

(2009) 12 OHC CK 0063
In the Orissa High Court
Case No : Writ Petition (C) No. 3240 of 2009

MSP Sponge Iron Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-12-2009

Acts Referred:

Companies Act, 1956 — Section 11(1), 17(2), 17(4), 17A
Constitution of India, 1950 — Article 226
Mineral Concession Rules, 1960 — Rule 15(1), 17A, 21(2), 22(4), 26(3), 26(3)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 5(1), 5(2)

Citation : (2010) 109 CLT 840

Hon'ble Judges : B.P. Ray, J;B.P. Das, J

Bench : Division Bench

Advocate : A.K. Ganguly, D.K. Dey, B.K. Sahu, C.K. Dey and S. Ghosh, for the Appellant; S.K. Nayak, for O.Ps. 1 and 2, J.K. Mishra, Asst. Solicitor General of India and J.K. Das, (Intervenor-BRG Iron and Steel Co. (P) Ltd.), for the Respondent

Judgement

B.P. Das, J.—The Petitioner-M/s. MSP Sponge Iron Ltd. being represented, through its Director has filed this writ petition praying, inter alia,

I) to quash the impugned notice dated 19.1.2009 issued by the Joint Secretary to Government of Orissa, Department of Steel & Mines under Rule 26(3) of the Mineral Concession Rules, 1960 (hereinafter "M.C. Rules") directing the Petitioner to appear before the Secretary to Government, Department of Steel & Mines, on 2.3.2009 and submit the wanting document, i.e., "Authenticated Geological Prospecting report of the applied area", for which the application of the Petitioner for grant of mining lease for Iron and Manganese ore was deficient; and

II) to issue a writ in the nature of Mandamus or any other writ directing O.P.1-State to consider the Petitioner's mining lease application bearing No. 1217 dated 7.9.2001 in respect of an area over 101.6864 hectares situated in Village-Patabeda in the district of Sundergarh on the basis of Geological Survey Report of April, 2006 prepared by the Directorate of Geological at Annexure-25 so also

make recommendation in favour of the Petitioner for grant of mining lease to the Central Government such recommendation made in favour of M/s. OCL India Ltd. in their applied area in Kundaposi, for grant of mining lease for Iron and Manganese Ore.

2. The brief facts, as delineated in this writ petition, tend to reveal as follows:-

The Petitioner is a public limited company incorporated under the Companies Act, 1956. The Petitioner has set up mineral based industries comprising of Sponge Iron Plant and Steel Manufacturing Unit in the State. In order to facilitate running of its industries, the Petitioner applied for an area of 101.68 hectares at Village-Patabeda in respect of Iron and Manganese Ore. The application of the Petitioner was registered as M.L. Application No. 1217 dated 7.9.2001. According to the Petitioner, in respect of the area, to which the Petitioner applied, was previously held by M/s. TISCO and on 29.11.1997 M/s. TISCO surrendered a part of its area to extent of 1299.607 hectares of land situated at Villages, Malda, Kolmang, Adaghat and Patabeda in the district of Sundergarh. On 12.3.1998 one M/s. MGM Minerals made an application for mining lease for a part of the relinquished area of M/s. TISCO and the State Government recommended its application to the Central Government for grant of P.L. for Iron Ore. By order dated 4.8.1998 the Central Government in exercise of its power under Rule 59(2) accorded its approval u/s 5(1) of the Mines & Minerals (Regulation & Development) Act, 1957 (hereinafter, "M.M.R.D. Act") by relaxing Rule 59(1) of the M.C. Rules. Thereafter, the State Government executed the mining lease in favour of M/s. MGM Minerals for Iron Ore over the said area. According to the Petitioner its Mining Lease Application was kept pending for three years. Finally after the Director of Mines, Government of Orissa, with a detailed report on 21.12.2004 recommended the case of the Petitioner for grant of mining lease.

As the application of the Petitioner was kept pending despite the recommendation of the Director of Mines, the Petitioner approached this Court in W.P.(C) No. 6731/2005 and this Court while disposing of the said writ petition by order dated 30.8.2005 directed the State Government to consider the Mining Lease application of the Petitioner within a period of three months from the date of communication of the said order. Thereafter, the Principal Secretary to Government in Department of Steel & Mines vide D.O. No. 13573/SM dated 20.12.2005 directed the Director of Geology to conduct a geological survey to assess the Iron Ore resource potential of the relinquished area of M/s. TISCO, which includes the Petitioner's applied area. Accordingly, a team consisting of Geologists from the Directorate of Geology and Managers, Geology from Orissa Mining Corporation carried on survey in and around the Petitioner's applied area in Village-Patabeda and opined in their report that:

2.3.5 Hard/Massive/Soft Laminated Iron Ore

Undifferentiated hard, massive and laminated ore of iron covers the entire western slopes of the 730 hill to the east of Pataberha village. The unit strikes

N15°E-S15° dipping 30° towards east. The thickness of the ore horizon is assumed to be 25m on an average as studied on the eastern and western slopes of the hill, where mining is being carried out by M/s. M G Mohanty. The ore is hard in nature and is of very high grade (68% Fe.). Three sets of joints are noticed in situ ore body, which may facilitate easy mineability. Exposures of this litho-unit were observed over the slopes on west of 730 peak. The ore is of sponge grade having a tumbler index of more than 90 (Statistics of Pataberha Mines). Thick layer of flat ore of such type is found lying over the entire deposit. The thickness of flat ore increases towards the lower slopes. Average thickness of 3m can be considered for the flat zone as evidenced from two illegal workings on the foothills towards east of Pataberha village. This is being collected, stacked and transported by clandestine operators. Such stacks are noticed almost everywhere over the ore zone. The float ore is similar to the in situ ore. Recovery of flat ore in this part is high as 70% and the same for the in situ ore is still higher as experienced in the Pataberha Mines of M/s. M G Mohanty on the southern portion of 730 hill.

3. However, the State Government by its order dated 23.5.2006 rejected the mining lease application of the Petitioner on the following grounds, as evidenced from Annexure-17.

I) The Petitioner could not substantiate its expansion programme.

II) The Petitioner has not signed MOU with the State Government.

III) There was no adequate justification in Petitioner's case for grant of ML in relaxation of Rule 59(1) of the M.C. Rules."

The aforesaid order of the State Government was challenged before the Central Government under Rule 54 of the M.C. Rules in Revision Case No.22(60)/2006-RC-1. The Central Government after hearing the Petitioner and the State Government, by its order dated 8.2.2008 allowed the Revision and set aside the order of rejection dated 23.5.2006. In the said order the Central Government has clearly observed that all the grounds of rejection adopted by the State Government are unsustainable in the eye of law. It is also observed that not signing any MOU with the State Government cannot be a pre-requisite and not in consonance with the provisions of the M.M.R.D. Act, 1957 and the Rules framed thereunder and to give preference to those applicants only who have signed MOU with the State Government will lead to outright exclusion of deserving applicants.

The order further says that the case of the Petitioner is a fit case for grant of relaxation of Rule 59(1) of the M.C. Rules in exercise of power vested under Rule 59(2) of the M.C. Rules. It is further indicated in the said order that relaxation of provision of Rule 59(1). The power vests with the Central Government and the role of the State Government is only to recommend. By order dated 8.2.2008 the Central Government remitted the case to the State Government, which happens to be the recommending authority under the scheme of the M.M.R.D. Act and Rules framed thereunder with a clear direction to re-consider the Petitioner's

Mining Lease Application in accordance with the law within ninety days.

4. As the State Government did not carry out the directions given by the Central Government in its order dated 8.2.2008 and after waiting for almost eight months for a favourable order from the State Government, the Petitioner approached this Court in W.P.(C) No. 13786/ 2008, which was disposed of on 21.10.2008 with the following orders:-

"xxx xxx xxx xxx xxx xxx

Learned Additional Government Advocate appearing for opposite party nos. 1 and 2 has assured the Court that by all means the direction issued by the learned Tribunal shall be complied with strictly in accordance with law within a period of four months from today.

In view of the aforesaid statement made by the learned Additional Government Advocate for opposite party nos. 1 and 2, we dispose of this petition requesting the said opposite parties to reconsider the matter and pass a speaking and reasoned order strictly in accordance with law in terms the direction issued by the learned Tribunal vide its judgment and order dated 8.2.2008 within a period of four months from today and communicate the same to the Petitioner

Xxx xxx xxx

It is alleged that when the time granted by this Court was about to expire, the State Government issued the notice dated 19.1.2009 calling upon the Petitioner to submit the authenticated Geological Prospecting report of the applied area, which according to the State, should have been accompanied with the application. The Petitioner against the said notice made a representation dated 11.2.2009 to the State Government. The authenticated Geological Prospecting Report of the applied area cannot be prepared by the Petitioner unless the Petitioner is granted a Prospecting Licence, as otherwise any prospecting/survey carried out in the said areas would be in gross violation of Section 4 of the M.M.R.D. Act, 1957. It is further indicated in the said representation that vide the report dated 21.12.2004, the Director of Mines has recorded regarding the existence of Iron Ore and Manganese deposit in the applied area and a geological survey was conducted to explore mineral deposits in the TISCO relinquished area around Patabeda and a detailed geological report was submitted to the State Government in April, 2006.

5. It is pertinent to mention here that by order dated 16.3.2009 this Court while issuing notice to the O.Ps. had given liberty to the Petitioner to appear before the Joint Secretary to Government, Department of Steel and Mines, in pursuance of the impugned notice in Annexure-24 and also directed that no final decision would be taken in respect of the area the Petitioner had applied for till the next date and the said order is still continuing. Accordingly the Petitioner appeared the authority concerned without prejudice and submitted all the additional information sought for in the format appended in the impugned notice except the

authenticated geological prospecting report.

6. The counter affidavit has been filed on behalf of O.Ps.1 & 2 sworn to by Sri Ashok Mahadeo Rao Dalwai, Commissioner-cum-Secretary to Government, Department of Steel & Mines, inter alia, a stand has been taken therein that the writ petition is premature, as the Petitioner was only asked to submit a document statutorily required for consideration of its case but instead of submitting the same, it approached this Court. It is further indicated that if the Petitioner in any manner will be aggrieved by any order of the Government, the alternative remedy is available u/s 30 of the M.M.R.D. Act read with Rule 54 of the M.C. Rules to file revision application before the Central Government. It is further stated that even if the area in question was held under mining lease for Manganese Ore only and relinquished by M/s. TISCO (presented re-named as "TATA Steel"), no prospecting whatsoever had ever been carried out by M/s. TISCO nor the agencies like Geological Survey of India, Indian Bureau of Mines, Mineral Exploration Corporation Ltd., Directorate of Geology, Orissa, not undertaken any prospecting operation in the area for proving and estimating the iron ore and manganese ore resources of the area. Therefore, the Petitioner is required to submit an authenticated legally acceptable geological prospecting report of the area for which the Petitioner has been noticed under Rule 26 of the M.C. Rules. It is also indicated that the approved mining plan revealed that prospecting in the form of exploratory drilling, pitting and trenching were carried out in two phases between 1964-69 and 1979-85 for Manganese ore only. The reserve for Manganese ore was established through these explorations and it was confined to some portions of the lease area of 822 hectares retained by M/s. TISCO during the third renewal of lease. The prospecting operations carried out by M/s. TISCO does not establish the occurrence of Iron ore within the original mining lease area of 2121.607 hectares.

It is further stated that there is no fault on the part of the State Government by calling upon the Petitioner to submit the prospecting report and calling for the same cannot be said to be violative of Article 14 of the Constitution of India. The Petitioner, according to the State, is not entitled to get any relief from the Court.

From the counter affidavit, it is evident that the stand of the State is that the area; for which the Petitioner has applied for mining lease, has not been prospected. The Petitioner cannot rely upon the investigation carried out by the Geologist of the Directorate of Geology and O.M.C. Ltd. as the same was not adequately assessed the availability of Iron ore resources and the nature and type of investigation carried out is very preliminary and just identification of occurrence of Iron ore deposit only indicates the occurrence in the area without giving the grade and resources. Therefore, according to O.P.1, the report does not fulfil the requirement of Section 5(2)(a) of M.M.R.D. Act, 1957. Adding to that the Petitioner has failed to produce any document in support of its claim for expansion proposal of its production. It is further submitted that the claim of the Petitioner that since the Central Government declared the Petitioner to be fit

person for relaxation of the provision of Rule 59(1) of the M.C. Rules, the State Government only needed to recommend the case for grant of mining lease to the Central Government and anything otherwise is not correct and not acceptable. According to O.P.1, on the face of it, there are number of applicants over the area in question. It is necessary to examine the inter-se merit of all such applicants in order to determine the most meritorious one in terms of parameters prescribed in Section 11(3) of the M.M.R.D. Act. It is further stated that if the domain of relaxation of Rule 59(1) invoking the provisions of Rule 59(2) of the M.C. Rules is with the Central Government, there is the statutory obligation of the State Government to decide the most meritorious person for such relaxation prior to initiation of any proposal according to approval of the Central Government. According to the State, if the contention of the Petitioner is correct, the Central Government would have conveyed its approval for relaxation under Rule 59(2) of the M.C. Rules without directing the State Government for reconsideration of the application of the Petitioner in accordance with law.

7. The intervenor-M/s. BRG Iron & Steel Company Pvt. Ltd. has filed an application seeking intervention and impletion as a party to this proceeding in on the plea that is Company has entered into a Memorandum of Understanding (MOU) with the State Government on 4.5.2005 pledging a huge investment within the State of Orissa by way of establishment/installation of Pelletisation Plant, Direct Reduction of Iron (DRI), Blast Furnace based plant, Ferro Chrome, Ferro Manganese, Medium Carbon Silicon Manganese based Plant, Captive Power Plant, Carbon Steel and Stainless Steel making plants etc., as part of its obligation. The intervenor proposed to make the aforesaid investment within the State only upon getting a due assurance from the State to prove it with all possible conducive environment, more particularly, in facilitating it to obtain mining lease of Iron and Manganese Ore for its Captive consumption. The intervenor has a direct interest in this case and as per the MOU, it is to get priority over the same and as it has also applied for the same area, unless it is heard, its interest will be jeopardised and bring irreparable loss.

8. Let us first see whether the intervenor has any justiciable right. The intervenor, as we find, is Anr. Company, which has applied for prospecting licence for Iron and, Manganese Ore for the area, to which the Petitioner is also an applicant for Mining Lease. Whether by virtue of MOU with the State Government, the intervenor is entitled to get the prospecting licence on priority basis cannot be considered in this writ petition, as the intervenor cannot get the status of the writ Petitioner. In view of such, the intervenor has no locus standiXo intervene in this case and no relief can be granted to it. Accordingly, the prayer of intervention is rejected.

9. Now with the backdrop of the rival contention and the facts narrated in the writ petition so also in the counter affidavit, basing upon which Mr. A.K. Ganguly, learned senior counsel, for the Petitioner, argued that on the face of the report of Director of Mines, report of the Directorate of Geology as well as the revisional

order passed by the Central Government, the notice issued by the State Government demanding production of Authenticated Geological Prospecting Report of the applied area by the Petitioner is not legally sustainable. According to him, Section 2 of the M.M.R.D. Act contains the parliamentary declaration in terms of Entry 54 of List-I of the Seventh Schedule of the Constitution to the effect that "xx xx it is expedient in the public interest that the Union should take under its control the regulation of mines and the development of minerals to the extent hereinafter provided." Section 4 of the said Act prescribes that no prospecting or mining operation shall be undertaken by any person save and except under and in accordance with the terms and conditions of a reconnaissance permit, prospecting licence or as the case may be of a mining lease. Section 5(1) of the Act mandates and described the definition of a fit person in whose favour such RP, PL or ML can be granted. Section 5(1) further prescribes that in case of major minerals grant of such mineral concession can be made only with the previous approval of the Central Government. Section 5(2) (a) prescribes that unless the State Government is satisfied regarding the existence of mineral contents in an area either by prospecting or established otherwise than by prospecting, no mining lease can be granted.

Relying upon the aforesaid provisions, Mr. Ganguly, learned Counsel for the Petitioner, submitted that the existence of mineral contents in the applied area of the Petitioner had been established otherwise than by prospecting as being recorded in the report dated 21.12.2004 (Annexure-6). The report submitted by the Directorate of Geology, vide Annexure-25 confirms the same. Annexure-25 is a report of the survey conducted at the behest of the Department of Steel and Mines jointly by the Geologists of Orissa Mining Corporation and Directorate of Geology. The Officers carried, out the survey are, namely, P.K. Sahu, Sr. Manager Geology, O.M.C., M.K. Senapati, Geologist, Directorate of Geology, S. Mishra, Dy. Manager, Geology, O.M.C. and S. Mishra, Geologist, Directorate of Geology.

10. Adding to this, according to Mr. Ganguly, M/s. MGM was favoured with a mining lease over the area adjacent to the applied area of the Petitioner bearing rich iron ore mineral deposit of very high grade basing up Annexures-6 & 25. Therefore, as the State Government is satisfied regarding the mineral deposit by virtue of Annexure-6 and granted Mining Lease to M/s. M.G.M., there is no requirement of earlier prospecting as a pre-condition for compliance u/s 5(2)(a) of the M.M.R.D. Act. It is further argued by Mr. Ganguly, learned senior counsel, the provision of Section 5(2)(b) of the said Act, which restricts grant of mining lease in absence of any mining plan duly approved by the Central Government, is to be read with Rule 22(4) of the M.C. Rules, which prescribes that on receipt of an application for grant of mining lease, the State Government shall take a decision to grant precise area for the said purpose and communicate such decision to the applicant and on receipt of communication from the State Government of the precise area to be granted, the applicant shall submit a mining plan within the time period prescribed therein or the approval of the Central Government.

Therefore, according to the learned Counsel for the Petitioner, only after the State Government takes a decision for grant of mining lease with regard to a precise area and communicate it to the applicant and on receipt of such communication, the applicant is to submit a mining plan for approval of the Central Government within the statutory time frame. Once the mining plan is approved by the Central Government, the State Government would then have to execute the mining lease in Form-K prescribed under the M.C. Rules. According to Mr. Ganguly, asking for a mining plan by the State Government before the State Government decides to grant Mining Lease is totally unsustainable and is an impracticable proposition, which has been advanced by the State in order to deprive the Petitioner from getting mining lease.

It is further argued by Mr. Ganguly, learned Counsel for the Petitioner, that in terms of the order dated 8.2.2008(Annexure-20), the Central Government arrived at the finding that signing of MOU with the parties interested in grant of mineral concession as a prerequisite is not in line with the provision of the MMDR Act, 1957 and the rules framed thereunder. It is further observed therein that to give preference to those applicants only who have signed MOU with the State Government will lead to outright exclusion of deserving applicants.

Basing upon the observation of the Central Government in paragraph-10 of Annexure-20 that the Petitioner's case is a fit case for grant of relaxation under Rule 59(2) of the M.C. Rules, 1960, Mr. Ganguly for the Petitioner submitted that the State Government has no alternative than to grant relaxation under Rule 59(2) of the M.C. Rules. In other words, the State Government is bound by the direction given by the Central Government. In this regard, Mr. Ganguly relied upon a decision of the apex Court in *Dharam Chand Jain Vs. The State of Bihar*, , paragraph-5 of which is quoted hereunder:-

5. xx xx xx xx The State Government, being a subordinate authority in the matter of grant of mining lease, was obligated under the law to carry out the orders of the Central Government as indicated above. But the State Government declined to do so on the ground that it had laid down a policy that the mining leases in respect of the area should be given only to those who were prepared to set up a cement factory. It was clearly not open to the State Government to decline to carry out the orders of the Central Government on this ground, particularly because the Central Government was a tribunal superior to the State Government. xx xx xx xx However, one thing is manifestly clear that the State Government could not have refused to implement the order of the Central Government unless the Central Government itself chose to revise it either on a reference by the State Government or suo motu. In fact to take the view that the State Government could decline to carry out the order of the Central Government on some ground which it thinks proper would be subversive of judicial discipline.

11. Mr. S.K. Nayak, learned Counsel for the State basing upon the counter affidavit filed by the Department of Steel & Mines submits that the State Government is bound by the direction of the revisional authority, as the

revisional authority has stated that the State Government shall proceed in accordance with law. According to him, the State Government is proceeding in accordance with law and the Petitioner without complying with the requirement of statute, as necessitated by the State authorities, has come to this Court. Now by virtue of the order of this Court, the Petitioner has already submitted his documents but final decision has not been taken by the authorities due to the interim order of this Court. According to him, this writ petition should be dismissed and the Petitioner in the event is aggrieved by the order of the state Government, may approach the revisional authority.

12. Learned Assistant Solicitor General of India, Mr. Mishra, defends the order of the revisional authority and submits that the State is bound by the same.

13. In order to examine the contention of the Petitioner the following questions fall for consideration.

(a) Whether by virtue of the order of the Revisional Authority, the State Government has any option under Rule 59(2) of the M.C. Rules other than recommending the case of the Petitioner to the Central Government for relaxation of the provision contained in Rule 59(1) of M.C. Rules.

(b) Whether the direction of the State Government to produce the mining plan is a requirement under the statute at this stage; and

(c) Whether the report as per Annexure-6 & 25 shall be construed that the existence of mineral contents has been established otherwise than by means of prospecting area.

In order to examine question (a), let us see the provision of Rule 59(1) & (2) of the M.C. Rules, which reads thus:-

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

(1) No area -

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

(b) which has been reserved by the Government or any local authority for any purpose other than mining; or

(c) in respect of which the order granting a permit or licence or lease has been revoked under sub-rule (1) of Rule 7A or sub-rule (1) of Rule 15 or sub-rule (1) of Rule 31, as the case may be; or

(d) in respect of which a notification has been issued under the Sub-section (2) or Sub-section (4) of Section 17, or

(e) which has been reserved by the State Government or u/s 17A of the Act

shall be available for grant unless :

(i) an entry to the effect that the area is available for grant is made in the register referred to in sub-rule (2) of rule 7D or sub-rule (2) of Rule 21 or sub-rule (2) of Rule 40 as the case may be: and

(ii) the availability of the area for grant is notified in the Official Gazette and specifying a date (being a date not earlier than thirty days from the date of the publication of such notification in the Official Gazette) from which such area shall be available for grant:

Provided that nothing in this rule shall apply to the renewal of a lease in favour of the original lessee or his legal heirs notwithstanding the fact that the lease has already expired :

Provided further that where an area reserved under Rule 58 or u/s 17A of the Act is proposed to be granted to a Government Company, no notification under clause (ii) shall be required to be issued :

Provided also that where an area held under a reconnaissance permit or a prospecting licence, as the case may be, is granted in terms of Sub-section (1) of Section 11, no notification under clause (ii) shall be required to be issued.

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

So as per the aforesaid provision, the restriction of Rule 59(1) of the M.C. Rules can be relaxed in any special case. From the revisional order, it is indicated that the Petitioner's case is a fit case for grant of relaxation under Rule 59(2) of M.C. Rules.

So far as the State recommending the case of M/s. MGM Minerals for relaxation of Rule-59(1) of M.C. Rules, the stand taken by the State before the Revisional Authority as well as before us is that, the MGM Minerals had expertise in mining whereas the Petitioner does not have and preference is given to the local industry, which is not the case of the Petitioner. The finding of the Revisional Authority is that the State Government has not rejected the application of the Petitioner on the ground that it is pre-mature but on some other grounds/ reasonings and it is further clear that under the provision of Rule-59(1) of M.C. Rules, power lies with the Central Government and the role of the State Government is only recommendatory. At the same time, the Tribunal was of the opinion that the Petitioner's case is a fit case for grant of relaxation.

As per the Chambers 21st Century Dictionary, the word "fit" means "to be suitable or appropriate for something". No doubt, the role of the State Government is only recommendatory as the power of relaxation vests with the Central Government as per Rule 59(2) of M.C. Rules. But to recommend a case even if the same is suitable, the State has to be satisfied that it is a special case.

12. It is true that the order of the Revisional Authority is binding on the State.

Law is well settled in this regard by the apex Court in the case of Dharam Chand

(supra). In the present case, the State has also not challenged the order of the Revisional Authority. In the case at hand, there is nothing to show that the State has refused to implement the order of the Revisional Authority. In absence of a direction by the Revisional Authority to recommend the case of the Petitioner, there is no bar on the State Government to examine the case of the Petitioner to arrive at a decision that is a special case. "Special" means as per Chambers 21st Century Dictionary, "distinct from and usually better than other of the same or similar kind". All those aspects shall be duly considered by the state looking into the observation made by the Tribunal.

13. So far as questions (b) & (c) are concerned, we may refer to Section 5(2) of the M.M.R.D. Act, which is quoted hereunder:-

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

XXX XXX XXX

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

(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been established otherwise than by means of prospecting such area; and

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

14. In order to arrive at a right conclusion regarding the legality of the direction of the State Government, we may refer to Rule 22(4) of the M.C. Rules, which came into force on 13.9.1995 by way of substitution and the same reads thus:-

22(4)-On receipt of the application for the grant of a mining lease the State Government shall take decision to grant precise area for the said purpose and communicate such decision to the applicant. On receipt of communication from the State Government of the precise area to be granted, the applicant shall submit a mining plan within a period of six months or such other period as may be allowed by the State Government, to the Central Government for its approval. The applicant shall submit the mining plan, duly approved by the Central Government or by an officer duly authorised by the Central Government to the State Government to grant mining lease over that area.

Section 5(2)(b) of the M.M.R.D. Act shall not be read in isolation and shall be read along with Rule 2(4) of the M.C. Rules. A conjoint reading of the aforesaid provisions, the irresistible conclusion would be drawn that after the State Government takes a decision to grant the precise area for the said purpose it should communicate such decision to the applicant and on receipt of the said communication from the State Government, the applicant shall submit a mining

plan within the time prescribed therein for approval of the Central Government. So a direction to give mining plan at this stage is totally pre-mature and it is a wrong decision of the authority and non application of mind.

So the notice relating to filing of the mining plan at this stage is illegal and beyond the purview of the statutory provision.

15. As regards question (c), we may refer to Section 5(2)(a) of M.M.R.D. Act. The main thrust of argument of the Petitioner is that existence of mining contents has been established otherwise by means of prospecting of that area. The Petitioner has relied upon Annexure-25, which is a report of survey conducted by the Department of Steel and Mines engaging some Scientists, names of whom have been indicated in the foregoing paragraph. Relevant points of the said report are extracted hereunder:-

CHAPTER-I (1.0 INTRODUCTION)

Rapid reconnaissance survey of the iron ore resources around the villages Pataberha, Ganua, Kakarpani etc. in Bonai Subdivision of Sundargarh district was taken up jointly by the Geoscientists of DMG and OMC during the month of April 2006 under the guidance of Mr. P.K.Sahu, Sr. Manager Geology, OMC, Bhubaneswar.

The objective of the programme was to assess the iron ore resource potential of the relinquished area of M/s. TISCO Ltd.

1.4 Previous Work.

The area under study forms a part of the Iron Ore deposit of the Jamda-Koira valley, and is a part of Jones' horse-shoe synclinalorium. It was studied during the nineteen thirties by Jones (1934), Dunn (1935) and Gupta (1938-40). Gupta was of the opinion that the shales are above the BHJ. Subsequently Chakrabarty and Taran (1968), Acharya et.al (1968), Banerjee (1974), Sarangi and Acharya (1975), Majumdar and Chakrabarty (1977), Saha et.al (1984), Chakrabarty and Majumdar (1986) and Saha have reported on Stratigraphy, structure and tectonic of BIF of the Jamda-Koira valley.

Directorate of Mining and Geology (DMG), Orissa have carried out predetailed investigation within the Koira Valley during 1965-66, 1966-67, 1967-69. These studies have established the manganiferous shale being older than the BHJ.

All geological investigations undertaken by the DMG have been covered within the Jamda-Koira Valley. But previously no detail work has been done in Khandadhar Iron Ore deposit exclusively.

However, all the above work, being of regional nature no resource positions are available for the exact area under study. M/s. TISCO Ltd. had carried out limited exploration during the late seventies within this patch, by way of large scale of geological mapping in 1:8, 000 scale and selective trial excavation with an objective to delineate the manganese bearing horizons.

CHAPTER-II (2.3.5 Hard/Massive/Soft Laminated Iron Ore)

Undifferentiated hard, massive and laminated ore of iron covers the entire western slopes of the 730 hill the east of Pataberha village. The unit strikes N15° W dipping 30° towards east. The thickness of the ore horizon is assumed to be 25m on an average as studied on the eastern and western slopes of the hill, where mining is being carried out by M/s. MG Mohanty. The ore is hard in nature and is of very high grade (68% Fe.). Three sets of joints are noticed in the in situ ore body, which may facilitate easy mineability. Exposures of this litho-unit were observed over the slopes on west of 730 peak. The ore is sponge grade having a tumbler index of more than 90 (Statics of Pataberha Mines). Thick layer of flat ore of such type is found lying over the entire deposit. The thickness of float ore increases towards the lower slopes. Average thickness of 3m can be considered for the flat zone as evidenced from two illegal workings on the foothills towards east of Pataberha village. This is being collected, stacked and transported by clandestine operators. Such stacks are noticed almost everywhere over the ore zone. The float ore is similar to the in situ ore. Recovery of float ore in this part is as high as 70% and the same for the in situ ore is still higher as experienced in the Pataberha Mines of M/s.MG Mohanty on the southern portion of 730 hill.

CHAPTER-V(5.0 CONCLUSION)

The present investigation has been completed within a very short span of time. Regional traverses have been made to delineate the ore bodies of economic importance, which have been further mapped by concentrated approach on the mineralized zone. In the absence of any drilling or trial excavation, the estimation of resources has been done through previous exploration and mining experiences, taking into account the parameters drawn from adjacent mine workings. Hence the iron ore resource figure of 21.40 mt is highly tentative and is indicative in nature. This figure is likely to change after detailed exploration. Grade of ore has also been assessed visually, which may be further modified by chemical analysis of sample collected. However occurrence of economic iron ore deposit in the area has been confirmed by this study and the resources can be safely put under E3F3G3 category of UNFC classification.

Suggestions :

Future exploration strategy in the area should involve the following steps.

- i. Large scale geological mapping of the area in scale 1:2, 000 and delineation of lithounits.
- ii. Trial excavation on potential float zone.
- iii. Close spaced dry core drilling on the in situ ore zone up to appropriate depth.
- iv. Logging of drill cores, preparation of meter-wise samples and chemical analysis thereof to determine various constituents.

Detailed exploration can reveal the actual potential of the deposits to a great extent.

16. Perusal of the report in Annexure-25 goes against the claim of the State Government, as made in the counter affidavit, that there is lack of evidence regarding existence of mineral resources. Point 2.3.5 of the report shows that there is existence of mineral contents and is being collected, stacked and transported by clandestine operators, which means clandestine mining is continuing in the area by some persons and transportation has been done, which has been detected by a group of Officers as back as in April, 2006. The report further shows that recovery of float ore in this part is as high as 70% and better than of M/s. MG Mohanty. So the plea of the State Government that mineral existence has not been evaluated cannot be accepted and the same is accordingly rejected. The report shows the existence of mineral contents otherwise than by means of prospecting area. But whether the report is sufficient for granting the mining lease to the Petitioner and it depends upon the objective satisfaction of the State Government. This Court in a proceeding under Article 226 of the Constitution of India cannot hold that the geological report placed before this Court is enough to grant mining lease. But we are not hesitated to say that the geological report clearly shows existence of mineral contents, even if the area has not been prospected.

17. To sum up:-

a) The Petitioner cannot be forced to produce the mining plan as per the impugned notice dated 19.1.2009 issued under Rule 26(3) of the M.C. Rules, vide Annexure-24, as we have already observed that the authenticated geological survey report would come at a stage as enumerated in Rule 22(4) of the M.C. Rules. So the said notice in Annexure-24 directing the Petitioner to produce the mining plan is accordingly set aside. The State Government is directed to give a further notice of hearing to the Petitioner without insisting upon production of mining plan.

b) As we have indicated in the foregoing paragraphs that the question whether geological survey report in Annexure-25 is sufficient to meet the requirement of Section 5(2)(a) of the M.M.R.D. Act, the same shall be decided by the State Government.

18. Accordingly, without expressing any opinion regarding merit of the case, we dispose of this writ petition with a direction to the State Government to consider the geological survey report of the area as per Annexure-25 and take a decision on the application of the Petitioner as early as possible.

B.P. Ray, J.

18. I agree.