpose of assigning priority u/s 11(3) of the MMDR Act, for development and regulation of the mines and minerals, any other interpretation, which would defeat the very purpose, object and intention of the legislation, is liable to be rejected.

26.15.1. In this regard, it is relevant to refer, with the risk of repetition, Rule 60 of the MC Rules, both prior and after amendment, by notification GSR 56 (E) dated 17th January 2000, which read as hereunder:

A] Prior to the amendments, Rule 60 of the MC Rules:

60. Premature applications.- Applications for the grant of a prospecting licence or mining lease in respect of the areas in which:

(a) no notification has been issued under Rule 58 or Rule 59; or

(b) if any such notification has been issued the period specified in the notification has not expired,

shall be deemed to be premature and shall not be entertained and the fee, if any paid in respect of any such application shall be refunded.

B] After amendment Rule-60 of the MC Rules read thus:

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 not be entertained.

{emphasis supplied)

26.15.2. As already observed, by amendment notification dated 17th January 2000, only the following words "the fee, if any paid in respect of any such application shall be refunded" were omitted from Rule 60 of the MC Rules. Therefore, the existing provision of Rule 60 of the MC Rules viz.,

Rule-60-. 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 not be entertained.

was already there in the statute book at time of amendment of Section 11 of the MMDR Act by amendment Act 38 of 1999, which came into effect from 18-12-1999, as rightly, pointed out by Mr. Rao, learned senior Counsel appearing for the appellants herein (respondent Nos. 4 and 5 in the writ petition) and the learned Advocate General for the State Government. Therefore, the first proviso to Section 11(2) of the MMDR Act has to be read to achieve the purpose, object and intention of the legislation viz., for the development and regulation of the mines and minerals and to consider all the applications that were received before or after the notification; otherwise, the purpose, object and intention of the amendment itself would be defeated to hold otherwise viz., the applications filed before the publication of notification of the area required to be notified under Rule 59(1) of the MC Rules should not be considered at all merely because they are premature and shall not be entertained, in our considered opinion, is opposed to the heart beats of the legislation introducing the first proviso to Section 11(2) of the MMDR Act.

26.15.3. The Apex Court in the case of Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, observed as follows:

28. The law exists to serve the needs of the society which is governed by it If the law is to play its allotted role of serving the needs of the society, it must reflect

the ideas and ideologies of that society. It must keep time with the heartbeats of the society and with the needs and aspirations of the people. As the society changes, the law cannot remain immutable. The early nineteenth century essayist and wit, Sydney Smith, said: "When I hear any man talk of an unalterable law, I am convinced that he is an unalterable fool." The law must, therefore, in a changing society march in tune with the changed ideas and ideologies. Legislatures are, however, not best fitted for the role of adapting the law to the necessities of the time, for the legislative process is too slow and the legislatures often divided by politics, slowed down by periodic elections and overburdened with myriad other legislative activities. A constitutional document is even less suited to this task, for the philosophy and the ideologies underlying it must of necessity be expressed in broad and general terms and the process of amending a Constitution is too cumbersome and time-consuming to meet the immediate needs. This task must, therefore, of necessity fall upon the courts because the courts can by the process of judicial interpretation adapt the law to suit the needs of the society.

{emphasis supplied}

26.16. Concededly, the first respondent herein (writ petitioner) applied for the very impugned area and requested the State Government to recommend to the Central Government to relax the Rule 59(1) of the MC Rules, viz. registration and issuance of notification, by exercising the power conferred under Rule 59(2). In the absence of any application, the State Government would not have recommended to the Central Government to exercise the power under Rule 59(2) to relax Rule 59(1). If that be so, if the application made prior to the notification is premature and shall not be entertained, the State Government could not even recommend to the Central Government to relax the Rule 59(1) of the MC Rules by exercising the power under Rule 59(2) of the MC Rules and as a result Rule 59(2) of the MC Rules could not be implemented at all and Rule 59(2) of the MC Rules, therefore, would become redundant. Therefore, in order to give effect to Rule 59(2) of the MC Rules, the application, applied for grant of an area which is required to be notified under Rule 59(1) of the MC Rules, if not notified so, even though, is premature and shall not be entertained, the same is still entitled to be considered for relaxing the Rule 59(1) of the MC Rules by exercising the power under Rule 59(2) of the MC Rules. In other words, such premature applications mentioned under Rule 60 of the MC Rules remain passive till the Central Government exercises its power under Rule 59(2) of the MC Rules for active consideration.

26.17. As rightly pointed out by Mr. Rao, Rule 60 creates a legal fiction rendering the application made before the publication of notification, if no notification is made or if the applications are made during the period specified in such notification, as premature and not entertainable. But Rule 60 does not say that such of the applications made for grant of lease, if no notification is issued or if the same are made before the period specified in such notification are liable to

be rejected; nor deemed to be rejected. When the language of the first proviso to Section 11(2) of the MMDR Act is plain and unambiguous, the same can neither be omitted, nor be ignored nor be substituted, and therefore, it may not be proper for this Court to exercise the power of judicial review under Article 226 of the Constitution to add or omit, to ignore or draw an inference contrary to any provision of Section 11(2) of the MMDR Act, when the same is plain, unambiguous and do not expressly or impliedly spell out any inconsistency or conflict with any other provisions of the MMDR Act and in any event, the Rules cannot control the effect of the Act and the Court has to iron out the crease and see that the intention of the legislation is given effect to.

26.18. Once a notification is published notifying the area available and inviting applications for grant, all the applications, whether applied prior to the publication of such notification notifying the area available and inviting applications for grant of reconnaissance permit, prospecting licence or mining lease and had not been disposed of, as well as the applications received during the period specified in the notification shall be deemed to have been received on the same day for the purpose of assigning priority u/s 11(3) of the MMDR Act.

26.19. In other words, the applications which are premature and shall not be entertained remain passive and entitled to be taken for active consideration once the notification is published u/s 11(2) of the MMDR Act in order to give effect to the first and second proviso to Section 11(2) of the MMDR Act or otherwise, they become redundant. By this interpretation, all the provisions of the Act and Rules are harmoniously read and given effect to without any inconsistency or conflict whatsoever, because, it is settled law that the statutes, both provisions of the Act and Rule, should be read harmoniously and the provisions of the Act and Rules should be interpreted to achieve the object of the legislation and the Court should avoid an interpretation that would be inconsistent with one another.

26.20. We are, therefore, of considered opinion that the applications filed either before publication of notification or before the expiry of the period specified in the notification, even though are premature and shall not be entertained, from the moment the notification is published; such applications are entitled to be taken for active consideration. In short, such applications applied before the notification remains passive and become active when the notification is issued or when the same is taken for consideration under Rule 59(2) of the MC Rules.

27. Accordingly, we answer Issue (II) in positive.

XVI - ISSUE(III):

Whether granting mining lease in consideration of Rule 35 of the MC Rules falls outside the purview of the matters specified u/s 11(3) of the MMDR Act?

28.1. Mr. Krishnan Venugopal, learned senior counsel contends that first respondent herein (writ petitioner) is already in the mining industry, which by itself is a stand-alone industry. Therefore, the first respondent herein (writ

petitioner) is entitled for preference over the appellants herein (respondents 4 and 5 in the writ petition), as they substantially satisfy the matters specified u/s 11(3) of the MMDR Act. According to Mr. Krishnan Venugopal, the existing iron and steel industry run by the appellants herein (respondents 4 and 5 in the writ petition) do not carry any merit with reference to end-use of minerals by them and therefore preferring the appellants herein (respondents 4 and 5 in the writ petition) in terms of Rule 35 of the MC Rules would only fall outside the consideration of matters specified u/s 11(3) of the MMDR Act.

28.2. Rule 35 of the MC Rules reads as follows:

35. Preferential rights of certain persons- where two or more persons have applied for reconnaissance permit, prospecting licence or mining lease in respect of the same land, the State Government shall for the purpose of Sub-section (2) of Section 11 consider besides the matters mentioned in Clauses (a) to (d) or Sub-section (3) of Section 11, the end use of the mineral by the applicant.

28.3. We are unable to appreciate the above contention of Mr. Krishnan Venugopal because Section 11(3) of the MMDR Act is only an inclusive provision which takes in Rule 35 of MC Rules also. With the risk of repetition we propose to refer Section 11(3) of the Act which reads hereunder:

11(1) xxx xxx xxx

11(2) xxx xxx xxx

(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 mineral;

(e) such other matters as may be prescribed.

{emphasis supplied}

28.4. The words employed by the Parliament u/s 11(3)(e) viz., "such other matters as may be prescribed" include the matters prescribed under Rule 35 of MC Rules also specifically refers to Section 11(3) of the MMDR Act. It is, therefore, mandatory for the State Government to consider the end-use of minerals by the applicants while evaluating their -relative merits. In the instant case, the appellants herein (respondents 4 and 5 in the writ petition) who have already established iron-ore based industry viz., iron and steel plant, weighed

the State Government to prefer the appellants herein (respondents 4 and 5 in the writ petition) as against the first respondent herein (writ petitioner). When the appellants herein (respondents 4 and 5 in the writ petition) proposed to use the iron-ore mined as captive consumption for the existing industry which in turn generate more employment and span ancillary industries, the consideration and evaluation of relative merits of the appellants herein (respondents 4 and 5 in the writ petition) and the first respondent herein (writ petitioner) in terms of Rule 35 of MC Rules, would certainly fall within the matters specified u/s 11(3) of MMDR Act.

29. Issue (III) is, therefore, answered in negative.

XVII - ISSUE (IV):

Whether the proceedings dated 6th December, 2004 suffers from:

- (i) irregularity;
- (ii) illegality;
- (iii) discrimination;
- (iv) arbitrary and unreasonable exercise of power, and
- (v) violates the principles of natural justice?

30.1. It is no ones case that Government has not given any opportunity as contemplated under Rule 26(1) of the MC Rules. On the other hand, concededly, first respondent herein (writ petitioner) has been given opportunity on 19th July, 2003 and 16th August, 2003 and they have also submitted their written representations. In the written representations dated 16th August, 2003, 31st May, 2004 and 12th October 2004, the first respondent herein (writ petitioner) claimed that:

- (a) they propose the resources available in their existing area could not support their future investment plan in the State;
- (b) they propose to invest Rs. 1000 crore in a one million MT specialty steel plant in the State;
- (c) they also propose to invest a five million MT integrated steel plant in the State over a span of five years for Rs. 10,000 crore and the said project could be undertaken only if iron ore is assured by granting of mining lease applied by them;
- (d) they also propose to invest Rs. 150 crore for non-conventional energy generation in the next three years;
- (e) they propose to invest Rs. 750 crore for generating of 160 mW of wind power in the next six months; and
- (f) they propose to use the iron ore from the mining lease applied for the

proposed steel plant as captive consumption which would result in value addition in the State.

30.2. The Government, taking into consideration Rule 26(1) of the MC Rules, has given opportunity to first respondent herein (writ petitioner). But the Rule does not say that opportunity should be given comprehensively to all the applicants, which, in our considered opinion, is impermissible, impossible and impracticable, when more than hundred applications were received pursuant to the impugned notification dated 15th March, 2003. Where more than one applications are made by the same party and the sister concern for the same area, and where more than one application are made for the same area by individuals, what is required is, whether each of the applicants were given opportunity of being heard before refusing grant or renew of mining lease over the whole or the part of the area applied for. Therefore, we are satisfied that there is no procedural irregularity. The learned Single Judge, in our considered opinion, erred in rendering a finding that the State Government had not acted legally and bonafide while considering the various applications.

30.3. Coming to the reasons that weighed the Government in favour of the appellants herein (respondents 4 and 5 in the writ petition), it is pertinent to note, as rightly pointed by Mr. Rao, that the first respondent herein (writ petitioner) is already having a mining lease over an extent of 722.94 hectares and that itself is sufficient for the integrated steel plant proposed to be established by them. On the other hand, the appellants herein (respondents 4 and 5 in the writ petition) are already running the steel plants investing over Rs. 7000 crore and Rs. 600 crore respectively, but they do not have any mining lease in their favour for their captive consumption. The appellants herein (respondents 4 and 5 in the writ petition) having established huge steel plants are therefore entitled for grant of mining lease in preference to the first respondent herein (writ petitioner) as per Section 11(3) of the MMDR Act and Rule 35 of the MC Rules. That apart, the State Government policy is also in favour of granting mining lease taking into consideration the end-use of the minerals by the applicants and its value addition.

30.4. Concededly, the first respondent herein (writ petitioner) in its representations dated 16th August, 2003, 31st May 2004 and 12th October 2004 has specifically claimed that it intends to use the impugned iron ore as captive consumption for the proposed steel industry. On the other hand, the appellants herein (respondents 4 and 5 in the writ petition) require the impugned iron ore as captive consumption for their existing industry. It is, under such circumstances, the Government rightly, taking into consideration all the relative merits of the respective parties, preferred the appellants herein (respondents 4 and 5 in the writ petition) and recommended them to the Central Government for the grant of mining lease.

30.5. The State Government, in the proceedings dated 6th December, 2004, has clearly given the reasons in writing for preferring the appellants herein

(respondents 4 and 5 in the writ petition) as against the first respondent herein (writ petitioner). The preference of the appellants herein (respondents 4 and 5 in the writ petition) as against the first respondent herein (writ petitioner), for the reasons referred to above, does not suffer from any irregularity, illegality, discrimination, arbitrariness, unreasonableness or violative of principles of natural justice.

31. Issue No. (IV) is answered in negative.

XVIII - ISSUE No. (V)

To what relief the parties are entitled to?

32. In the result, we pass the following:

ORDER

(i) The order of the learned Single Judge dated 7th August, 2008 in writ petition No. 21608 of 2005 quashing the notification dated 15th March, 2003 is set aside and the writ petition is dismissed;

(ii) Consequently, the directions (a) to (m) given in the order dated 7th August 2008 made in Writ Petition No. 21608/2005 at paragraph 150, are set aside;

(iii) Notification dated 15th March, 2003 issued by the State Government is held valid;

(iv) Proceedings dated 6th December, 2004 and the consequential approval of the Central Government, are held valid.

Writ Appeals are disposed of accordingly. No costs.