

(2001) 05 OHC CK 0010
In the Orissa High Court
Case No : O. J.C. No. 1830 of 1999

M/s. Indian Charge Chrome Ltd. and another	APPELLANT
Vs	
Union of India and others	RESPONDENT

Date of Decision : 18-05-2001

Acts Referred:

Companies Act, 1956 — Section 3, 3(c), 3(d), 3(g), 3(h)
Constitution of India, 1950 — Article 136, 14, 19(6)(i), 19(l)(g), 226
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2), 11(4), 11(4), 11(l)
Motor Vehicles Act, 1988 — Section 80, 88

Citation : (2001) 05 OHC CK 0010

Hon'ble Judges : N. Y. Hanumanthappa, C.J.; R. K. Patra, J

Bench : Division Bench

Advocate : Indira Jaising, Ms. Anuradha Dutt, Ms. L. Menon and S.S. Das, for the Appellant; D.C. Mohanty, Standing Counsel (Central), A. Routray, Additional Government Advocate, S. Dave and A.K. Parija, for the Respondent

Final Decision : Dismissed

Judgement

N. Y. Hanumanthappa, C.J.—The petitioners have filed this writ petition challenging the proposal made by the Government of Orissa, Department of Steel and Mines by letter No. 550/SM/III (G) SM-36/97 dated 23-1-1999 sent by the Additional Secretary to Government of India. Ministry of Mines, Shastri Bhawan, New Delhi and seeking the following reliefs.

(i) The recommendation made by the State of Orissa (opposite party No. 2) vide letter dated 28-1-1999 bearing No. III(G)SM/ 36/97/550 be quashed.

(ii) The Union of India and the State of Orissa, i.e. opposite party Nos. 1 and 2 be restrained from acting on the recommendation made by O.P. No. 2 in the letter dated 28-1-1999 referred to above.

(iii) Opposite party Nos. 1 and 2 be restrained from granting lease pursuant to the application dated 19-9-1996 made by opposite party No. 3, i.e. M/s Nava

Bharat Ferro Alloys Limited, a company registered under the Companies Act, 1956 having its Registered Office at Nava Bharat Chambers. Rajbhavan Road, Hyderabad, Andhra Pradesh.

(iv) A writ of mandamus or any other appropriate writ, order or direction be issued directing opposite party No. 2 to grant a mining lease in favour of petitioner/IMFA for the balance 50% of the area as per the requirement assessed by the Central Government in its order dated 17th August, 1995; and such other reliefs.

2. A few facts necessary for disposal of the writ petition are indicated herein below :

Petitioner No. 1, namely, M/s. Indian Charge chrome Limited is a company incorporated under the Companies Act, 1956, having its Registered Office at Bomikhal, P.O. Rasulgarh. Bhubaneswar, District Khurda, Orissa. M/s. Indian Metals & Ferro Alloys Ltd., (hereinafter referred to as "IMFA") a shareholder of M/s Indian Charge Chrome Limited (hereinafter referred to as "ICCL"). is also a company incorporated under the Companies Act, 1956. Petitioner No. 1 is carrying on the business of manufacture and sale of High Carbon Ferro Chrome/ Charge Chrome having its factory at Choudwar in the district of Cuttack which is a 100% Export Oriented Unit. IMFA is an instrumentality of petitioner No. 1. It is also carrying on the business of manufacture and sale of Charge Chrome having its factory at Therubali, district Rayagada, Orissa. The need of chrome ore has been assessed for both ICCL and IMFA together, as they constitute groups of companies.

Petitioner No. 1 requires the chrome ore as a basic raw-material for manufacture of charge chrome. The capacity of petitioner's plant is 62.500 MT per annum on the basis of which the minimum requirement of chromite ore of petitioner is about two lakhs MT per annum. IMFA's requirement is 90.000MT per annum. It requires about four lakhs tonnes of chrome ore per annum which includes the requirement for making chrome ore pellets for export. The total requirement of IMFA is 5.28,427 tonnes or 6 lakhs tonnes per annum. The requirement of IMFA is based on Sharma Committee Report dated 16-8-1995 and the Central Government approved the same on 17-8-1995. Same was also accepted by the State Government (opposite party No. 2). The working mines available with ICCL and IMFA are hardly 5% of their needs.

3. Originally Tata Iron & Steel Company Ltd., (hereinafter referred to as TISCO") was granted mining lease over an area of 1812.993 hectares in Sukinda Valley in the year 1953. In the year 1973 after expiry of the lease period in respect of the mining lease granted to TISCO same was renewed by opp. party Nos. 1 and 2 restricting the area to 1261.476 hectares. As the period of lease was to expire on 12-1-1993, TISCO made an application to opposite party No. 2 for renewal of the mining lease which was duly recommended on 28-11-1992 to opposite party No. 1 by opposite party No. 2 in exercise of power conferred under S. 8 of the Mines

and Minerals (Regulation and Development) Act, 1957 (hereinafter referred to as the "Act"). According to the petitioner the said recommendation was contrary to the report submitted by B.K. Rao Committee, and also the principles laid down by the Supreme Court in the case of Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, Opposite party No. 1 though initially reviewed the question of grant renewal of lease in respect of the area allotted to TISCO on 3-6-1993, by its subsequent order dated 5-10-1993 the renewal was ordered only to the extent of 651 hectares, and the remaining area was made available to other industries. The order passed by opposite party No. 1 on 5-10-1993 was challenged by TISCO in this Court by filing O.J.C. No. 7729 of 1993. ICCL - petitioner No. 1 also challenged the said order by filing O.J.C. No. 5422 of 1994. Petitioner No. 1 main contention was that renewal of 451 hectares in favour of TISCO was quite arbitrary. Likewise, three other parties, namely, IMFA, M/s. Jindal Strips Ltd. and TISCO filed separate writ petitions challenging the order dated 5-10-1993 passed by opposite party No. 1. JINDAL filed OJC No. 7054 of 1994 in this Court seeking similar relief including FACOR as an opposite party. this Court by order dated 4-4-1995 set aside the order of renewal passed on 5-10-1993 and directed the Central Government to consider the renewal application of TISCO afresh. During this period opposite party No. 1 appointed a Committee known as Sharma Committee to submit report to it after giving the opportunity of hearing to all the parties. The Sharma Committee in its report dated 16-8-1995 recommended the name of TISCO over an area of 406 hectares. In case of other four parties it suggested that the balance area of 855476 hectares should be granted in proportion to their needs as given below:

SI.

No.

Name of the party

Requirement over 50 years

1

IMFA/ICCL

42.85 million MT

2.

FACOR

8.53 -do-

3.

ISPAT

21.48 -do-

2.

JINDAL

19.33 -do-

Total :

92.19 million MT

The Central Government (opp. party No. 1) after considering the report of the Committee passed order on 17-8-1995. Relevant portion of the said order reads as follows :

"17.....Therefore, so as to ensure earliest compliance to the said observation of the Hon''ble High Court, the State Government of Orissa is requested to take necessary steps to-

(i) issue orders granting subsequent renewal of ML for chrome ore in favour of TISCO over 406 hectares for a period of 20 years over a compact and contiguous area as per break up given in para 16 above. The physical demarcation based on the above guidelines may also be carried out by the State Government in consultation with Indian Bureau of Mines within a time frame of 30 days in the light of guidelines in paras 6.1.12 and 6.1.13 of the Committee's Report.

(ii) to take further action on the ML applications of the other 4 (four) applicants (other than TISCO) mentioned in para 10 above for grant of mining leases as per law over the balance area of 855.476 hectares (in excess of the requirements of 406 hectares of TISCO as assessed by the Committee) on the basis of proportionate to the requirement of chrome ore for these parties as furnished to the Committee in a fair, just and equitable and in a contiguous manner in consultation with Indian bureau of Mines within a period of 30 days from the date of issue of the order and make its recommendation to the Central Government for approval for grant of mining lease as per provisions of the NMRD Act and the Mineral Concession Rules, 1960. The government has carefully seen the observation of Hon''ble Orissa High Court in OJC No. 7729/93 and others contained in its judgment dated 4-4-1995. Since the other 4 (four) parties are in dire necessity of the raw material (chrome ore) as observed by the Hon''ble High Court and have set up mineral based industries and area suffering for want of chrome ore, the Central Government, in conformity with the observation of the Hon''ble Orissa High Court (in para 96 of its judgment dated 4-4-1995} and in exercise of powers conferred by sub-rule(2) of Rule 59 hereby relaxes the provisions of sub-rule (1) of the said Rule 59 with the objective of expediting the process for making available the raw material, which is chrome ore, to the needy industries in the interest of mineral development. The chrome ore requirements of these 4(four) parties besides TISCO, which appeared before the Committee constituted by the Central Government, as finally accepted by the Central Government, are listed as Annexure-1 of Appendix-A of this letter and the assessment of area for TISCO as finally accepted by Central Government is listed

as Annexure-11 of Appendix-A and in the case of M/s Ispat Alloys Ltd., the requirements are listed at Appendix-C."

TISCO challenged the order dated 17-8-1995 of the Central Government before the Hon"ble Supreme Court in SLP No. 2271ft of 1995 and the order of this Court passed on 4-4-1995 in SLP No. 10838 of 1995. Industrial Development Corporation Orissa Ltd., (hereinafter referred to as "IDCOL") also filed SLP Nos. 23131-32 of 1995 contending that the balance area of 855.476 hectares should not have been suggested to be granted in favour of four parties without considering its claim. In the said SLP opposite party No. 3 also filed an intervention application same as IDCOL had done. The Hon"ble Supreme Court by their order dated 23-7-1996 rejected the SLP and the intervention applications. The said order of the Hon"ble Supreme Court has been reported in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., During the same period, the Orissa Mining Corporation Limited (in short, "OMC") and M/s Orissa Industries Limited (in short, "ORIND") challenged the order dated 17-8-1995 passed by the Central Government on the ground that it did not consider their claims and the balance portion of 855.476 hectares should not have been suggested in favour of four parties. The Hon"ble Supreme Court by their orders passed on 10-2-1997 and 27-2-1997 dismissed the S.L.P.

4. FACOR filed O.J.C. No. 12032 of 1997 before this Court challenging the order dated 17-8-1995 passed by the Central Government on the basis of assessment made by the Sharma Committee. The writ petition was rejected by this Court on 31-8-1998. Challenging the said order, SLP (Civil) No. 17987 of 1998 was filed before the Hon"ble Supreme Court, which was disposed of by order dated 22-3-1999 reported in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, The State Government in its order dated 29-6-1997 followed the Central Government's order dated 17-8-1995, and the Hon"ble Supreme Court's order passed in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., and recommended for grant of mining lease in favour of four companies to the extent of 50% of the assessed needs. The balance area was reserved by it to be recommended for other industries set up in the State. Following the said recommendation, opposite party No. 2 recommended 84,881 hectares from out of 419.181 hectares situated in village Kalaraniata, Kaliapani etc. in Sukinda Tahasil of Jaipur district for a period of 30 years in favour of opposite party No. 3. Same has been sent for approval to opposite party No. 1.

5. According to the petitioners, the aforesaid recommendation made by opposite party No. 2 in favour of opp. party No. 3 is quite arbitrary, illegal and has been made with mala fide intention. Opposite party No. 3 is acting as an agent of TISCO. When all the industries were requiring the chrome ore and were challenging TISCO's renewal opposite party No. 2 without bothering about the requirements of other industries proposed to grant least; in favour of opposite

party No. 3. Any area which was to be leased out in favour of opposite party No. 3 should have been taken into consideration only after it satisfied the need of other applicants. Both ICCL and IMPA have invested huge amount and the Industrial Development Bank of India (IDBI) and other banking institutions who had invested public money and funds on the petitioner No. 1 informed the State Government that the petitioner No. 1 was in great financial crisis and requested the State Government to work out a suitable revival package jointly with IDBI by providing mining facility to petitioner. The petitioner No. 1 and other three parties are entitled to balance area of 84.881 hectares. The State Government though recommended the case of IMFA two years ago, so far same has not been fulfilled. The State Government's recommendation is not only arbitrary, illegal, but also contrary to the principles laid down by the Supreme Court In Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., wherein the Supreme Court held as under : (Para 61)

".....In order to properly appreciate the issue of captive consumption, the Committee examined the needs of the other parties before it. it stated that each of these parties had manufacturing industries which produce value-added products and earn considerable foreign exchange for the country, and it was therefore of the view that an analysis of their total requirement was necessary in the interests of mineral development as also that of the nation. Based on the information supplied to it. the Committee thereafter made an assessment, for a total period of 50 years, of the captive and net requirements of ICCL, IMFA, FACOR and JSL. At page 349 of its report, the Committee has also taken note of the projected captive and net requirements of ISPAT Alloys. This being a finding of fact that has been recorded by the Committee, we have to accept that the argument of captive consumption does have a basis in the facts of the present case. On the issue of the application of the principle of equitable distribution, we are of the view that the Committee had. after having taken note of the prevailing situation and the problems faced by needy manufacturers, taken the correct view in recommending its implementation."

(Page 2473, para 61) "

67. We are, therefore, of the view that the Central Government was justified in issuing its order dated August 17, 1995."

(Page 2472, para 67)

The State Government went wrong in ignoring that the balance area of 419. 181 hectares which was not available for grant to any other parties and as such no recommendation could have been made. Relaxation under Rule 59 (1) of the Mineral Concession Rules, 1960 (in short, the "Rules") is available in respect of only four parties. As such, there should not have been a suggestion for further relaxation in favour of opposite party No. 3. The recommendation dated 28-1-1999 is void and without jurisdiction as on the date of recommendation no area was available for grant of lease. Before making the recommendation the

State Government should have strictly followed the provisions of Rule 59(1) of the rules. The balance suggested in the report of the Sharma Committee hardly meets the need of four parties. According to the petitioners the following table will explain the need of four parties. Same is extracted hereinbelow :

Arsa

Reserved

Total 1261.476 Hect.

102.44 Million Tonnes

TISCO 406.00 Hect.

16.27 Million Tonnes

855.476 Hect.

96.17 Million Tonnes.

(** Note - However, when the State Government assessed the reserves In the balance area of 855.476 hectares, it came to the conclusion that the reserves were in fact less, that is, 86.62 million MT)

NEED OF THE FOUR PARTIES

11

M/s IMFA/ICCL

42.85 Million Tonnes

2)

M/s FACOR LTD.

8.53 Million Tonnes

3)

M/s ISPAT ALLOYS

21.48 Million Tonnes

4)

M/s JINDAL STRIPS

19.33 Million Tonnes

Total :

92.19 Million Tonnes

Non-recording reasons for making relaxation in the case of opposite party No. 3 is the result of non-application of mind to the Sharma Committee report,

availability of the area and the need of four parties. The recommendation made on 28-1-1999 is contrary to the order of the State government dated 29-6-1997. Before making recommendation in favour of opposite party No. 3 the State Government should have assessed the need of opposite party No. 3 and taken steps for further action as observed by the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., to the following effect : (Para 61)

".....The captive requirement of an industry is a factor that has to be kept In mind while granting leases but it is to be done on a comparative scale. While the Central Government exercises its discretion in granting or renewing a lease, it is clear that the capacity of an industry to effectively exploit the ore, will be a predominant consideration."

The requirement is a relevant factor to be kept in mind while granting the lease or renewing the lease. While the Central Government exercising its discretion in granting or renewing lease, it is clear that the capacity of the industry to effectively exploit the ore should be a predominant consideration. The recommendation dated 28-1-1999 has conferred largess on opposite party No. 3 thus violating Article 14 of the Constitution of India. When opp. party No. 3 had a contract for work with the TISCO, again same area should not have been recommended in favour of opp. party No. 3. It is also averred that the decision rendered by the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., that before granting, the need of the parties is to be ascertained. In the instant case the Government is estopped from granting lease for an area out of 855.476 hectares of Sukinda valley to any other parties including opp. party No. 3. But the recommendation should have been in favour of four companies. The State Government made the recommendation mechanically without taking into consideration the relevant factors necessary for grant of recommendation. Thus averring it is prayed that the writ petition be allowed.

6. On service of notice the opposite parties have entered appearance and filed their respective counter affidavit. Stand taken by opposite party No. 1 in its counter is that as litigations were going on between the parties before this Court and the Supreme Court, the Central Government conveyed its approval by letter dated 16-4-1999 for grant of mining lease of chromite over an area of 419.181 hectares in Sukinda Valley in favour of four parties for a period of 30 years on the basis of recommendations made by the State dated 29-6-1997 and also in compliance with Supreme Court's order dated 22-3-1999 reported in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, Relevant portion of the counter affidavit filed by opp. party No. 1 in which observations of the Supreme Court have been placed reliance reads as under : (Paras 51 &52)

"...."As a consequence of our decision on point Nos. 3, 4 and 5, the inevitable result is that this appeal fails and will stand dismissed. However, it is clarified that the State of Orissa will carry out the remaining exercise pursuant to its

order dated 29th June, 1997 at the earliest and will see to it that Shri Jagdish Prasad Das Committee constituted by it on 6-11-1998 also completes its exercise in connection with the remaining area of 436.295 hec. out of 1261.476 hectares after in the first instance granting leases as per its order dated 29th June, 1997 in the reserved area of 419.18 hec. out of 12621.476 hec. for mining of chromite in favour of the four parties i.e. the appellant and respondents 3 to 7 in Sukinda Valley of Jaipur District.

It is obvious that the grant of mining leases to the extent of 50% to the appellant, the respondents 3 to 7 as per order of the Orissa Govt. dated June 29, 1997 will remain binding between the parties. However, any additional leases granted by the State of Orissa pursuant to the Report of Shri Jagdish Prasad Das Committee or even otherwise to the appellant and respondents 3 to 7 to meet wholly or partially their remaining 50% of assessed needs as per Central Government's order dated August 17, 1995 will be subject to the revisions, if any, by the aggrieved parties before the Central Government in accordance with law.

That in the light of the position explained above, the Hon'ble High Court may kindly dismiss the petition as having become infructuous keeping in view the order passed by the Hon'ble Supreme Court on March 22, 1999."

7. Opposite party No. 2, namely, the State of Orissa has filed a detailed counter meeting each and every point raised by the writ petitioner, in addition to , supporting the stand taken by opposite party No. 1. according to opposite party No. 2, State Government's recommendation dated 28-1 -1999 is in conformity with the directions given by the Supreme Court in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, . Further the State Government by its order dated 29-6-1997 had sliced down the area that remained after grant of lease to TISCO, i.e. 50%. According to opp. party No. 2, in FACOR's case (supra) the Supreme Court raised important points for consideration and Point No. 4 reads as under :

"Whether the order of the State of Orissa dated 29th June, 1997 was in conflict with the earlier order of the Central Government dated 17th August, 1995 was upheld by this Court in TISCO's case (supra)? Whether the order of the State Government dated 29th June, 1997 is binding on the appellant as well as on the contesting respondents 2 to 72"

While referring to paragraphs 48 and 49 of the judgment rendered by the Supreme Court in FACOR's case (supra), action of the State Government in silicing down the area by 50% for consideration of the claims of other parties cannot be held as bad. Opposite party No. 2 stated that all the four parties before the Supreme Court did not challenge its order dated 29-6-1997. Said order was held by the Supreme Court as correct. Now the petitioners are estopped from contending that the order dated 29-6-1997 is not maintainable. It is contended that the relaxation granted by the Central Government under Rule 59 (2) of the rules is not limited to the four parties in respect of the area in

question. The plain meaning of the provisions is that the relaxation granted by the Central Government extends to the area in question.

8. According to opp. party No. 2, the contention that the recommendation is the result of non-application of mind is quite incorrect. On the other hand, voluminous materials were placed before the State Govt. and after considering the same the State Government took a correct opinion as to the bona fide requirement of opp. party No. 3. The materials that were placed before the State Govt. are as under :

On 19-9-1996 opp. party No. 3 applied for grant of mining lease over an area of 1261.476 hectares. On 2-7-1998 it represented to the Govt. for issuance of necessary guidelines to the Mining Department for sending application to the Central Govt. On 5-8-1998 the representation of opp. party No. 3 was considered by the Government and relaxation was ordered for the special reasons as required under S. 11 (4) of the Act.

The said special reasons were-

(a) As per the Industrial Policy of 1996, State Govt. would in the matters of grant of P.L./M.L. give preference to industries set up in the State like opp. party No. 3.

(b) Opp. Party No. 3 is the only chrome based industry in the State which does not have a captive lease.

(c) There is a Cabinet decision on 18-3-1997 considering the proposal to the effect that it would be clear and appropriate for the State Government to give preference to industries which are really starving and in dire need of raw materials while considering the applications.

It was observed as follows :

"It would therefore be proper to allocate certain reserves for these four parties and recommend to Govt. of India accordingly for grant of mining lease while keeping sufficient area for considering need of other parties. It would be reasonable to keep 50% of the available area and reserve for consideration of other parties including the captive consumers who have set up industries inside the State."

Opposite party No. 2 also placed reliance on the correspondence relating to recommendation for grant of lease in favour of opp. party No. 3. On 8-8-1998 the Chief Secretary approved the Government decision dated 5-8-1998. The Chief Minister also approved the Government decision on 14-8-1998. On 14-9-1998 opinion was given by the Law Department to the following effect.

"The State Government can lease out the area on priority basis under S. 11(4) of the M.M. (R & D) Act, to the applicant without prior approval of the Central Government."

On 20-8-1998 the State Government directed the Director of Mines to determine

the captive requirement of chrome ore of opposite party No. 3. On 21-9-1998 opposite party No. 3 furnished details relating to its production capacity. The need of opposite party No. 3 was assessed by the Director of Mines at 31.6367 Million Tonnes. According to opp. party No. 2, the Director of Mines had recommended the case of opp. party No. 3 over an area of 34.8815 hectares which consisted of the reserve area to the extent of 15.818 million tonnes. Before constitution of Das Committee the State Government decided to recommend the case of opposite party No. 3. It is stated that the action of the State Government is in conformity with S. 11 (4) of the Act. There is no deviation to the order passed by the Supreme Court. Thus, it is stated that the writ petition be dismissed as there is no mala fide and arbitrariness on the part of the State Government in recommending the case of opposite party No. 3.

9. Opposite party No. 3, namely, NBFAL has filed its detailed counter meeting each and every contention made by the writ petitioners. Opposite party No. 3 has admitted the factual position indicated by the petitioner. Opposite party No. 3's first attack is that the writ petition is not maintainable as the same is hit by the principles of res judicata. It is stated that though the writ petition has been filed against the recommendation of the State Government dated 28-1-1999 but in effect it is purporting to challenge the decision of the State Government dated 29-6-1997. The need assessed and the area which can be made available for allotment pursuant to the order dated 29-6-1997 of the State Government was not challenged by any of the companies including the petitioner. Some of the relevant portions of the judgment of the Supreme Court in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, particularly paragraphs 8, 38, 39 and 48 to 52 will be referred to a little later. It is averred in the counter that the writ petition is premature and is not maintainable. According to opposite party No. 3, the petitioner No. 1 had participated throughout and was aware of the order of the State Government dated 29-6-1997 which was also challenged before the Supreme Court. To approach the Court again with a different version tells about the selfish attitude of the petitioner. According to opp. party No. 3 if at all the petitioner No. 1 was aggrieved by the order dated 29-6-1997, same should have been challenged at an earlier point of time, but not In the present writ petition, i.e. O.J.C. No. 1830 of 1999 for the reasons indicated below.

Recommending grant of lease in respect of an area of 84.8815 hectares is neither illegal nor mala fide. It has not deprived the petitioner's legal right, if any. since the petitioner No. 1 has no legal right, the writ petition cannot be maintained as the petitioner is not an aggrieved person. When the order passed by the State Government on 29-6-1997 has been upheld by this Court and the Supreme Court, now it is not open to the petitioner to challenge the same by filing a writ petition. Under S. 11 (4) of the Act, the State Government have powers to prefer a person. Though such a course is belated, all that the State Government has to do is to make recommendation after recording special reasons for the same, and it has to be done with prior approval of the Central Government. Policy of State Government to recommend grant of lease in favour

of opposite party No. 3 is in consonance with the State Policy. Directions given the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., are to be given effect to those whose claims have been superseded by the recommendation dated 29-6-1997. The requirement of the petitioner No. 1 and IMFA as explained in the writ petition has been determined by the Sharma Committee Report, and in spite of recommendation no steps have been taken.

According to opp. party No. 3 the recommendation made is quite just and proper. Reference made to rule 59(2) of the rules relates to the area and not to the person. Any relaxation cannot be construed as a final decision for leasing out. According to opp. party No. 3, in the matter of relaxation, the Central Government has got powers to reverse the State Government's recommendation. Petitioner No. 1 had made application to the State Government seeking mining lease but the same was rejected. Regarding opposite party No. 3's capacity and investment, it is stated that the decision of the State Government dated 29-6-1997 was aimed at bringing all the consuming industries at par with regard to availability of chrome ore for captive requirement of mining leases. According to this opposite party, 600 hectares of mining area was deleted from the existing lease of TISCO and same was made available to other industries only for their captive consumption. As such the State Govt. had to make a recommendation. This shows that the object of mineral development is in the public interest.

According to opp. party No. 3, the earlier orders of the Supreme Court do not suggest that straightway the claims of the four companies for grant of lease are to be ordered. On the other hand, any grant of lease is to be made only on the basis of need and capacity of the company. Further such an allotment shall be for equal distribution of mining lease. The question that was to be considered by the Supreme Court in the S.L.R filed by TISCO was whether TISCO is entitled to renewal of lease over the entire extent of 1261.476 hectares and whether the Central Government which had previously granted approval of the lease of the entire extent could later restrict it to a smaller area. The Supreme Court found that slicing down or restricting the area is in no way illegal.

Regarding the need of opposite party No. 3, it is stated that it has set up various manufacturing units at Paloncha in the State of Andhra Pradesh, Raipur in the State of Madhya Pradesh and at Khadagaprasad in the district of Dhenkanal in the State of Orissa. It has also experience. It has conversion contract with TISCO as it did not get sufficient ore. The installed capacity of opp. party No. 3 is 1,40,000 M.T. in respect of three different places. Its capacity is highest in the country. Opposite party No. 3's manufacturing units are designed to produce valuable products and are earning substantial foreign exchange for the country. As on date, opp. party No. 3 has no mining lease to meet its captive requirements of chrome ore, whereas the other companies have subsisting mining leases in the State of Orissa. On merit also opp. party No. 3 has got

better entitlement to get captive chromite mining lease. Opp. party No. 3 has referred to Government Order dated 29-6-1997 which was challenged by it in O.J.C. No. 12032 of 1997 and finally decided by the Supreme Court, which has been reported in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, As the observations of the Supreme Court in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, could have affected the interest of opposite party No. 3 it filed an application for clarification. Likewise the State also filed an application. Both the applications were clubbed together and the Supreme Court disposed of the same by order dated 10-8-2000.

Relevant: portion of the said order reads as follows :

"We have heard learned Additional Solicitor General Mr. Rohtagi for the State of Orissa in LA. No. 2. Mr. Dave, learned Senior Counsel in support of I.A, No. 1 and Mr. Shanti Bhushan. learned Senior Counsel for the respondent. Having heard ail of them, all that we can say is that our observations in paragraph 50 of the Judgment in Ferro Alloys Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, : Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, regarding the availability of 436.295 hectares" out of 1261.476 hectares will not in any way be construed to be pre-empting any decision of the High Court of Orissa in the pending writ petition i.e. O.J.C. No. 1830 of 1999. Our observations as above, are without prejudice to the rights and contention of the parties before the High Court in the aforesaid pending writ petition.

So far as our observation regarding the appointment of Dash Committee is concerned, it has been pointed out that Dash Committee is already superseded. The said Committee is substituted by another Committee consisting of (i) the Principal Secretary. Department of Steel & Mines, Government of Orissa; (ii) Director of Mines, and (ill) Deputy Controller, Indian Bureau of Mines. Therefore, our observations regarding the consideration to be made by the Dash Committee will now be read as referring to the Committee constituted as above. I.As. are disposed of accordingly.

Unregistered I.As. (two in number) filed on behalf of Orissa Mining Corporation.

So far as these I. As are concerned, they do not fall within the scope of the present proceedings before us. Whatever legal rights the applicants may have are kept open, These I.As are disposed of accordingly."

According to this opposite party, the writ petition is highly misconceived. The petitioner No, 1 has no locus standi to question the recommendation made by opposite party No. 2 In favour of opposite party No,3. The said recommendation is quite valid and legal and it Is in conformity with Rule 59(1) of the Rules. According to opposite party No. 3, the relaxation is only in respect of the area and without referring to any person/This opposite party is one of the needy industries. The object of appointing Sharma Committee was not to allot the area but with a view to assess the need and availability of the area. The petitioner No. 1 along with IMFA directly or indirectly had questioned lease of mining area for

its captive mining operations. When satisfied with the same, it has now sought to extend its area to the area which has been recommended in favour of opp. party No. 3. Thus, the petitioner No. 1 wants to have monopoly over the mining lease and allied mining business.

10. Main challenge to the Government order in TISCO's case did not confer any right on the company. According to opp. party No. 3, it is for recommendation but not to help the TISCO indirectly. Opposite party No. 3 has got vast experience, finance capacity and has accrued preferential right. Thus, petitioner No. 1 by upsetting the lease in favour of others has not acquired preferential right as against opposite party No. 3. Further, it is the case of opposite party No. 3 that it is the duty of the State Government to distribute the mining lease amongst various prospective licencees who require chrome ore for the industry. It would be fair and proper to give a mining lease to the opposite party No. 3 Company which is financially sound and is in a better position to effectively exploit the ore in the interest of mineral development and public interest. In the meanwhile the petitioner No. 1 has been granted an additional mining lease over an area of 190.80 hectares containing reserves of 20.13 million metric tonnes. The recommendation of opposite party No. 2 in favour of opposite party No. 3 i.e. to needy industry, same is valid and legal and is not in contravention of any of the provisions of the Act and the Rules. It is In conformity with Rule 59(2), the principles laid down by the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., and the reports of Rao and Sharma Committees. It is not the case of petitioner No. 1 that the recommendation in favour of opp. party No. 3 Is in respect of area earlier granted to it in the name of IMFA but as against other area. If the petitioner No. 1 desires to get the area other than the area proposed in favour of opp. party No. 3. same can be obtained. When the petitioner No. 1 has no right to question the proposal made in favour of opposite party No. 3. it is difficult to understand how Central Government is prevented giving approval either for granting lease or rejecting the same. It is further stated that the proposal made by the State Government to consider the need of opposite party No. 3 does not in any manner infringe upon any of its subsisting, statutory or fundamental rights. Thus contending, it is urged that the writ petition be dismissed.

11. In support of the stand taken in the writ petition and also in the counter affidavits, Learned Counsel appearing for different parties made their submissions. They are Smt. Indira Jaising, Learned Counsel for the petitioner, learned Standing Counsel (Central) for opposite party No. 1, learned Addl. Government Advocate for opposite party No. 2, and Shri Dave, Learned Counsel for opposite party No. 3, Their lines of arguments are almost In support of the pleadings of respective parties.

12. Attacking the letter dt. 28-1-1999 of opp, party No. 2 Smt. Indira Jaising submitted that said action on the part of opp. party No. 2 is arbitrary, mala fide and illegal. The decision should not have been made first without determining the

availability of area for grant of lease. When Das Committee was appointed to determine the availability of area and the need of various prospective captive consumers without waiting for submitting the report making a recommendation to opp. party No. 3 is bad. The decision taken by the State Government is contrary to Sharma Committee report, particularly the order of the Central Government dated 17-8-1995 and the direction given by the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., The Sharma Committee suggested and the Supreme Court ordered that the remaining area of 419.181 hectares should be distributed to other four parties including the petitioner. But the State Government ignoring the same recommended grant of lease in favour of opp. party No. 3. Thus it deprives the petitioner's right over the remaining portion of the area.

13. State Government-opposite party No. 2 should have noticed that any decision In respect of the area covered under the balance area, after renewing It to TISCO, Is ordered in favour of others will affect the existing area for mining operation of the petitioner. It affects the petitioner's right to contiguous area for its better enjoyment. Before taking a decision the State Government (opp. party No. 2) should have taken into consideration the need and capacity pf other applicants. When there was an interim order granted against the Union of India and there was a direction that the Central Government may consider the request of others but the decision shall be kept in a sealed cover ignoring same and now the proposal made by opp. party No. 2 amounts to modifying the said order. Opposite party No. 3 came Into picture late. But considering case of opp. party No. 3 and ignoring the preferential right which the petitioner had acquired by virtue of it being prior applicant has resulted in ignoring the mandatory requirement of preference under S. 11(4) of the Act. which envisages that when there is request for lease or licence of mining lease the case of prior applicant is to be preferred. Preferring an applicant late in point of time shall be entertained only after recording special reasons.

14. According to Smt. Indira Jaisingh, the so-called proposal has been made in derogation to previous approval of State Government and the Central Government. Thus, the entire proposal is contrary to the provisions of Ss. 5, 8 and 11 of the Act and Rule 59 (1) and (2) of the Rules. The petitioner No. 1 being a prior applicant and having fulfilled all the requirements to get the area in question proposal made in favour of opp. party No. 3 without hearing the petitioner No. 1 is arbitrary and violative of" the principles of natural justice.

15. Proposal is made without waiting for the report of Das Committee is nothing but an act of misusing the power conferred on the State. When such an infrinment of right has been made out, the petitioner No. 1 is an aggrieved person and has a locus standi to attack such a decision. Thus the writ petition is maintainable. To show that the decision is incorrect and unjustified, she took us through some of the letters and orders, particularly the Annexures annexed to

the writ petition. The need of the petitioner No. 1 and other applicants was also shown by the Sharma Committee report correctness of which was subject-matter before this Court and the Supreme Court as decided in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., wherein the Supreme Court observed that the need of the applicants is to be considered. Further the Sharma Committee has determined need of the petitioner No. 1 and other applicants total four in number at 92.19 million M.Ts. which includes the need of the petitioner of 42.48 million M.Ts.

16. When Sharma Committee made assessment after deducting the area required for TISCO at 406 hectares, it allowed 84.881 hectares in favour of opp. party No. 3. In other words 885.476 hectares were made available to four applicants including the petitioner No. 1 and yield capacity was 92.19 M.Ts. i.e. as against the petitioner No. 1 and others 42.85 M.Ts. In other words the balance available for the four applicants which includes 42.85 M.T. should not have been made ready in favour of opp. party No. 3 slicing down the area required by TISCO though correct, The balance should have been allotted to petitioner No. 1 and other applicants as suggested by the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., instead of ordering to allow 50% out of the remaining area for these four applicants and the balance to be thrown open for allotment to others including opp. party No. 3. It is quite improper and amounts to State sitting over the judgments of this Court and the Supreme Court. TISCO and other companies including opp. party No. 3 who tried to come on record by filing impleading petitions were aware of the direction of the Supreme Court and were not entitled to any area that was left over and suggested to be leased out to four applicants. Order of the State Government dt. 29-6-1997 slicing down the area and suggesting to reserve 50% for the four applicants and other 50% thrown open for others is quite illegal. When the petitioner No. 1 made applications for securing grant of lease on 27-9-1995 and 19-10-1995 proposing the case of opp. party No. 3 who came into picture late by filing an application on 19-8-1996 is quite discriminatory and it is violative of Article 14 of the Constitution. When the State itself constituted various Committees to look into availability of area and need of several applicants they should have waited first for submission of report by the said Committee or the report submitted already should have been respected. Whereas in the case in hand both Central and State Governments have disrespected the reports of the Committees. According to Smt. Indira Jaising, the decision of the State Government and the actions of the Central Government throughout without considering the petitioner's right and requirement not only hit by the provisions of the Sections and Rule referred to above, but also are in direct conflict with the principles laid down by this Court and the Supreme Court referred above.

17. She, while attacking the stands taken by the opposite parties in their counter affidavits submitted that the letter dt. 28-1-1999 is not supported by any special reasons. Thus it is in violation of S. 11 of the Act and rule 59 of the Rules.

According to her such a lacuna cannot be allowed to be improved by mentioning the same in the pleadings. For this proposition, she placed reliance on a decision of the Supreme Court rendered in Hamdard Dawakhana (Wakf), Delhi and Another Vs. Union of India (UOI) and Others, According to her, the prior applicant will have preference over others who came late. But the same was not considered while making the proposal on 28-1-1999, and thus the decision is bad. For this proposition, she placed reliance on a decision of the Gujarat High Court rendered in Ravjibhai Jivabhai Patel Vs. State of Gujarat and Others, According to her. before making a proposal the State should have taken into consideration the efficiency of other applicants particularly the petitioner. She submitted that in respect of mining lease matters availability of such an applicant who can export mining ore is to be considered. For this proposition she placed reliance on a decision of the Supreme Court in Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others,

18. When a Committee is constituted to identify the need of the applicant and existence of the area, there should not have been any departure from it. According to her, the report of said Committee though does not bind the Government, but it has to be respected and any departure thereof is only by recording special reasons. Further, persons likely to be affected legitimately have a right to be heard in such matters. For this proposition, she placed reliance on a decision of the Supreme Court in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., It is her further case that the entire decision is a deliberate disrespect to the findings given by the Supreme Court in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, including the order passed by the Supreme Court rejecting intervention applications filed by opposite party No. 3 and another in the said judgment, and the law laid down by this Court in the case of the Iron & Steel Co. Ltd. v. Union of India : (1996) 82 C Ir.LJ 797 : (1996 AIHC 4234). Thus contending, the reliefs sought are to quash the order dated 28-1-1999. to restrain opposite party Nos. 1 and 2 in granting lease in favour of opposite party No. 3 and to grant the same in favour of the petitioners.

19. As an answer to the above contentions learned Standing Counsel for the Central Government submitted that there is no merit in the contentions raised by the petitioner's counsel. According to him, the Central Government has not contravened any of the provisions of the Act and the Rules. The mineral in question is a major mineral covered by the 1st. Schedule to the Act. The State is the owner of the property. It is only the State which has to distribute the same. A rival applicant will have no right to question the authority of the State to grant lease. Neither the Central Government nor the State Government is influenced by the extraneous considerations or other factors to make the recommendation in favour of opp. Party No. 3. They have not gone against the principles laid down by the Supreme Court either in Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., or in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, relating to grant of

mining lease in Sukinda valley and other villages and the right of the petitioner No. 1 with other applicants including opposite party No. 3. It is submitted that as per Section 11 (4) of the Act the discretion lies with the Central Government either to approve or disapprove the proposal made by the State Government. According to him, the attitude of the petitioner No. 1 is only to prevent opp. party No. 3 from competing with it and others. Thus contending, it is urged that the writ petition be dismissed.

20. The learned Addl. Government Advocate appearing for the State of Orissa while adopting the arguments of Central Government submitted that there is no arbitrariness or mala fides in recommending the case of opposite party No. 3. According to him, the petitioner has no locus standi to challenge the action of the State Government. The State Government has made proposal after specifying the necessity to lease out a portion of the existing area in favour of opp. party No. 3 and also in favour of others. According to the Government letter dated 29-6-1997, 50% of the area was to be distributed to four applicants if they are otherwise entitled. Since the State is owner of the property, it is for the State to consider who is entitled to get the lease and it is not for the applicant to suggest the same. A prior applicant will not have a preferential right. But granting of lease is to be considered on the basis of efficiency, need and capacity of the parties. It is the discretion of the State Government to make a proposal with a request to the Central Government to accord approval, as it has been done in the case in hand. The proposal made on 28-1-1999 is well considered one, after taking into consideration various aspects and the details available. According to him, the proposal made is not in contravention of any of the provisions of the Act and the Rules, Some area has already been given to petitioner No. 1. To claim some more portion is with a view to deprive others on one hand and to have monopoly in the field of mining operation on the other, which is against the public policy. The State being the owner of the property its grant cannot be questioned by others, unless it is shown that such a grant is contrary to law. When the petitioner No. 1 has no contractual or fundamental right for grant of lease in its favour, it has no locus standi to challenge the proposal. Any proposal made is in conformity with the B. K. Rao and Sharma Committee's reports. There is no deviation of any of the directions given by this Court or the Supreme Court in the cases on which the petitioner No. 1 has relied upon. According to learned Addl. Government Advocate, there is no merit in any of the contentions raised by Smt. Indira Jaising. The present writ petition has been filed with a view to drag on the matter and pressurise the Government to accede to the request of the petitioner. Thus, contending, in short, it is submitted that the petition be dismissed.

21. Shri Dave, Learned Counsel appearing for opposite party No. 3 while meeting each and every point urged by Smt. Indira Jaising made his first attack to the maintainability of the writ petition. The petitioner and others were parties to Government Order dated 29-6-1997 wherein the area after allotting to TISCO was sliced down to the extent of 50% of the requirement of four claimants. The

said letter was also subject-matter of challenge before this Court in O.J.C. No. 12032 of 1997 and again before the Supreme Court In Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, The petitioner and some others were also parties in the proceeding before the Supreme Court. The Supreme Court accepted the decision rendered by this Court and confirmed the same. As such, again to reagitate the same issue is contrary to the decision of the Supreme Court in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, Thus hit by the principles of res judicata. The petitioner is also estopped from challenging the recommendation of the State Government in favour of opp. party No. 3. The recommendation is neither mala fide nor arbitrary. The State Government proposed the case of the petitioner after taking into consideration the need and capacity of opp. party No, 3, The proposal dated 28-1-1999 is supported by reasons. The reasons taken in the letter need not necessarily be elaborative unless it is shown that there has been non-application of mind to some of the circumstances which resulted in making the Government proposal unsustainable. According to him, the State Government already disclosed the circumstances and the materials which suggested the State Government to make a proposal in favour of opposite party No. 3. Thus the reliance placed by Smt. Indira Jaising on the decision of the Supreme Court reported in Hamdard Dawakhana (Wakf), Delhi and Another Vs. Union of India (UOI) and Others, on facts has no application.

22. A prior applicant will not have a preferential light for the purpose of a fresh grant, unless it is shown that he had acquired some right over the area allotted to others. Since the property Is owned by the State, it is for the State to distribute in the manner in which it likes. It is not for the applicant to suggest as to how same is to be distributed. Since no contractual or fundamental right is conferred, hearing of such an applicant is not mandatory. The proposal is in conformity with the earlier recommendation of the Sharma Committee report and the decisions of this Court and of the Supreme Court. There was no need for the State Government to wait till Dash Committee submitted its report. Opposite party No. 3 has got the need and capacity. It has set up various manufacturing units in the States of Orissa. Andhra Pradesh and Madhya Pradesh. It is one of the best foreign exchange earners. State's proposal only over a portion of the area which opposite party No. 3 needed and not the entire area. Because of absence of area earlier to carry on mining operation, it contracted prospective contracts with TISCO. According to Shri Dave, need of the petitioner and other applicants depends on the Sharma Committee report and there is no illegality on the part of the State Government to recommend the case of opp. party No. 3. Granting of mining lease falls within the economic policy of the State whose object is to improve mineral development and meet the public demand. The petitioner cannot compel this Court to grant lease in respect of the area in question. It cannot have monopoly over the trade. While making proposal there is no transgress on any of the provisions of the Act or the Rules. The present policy suggests State's policy of equal distribution of area to needy industries. In

other words, a policy of live and let live". According to Shri Dave, there is no discrimination attracting Article 14 of the Constitution in making the proposal on 28-1-1999 in favour of opposite party No. 3 nor in any way the State has granted its largess in favour of opp. party No. 3. It is submitted by Shri Dave that with a pious hope opposite party No 3 started requesting the Government for grant of a reasonable area for mining operation since 1966. But on account of protest made either by the petitioner or others the State Government and the Central Government were prevented to grant lease in favour of opposite party No. 3. For about nearly three years the petitioner successively managed to see that no lease is granted to opp.party No. 3 by the State Government and the Central Government. According to him, that the conduct of the petitioner in directly or indirectly preventing others to compete with it in mining operation shows its monopolistic attitude."

23. Shri Dave submitted that the decisions referred to by Smt. Indira Jaisingh on all fours support the case of opposite party No. 3. The prosecution is malicious and the averments made are mischievous in nature and the petitioner has not come to the Court with clean hands. It is therefore submitted that the writ petition be dismissed and the petitioner be warned and saddled with heavy costs.

In reply. Smt. Indira Jaising submitted that as per S. 5 of the Act it is the State Govt. which is the authority to grant lease with the prior approval of the Central Government. Section 11 has to be read in toto but not its sub-sec.(4) in isolation. The contention of estoppel urged by the opp. parties has no substance if one goes through the principles laid down by the supreme Court in the case reported in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, of the said judgment has to be read along with paragraphs 39 and 40. Particularly paragraph 49 is to be read along with paragraphs 39 and 40. If one has a bare look at page 100 of the Paper book, the area now ordered to be given to the opp. party No. 3 relates to the contiguous area in enjoyment of the petitioner. Such an order deprives earlier licencees said to have a contiguous area for its better enjoyment. Decision dated 28-1-1999 has been made with a view to favour opp. party No. 3. According to Sharma Committee report paragraph 11 at page 31 of the Paper Book it is clear that the authorities shall take further action to grant area for the petitioner and others in a fair, Just, equitable and contiguous manner. As such, petitioner has right to claim for consideration of its application in a fair, Just, equitable and contiguous manner. According to her. the State's action in taking a decision on 28-1-1999 is quite arbitrary. In other words, the decision making process is bad. As such, the Central Government be restrained from acting on the State's decision. According to her, neither under S. 5 nor under S. 11 power has been given to the State Govt. to make a recommendation and then get it approved by the Central Government. What is contemplated in those two sections is the decision. When already a decision has been taken by the State Government to grant of mining lease to contend that no cause of action has arisen is incorrect. Opp. party No. 3 is not in starvation. On the other hand, it gets sufficient material from TISCO. If there was any further need for opp.

party No. 3 the State should have waited till submission of the report by Das Committee. She further submitted that petitioner being a prior applicant its application required to be considered first. If for any reason it was not required to be considered first, atleast all the applications including the application filed by opp. party No. 3 should have been clubbed together and disposed of simultaneously instead of deciding the application filed by opp. party No. 3 in isolation to the detriment of the petitioner and other applicant.

24. To support his several contentions and to meet the decisions referred to by Smt. Indira Jaising, Shri Dave also placed reliance on a few more decisions. The decisions referred by him shall be dealt with a little later. The decisions so relied upon are:

- (1) State of Assam and Others Vs. Om Prakash Mehta and Others,
- (2) Mrs. Kunda S. Kadam Vs. Dr. K.K. Soman and Others,
- (3) Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others,
- (4) (1995) 1 Andh. LT 381 : M/s Coastal Papers Limited v. Government of India (Para - 68)
- (5) M/s. G. J. Fernandez Vs. State of Karnataka and others,
- (6) State of M.P. and Others Vs. Nandlal Jaiswal and Others,
- (7) Netai Bag and Others Vs. The State of West Bengal and Others,
- (8) center For Public Interest Litigation and Another Vs. Union of India and Others,
- (9) Maheshwar Prasad Srivastava Vs. Suresh Singh and Others,
- (10) Union of India and others Vs. S.L. Dutta and another,
- (11) Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others,

25. It is clear from the pleadings and the arguments advanced by all the Advocates that the controversy revolves round correctness or otherwise about the State government's letter dated 28-1-1999 addressed to Central Govt. to consider to grant lease of 84.881 hectares; whether the same is in conformity with-the Act, the Rules, the proposals made by various committees and the principles laid down by this Court and the Supreme Court? Further it is to be seen whether there are any mala fides on the part of the State Government in making a proposal and whether such a proposal has deprived the right of the petitioner.

26. It is not in dispute that the lease sought is in respect of chromite mineral which comes under 1st. Schedule of the Act. Admittedly this is the property of the State. No one can have the legal or fundamental right to claim grant of

mining lease in his favour excluding others. In the case of A. Kotaiah Naidu Vs. State of Andhra Pradesh, , it was held that a private individual has no fundamental right or other right to grant of licence. He cannot question the right of the Central and the State Government to deal with mineral resources situate in the State in the manner they deem fit in the public interest. While considering the claims of rival traders under similar circumstances in the matter of fishing rights, the Supreme Court in the case of Ananda Behera and Another Vs. The State of Orissa and Another, held refusing to recognise by virtue of subsequent vesting has not resulted in infringement of any fundamental right. Since the State is the owner of the property, it is the best person to decide in whose favour the grant of mining lease can be made.

27. Case of the petitioner is that the State Govt. Ignored the order of the Central Government dated 17-8-1995 based on Sharma Committee report which recommended 855.475 hectares were available for four applicants, namely. M/s IMFA/ICCL. M/s Facor Ltd., M/s Ispat Alloys, and M/s Jindal Strips. Same has been upheld by the Supreme Court in the case of Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd., As such the State Government should not have made recommendation in favour of opp. party No. 3, The State Government should have taken into consideration the dates of applications submitted by the petitioner and opp. party No. 3. If that was the basis the petitioner would have been preferred as it was the prior applicant. Relaxation under rule 59(2) of the rules is only available to the petitioner and not to opp. party No. 3. As such the recommendation for grant of lease should have been made only in respect of those four applicants. The need of petitioner and opposite party No. 3 has not been properly assessed. Further, the State Government while granting lease in favour of TISCO has indirectly fulfilled the need of opp. party No. 3. As such the decision in question is not only arbitrary but also is mala fide and violative of Article 14 of the Constitution of India. Because, the State Government resorted to show favour to opp. party No. 3 ignoring the reports of the Committees. The decision should have waited till Das Committee submitted its report. The Government also should have noticed that before making recommendation the petitioner should have been heard in the matter.

28. There is no such hard and fast rule that a prior applicant shall have preferential treatment. On the other hand the State can lease out in favour of those who can exploit the ore more efficiently, as has been held by a Division Bench of High Court of Ravjibhai Jivabhai Patel Vs. State of Gujarat and Others, and also by the Supreme Court in the case of Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, and Dharambir Singh Vs. Union of India (UOI) and Others, Before examining how far the principles laid down in the aforesaid decisions and the scope of S. 11 including rule 59 (2) apply to this case, it is proper to refer to some of the sections of the Act and the Rules of the Mineral Concession Rules, 1960. Section 3(c) defines "mining lease", 3(d) defines "mining operation". Section 3(g) defines "prospecting licence" and S. 3(h)

defines "prospecting operations", they are quoted below :

"3 (c) "mining lease" means a lease granted for the purpose of undertaking mining operations, and includes a sub-lease granted for such purpose;

3 (d) "mining operation" means any operation undertaken for the purpose of winning any mineral;

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

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

According to S. 4, the prospecting or mining operations are to be under licence or lease. Section 4-A deals with termination of prospecting licences or mining leases. Sub-sec.(3) of Sec. 4-A says that no order making a premature termination of a prospecting licence or mining lease shall be made except after giving the holder of the licence or lease a reasonable opportunity of being heard. Section 5 deals with restrictions on the grant of prospecting licences or mining leases. Section 5(1) (a) and (b) reads as under :

"5. Restrictions on the grant of prospecting licences or mining leases :-

(1) A State Government shall not grant a prospecting licence or mining lease to any person unless such person-

(a) is an Indian national, or a company as defined in sub-sec. (1) of S. 3 of the Companies Act, 1956; and

(b) satisfies such conditions as may be prescribed ;

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

Explanation :- For the purpose 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."

Section 6 deals with maximum area for which a prospecting licence or mining lease may be granted. Section 7 deals with periods for which prospecting licences may be granted or renewed. Section 8 deals with the period for which mining leases may be granted or renewed.

In all these Sections the mandatory requirement is that recommendation is to be made by the State Government and its grant shall only be with the previous approval of the Central Government. Section 10 speaks about the application for

prospecting licences or mining leases. Section 11 deals with preferential right of certain persons. These are sections on which much stress has been laid by both parties. The said sections read as under :

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

(1) An application for a prospecting licence or a 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-sec.(1), there shall be sent to the applicant an acknowledgement 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 licence or lease.

11. Preferential right of certain persons:-

(1) Where a prospecting licence has been granted in respect of any land, the licensee shall have a preferential right for obtaining a mining lease in respect of that land over any other person :Provided that the State government Is satisfied that the licensee -

(a) has undertaken prospecting operations to establish mineral resources in such land;

(b) has not committed any breach of the terms and conditions of the prospecting licence; and

(c) is otherwise a fit person for being granted the mining lease.

(2) Subject to the provisions of sub-sec.(1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier shall have a preferential right for the grant of the licence or lease, as the case may be over an application whose application was received later;

Provided that where any such applications are received on the same day, the State Government, after taking into consideration the matters specified in sub-sec.(3), may grant the prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(3) the matters referred to in sub-sec.{2} are the following :-

(a) any special knowledge of, or experience In 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) such other matters as may be prescribed.

(4) Notwithstanding anything contained in sub-sec.(2) but subject to the provisions of sub-sec.(1). the State Government may for any special reasons to be recorded and with the previous approval of the Central Government, grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier."

Section 17 deals about the special power of the Central Government, Sec. 17A deals with reservation of area. Section 19 deals about prospecting licences and mining leases to be void If in contravention of the Act, Section 30 confers power of revision of Central Government.

Regarding the Mineral Concession Rules, 1960 the relevant rules for disposal of the writ petition are Rule 9 which deals about submission of applications, rule 34 deals with manner of exercise of preferential right. Rule 59 speaks about availability of area for regrant to be notified, and Rule 60 deals with premature applications.

Rules 34, 59 and 60 are quoted hereunder :

"34. Manner of exercise of preferential right for mining lease :-

A mining lease to any person which has a preferential right thereto under sub-sec.(1) of S. 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.

59. Availability of areas for regrant to be notified :-

(1) No area :-

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

(b) xxxxxxxx

(c) in respect of which the order granting a licence or lease has been revoked under sub-rule [l]of Rule 15 or sub-rule (1) of rule 31; or

(d) in respect of which a notification has been issued under sub-sec.(2) or sub-sec.(4j of S. 17; or

(e) which has been reserved by the State Government under Rule 58 or under 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 the Rule 21 or sub-rule (2) of Rule 40 as the case may be. In ink; 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 under S. 17A of the Act is proposed to be granted to a Government company, no notification under clause (ii) shall be required to be issued;

Provided also that where an area held under prospecting licence to granted in terms of sub-sec.(1) of s. 11, no notification under clause (ii) shall be required to be issued;

(f) which has been reserved by the Government of any local authority for any purpose other than mining.

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

60. Premature applications :- Applications for the grant of a 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 and the application fee thereon, if any paid, shall be refunded."

29. How far a prior applicant will have preferential treatment has been considered by the Gujarat High Court in Ravjibhai Jivabhai Patel v. State of Gujarat and others : AIR 1981 Gujarat 57. The said High Court while considering the scope of S. 11 (2) and (4) and 30 of the Act held as follows :

"An applicant for mining lease is entitled to a priority over the other applicants whose applications have been received subsequently by virtue of sub-sec.(2) of S. 11 of the Act. This conferment of priority under sub-sec.(2) of S. 11 can, however, be by-passed by the State Government with the approval of the Central Government under sub-sec.(4) of S. 11. That sub-section begins with a non obstante clause and overrides the priority conferred by sub-sec. (2) of S. 11. In order that a State Government may overlook or by-pass the priority conferred by sub-sec.(2) of S. 11, two conditions have to be satisfied, namely, (i) special reasons must exist for so doing; and (ii) the previous approval of the Central

Government must be obtained in that behalf. It is, therefore, clear on a plain reading of sub-sec.(4) of S. 11 that the power granted to the State government is not absolute but is circumscribed by two conditions, namely, the requirement to record reasons in writing for overriding the priority of an applicant who has made the application earlier in point of time and the requirement of previous approval of the Central Government in that behalf. It is needless to say that the Central Government would grant approval only if it is satisfied that there are sound reasons for overriding the priority of an applicant who has made the application for the grant of a mining lease earliest in point of time. The special reasons which have to be recorded in writing are an additional check on the exercise of power by the State Government under sub-sec. (4) of S. 11. the proposal to by-pass the priority must be supported by special reasons, meaning, thereby, reasons which are sound and logical and germane to the question at issue. If either of these conditions is not satisfied the exercise of power under sub-sec. (4) of S. 11 would clearly be bad in law and unsustainable.

Section 11(4) does not in terms provide that an applicant whose priority is sought to be by-passed shall be heard before a final order is made in favour of any other applicant whose application was subsequent in point of time. However, in the circumstances of the case the petitioner was present in a meeting of Minister and Respondent 3 and others and the petitioner was told that preference was being given to respondent 3."

The Supreme Court in *Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others*, took the similar view. Relevant portion of the said judgment reads as follows ;

"16. Is S. 11(2) conclusive?

Now, to turn to the contentions urged before us : Dr. Singhvi; who appeared for ORIND vehemently contended that the rejection of the application of ORIND for mining lease was contrary to the statutory mandate in S. 11(2): that, subject only to the provision contained in S. 11(1) which had no application here, the earliest applicant was entitled to have a preferential right for the grant of a lease; and that a consideration of the comparative merits of other applicants can arise only in a case where applications have been received on the same day. It is no doubt true that S. 11 (2) of the act read in isolation gives such an impression which, in reality, is a misleading one. We think that the sooner such an impression is corrected by a statutory amendment the better it would be for all concerned. On a reading of S. 11 as a whole, one will realise that the provisions of sub-sec. (4) completely override those of sub-sec. (2). This sub-section preserves to the S.G. a right to grant a lease to an applicant out of turn subject to two conditions : (a) recording of special reasons, and (b) previous approval of the C.G. It is manifest, therefore, that the S.G. is not bound to dispose of applications only on a "first come, first served" basis. It will be easily appreciated that this should indeed be so for the interests of national mineral development clearly require In the case of major, minerals, that the mining lease should be

given to that applicant who can exploit it most efficiently. A grant of ML, in order of time, will not achieve this result."

Again there is no hard and fast rule that the rival applicant shall be heard while granting prospective licence or mining lease. Question of hearing will only arise if interest of others is going to be affected because such persons will have a right to be heard at the time of grant of lease. The Supreme Court in *State of Assam and Others Vs. Om Prakash Mehta and Others*, while interpreting S. 8 and 13 of the Act and rules 24 (3) and 54 of the rules held as follows :

"9. The Act and the Rules thus contain the complete code in respect of the grant and renewal of prospecting licences as well as mining leases in lands belonging to Government as well as lands belonging to private persons. The main point to be kept in mind is the fact that the mining lease in question is in a land belonging to Government and it is for a mineral included in the First Schedule to the Act in respect of which no mining lease can be granted without the previous approval of the Central government. Normally the government like any other owner of property is entitled to choose with whom it shall deal and what sort of a contract it will enter into, but being a public authority its acts are necessarily regulated by certain rules. The Act and the rules in this case are intended to regulate the development of mines and minerals under the control of the union and contain the provisions necessary for that purpose. No person can claim any right in any land belonging to Government or in any mines in any land belonging to Government except under and in accordance with the Act and the Rules or any right except those created or conferred by the Act. There is no question of any fundamental right in any person to claim that he should be granted any lease or any prospecting licence or mining lease in any land belonging to the Government. It is necessary to bear this in mind because some sort of vague right was claimed on behalf of the respondents as though there is a right of renewal of the mining lease in question even apart from the rules."

In *Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd.*, where all the parties herein were directly or indirectly parties, the supreme Court while confirming the order passed by a Division Bench of this Court in *The Tata Iron & Steel Co. Ltd., etc. v. Union of India and another*, (1996) 82 CJLT 797 :(1996 AIHC 4234), held as follows :

"46. We are of the view that the High Court had taken the correct step in allowing the prospective applicants to put forth their points of view with regard to the renewal of TISCO's lease. As we have already pointed out, these issues involve considerably high stakes, both in terms of commercial value and the effect that such a decision will have on the concept of mineral development and the consequent national interest. To that extent, those likely to be affected and indeed, those who can legitimately have a stake in the proper formulation of such vital policy, can be heard. No exception can be taken to the High Court treating them as proper parties and directing the Committee to hear them."

The above decision suggests the requirement of hearing a rival applicant only under special circumstances.

Shri Dave, Learned Counsel for opposite party No. 3. requested us to go through the principles laid by the Andhra Pradesh High Court reported in *M/s Costal Papers Limited v. Govt. of India*; (1995) 1 Andh LT 381 for the proposition as to who is the person aggrieved, having locus standi and right of hearing to a rival trader and mala fides. In the above decision it is held thus:

"A writ petition can be filed and can be maintained, if the order under challenge is contrary to the provisions of law or statutes depriving a person his fundamental right, and it is "against the principles of natural justice. Mere existence of rival trade interest devoid of affecting any statutory or substantive justiciable right or infringement of fundamental right guaranteed under the Constitution is not. sufficient to entertain a writ petition."

It is further held by the Andhra Pradesh High Court as follows :

"24. How far a rival trader is affected and fundamental right guaranteed under the Constitution is deprived, when similar permission or licence is granted to another person, had come up for consideration before the Supreme Court and other Courts on various occasions and the Judicial pronouncements in all those cases are to the effect that granting permission or licence to a rival trader does not amount to breach of any of the fundamental rights, including the one conferred under Art. 19(1) of constitution of India.

25. In *Harman Singh and Others Vs. Regional Transport Authority, Calcutta and Others*, while dealing with scope of Art. 19 (1)(g). the Supreme Court held :

"Article 19(1)(g) does not guarantee a monopoly to a particular individual or association to carry on any occupation and if other persons are also allowed the right to carry on the same occupation and an element of competition is introduced in the business, that does not, in the absence of any bad faith on the part of the authorities. amount to a violation of the fundamental right guaranteed under Art. 19(1)(g) of the Constitution.

26. While dealing with similar situation, namely, change of location of rice-mill, considering the scope of S. 8(3) (c) of *Mysore Rice Milling Industry (Regulation) Act. 1958* and Art. 19(1)(g) of Constitution of India, the Supreme Court in *The Nagar Rice and Flour Mills and Others Vs. N. Teekappa Gowda and Bros. and Others*, held as follows :-

Where the owners of an existing rice mill shifted its existing location and obtained the necessary permission for change of location from the Director of Food & Civil supplies, even if it be assumed that the previous sanction has to be obtained from the authorities before the machinery is moved from its existing site, the co-petitioner in the business (owner of another rice mill) can have no grievance against the grant of permission permitting the installation on a new site. The right to carry on business being a fundamental right under Art. 19(1)(g)

of the Constitution, its exercise is subject only to the restrictions imposed by law in the interests of the general public under Art. 19 (6) (i). Section 8(3)(c) providing for previous permission of Central Government to change location of Rice mill is merely regulatory: if it is not complied with, the owners may probably be exposed to a penalty, but a competitor in the business cannot seek to prevent the owners from exercising their right to carry on business, because of the default. Similar view has been taken by the Supreme Court in *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, while dealing with Rule 6 of Bombay Cinema Rules, 1954 and Art. 226. wherein the Court held as follows :-

"The Act and the Rules do not confer any substantive justiciable right on a rival in cinema trade, apart from the option, in common with the rest of the public, to lodge an objection in response to the notice published under Rule 4. Thus the proprietor of Cinema Theatre holding a licence for exhibiting Cinematograph films has no legal right under the statutory provisions or under the general law which can be said to have been subjected to or threatened with injury as a result of the grant of No Objection Certificate to the rival trader.

27. In *Mohd. Ibrahim Khan and Others Vs. State of Madhya Pradesh and Others*, while interpreting the scope of Ss. 3 and 5 of M.P. Cinemas (Regulation) Act, 1952, the Supreme Court took a view that when objection for granting of any licence not taken in the beginning, the same cannot be considered at a later stage.

28. In *Mithilesh Garg, Vs. Union of India and others etc. etc.*, while considering the scope of Ss. 80 and 88 of Motor Vehicles Act of 1988 and explaining the necessity to enlarge healthy competition and curb corruption, the Supreme Court held as follows :

There is no threat of any whatsoever under the new Act from any authority to the enjoyment of the right of the existing operators under Article 19(1)(g) to carry on the occupation of transport operators. More operators mean healthy competition and efficient transport system. Over crowded buses, passengers standing in the aisle, persons clinging to the bus-doors and even sitting on the roof-top are some of the common sights in this country. More often one finds a bus which has noisy engine, old upholstery, uncomfortable seats and continuous emission of black-smoke from the exhaust pipe. It is, therefore, necessary that there should be plenty of operators on every route to provide ample choice to the Commuter-public to board the vehicle of their choice and patronise the operator who is providing the best service. Even otherwise the liberal policy is likely to help in the elimination of corruption and favouritism in the process of granting permits. Restricted Licensing under the hands of few persons thereby giving rise to a kind of monopoly, adversely affecting the public interest. It cannot be said that too many operators on a route are likely to affect adversely the interest of weaker section of the profession. The transport business is bound to be ironed out ultimately by the rationale of demand and supply. Cost of a vehicle being as

it is the business requires huge investment. The intending operators are likely to be conscious of the economics underlying the profession. Only such number of vehicles would finally remain in operation on a particular route as are economically viable. In any case the transport system in a State is meant for the benefit and convenience of the public. The policy to grant permits liberally under the Act is directed towards the said goal.

29. From the above, it is clear that a rival trader cannot challenge the permit or licence issued to a competitor in the field. There is no vested right of monopoly in the business of starting of sugar Units. Unhealthy competition and tendency towards monopoly and corruption deserve to be discouraged. Contentions that by granting licence to another, his right to carry on the business is affected, or would result in losses to him etc., will be of no avail. To maintain that licence or permission granted to others has resulted in causing some loss, which would not have been caused if licence or permission not granted has to be established. Apart from this one has to show the subsisting justiciable right and his locus standi. Challenge, if any, only when permission is granted by authorities ignoring the statutory requirements or by an authority who does not have competency, and not otherwise.

30. Dealing with such a situation, the Madras High Court while interpreting the scope of certain provisions of T.M. Cinema (Regulation) Rules, 1957, held in *L. Sundararajan v. State* : AIR 1992 Mad. 68, that a rival in cinema trade is not an aggrieved person by the grant of certificate and he has no locus standi to challenge order granting certificate.

31. Under almost identical circumstances, the Delhi High Court in *The Simbhaoli Sugar Mills Ltd. and Another Vs. Union of India and Others*, laid down that letter of intent granted for establishment of new sugar factory. when it is not contrary to Act, Rules or Guidelines issued by the Central Government for grant of Licences, cannot be challenged, that too by a rival applicant, who has no locus standi. While granting L.O.I, no restrictions imposed. The Court further observed that hearing factories/factory/ owner association before issuance of guidelines is not mandatory. According to the Court, issuance of guidelines is policy matter of Government.

32. Hence, Point No. 2 is answered negatively.

WHETHER HEARING IS NECESSARY BEFORE GRANTING L.O.I. TO A RIVAL TRADER?

33. In *Swadeshi Cotton Mills Vs. Union of India (UOI)*, the Supreme Court discussed how far hearing is necessary where another unit is coming up on the basis of permission or licence granted by the Government.

34. From the above discussion, it is clear that the request of the petitioner is only to monopolise in sugar trade in Srikakulam district. When respondent No. 8 and others submitted their applications he never chose to object their

applications. On the other hand he participated in the Screening Committee meetings and other meetings. It is not his case that permission to start a sugar unit is his exclusive right and others have no right to seek and start a similar unit. None of the provisions of the Acts, Rules or guidelines envisage a rival trader shall be heard before granting LOI. Further LOI was granted to the petitioner when 8th respondent's request was taken up for consideration. As such there was no obligation to hear the petitioner.

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68. The petitioner failed to make out a case of mala fides, bias, arbitrariness or discrimination in granting LOI to the 8th respondent. Also not established that order under challenge is contrary to any of the provisions of the Acts, Rules and guidelines or result of abuse of power. Fraud and misrepresentation though pleaded not proved. Petitioner's efforts that order under challenge is the outcome of suppressio vary and suggestio false, have no basis. Mere existence of rival trade interest devoid of affecting any statutory or substantive justiciable right or infringement of fundamental right guaranteed under the Constitution not sufficient to entertain this writ petition."

30. The Court shall not interfere in a policy decision unless it is shown that the decision taken by the Executive is arbitrary, illegal and mala fide. This has been explained in paragraphs 36 to 46 of the aforesaid judgment. Again interference is warranted only when the order is result of mala fide. But mere alleging mala fide in absence of proof of the same and without any basis being the foundation for discrimination etc. will not attract Article 14 of the Constitution.

31. In *Netai Bag and Others Vs. The State of West Bengal and Others*, while dealing with arbitrariness or mala fide in Executive action, the Supreme Court, as to the scope of interference by the Court held as follows :

"17. It has been consistently held by this Court that in a democracy governed by the rule of law, the Executive Government or any of its officers cannot be allowed to possess arbitrary powers over the interests of the individual. Every action of the Executive Government must be in conformity with reason and should be free from arbitrariness. The Government cannot be equated with an individual in the matter of selection of the recipient for its largesse. Dealing with the limits on the exercise of Executive authority in relation to rule of administrative justice, Mr. Justice Frankfurter in *Vitarel v. Seaton*: (1959) 359 US 535 : 3 L Ed. 2d. 1012 said :

"An executive agency must be rigorously held to the standards by which it professes its action to be judged;... Accordingly, its dismissal from employment is based on a defined procedure, even though generous beyond the requirements that bind such agency, that procedure must be scrupulously observed...../This judicially evolved rule of administrative law is now firmly established and, if I may add, rightly so. He that takes the procedural sword shall perish with the sword."

18. this Rule of Administrative law was accepted as valid and applicable in India by this Court in Dr. Amarjit Singh Ahluwalia Vs. The State of Punjab and Others, Sukhdev Singh, Oil and Natural Gas Commission, Life Insurance Corporation, Industrial Finance Corporation Employees Associations Vs. Bhagat Ram, Association of Clause II. Officers, Shyam Lal, Industrial Finance Corporation, and Ramana Dayaram Shetty v. The International Airport Authority of India : Ramana Dayaram Shetty Vs. International Airport Authority of India and Others,

19. Though State cannot escape its liability to show its actions to be fair, reasonable and in accordance with law, yet wherever challenge is thrown to any of such action, initial burden of showing the prima facie existence of violation of the mandate of the Constitution lies upon the person approaching the Court. xxx
xxx xxx

The Constitutional Courts cannot be expected to presume the alleged irregularities, illegalities or un-constitutionality nor the Courts can substitute their opinion for the bona fide opinion of the State executive. The Courts are not concerned with the ultimate decision but only with the fairness of the decision making process.

20. The Government is entitled to make pragmatic adjustments and policy decision which may be necessary or called for under the prevalent peculiar circumstances. The Court cannot strike down a policy decision taken by the Government merely because it feels that another decision would have been fairer or wiser or more scientific or logical. In State of M.P. and Others Vs. Nandlal Jaiswal and Others, it, was held that the policy decision can be interfered with by the Court only if such decision is shown to be patently arbitrary, discriminatory or mala fide....."

32. In the case of State of M.P. and Others Vs. Nandlal Jaiswal and Others, how far the Court can interfere in policy matters of the State, the Supreme Court at paragraph 33 observed as follows :

"33. But. while considering the applicability of Article 14 in such a case, we must bear in mind that, having regard to the nature of the trade or business, the Court would be slow to interfere with the policy laid down by the State Government for grant of licences for manufacture and sale of liquor. The Court would, in view of the inherently pernicious nature of the commodity allow a large measure of latitude to the State Government in determining its policy of regulating, manufacture and trade in liquor. Moreover, the grant of licences for manufacture and sale of liquor would essentially be a matter of economic policy where the Court would hesitate to intervene and strike down what the State Government had done, unless it appears to be plainly arbitrary, irrational or mala fide. We had occasion to consider the scope of interference by the Court under Article 14 while dealing with laws relating to economic activities in R.K. Garg v. Union of India, (1982) 1 SCR 947 : AIR 1981 SC 2138. We pointed out in that case that laws relating to economic activities should be viewed with greater latitude than laws

touching civil rights such as freedom of speech, religion, etc. We observed that the legislature should be allowed some play in the joints because it has to deal with complex problems which do not admit of solution through any doctrinaire or straitjacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with, greater play in the joints has to be allowed to the legislature, We quoted with approval the following admonition given by Frankfurter. J. in *Mercy v. Doud*. (1957) 354 US 457 :

In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and number of times the judges have been overruled by events - self limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

What we said in that case in regard to legislation relating to economic matters must apply equally in regard to executive action in the field of economic activities, though the executive decision may not be placed on as high a pedestal as legislative judgment insofar as judicial deference is concerned. We must not forget that in complex economic matters every decision is necessarily empiric and it is based on experimentation or what one may call "trial and error method" and. therefore, its validity cannot be tested on any rigid "a priori" considerations or on the application of any straitjacket formula. The Court must while adjudging the constitutional validity of an executive decision relating to economic matters grant a certain measure of freedom or "play" in the "joints" to the executive. The problem of Government" as pointed out by the Supreme Court of the United States in *Metropolis Theatre Company" v. State of Chicago*, (1912) 57 I. ed 730 "are practical ones and may justify, if they do not require, rough accommodations, illogical, it may be, and unscientific. But even such criticism should not be hastily expressed, what is best is not discernible, the wisdom of any choice may be disputed or condemned. Mere errors of Government are not subject to our judicial review. It is only its palpably arbitrary exercise which can be declared void". The Government, as was said in *Permian Basin Area Rate cases*. (1968) 20 L ed (2d) 312, is entitled to make pragmatic adjustments which may be called for by particular circumstances. The Court cannot strike down a policy decision taken by the State Government merely because it feels that another policy decision would have been fairer or wiser or more scientific or logical. The Court can interfere only if the policy decision is patently arbitrary, discriminatory or mala fide. It is against the background of these observations and keeping them in mind that we must now proceed to deal with the contention of the petitioners based on Article-14 of the Constitution."

33. For the same proposition, reliance is placed on the decision of the Supreme

Court reported in *Km. Nelima Misra Vs. Dr. Harinder Kaur Paintal and others*,
Wherein it was held thus : (Para 29)

"The Chancellor, however, has to act properly for the purpose for which the power is conferred. He must take a decision in accordance with the provisions of the Act and the Statutes. He must not be guided by extraneous or irrelevant consideration. He must not act illegally, irrationally or arbitrarily. Any such illegal, irrational or arbitrary action or decision, whether in the nature of a legislative, administrative or quasi-judicial exercise of power is liable to be quashed being violative of Art, 14 of the Constitution. As stated in *E.P. Royappa Vs. State of Tamil Nadu and Another*, : *E.P. Royappa Vs. State of Tamil Nadu and Another*, "equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarch". The principle of equality eshrined in Article. 14 must guide every State action, whether it be legislative, executive, or quasi-judicial. See *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, : *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, ; *Ajay Hasia and Others Vs. Khalid Mujib Sehravardi and Others*, ; *Som Raj and others etc. Vs. State of Haryana and others*,

34. Much emphasis was laid on the reports of various Committees. It is true that if a report is submitted and the same is accepted it shall be respected. There cannot be a second opinion. That was the view in the case of *Maheshwar Prasad Srivastava Vs. Suresh Singh and Others*,

35. Similar view was taken by the Supreme Court in *Secretary (Health) Department of Secy. (Health) Deptt. of Health and F.W. and Another Vs. Dr. Anita Puri and Others*, wherein it was held as follows ; (Para 7)

"When an advertisement stipulates a particular qualification as the minimum qualification for the post and further stipulates that preference would be given for higher qualification, the only meaning it conveys is that some additional weightage has to be given to the higher candidates with higher qualifications. It cannot be construed to mean that a person with a higher qualification is automatically entitled to be selected and appointed. In adjudging the suitability of person for the post, the expert body like Public Service Commission in the absence of any statutory criteria has the discretion of evolving its mode of evaluation of merit and selection of the candidate. The competence and merit of a candidate is adjudged not on the basis of the qualification he possesses but also taking into account the other necessary factors like career of the candidate throughout his educational curriculum, experience in any field in which the selection is going to be held, his general aptitude for the job to be ascertained in course of interview, extra curricular activities like sports and other allied subjects, personality of the candidate as assessed in the interview and all other germane factors which the expert body evolves for assessing the suitability of the candidate for the post for which the selection is going to be held. Hence the High Court was wholly in error in holding that person possessing M.D.S. degree like respondent 1 was entitled to be selected and appointed."

36. Dealing with similar question including judicial review if the decision making process is wrong, the Supreme Court in the case of *Center For Public Interest Litigation and Another Vs. Union of India and Others*, while referring to the earlier decision of the said Court in the case of *Kasturi Lal Lakshmi Reddy, Represented by its Partner Shri Kasturi Lal, Jammu and Others Vs. State of Jammu and Kashmir and Another*, and also on State's action to Judicial Review, held as follows : (Para 14)

".....for there may be an infinite variety of considerations which may have to be taken into account by the Government in formulating its policies and it is on a total evaluation of various considerations which have weighed with the Government in taking a particular action, that the Court would have to decide whether the action of the Government is reasonable and in public interest.

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"The principles of judicial review would apply to the exercise of contractual powers by Government bodies in order to prevent arbitrariness or favouritism. However, there are inherent limitations in exercise of that power of judicial review. Government is the guardian of the finances of the State. It is expected to protect the financial interest of the State. The right to refuse the lowest or any other tender is always available to the Government. But. the principles laid down in Article 14 of the Constitution have to be kept in view while accepting or refusing a tender. There can be no question of infringement of Article 14 if the Government tries to get the best person or the best quotation. The right to choose cannot be considered to be an arbitrary power. Of course, if the said power is exercised for any collateral purpose the exercise of that power will be struck down.

Judicial quest in administrative matters has been to find the right balance between the administrative discretion to decide matters whether contractual or political in nature or issues of social policy; thus they are not essentially justiciable and the need to remedy any unfairness. Such an unfairness is set right by judicial review.

The judicial power of review is exercised to rein in any unbridled executive functioning. The restraint has two contemporary manifestations. One is the ambit of judicial intervention; the other covers the scope of the Court's ability to quash an administrative decision on its merits. These restraints bear the hallmarks of judicial control over administrative action.

Judicial review is concerned with reviewing not the merits of the decision in support of which the application for judicial review is made, but the decision-making process itself. It is thus different from an appeal. When hearing an appeal, the Court is concerned with the merits of the decision under appeal. Since the power of judicial review is not an appeal from the decision, the Court cannot substitute its own decision. Apart from the fact that the Court is hardly equipped to do so. it would not be desirable either. Where the selection or

rejection is arbitrary, certainly the Court would interfere. It is not the function of a Judge to act as a superboard, or with zeal of a pedantic school master substituting its judgment for that of the administrator.

The duty of the Court is thus to confine itself to the question of legality. Its concern should be :

- (1) Whether a decision making authority exceeded its power ?
- (2) Committed an error of law;
- (3) Committed a breach of the rules of natural justice;
- (4) Reached a decision which no reasonable tribunal would have reached or,
- (5) Abused its powers.

Therefore, it is not for the Court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

(i) Illegality : this means the decisionmaker must understand correctly the law that regulates his decision -making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness. It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at. the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have i reached it

(iii) Procedural impropriety."

37. Having noticed the legal position on various contentions urged by both sides including the effect of S. 5 and 11 of the Act. now we have to see the effect of Rule-59 of the Rules.

38. In view of the powers conferred under Rule 59(2) of the Rules relaxation is provided with the object of expediting the process for making available the chrome ore to needy industries in the interest of mineral development. The said Rule as it exists does not refer to an individual but refers to an area. The area of 855.476 hectares is not in respect of petitioner or others. In terms of Rule 59(2) the Central Government is competent to relax the requirement of Rule 59(1). Even after relaxation, the lease can only be on satisfaction of other relevant factors. Relaxation of Rule 59 is not meant to be used by the Central Govt. as a device to divest the State Government of its authority to grant a mining lease. It is also not the petitioner's preferential right.

39. It has come in the pleadings that the requirement of opp. party No. 3 was

assessed by Director of Mines and Geology by his letter dated 28-9-1998 on the basis of Sharma Committee report. The observation made by the Sharma Committee at pages 256 and 257 was only as against TISCO to the extent of need, but not in respect of opp. party No. 3. The contention of Smt. Indira Jaising that the decision dated 28-1-1999 does not contain the reasons to prefer opp. party No. 3 is without any merit as the decision indicates the factors which compelled the State Government to make the same and these have been explained by the State in its counter referred to above, Thus, the proposal has been made after application of mind to various factors.

40. Next on the point of mala fide or discrimination, one has to see that opposite party No. 3 is not the only chrome mining lessee. There are other applicants also who are already in operation. Opposite party No. 3 is not a new industry operating in the field. It has rich experience and financial stability. It is said that it has Units at Raipur in the State of Madhya Pradesh. Dhenkanal in the State of Orissa and Paloncha in the State of Andhra Pradesh, but; because of Non-availability of chrome ore opp. party No. 3 had to close the units. As mentioned earlier, chromite is one of the major minerals shown at Schedule I. It is the property of the State. The State alone can distribute the mineral in such manner it would like. The question that arises is whether the right of the petitioner has been infringed. After renewing the TISCO's licence, there remained nearly 855.476 hectares. With a view to see that all needy industries will have equal distribution of State's property applying the principle of live and let-live", the State Government found it proper to consider the claim of four applicants in respect of 50% area that was sliced down and the remaining thrown open to others including opp. party No. 3. It is not as if the entire area left over after renewing TISCO's licence has been recommended in favour of opp. party No. 3. The area in hectares and quantity in million tonnes and recommendation of areas made in respect of several persons including TISCO and opp. party No. 3 and the balance area available can be seen from the following table.

(See Table below)

TABLE

Area in Hects,

Quantity in MiliumTpnnes

Total area under Dispute

1261

102

Area granted for TISCO

- 406 - 16.28 MT

Area granted for ICCL/IMFA

- 190.08 - 20.13 MT.

Area granted for ISPAT

- 100.06 - 10.10 MT

Area granted for FACOR

- 39.31 - 4.02 MT

Area granted for JINDAL

- 89.00 - 9.11 MT.

Total granted by Govt. of Orissa for four parties

- 825.17 - 59.64 MT

Balance area available with Government

435.8

42.37

Area recommended by State Govt. for NBFAL

- 84.07 - 15.00 MT.

Balance area available

351.8

27.37

for further consideration of pending applications including NBFAL by Dash Committee

When the petitioner has not disputed the area which has been granted to its shareholder, namely, IMFA, again same cannot be a portion set apart for the petitioner and others because some more portion will remain as balance. If the petitioner desires to have some more portion for its mining lease, it is not prevented from making a claim before the concerned authority. Its attempt to challenge the recommendation made in favour of opposite party No. 3 on the ground that it will affect petitioner's right to have a contiguous land for its better enjoyment is not only illegal but indirectly the petitioner wants to have monopoly over mining operation in the State of Orissa which is neither reasonable nor permissible in law. It is also (sic) in the interest of mineral development land in the interest of public.

41. Apart from submitting that there is no arbitrariness, mala fides, illegality and contravention of S. 11 and other provisions of the Act and the Rules along with some of the decisions of this Court and the Supreme Court, Shri Dave also submitted that the petitioner has not approached this Court with clean hands because it has accepted the order of the State Government dated 29-6-1997

coolly. The petitioner is now estopped from challenging (he present recommendation which is an offshoot of earlier Government Order dated 29-6-1997. In fact the Supreme Court in *Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others*, upon which both parties placed reliance, explained the legal position, the effect of the report and the rights of the parties, in view of the slicing down the area, and ordered to consider the applications of other applicants including the captive consumers estopping the petitioner to get a share in the portion of the area recommended in favour of opposite party No. 3. While answering Point No. 4. namely, "Whether the Committee was justified in interpreting the concept of mining development" under S. 8(3) of the Act as required by mining regulations and the application of equitable distribution among mining lessees, the Supreme Court held as follows :

"49. Now it becomes at once obvious that despite the whole hearted approval of the Central Government's order dated 17th August. 1995 by this Court, in *Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd.*, the State Government in its discretion passed the aforesaid order dated 29th June. 1997 slicing down the claims of the aforesaid four parties covered by the Central Government Order by 50%. It is pertinent to note that neither the appellant nor any of the contesting respondents 3 to 7 have thought it fit to challenge the aforesaid order of the State Government to the extent it sliced down their dims for allotment by 50% from the available area of 855.476 hectares. Mr. Shanti Bhushan, learned Senior Counsel appearing for the contesting respondents 3 and 4. as well as other senior counsel appearing for remaining respondents 5 to 7 submitted that they did not think it fit to challenge die aforesaid slicing down by 50% of their demand for allotment of leases only on the principle that a bird in hand is worth two in the bush, it is also required to be noted that the learned Senior Counsel, Shri Nariman in this turn, also did not challenge the order of 29th June, 1997 regarding slicing down of appellant's need by 50%. The challenge to the said order was mounted by the appellant before the High Court on an entirely different ground namely, that its need for chrome ore was more than as assessed and therefore, the Central Government's order dated 17th August, 1995 and the consequent order of the State Government dated 29th June, 1997, were not legal and valid but no alternative challenge was mounted or pressed before us in connection with the State Government's Order of 29th June, 1997 on the aspect of slicing down or reserving 50% of 855.476 hectares for consideration of claims of other parties including the captive consumers. As seen earlier, this challenge of the appellant about assessment of its need by the Central Government is not maintainable. We must, therefore, hold that the order of the State Government dated 29th June. 1997 slicing down up by 50% the need of the appellant as assessed and also reserving the remaining 50% of 855.476 hectares of land for consideration of claims of other parties including the captive consumers. As seen earlier, this challenge of the appellant about assessment of its need by the Central Government is not maintainable. We must, therefore, hold that the order

of the State Government dated 29th June, 1997 slicing down up by 50% the need of the appellant as assessed and also reserving the remaining 50% of 855.476 hectares of land for consideration of claims of other parties including the captive consumers and also permitting consideration of claims of the appellant and respondents 3 to 7 for meeting their remaining 50% assessed need will remain binding on the appellant as well on the contesting respondents 3 to 7. The said order also cannot be said to be in conflict with the order of the Central Government dated 17-8-1995. This point, therefore, is held in affirmative against the appellant and also against respondents 3 to 7. In view of our aforesaid decision on point No. 4, the grievance made by learned Senior Counsel Shri Desai in the Intervening Application No. 1 of 1999 does not survive for consideration. The said I.A. will stand disposed of accordingly. Point No. 5 :

50. In view of our decision on Point No. 3, it is obvious that it is not a fit case for our interference under Article 136 of the Constitution of India. No useful purpose can be served by remanding this proceeding for a fresh decision of the High Court even though the appellant succeeds in showing that the grievances made by it regarding the alleged error in assessment of its need by the Expert Committee and as confirmed by the Central Government by its Order dated 17th August, 1995 was not barred by res judicata or constructive res judicata. It is for this simple reason that the appellant by its own conduct has disentitled itself from getting any fresh decision on this aspect from any Court. In the light of our findings on Point No. 3. Point No. 5 is, therefore, answered in the negative against the appellant and in favour of the Respondents.

Point No. 6 :

51. As a consequence of our decision on Point Nos. 3, 4 and 5, the inevitable result is that this appeal fails and will stand dismissed. However, it is clarified that the State of Orissa will carry out the remaining exercise pursuant to its order dated 29th June, 1997 at the earliest and will see to it that Shri Jagdish Prasad Dash Committee constituted by it on 6-11-1998 also completes its exercise in connection with the remaining area of 436.295 hectares out of 1261.476 hectares, after in the first instance granting leases as per its order dated 29th June, 1997 in the reserved area of 419.18 hectares out of 1261.476 hectares for mining of Chromite in favour of the four parties, i.e., the appellant and respondents 3 to 7 in Sukinda valley of Jaipur district.

52. It is obvious that the grant of mining lease to the extent of 50% to the appellant and respondents 3 to 7 as per Order of the Orissa Government dated 29th June, 1997 will remain binding between the parties. However, any additional leases granted by the State of Orissa pursuant to the Report of Shri Jagdish Prasad Dash Committee or even otherwise to the appellant and respondents 3 to 7 to meet wholly or partially their remaining 50 per cent of assessed needs as per Central Government's order dated 17th August, 1995 will be subject to the revisions, if any, by the aggrieved parties before the Central Government in accordance with law."

42. It is also necessary to mention here the clarification made by the Supreme Court at the instance of opposite party No. 3 and another in LA. Nos. 1 and 2 in Civil Appeal No. 1626 of 1999. The said I.As were disposed of by order dated 10-8-2000. Same is extracted below :

"I.A. Nos. 1 & 2 :

We have heard learned Additional Solicitor General. Mr. Rohtagi for the State of Orissa in I.A. No. 2. Mr. Dave, learned Senior Counsel in support of I.A. No. 1 and Mr. Shanti Bhushan, learned Senior Counsel for the respondent. Having heard all of them, all that we can say is that our observations in paragraph 50 of the judgment in Ferro Alloys Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, : Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, regarding the availability of 436.295 hectares out of 1261.476 hecatres will not in any way be construed to be pre-empting any decision of the High Court of Orissa in the pending writ petition, i.e. O.J.C. No. 1830 of 1999. Our observations as above, are without prejudice to the rights and contention of the parties before the High Court in the aforesaid pending writ petition.

So far as our observation regarding the appointment of Dash Committee is concerned, it has been pointed out that Dash Committee is already superseded. The said Committee is substituted by another Committee consisting of (i). the Principal Secretary, Department of Steel & Mines, Government of Orissa; (ii). Director of Mines, and (iii). Deputy Controller, Indian Bureau of Mines. Therefore, our observations regarding the consideration to be made by the Dash Committee will now be read as referring to the Committee constituted as above. I.As., are disposed of accordingly.

Unregistered I.As. (two in number) filed on behalf of Orissa Mining Corporation.

So far as these I.As., are concerned, they do not fall within the scope of the present proceedings before us. Whatever legal rights the applicants may have are kept open. These I.As., are disposed of accordingly".

43. Thus the findings in Ferro Alloys Corpn. Ltd. and Another Vs. U.O.I. and Others, and its subsequent clarification, dated 10-8-2000, answer the petitioner's contentions.

44. Now it is to be seen whether the petitioner is entitled to the reliefs sought ?

45. It is relevant to mention here that the petitioner's first relief sought is to quash opposite party No. 2's proposal, dated 28-1-1999. Same is a letter addressed by the Additional Secretary to Govt. of Orissa, Steel and Mines Department to the Joint Secretary to Govt. of India, Ministry of Mines, Shastri Bhawan, New Delhi, referring to opposite party No. 5's application dated 9-9-1996, and State Government's earlier order, dated 29-6-1997, wherein the State has recommended for grant of mining lease for chromite for 419.181 hectares, i.e. 50% of the area of 855.476 hectares remaining after grant of second renewal of mining lease to TISCO over an area of 406.00 hectares in

favour of four parties, i.e. M/s IMFA/ICCL, M/s Ispat Alloys Ltd., M/s Jindal Strips and M/s Facor. It is also mentioned in the said letter that the State has decided to keep the balance 50% of the available area of 855.476 hectares for consideration of other parties. Opposite party No. 3 in the letter dated 19-9-1996 requested for grant of mining lease for chromite over an area of 1261.476 hectares. In that letter there is reference to opp. party No. 3. According to the said letter the total captive requirement of chromite was 1,40,000 M.Ts. of carbon Ferro Chrome annually as estimated in Sharma Committee Report. Adopting the said report in case of opp. party No. 3 the total requirement was estimated at 31.6367 M.Ts. out of 1261.476 hectares. The State Govt. has decided to consider opp. party No. 3's requirement of 50% which comes to 84.881 hectares with chromite reserve of 15.818 million tonnes. So the balance area is proposed for grant in favour of opp. party No. 3. It is also mentioned that the area in question is not thrown open. In the said letter. State Government requested the Central Government for its approval u/S. 5(1) of the Act, and to obtain the grant of lease for chromite over 84.881 hectares in favour of opp. party No. 3 for a period of 30 years.

46. According to Smt. Indira Jaising the said letter is not a recommendation but a decision. But the words used in the prayer of the same are recommendation. Thus, whether it is either a recommendation or a decision or a proposal, but the fact remains that the State Government expressed its intention to grant lease in respect of the area mentioned in the said letter in favour of opp. party. No. 3 out of 855.476 hectares which is remaining portion of the area granted to TISCO (50%), i.e., 855.476 hectares is kept aside to consider the case of petitioner. Out of the area so available only 85.881 hectares with chromite reserve of 15.818 M.Ts. is proposed for grant of mining lease in favour of opp. party No. 3. From this it is clear that apart from 50% reserved as per Sharma Committee Report even if 85.881 hectares is deducted from out of rest 50%, still sufficient area will be left over and the same can be allotted by the State to the needy applicants. There is no bar for the petitioner to claim the remaining area or a portion. Smt. Indira Jaising's contention is that S. 11(4) should not be read in isolation but the entire section has to be read in toto. In such an event the law suggests that petitioner being a prior applicant is entitled for grant. In other words the applications of the petitioner, opp. party No. 3, and others should have been considered simultaneously. The contention that all the applications should have been considered together in our view, is without any merit. Since State being owner of the property it can take decision in the manner it likes. A person to be preferred for grant should have other qualifications mentioned in Ss. 5 & 11 of the Act. When S. 11 speaks about preferential treatment for grant of lease, S. 5 speaks about the grant in general, and the restriction to grant. The State Government can grant mining lease only when the conditions stipulated under S. 5 are fulfilled, that too on previous approval of the Central Government. Section 11(4) confers power of relaxation to prefer a prior applicant provided the State Government records special reasons for such grant" with prior approval of the

Central Government. The submission of Smt. Indira Jaising that the area contiguous to the petitioner's area already granted should not have been decided to be granted to opposite party No. 3 , again has no merit. The Government concerned may grant or refuse to grant the area requested by the petitioner. Thus, the relief sought does not deserve to be granted. The second prayer is in the nature of injunction, namely, to restrain the Government authorities from taking a decision which cannot be granted. The petitioner is not entitled to third relief, namely, no action should be taken on opposite party No. 3's application dated 19-9-1996. The last relief sought at para (d) is that the grant of mining lease be in its favour. When the petitioner has not acquired any right for the mining area, it cannot prevent the State in exercising its discretion to grant mining lease to others. In the letter dated 28-1-1999 there is reference to obtain approval of the Central Government. When an authority's decision is subject to the approval of some other authority, then, under such a situation the grant will be completed only after such approval by the next higher authority. The petitioner except making allegation has not shown how the letter dated 28-1-1999 affected its right or prevented it from seeking the grant of some more area.

47. The facts and circumstances of the case and the above entire discussion, lead us to the conclusion that there is no merit in the contentions raised by the petitioners.

48. Accordingly, this writ petition is dismissed. However, we feel that it is proper and appropriate for the Central Government to take a decision for approval in accordance with law within a period of two months from the date of receipt of copy of this order so that further litigation between the parties can be avoided. No costs.