

(2008) 05 OHC CK 0013

In the Orissa High Court

Case No : Writ Petition (C) No. 14044 of 2006

MESCO Steels Limited

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 16-05-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Forest (Conservation) Act, 1980 — Section 2
Mineral Concession Rules, 1960 — Rule 22, 27, 27(3), 27(5), 31
Mines and Minerals (Development and Regulation) Act, 1957 — Section 10(3), 11(1), 11(4), 15(1), 2

Citation : (2008) CLT 344 Supp : (2008) 2 OLR 566 Supp : (2008) OLR 344 Supp

Hon'ble Judges : Sanju Panda, J; I.M. Quddusi, J

Bench : Division Bench

Advocate : B. Ray and S. Mohanty, D.K. Mishra, B. Mohanty, B. Moharana, D. Chhotray and S. Mohanty, for the Appellant; S.K. Nayak-1, B.K. Sahoo, D. Nayak, A.C. Baral, S. Biswal and S. Ray for O.Ps. Nos. 1 and 2 and J.K. Mishra, ASG for O.P. 3, for the Respondent

Final Decision : Allowed

Judgement

I.M. Quddusi, J.—By means of this writ petition, the Petitioner has prayed for quashing of the impugned order dated 19.9.2006 of the Director of Mines, Orissa as contained in Annexure-8 to the writ petition proposing deduction of area granted to the Petitioner for mining lease and also for a directing to the State to execute the deed of mining lease in respect of the iron ore over an area of 1011.480 hectares (802.6678 hectares as per survey) in village Kadakala and Luhakala and 508.500 hectares (697.8122 as per survey demarcation) in village Sundara and Pidapokhari in the district of Keonjhar declaring that the Petitioner is entitled to the mining lease for the aforesaid areas as approved by the Government of India as early as 7.1.1999 without reduction of any area approved by the Central Government.

2. Vide impugned order as contained in Annexure-8, instead of issuing the order

for executing the lease deed, the Director of Mines requested the State Government for reallocation of the resources allotted in favour of the Petitioner after reassessment of requirements of MESCO Steel and since the Steel Plant has been installed by M/s. MISL instead of MESCO the Director suggested to the State Government as to whether the supply of iron ore from the mining leases granted in favour of MESCO to the steel plant set up by M/s. MISL would not be in violation of the aforesaid terms and conditions for captive use.

3. The brief facts of the case are that the Petitioner, in the year 1994, submitted three mining lease applications for mining lease for the area 1546.618 hectares. Thereafter in the year 1996, Government of Orissa allotted an area of 1565 hectares in favour of the Petitioner in "S", "K", "J" and "H" Blocks of Malangtoli and Block No. 16 of Luhakala villages in the district of Keonjhar and thereafter sent a letter to the Petitioner to furnish revised mining lease applications to cover the allotted area of 1565 hectares. Consequentially, the Petitioner submitted two revised mining lease applications for an area of 1101.000 hectares and 494.987 hectares total amounting to 1595.987 hectares to cover the entire allocated area of 1565 hectares. Thereafter vide letter dated 23.9.1997, the Director of Mines, Orissa recommended the mining lease applications of the Petitioner to the State Government for grant of mining lease over an area of 1011.480 hectares against M.L. application No. 672 and 508.500 hectares against M.L. Application No. 673 thus total area of 1519.980 hectares out of allotted area of 1565 hectares (by overlapping 61 earlier PL/ML applications). The area of 1011.480 hectares did not include any forest land and the grant was subject to submission of approved mining plan and environmental clearance but the area 508.980 hectares recommended included forest land of 377.690 hectares and the grant was subject to submission of approved mining plan, forest and environmental clearance. Iron ore being a specified mineral, State Government vide letter dated 21.10.1997 recommended the mining lease application of the Petitioner to the Central Government for their approval u/s 5(1)(b) with relaxation of Section 6(1)(b) to meet the captive requirement of the Petitioner and its sister concern (MKSL).

4. On 7.1.1999, the Central Government approved the proposal of grant of mining lease over an area of 1011.480 hectares and 508.500 hectares in exercise of power conferred u/s 5(1) and 11 (4) of the Mines and Minerals (Development and Regulation) Act, 1957 (in short "MMDR Act) and Rule 27(3) of the Mineral Concession Rules, 1960 (in short "M.C. Rules") with relaxation of Section 6(1)(b) of the Act, 1957 in favour of the Petitioner for a period of thirty years which was communicated to the Petitioner by the Government of Orissa vide letter dated 8.2.1999. The terms and conditions mentioned in that letter for grant of mining lease was accepted by the Petitioner on 15.2.1999. Thereafter on 17.3.1999, the Government of Orissa issued grant order for mining lease in favour of the Petitioner over an area of 1011.480 hectares in villages Kadakala and Luhakala and 508.500 hectares in villages Sundara and Pidapokhari u/s 10(3) of the MMDR Act with the condition that the order of execution of lease

deed in terms of Rule 31 of M.C. Rules will be issued by the State Government upon submission of the survey map and description within three months from the date of the order to the Collector and furnish required mining plan to be approved by Indian Bureau of Mines, Ministry of Mines, Government of India (in short "I.B.M.") and clearance/approval of the Ministry of Environment and Forest, Government of India on de-reservation proposal. On 24.3.1999, the Petitioner deposited the survey map and demarcation fee as required under Rule 22 of M.C. Rules. On 13.6.2003, the Petitioner submitted the mining plan approved by I.B.M. in respect of the aforesaid areas. The State Government, from time to time, changed the status of the land. On 1.12.2003, the State Government submitted a survey demarcation changing the status of the land in respect of the area 1011.480 hectares as reported by the Director of Mines on 26.5.2004 and on 8.11.2005 again the State Government submitted a survey demarcation changing the status of 508.500 hectares. However, before survey, 1011.480 hectares was shown as non-forest land but after survey, 802.6678 hectares land was shown as non-forest land and during processing for this area for execution of mining lease deed, it was revealed that out of 802.6678 hectares, an area of 643.4578 hectares was marked as UDFP and submitted before the Hon'ble Supreme Court by way of affidavit. Non-forest area was reduced to 159.21 hectares and with regard to 508.500 hectares, before survey 598.500 hectares were forest land but after survey, 687 3122 hectares was shown as forest land. No order for execution of lease deed was issued. However, on 19.9.2006, the Director of Mines, Orissa requested the State Government for reallocation of the resources allotted in favour of the Petitioner after reassessment of requirements of the Petitioner. Being aggrieved, the Petitioner filed this instant writ petition before this Court on 25.10.2006 in which an interim order was passed on 1.2.2007 to maintain status quo. During pendency of the writ petition, the Government of Orissa in the Department of Steel and Mines issued show cause notice under Rule 27(5) of M.C. Rules to show cause within sixty days as to why the area of 469.25 hectares (overlapping with the approved area for State PSU i.e. OMC) and 921.25 hectares (granted in excess of the captive requirement) will not be deducted from the total M.L. area of 1519.980 hectares granted earlier. On 7.3.2007, after survey and demarcation, modified Mining Plan was resubmitted by the Petitioner before the IBM for approval of the changed status of the areas.

5. Learned Counsel for the Petitioner states that Iron Ore is a specified mineral mentioned in Part-C of the First Schedule of the MMDR Act. Section 5(1)(b) of MMDR Act, 1957 provides that no mining lease in respect of mineral specified in the First Schedule shall be granted without prior approval of the Central Government.

MMDR Act, and the M.C. Rule is a complete code. Section 2 of the MMDR Act, provides that the Central Government is the controlling authority. Iron ore being a specified mineral, approval of Central Government has to be taken before grant of mining lease in terms of Section 5(1). Section 5(1)(b) provides that State

Government shall not grant mining lease to any person unless such person satisfies such conditions as may be prescribed. Section 3(f) defined "prescribed" to mean prescribed by rules made under the MMDR Act. Rule 27(3) of the M.C. Rules states that the State Government, may either with the previous approval of the Central Government or at the instance of the Central Government impose such further conditions as may be necessary in the lease deed. In fact the State Government has taken approval of the Central Government under Rule 27(3) of the M.C. Rules for inclusion of a condition (setting up steel plant within a time) in the lease deed. Mining Lease Deed in Form "K" of the M.C. Rules has not yet been executed. Therefore, violation of such condition does not arise. The State Government, on a total misconception, initiated a proceeding under Rule 27(5) of the M.C. Rules for reducing the area already granted u/s 10(3) of the MMDR Act on the basis of recommendation of the Director of Mines dated 19.9.2006 (Annexure-8). Rule 27(5) has no application as the lease deed has not been executed. The conditions mentioned in the recommendation of the State Government dated 21.10.1997 were only seeking an approval of the Central Government for incorporating such condition in the lease deed, therefore, the entire exercise of State Government so also the Director of Mines is without jurisdiction as State Government has no power of review/reduce the area already granted upon obtaining approval of Central Government and the same amounts to interference with the approval of Central Government which is the approving and controlling authority.

6. Condition No. X mentioned in letter dated 8.2.1999 is not the conditions of the grant order dated 17.3.1999 nor required to be fulfilled prior to execution of lease deed. The said condition is to be incorporated in the lease deed. Once the Central Government approved the mining lease applications, the State Government has no authority under the Act, 1957 or the Rules, 1960 to reduce or review the area granted and there is no provision either under the Act, 1957 or under the Rules, 1960 empowering the State Government to reduce the grant area. The power of review is not an inherent power. It must be conferred by law either specifically or by necessary implication. No provision of the Act 1957 or the Rules, 1960 empowers the State Government to review the grant order. The Mines and Mineral (Regulation & Development) Act, 1957 and the Mineral Concession Rules, 1960 contain the complete code and controlling power vested with the Central Government.

7. Learned Counsel for the opposite parties, Sri Nayak states that the writ petition is premature on the ground that the State Government has issued show cause notice dated 6.2.2007 under Rule 27(5) asking the Petitioner to show cause as to why the area of 469.25 hectars (overlapping with the approved area for State PSU i.e. OMC) and 921.258 hectares (granted in excess of the captive requirement) will not be deducted from the granted area of 1519.980 hectars. The Petitioner should have replied to the said show cause instead of pursuing the writ petition before this Court.

The said contention of the State Government is wholly erroneous and untenable because Rule 27(5) of M.C. Rules is not applicable in the present case at all and the recommendation of the Director of Mines to reduce the grant area as well as forming of opinion by State Government to reduce the grant area are without jurisdiction and contrary to the provisions of the M.M.D.R. Act and M.C. Rules.

8. Learned Counsel for the Petitioner has further submitted that the action of the State Government is without jurisdiction and amounts to take away the right of the grantee contained in the grant order. Such illegal action of the State Government being without jurisdiction, the grantee/Petitioner filed writ petition before this Court for declaration in the form of mandamus that he is entitled to the entire area of 1519.980 hectares granted vide grant order dated 17.3.1999 which is after obtaining the approval of the Central Government on 7.1.1999.

9. After the area has been granted and while the grantee/Petitioner was under process of complying the conditions mentioned in the grant order dated 17.3.1999 like submission of Mining Plan approved by IBM, Forest Environmental clearance from the Central Government, the recommendation of the Director of Mines, Orissa dated 19.9.2006 for re-allocation of the resources allotted in favour of the Petitioner after reassessment of requirements of the Petitioner is without jurisdiction and the recommendation has been made on two frivolous grounds that an area of 469.25 hectares is overlapping with the approved area for State PSU i.e. OMC & 921.258 hectares were granted in excess of the captive requirement which are incorrect, illegal and without jurisdiction on the following grounds:

(a) The Government had earmarked an area of 1565 hectares for Petitioner vide their letter dated 23.7.1997 requesting to furnish the revised application along with reference map, boundary description, land schedule which will cover the entire area allotted in favour of the Petitioner.

(b) The Director (Mines), Orissa vide its report dated 23.9.1997 had recommended the mining lease application of the Petitioner to the State Government indicating that a list of PL/ML application with which the above said two revised ML applications overlapped partly/fully had applied for Prospecting Licence No. 220 for 1950 hectares which has been overlapped partly by the Petitioner's granted area. It is relevant to mention that on the basis of report dated 23.9.1997 of the Director of Mines, the State Government vide letter dated 21.10.1997 recommended the mining lease applications to the Central Government. The State Government recommended that it may further be pointed out that the two ML applications filed by the Petitioner overlapped partially/fully with 61 Nos. of PL/ML applications earlier filed by private parties on 21.10.1991 in pursuance to the notification of the State Government dated 23.8.1991. The boggy of overlapping being pointed out after ten years of State Government recommendation is nothing but to deny the Petitioner, the right to possess the captive mines.

(c) The Iron Ore Linkage for the proposed steel plant in Orissa prepared by the Department of Steel and Mines vide Memo No. 5444 dated 24.6.1997. But in case of Malangtoli there are some sporadic and small patches with proved reserve of 36.84 million tonne comprising of the area earmarked K=2105 MT and H=12.50 MT. These deposits from a cluster along with L-17, M&S located at the western side and can be exploited together conveniently. Therefore, these 36.84 million tonne comprising the area earmarked K.J. & H are carved out of RTZ/OCM Joint Venture as it is not found suitable for mechanized mining operation along with the main reserves of Malangtoli and are proposed for linkage to the steel plant.

10. The issue was discussed with the Managing Director, OMC on 17.6.1997. He argued that these small scattered patches can be taken out from the purview of joint venture of OMC and TRZ. Hence these patches K.J.H. & S. included in the granted area of Mesco Steel Ltd.

11. It has been further stated that the Hon'ble Chief Minister while reviewing the outstanding issue related to OMC's Joint Venture Project with M/s. Rio Tinto on 29.10.2001 observed that as the two portions from the Malangtoli Reserves have already been granted to M/s. NINL and Petitioner, it is not possible at this stage to reconsider the matter.

12. The State Government vide letter dated 21.10.1997 addressed to the Central Government recommended grant of mining lease stating that the Petitioner and its sister concern (Mesco Kalinga Steels Ltd.) have in the meantime taken all effective, steps to install the second steel plant in Jajpur district of Orissa as follows:

(a) Integrated Steel Plant in Duburi (1.2 million tonne) which has already been installed and as phase-1, 0.7 million tonne of Pig Iron is being produced at the moment.

(b) The second steel plant of Mesco Kalinga Steels Limited with annual production capacity of 2.25 MTPY is planned and according to the State Government's letter, the Infrastructure for the same is completed.

13. The requirement of Iron Ore based on the above calculation as indicated in the State Government letter dated 21.10.1997 works out to 3.3 million tonne production capacity as such 30 years requirement is 158.4 million tonne. The Mideast Integrated Steels Limited has already established a steel plant of 1.2 million tonne of pig iron production in Phase-I. The expansion of this steel plant to 3 million tonne capacity has been planned by re-engineering to accommodate expansion within the available land and the financial closure for the same has already been obtained and this expansion is planned to be completed within 3 years by 2010 and for thirty years, the iron ore requirement is 144 MT.

14. As regards, the 2nd Steel Plant of 2.25 MT capacity as given in the State Government letter dated 21.10.1997, the Petitioner had started infrastructure

development in 1996 with 13.2 KM boundary wall levelling all the entire area (1756.29 Acre), piled foundation for the blast furnace of 3200 Cu.Mtr capacity and a 48 room concrete building as administrative block at an expenditure of Rs. 30 crores. However, IDCO unlawfully resumed the land in the year 2003 and allotted a portion to various new comers for which W.P.(C) No. 2453 of 2005 was filed before this Court and vide Judgment/order dated 30.10.2007, this Court restored a part of the land of 825.68 acre and directed to complete the project by 2010. The expansion of the steel plant to 4.5 MT capacity has been planned by re-engineering to accommodate expansion within the available land and the financial closure for the same has already been obtained to be achieved by 2010 and for thirty years, the iron ore requirement is 216 MT. When the projects are completed, the Mesco Steel Group of companies will have a total capacity of 7.5 MT of finished steel per annum at Kalinga Nagar Industrial Complex at Jajpur and by then the iron ore requirement would be to the tune of 12 MT per annum and for thirty years, the requirement of MISL and MKSL would be 360 MT. Even if, the grant order dated 17.3.1999 of the Government of Orissa would be implemented then the total reserve of Iron Ore would be 90 M.T. and there will be further shortage of 270 M.T.

15. With a reference from the State Government about the status of the Petitioner, IPICOL, a nodal agency of the State Government for industrial promotion, had submitted a reply on 18.6.2005 indicating the requirement of ore in respect of the Petitioner-company which was conveniently ignored by the State Government while wrongfully reassessing requirement of iron ore in relation to the production/expansion capacity of the company as reported by the IPICOL.

16. Learned Counsel for the Petitioner, with regards to the applicability of Rule 27(5), submits that during pendency of the instant writ petition, the State Government issued notice on 6.2.2007 under Rule 27(5) of the M.C. Rules, asking the Petitioner to show cause as to why an area of 469.25 hectares (overlapping with the approved area for OMC) and 921.258 hectares (granted in excess of the captive requirement) will not be deducted from the ML area of 1519.980 hectares. The said show cause notice under Rule 27(5) was issued in clear violation of the status quo order dated 1.2.2007 passed by this Court and, therefore, the proceeding for reduction of area under Rule 27(5) vide notice dated 6.2.2007 is illegal and without jurisdiction. It is submitted that Rule 27(5) is applicable where lease deed in Form K has been executed but in the instant case though grant order has been issued, no mining lease deed in Form K has been executed till date and, therefore, Rule 27(5) will not be applicable to the present case. The show cause notice dated 6.2.2007 issued under Rule 27(5) is also illegal as the State Government has already admitted in its counter affidavit that the State Government has already decided to exclude 1390.508 hectares from the grant area of 1519.980 hectares and the show cause is only a mere formality.

17. It has been further stated by the Petitioner that the condition mentioned in

the grant order dated 17.3.1999 like furnishing of surveyed map, mining plan approved by the IBM and forest and environmental clearance are pursuant to direction of the Apex Court in T.N. Godavarman case. It has been further submitted that there is no provision in the Act and Rules empowering the State Government to incorporate any conditions in the grant order and Rule 27 of the M.C. Rules only speaks of conditions to be incorporated in the lease deed. Rule 27(5) of the M.C. Rules only speaks of breach of conditions by lessee and determination of lease deed. In the instant case, no lease deed has been executed between the State Government and the Petitioner and, therefore, the question of breach of conditions of lease does not arise. Further Rule 27(5) does not confer power on the State Government to reduce the area and it only gives power to State Government to determine the lease in case of any violation of conditions of lease deed and the show cause notice dated 6.2.2007 issued under Rule 27(5) is illegal and without jurisdiction.

18. It has been stated by the learned Counsel for the Petitioner that in view of the status quo order passed on 1.2.2007, the proceeding for reduction of the area under Rule 27(5) of the M.C. Rules vide notice dated 6.2.2007 is illegal and without jurisdiction. Rule 27(5) does not confer owner on the State Government to reduce the grant area, where no mining lease deed has been executed between the parties. Hence, where an order is wholly without jurisdiction, Section 30 of the MMDR Act cannot operate as bar of alternative remedy.

19. The compliance of requirements by the Petitioner as stipulated in the grant order dated 17.3.1999 like survey map and description, mining plan to be approved by IBM and forest/environmental clearance from Central Government has been delayed due to the action of the State Government. The survey and demarcation was completed on 1.12.2003 in respect of 1011.480 hectares and on 8.11.2005 in respect of 508.500 hectares (after 4 and 6 years of grant order dated 17.3.1999).

The mining plan was approved by the IBM on 13.6.2003. Although the mining plan was approved by IBM on 13.6.2003, the belated action of the State Government warrants submission of modified mining plan as the area and status of the land have been changed by the State Government. The Petitioner had already submitted the diversion proposal to chief Conservator of Forest but the same has not been processed due to want of the modified mining plan to be approved by IBM. The Petitioner had already submitted the modified plan before the IBM, Nagpur on 7.3.2007 for approval. Forest Division Proposal as per Section 2 of the Forest Conservation Act, 1980 will be resubmitted to CCF on receipt of approved modified mining plan along with the Mine Closure Plan from IBM, Nagpur. Approval of modified mining plan is pre-requisite for submission of forest division proposal. The Petitioner is ready and willing to comply all the conditions stipulated in the grant order dated 17.3.1999 like submission of mining plan to be approved by IBM and Forest/Environmental clearance from Central Government.

20. Mr. Sanjit Mohanty, learned Senior Advocate for the Petitioner has submitted that though Rule 31 of the M.C. Rules provides for execution of mining lease within six months from the date of grant, but till date no lease has been executed by the Government in Form K with the Petitioner for mining operation over the area in question in spite of several requests made by the Petitioner for the same. The Government of Orissa on one appeal or the other refused to execute the lease deed merely because the grant order does not empower the Petitioner to do mining activities. The Petitioner is only a grantee and not the lessee so far. It has been pointed out by Mr. Mohanty that the survey and demarcation was completed on 1.12.2003 in respect of an area of 1011.480 hectares and on 8.11.2005 in respect of 508.500 hectares that too after 4 to 6 years of grant order dated 17.3.1999. The mining plan was approved by the IBM on 13.6.2003. The approved mining plan along with boundary description of land schedule was given to the Petitioner-company by the Mining Officer, Keonjhar on 27.2.2007. Although the mining plan was approved by IBM on 13.6.2003, the belated action of the State Government warrants submission of modified mining plan as the status of the areas have been changed by the State Government. Approval of modified mining plan is pre-requisite for filing forest diversion proposal. The Petitioner company had submitted the diversion proposal to Chief Conservator of Forest (Nodal) but the same has not be processed due to want of the modified mining plan approved by the IBM. It has been further submitted that the OMC has not taken any action before the competent authority challenging the recommendation of grant of mining lease in favour of the Petitioner in respect of the overlapping area. He has further submitted that the Government of Orissa in their letter contained in Annexure-4 to the writ petition which is a copy of the letter dated 21.10.1997 sent by Government of Orissa, Department of Steel and Mines to the Deputy Secretary to Government of India, Ministry of Mines forwarding two applications for grant of mining lease in favour of the Petitioner relevant portion of which is necessary for perusal which is quoted as under:

Sir,

I am directed to say that the State Government in their Notification No. 647/91 dated 23.8.91 (copy enclosed) have reserved and thrown open Iron/Manganese Ore bearing areas to the extent of 282.46 Sq. Miles in five blocks located in Keonjhar and Sundargarh district. Accordingly, applications were invited from interested Private parties with effect from 29.10.1991 as per Rule 59 of M.C. Rules, 1960 for grant of P.L. and M.L. subsequently it has been decided by the State Government to promote establishment of Steel Plants in Orissa by (1) M/s. TISCO Ltd. (2) M/s. MESCO Ltd. (3) M/s. L & T Ltd. (4) M/s. Nilachal Ispat Nigam Ltd. to ensure optimum utilization of Mineral reserves and to boost up economy of the State which in turn will generate more employment opportunity for the predominantly tribal inhabited districts. It has further been decided by then Government to allot Iron Ore reserve to cater to the needs of proposed Steel Plants and accordingly parties have filed P.L./M.L. application keeping in view the

Iron Ore bearing areas tentatively allotted in their favor. A copy of the Government decision together with a copy of the Comparative reference map in this regard are enclosed for your kind reference.

M/s. Mesco Limited and its sister concern (MESCO-Kalinga Steels Limited) have in the meantime take all effective steps to install two steel plants in Jajpur district of Orissa as follows:

Integrated steel plant 1.2 Million tones capacity for production in Duburi village of of steel annum. The project shall Jajpur district with implemented in two phases expected a target to be completed 1999.

(A) The Pig Iron Plant has already been installed.

In The 1st phase production of 0.62 million tonne per year is expected from December, 1997.

(A) Requirement of Iron Ore per year for the plant 1.3 M.T.

2. Another steel plant at Duburi in Sukinda Tahasil in Jajpur District is proposed to be installed by MESCO-Kalinga Steels Limited with an annual production target of 2.25 MTPY of H.R. Coils - Infrastructure is complete,

(A) Requirement of Iron Ore per annum - 2.00 Million Tonne In order to meet the captive requirement of Iron Ore of M/s. MESCO Limited and its sister concern MESCO-Kalinga Steels Ltd. they have filed two Mining Lease applications on 29.7.97 in village Kadakala, Luhakala, Sundra and Pidapokhari of Keonjhar district as follows:

1. M.L. application dt. 29.7.97-1101 Hects for Iron Ore-village.

Kadakala and Luhakala

2. M.L.application dt. 29.7,97 494.987 Hects.

In that letter, the conditions were recommended as under:

1. If the lessee fails to set up the full-fledged Steel Plants within a reasonable time (to be intimated by the party at the time of issue of terms and conditions for grant of mining lease) due to any default of its own, the lease can be determined by the State Government taking recourse to the provisions of Rule 27(5) of the M.C. Rules. Such areas as resumed by the State Government can be considered for re-allocation to other parties interested for setting up steel plants in the State.

2. The lessee shall utilize the iron ore deposits solely for meeting the captive requirement of the steel plant being set up at Duburi and Jakhapura and no commercial trading of the mineral raised and exploited will be permissible.

21. After the approval of the Government of India, vide letter dated 7.1.1999, for grant of mining lease, the lease deed has not been executed so far and no

person can take the risk of establishing a plant without executing the lease agreement.

22. Mr. S.K. Nayak-I, learned Senior Advocate specially engaged for the State has submitted that it is the jurisdiction of the State to impose any condition for grant of mining lease. The Petitioner has to comply with the provisions of the Forest Conservation Act, 1980 and without a grant lease could not have been granted. He has pointed out towards Annexure-H to the further affidavit filed on behalf of opposite parties 1 and 2 to the additional affidavit filed by the Petitioner which is a letter issued on behalf of the Petitioner dated 15.2.1999 addressed to the Additional Secretary to Government of Orissa, Department of Steel and Mines and has submitted that it was specifically mentioned therein that the Petitioner accepts all the terms and conditions laid down by the State Government of Orissa in their Mining and Geology Department letter dated 8.2.1999 and also agreed that the Petitioner shall abide by all the terms and conditions and provisions laid down now, and as may be amended from time to time, in the MMDR Act and the M.C. Rules, 1960. He has submitted that the State Government has right to reduce the area in view of Rule 34 of the M.C. Rules which provides that a mining lease to any person who has a preferential right thereto under Sub-section (1) of Section 11, may at his option, be granted to him either for the whole of the area for which he holds the prospecting licence or such part or parts thereof as he may select but the State Government may for any special reasons to be recorded in writing reduce the area or exclude a portion therefrom. However, to our mind, this is applicable for the prospecting licence and not after the stage of grant of mining lease where the mining lease agreement was to be executed. He has referred to the letter of the Director of Mines dated 26.5.2004 (Annexure-K) in which it has been mentioned that since major portion of the approved surveyed and demarcated area of 802.6678 hectares which was non-forest land as per land schedule in the meantime reported to be of forest kissam, the mining lease deed cannot be executed until and unless the clearance from MOEF, Government of India is obtained by the grantee company in compliance to the conditions laid down in the grant proceedings order dated 17.3.99 of Government of Orissa. On the last, he has submitted that the writ petition is not maintainable in view of the fact that it is premature one.

23. With regard to maintainability of the writ petition, since in the counter affidavit filed on behalf of the opposite parties 1 and 2 to the rejoinder affidavit filed by the Petitioner sworn to by Mr. N.K. Nayak, Joint Secretary to the Department of Steel and Mines of the Government of Orissa inter alia it has been mentioned at paragraph-8 that:

8. ...Though time limit was not stipulated in the MOU but that does not mean that the company will take unlimited time to comply the terms and conditions. Therefore, the State Government reviewed the grant made in favour of the Petitioner and an area of 469.25 hec. were excluded. Moreover, keeping in view

of the requirement of iron ore for a 0.7 MTPA capacity of pig iron in 1st steel plant, it was necessary to further reduce the area granted in favour of the company. So far as the future expansion of the company is concerned, this has no relevance with the present case. It is submitted that since the party did not comply the terms and conditions issued by Government and due to overlapping with the earlier recommended area of OMC, Government did not execute the lease deed. Thereafter, Government decided to grant lease as per the captive requirement of company....

We are of the opinion that the Government have finally decided to reduce the area and there is no other remedy for the Petitioner to challenge the decision of the Government.

However, the State Government in the instant writ petition has not issued any final order but a decision has been taken and a formal show cause notice has been issued. If the decision would not have been taken by the State Government and only the show cause notice would have been issued, the stage would have been different. But since a decision has been taken and no order has been passed, a show cause notice, to our mind, would be a formality and futile exercise after such a decision.

Mr. Nayak, learned Senior Advocate for the State has submitted that any order passed by the State Government is revisable by the Central Government. But in the instant case, no order has been passed as indicated above and a decision has been taken as mentioned in the affidavit as per the portion quoted above, we are of the opinion that it is fit case to entertain under Article 226 of the Constitution of India. After the above decision, nothing remains to be said that the writ petition is a pre-mature one.

24. It is also not disputed that the Petitioner was a grantee and a lease deed was to be executed which was not executed. Now it is a matter of consideration that whether the mining plant was to be established by a grantee or by a lessee. In this regard, the provision of Orissa Minor Mineral Concession Rules, 2004 are liable to be perused which have been enforced in exercise of power conferred by Sub-section (1) of Section 15 of the MMDR Act by the State Government.

25. A grantee has no right for mining work without a lease to be executed in his favour. Rule 31 of the M.C. Rules is quoted as under:

31. Lease to be executed within six months:

1. Where, on an application for the grant of mining lease, an order has been made for the grant of such lease, a lease deed in Form K in a form as near thereto as circumstances of each case may require, shall be executed within six months of the order or within such further period as the State Government may allow in this behalf and if no such lease deed is executed within the said period due to any default on the part of the Applicant, the State Government may revoke the order granting the lease and in that event the application fee shall be

forfeited to the State Government.

2. The date of the commencement of the period for which a mining lease is granted shall be the date on which the deed is executed under Sub-rule (1).

26. In this case, the mining lease has not been executed and, therefore, the contention of the learned Senior Advocate appearing for the Petitioner that nobody would take risk to install plant without execution of the lease deed is sustainable.

27. In view of the facts and circumstances mentioned above, the writ petition is allowed and the impugned letter dated 19.9.2000 (Annexure-8) is quashed. It is directed that the Petitioner is entitled to mining lease for the area 1011.480 hect and 508.500 hect as approved by the Government of India as early as 7.1.1999 without reduction of the area. It is further directed that opposite party No. 1 shall execute the mining lease in favour of the Petitioner company in respect of the aforesaid area. However, the Petitioner shall make compliance with the conditions of the mining lease deed on its execution.

There would be no order as to costs.

Sanju Panda, J.

28. I agree.