
(2014) 03 MP CK 0018

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 4001 of 2010 and 891 of 2013 in W.P. No. 4001 of 2010

Olpherts Pvt. Ltd.

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 14-03-2014

Acts Referred:

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2)

Citation : AIR 2014 MP 109 : (2014) 3 MPLJ 458

Hon'ble Judges : K.K. Trivedi, J

Bench : Single Bench

Advocate : Kishore Shrivastava, Senior Counsel assisted by Kapil Jain, Anil Khare, Senior Counsel assisted by Jasmeet Singh, Advocate for the Appellant; Sanjay Dwivedi, Government Advocate and Pranay Verma and Archana Nagariya, Advocate for the Respondent

Judgement

K.K. Trivedi, J.—These two writ petitions are directed against the order of the Revisional Authority of Central Government in revision petitions filed against the order of the State Government granting mining lease to the respondent No. 3. Both the writ petitions were heard together and are being decided by this common order. For the purposes of this order, the facts are taken from W.P. No. 4001/2010. In brief, facts giving rise to this long lasting litigation are that the petitioner was granted a mining lease over an area of 147.35 acres land situated in village Jauli, Tahsil Sihora, District Jabalpur. The mining lease granted on 31st July, 1951 was for a period of 30 years, which was to end on 31st July, 1981. There were conditions mentioned in the lease for renewal of the same and the application was to be made before 12 months of expiry of the lease so granted. The petitioner preferred an application for renewal of the lease not before 12 months, calculated from the date of expiry of the mining lease. The said application was not considered at the relevant time. The petitioner preferred a revision before the Central Government under the provisions of the Mines and Minerals (Development and Regulation) Act, 1957 and the rules made

thereunder, known as the Mineral Concession Rules, 1960 (herein after referred to as "Act" and "Rules"). However, before the revision could be decided, a notification was issued by the State Government intending allotment of the said land on lease for mining purposes on 27-7-1984. The Central Government decided the revision of the petitioner, allowed the same vide order dated 16-11-1987 and directed the State Government to decide the application of the petitioner by a speaking order on merits. However, this order was not complied with, the application of the petitioner was not decided, therefore, a writ petition was filed by the petitioner seeking direction against the State Government to decide the application of the petitioner for renewal of the lease. The said writ petition being W.P. No. 4499/1996 was disposed of vide order dated 20-12-1996. The writ Court directed the State Government to dispose of the application made by the petitioner consistently with the directions made by the Central Government, within a period of 30 days from the date of the order.

2. The State Government issued a memo to the petitioner on 22-1-1997 pointing out certain defects in the application for renewal made by the petitioner and on the same date issued an order rejecting all such applications received pursuant to Notification dated 27-7-1984. In fact, it appears that the State Government was willing to consider the application of the petitioner for renewal of the lease. Some query was raised on 6-2-1997 by the Additional Collector, Minerals Branch, Katni and a memo was sent to the Regional Forest Officer, Kami indicating that decision is taken to sanction renewal over the land allotted to the petitioner leaving aside the forest land. This was communicated that out of 147.47 acres, only 6.75 acres land was available for grant as mining lease and rest of the area was within the forest limits. Such a statement was made on the basis of provisions contained in Forest Conservation Act, 1980.

3. Some of the persons, who have applied for grant of fresh mining lease pursuant to notification dated 27-7-1984 and whose applications were rejected, approached the High Court by way of filing review application seeking to review the order dated 20-12-1996 passed in W.P. No. 4499/1996 alleging that there was concealment of material facts and this Court was persuaded to grant a relief to the petitioner herein on the basis of those concealed facts. The review application was considered by the single Judge of this Court, the same was allowed and the order dated 20-12-1996 was recalled. The writ petition filed by the petitioner was dismissed and a cost of Rs. 10,000/- was imposed on it. A direction to prosecute the petitioner was also given. Being aggrieved by this order, a Letters Patent Appeal was filed by the petitioner before the Division Bench of this Court, which too was dismissed on 16-2-2001. A review application was made by the petitioner but that too was dismissed, therefore, the petitioner approached the Apex Court by filing an appeal. The civil appeal came to be decided by the Apex Court on 12-2-2004. Both the orders of the High Court passed by the single Judge as also by the Division Bench were set aside. The directions were given by the Apex Court to reconsider the matter afresh. The directions as contained in the order reported in JT 2004 (Suppl. 1) SC 11 read

thus:

"(1) The application dated 30th September, 1980 read with the application dated 1st August, 1981 filed by the appellant seeking renewal of lease shall be treated as an application for fresh grant. That application shall be available for consideration as an application for fresh grant (and not as an application seeking renewal) to be taken up for consideration along with such other applications for fresh grant which were validly filed and though rejected by the State Government were remanded by the Central Government for consideration afresh by the State Government.

(2) All such applications shall be treated as applications for fresh grant and shall be considered on merits. If there be any deficiency in any of the applications that shall be got cured by affording an opportunity to the party concerned.

(3) So much area of the mining lease dated 31st July, 1951 along with such other area as has been added to it (i.e. such area as was available for grant pursuant to the Notification dated 27th July, 1984) shall be considered for grant by way of fresh mining lease or leases excluding such area as may be forest attracting applicability of Forest Conservation Act, 1980."

It appears that all those applicants, who were to be considered, were informed about the shortcomings or the lacuna in their applications, were called upon to submit the relevant informations and all those applications were considered and decided. The State Government once again considered the application of the petitioner as fresh grant in terms of the directions of the Apex Court, rejected the same and allowed the application of respondent No. 3 vide order dated 13-9-2004. All other applications were rejected. Being aggrieved by this order, the petitioner herein preferred a revision before the Central Government, which remained pending for a long time and was ultimately dismissed by the impugned order, therefore, this writ petition is required to be filed. The writ petition was entertained. Notices were issued to the respondents and as an interim direction was given by the Division Bench to maintain status quo with respect to allotment of the land for mining purposes, which order was made absolute by the writ Court, as on today nobody is carrying out the mining activities on the land in question.

4. Learned senior Counsel for the petitioner vehemently contended that in the facts and circumstances when the Apex Court directed consideration of the application of the petitioner for renewal as an application for fresh grant along with those, who were also the applicants and whose applications were rejected and who have approached the Central Government against the said order and in case of those, Central Government has passed the order to reconsider their applications by the State Government, strictly the provisions of section 11(2) of the Act were to be looked into and preference was to be given to the petitioner. Instead of giving preference, on flimsy ground that when earlier the lease was granted to the petitioner, it was not successfully operating the mines, the State

Government has rejected the application of the petitioner. It is further contended that respondent No. 3 was a defaulter, the application of the respondent No. 3 was to be treated as incomplete application and virtually there was no application of the respondent No. 3 to be considered in view of the provisions of Rule 22 of the Rules, therefore, the only applicant was the petitioner and its application was not to be rejected in the manner it has been. It is further vehemently contended that instead of taking action against the respondent No. 3 for committing breach in respect of payment of royalty in accordance to the provisions of the Rules, even when such a statement was made before the Apex Court by filing an affidavit in the appeal filed by the petitioner, the State Government has favoured respondent No. 3 for grant of lease. This makes it clear that in fact arbitrarily claim of petitioner was rejected and the application of respondent No. 3 was illegally allowed. It was necessary for the revisional authority to look into these allegations, decide the revision of the petitioner in appropriate manner but the revision is erroneously rejected. That being so, the orders, impugned in the writ petition, are liable to be quashed.

5. Per contra, it is contended by learned Govt. Advocate appearing for the respondent-State that there was no arbitrary action on the part of the respondent-State. On the other hand, in terms of the provisions of the Rules, there was no application of Rule 22 of the Rules and as such if the application of the respondent No. 3 was considered and decided, it is incorrect to say that the action on the part of the respondent-State was arbitrary. Learned Counsel for respondent No. 3 reading out the whole provisions of the Rules, emphatically contended that as on 27-7-1984 when the notification was issued by the State Government throwing open the land for allotment by granting mining lease, the provisions of Rule 22(3)(d) were not such that application made by the respondent No. 3 could be said to be an invalid application. The rules were not so made till that time so as to throw the application of the respondent No. 3 as invalid application. The orders of penalty were not issued against the respondent No. 3 in respect of other mines. The application by respondent No. 3 was made in independent capacity and not that of a sister concern of any other company. If the defaults were committed by any other company in which the director of the respondent No. 3 was also an office bearer, it could not be said that the respondent No. 3 was a defaulter and therefore, the application of the respondent No. 3 was not to be considered. It is contended that the petitioner has not successfully operated the mines when the lease was granted to it for a long period of 30 years and that being a sole reason, application of the petitioner was rightly rejected. On appreciation of the comparative merits and feasibility for starting mining activities, the claim of respondent No. 3 was rightly allowed. The revisional authority has looked into all these aspects and has rejected the revision of the petitioner on valid grounds, therefore, no interference in the order impugned is called for. Thus, it is contended that the petition is liable to be dismissed upholding the orders of the respondent-State.

6. After hearing learned Counsel for the parties at length and minutely perusing

the record as also the orders passed by the Apex Court, certain questions are formulated for the purposes of adjudication of this writ petition in appropriate manner. This has been done keeping in mind the fact that litigation is going on for a long period when the application was made by the petitioner for renewal of the lease. To put at rest the entire controversy, following questions are required to be adjudicated:

"(I) Which provision of law is to be made applicable, one which was available on the date of notification issued by the State Government for the purposes of determining the claim of the persons like petitioner and respondent No. 3, or the law which was applicable on the date of consideration of the application by the State Government?

(II) Whether any preferential right was available to the petitioner to be considered on priority over and above other applicants in terms of the directives issued by the Apex Court?

(III) Whether the facts, which were already considered and rejected or were put at rest by the orders of the competent authority and Courts, could be taken note of while considering the application of the petitioner and respondent No. 3 afresh for grant of mining lease?

(IV) Whether the notification dated 27-7-1984 is hit by provisions of section 2 of Forest Conservation Act, 1980, as no prior approval was obtained by the State Government before putting forest land available for mining purpose?"

7. Question No. (I) : The first question is - what would be the law applicable at the time of consideration of the applications of the petitioner and respondent No. 3 for grant of mining lease? Admittedly two applications were made by the petitioner for grant of renewal of mining lease, first application was made on 30-9-1980 and the second application was made on 30-7-1981/1-8-1981. There was a provision at that time under the Rules that if an application for renewal is made and is not considered or decided within a period of six months, it is deemed rejected. Therefore, the petitioner herein was required to approach the Central Government by way of filing a revision against the deemed rejection order of the respondent-State in respect of the application made for renewal. As has been pointed out, the Central Government directed disposal of the application afresh. However, before the revision could be decided, the State Government had thrown open the area for grant of mining lease vide Notification dated 27-7-1984. The rules, which were in vogue at the relevant time, required furnishing of a valid clearance certificate in the form prescribed by the State Government with respect to payment of mining dues, such as royalty or deed rent and surface rent payable under the Act or the Rules made thereunder, from that Government or any officer authorized by that Government in this behalf. The other provisos, which were added subsequently, were not in vogue at the relevant time and there was no such condition that in case such a no dues certificate is not furnished, or an affidavit to this effect is not filed, the

application would become invalid. Therefore, if the directions of the Apex Court while remitting back the matter to the respondent-State for reconsideration are looked into, it has to be examined what law would be applicable on the date of consideration.

8. Normally rule of interpretation or application is that the law, which was available on the date the application is made, is required to be looked into and the applications are to be considered only under the law as was existing on the date of making of application. However, this being a debatable question, has been looked into from various angles. First of all the fact remains that the statutes were made, looking to the development, progress and requirement of mineral extraction and mines operations and subsequently procedural laws were changed and certain new provisions were made. The applications of all the applicants were already rejected including that of respondent No. 3. The matter was agitated before the Central Government by some of the persons, whose applications were rejected and in their cases, directions were issued for reconsideration. The order of the Central Government in respect of the petitioner herein was made applicable with respect to reconsideration of the application for grant of renewal of the lease. All this has remained in litigation for long time and ultimately in terms of the directions of the Apex Court, consideration is done by the State Government. If every such application is to be treated as fresh application, though not specifically directed by the Apex Court, has to be considered only on the basis of the law as was available on the date of consideration and not on the date of making of the application. In respect of the procedural law, the Apex Court has considered these aspects where the application was not decided for a long period by the State and the law was changed during the intervening period. The Apex Court has held that only the law, as existed on the date of consideration, was to be looked into and not the law which was existing on the date of making of the application. In the case of *State of Tamil Nadu Vs. Hind Stone and Others*, , virtually the identical situation was looked into by the Apex Court and it was held in paragraph 13 of the report as under:

"13. Another submission of the learned counsel in connection with the consideration of applications for renewal was that applications made sixty days or more before the date of GO. Ms. No. 1312 (December 2, 1977) should be dealt with as if Rule 8-C had not come into force. It was also contended that even applications for grant of leases made long before the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8-C had not come into force. The submission was that it was not open to the Government to keep applications for the grant of leases and applications for renewal pending for a long time and then to reject them on the basis of Rule 8-C notwithstanding the fact that the applications had been made long prior to the date on which Rule 8-C came into force. While it is true that such applications should be dealt with within a reasonable time, it cannot on that account be said that the right to have an application disposed of in a reasonable time clothes an applicant for a lease with a right to have the

application disposed of on the basis of the rules in force at the time of the making of the application. None has a vested right to the grant or renewal of a lease and none can claim a vested right to have an application for the grant or renewal of a lease dealt with in a particular way, by applying particular provisions. In the absence of any vested rights in anyone, an application for a lease has necessarily to be dealt with according to the rules in force on the date of the disposal of the application despite the fact that there is a long delay since the making of the application. We are, therefore, unable to accept the submission of the learned counsel that applications for the grant or renewal of leases made long prior to the date of G.O. Ms. No. 1312 should be dealt with as if Rule 8-C did not exist."

This law is further considered in the case of Geomin Minerals and Marketing (P) Ltd. Vs. State of Orissa and Others, , and though the question is not specifically decided keeping in view the fact that the State has already considered the application but it has been held that in view of the law laid-down by the Apex Court in the case of M/s. Hind Stone (supra), this question need not to be answered. Meaning thereby, the law is made clear by the Apex Court that only the provisions of law, as are available on the date of consideration, are to be looked into and not the law as was existing on the date of making of application. This has to be held so in view of the specific opportunity granted by the Apex Court in its order in the case of petitioner, referred to herein above, wherein it is specifically directed that if there is any deficiency in any of the applications, that shall be got cured by affording an opportunity to the party concerned. Virtually this opportunity was extended by the State Government by giving notices to all concerned, specially in the case of respondent No. 3, therefore, the law, as was existing on the date of consideration, was to be looked into. The first question is answered accordingly.

9. Now the effect of non-compliance of any of the provisions, as were existing on the date of consideration, is required to be examined. As has been pointed out, when the applications were made by the concerned applicants pursuant to the Notification dated 27-7-1984, the rules were not so that if a certificate of no dues is not filed, the application would become invalid. For the purposes of convenience, the provisions of Rule 22 of the Rules, as were available on the date of consideration because of the Notifications dated 20-2-1991 and 17-1-2000, are reproduced below for ready reference:

"22. Applications for grant of mining leases. -- (1) An application for the grant of a mining lease in respect of land in which the minerals vest in the Government shall be made to the State Government in Form I through such officer or authority as the State Government may specify in this behalf.

(2)[*****]

(3) (i) Every application for the grant or renewal of a mining lease shall be accompanied by --

(a) [a non-refundable fee of two thousand and five hundred rupees];

[*****]

(d) A valid clearance certificate, in the form prescribed by the State Government of payment of mining dues, such as royalty or dead rent and surface rent payable under the Act or the rules made thereunder, from that Government or any officer authority authorised by that Government in this behalf:

Provided that in case the applicant is a partnership firm or a private limited company, such certificate shall be furnished by all partners of the partnership firm or, as the case may be, all members of the private limited company:

Provided that where any injunction has been issued by a Court of law or any other competent authority staying the recovery of any such mining dues or income-tax, non-payment thereof shall not be treated as a disqualification for the purpose of granting or renewing the said mining lease:

Provided that where a person has furnished an affidavit to the satisfaction of the State Government stating that he does not hold and has not held a mining lease, it shall not be necessary for him to produce the said valid clearance certificate:

Provided that a properly sworn affidavit stating mat no dues are outstanding shall suffice subject to the condition that the certificate required as above shall be furnished within ninety days of the date of application and the application shall become invalid if the party fails to file the certificate within the said ninety days:

Provided further that the grant of a clearance certificate under sub-clause (d) shall not discharge the holder of such certificate from the liability to pay the mining dues which may subsequently be found to be payable by him under the Act or rules made thereunder.

[*****]

(f) an affidavit stating that the applicant has -

(i) filed up-to-date income-tax returns;

(ii) paid the income-tax assessed on him; and

(iii) paid the income-tax on the basis of self-assessment as provided in the Income Tax Act, 1961;

(g) an affidavit showing particulars of area mineral-wise in [the] State, which the applicant or any person jointly with him -

(i) already holds under a mining lease;

(ii) has already applied for but not granted;

(iii) being applied for simultaneously;

(h) a statement in writing that the applicant has, where the land is not owned by him, obtained surface rights over the area or has obtained the consent of the owner for starting mining operations:

Provided that no such statement shall be necessary where the land is owned by the Government:

Provided further that the consent of the owner for starting mining operations in the area or part thereof may be furnished after execution of the lease deed but before entry into the said area:

Provided also that no further consent would be required in the case of renewal where consent has already been obtained during grant of the lease."

Undisputedly, a notice was given to the respondent No. 3 calling upon it to furnish a no dues certificate. Such a notice of the respondent-State is already placed on record and is not in dispute. The respondent No. 3 was duty bound to produce a no dues certificate in that respect. By filing counter, respondent No. 2 has pointed out that such an affidavit was filed by respondent No. 3 but no dues certificate was not produced at the relevant time. Even on the date of consideration, i.e. on 3rd September, 2004, the said No Dues Certificate was not produced. Not a single word is said about this non-production of the certificate of no dues by the respondent No. 2 in its order. Only a bald statement was made that a no dues certificate was produced. The fact that a report was already made against respondent No. 3, was not taken note of, whereas such a fact was already stated on affidavit in reply to the application filed before the Apex Court in the appeal of the petitioner herein. This being so, it has to be considered whether the application of respondent No. 3 was a valid application on the date of consideration of such an application for grant of mining lease in terms of the orders of the Apex Court or not. As the objection raised by the respondents with respect to applicability of the provisions of the Rules, as regards the validity or invalidity of the application, has already been adjudicated hereinabove, it is to be examined whether on the date of consideration there was a valid application made by the respondent No. 3, available on record of the respondent-State for consideration or not, or it was to be treated as if there was no valid application of the respondent No. 3 for consideration.

10. The Rule quoted hereinabove prescribes specifically that a properly sworn affidavit is required to be filed that no dues are outstanding on the date of making of the application with a qualifying condition that the certificate required as above, shall be furnished within 90 days of the date of application and the application shall become invalid if the party fails to file certificate within the said 90 days. In terms of the orders issued by the Apex Court, the respondent No. 3 was called upon to furnish a no dues certificate by 21-6-2004 vide notice dated 11-6-2004. The hearing of the matter took place on 3-9-2004. Till this time, no dues certificate was not produced by the respondent No. 3. Therefore, on the date of hearing, the application filed by the respondent No. 3 for grant of fresh

lease became invalid for non-compliance of mandatory provisions of Rule 22 of the Rules and it ought to have been rejected as such. There was no question of considering the said application only because on 08-9-2004, a no dues certificate, that too in respect of some of the leases granted to companies of owner of respondent No. 3, was produced. Therefore, the application of respondent No. 3 was liable to be rejected as such.

11. To make it more clarified, it would not be out of place to mention here that certain leases in accordance to the application submitted by the respondent No. 3 were allotted to the family members of owner of respondent No. 3 or the companies owned by the members of the family of owner of respondent No. 3, in some of which the owner of respondent No. 3 was also a Director. Upon its own showing, in 11 areas, different leases were granted (11 in number) to the respondent No. 3 or the companies owned by it or the companies in which the owner of respondent No. 3 was a Director. Earlier a no dues certificate was issued on 28-9-2002 in respect of only six mining leases saying that there was no dues against the respondent No. 3 or the lease holder. However, in one of the cases, it was found that when there was no grant of lease available to the company of respondent No. 3 or the company in which the owner of respondent No. 3 was a Director, minerals were extracted and sold to the Bokaro Steel Plant. A case was registered with respect to illegal mining and an order was issued by the Collector imposing penalty for recovery of royalty only. No other action was taken. In a revision preferred by the said company before the Board of Revenue, matter was remitted back to the Collector and ultimately a final order was issued by the Collector on 12-9-2011 holding that an amount of Rs. 2,79,13,107/- was to be recovered as royalty. There was no action taken against the defaulting company under the provisions of the Rules for imposition of penalty or for recovery of the price of the minerals illegally extracted, without any grant. Thus, if this was the conduct of the respondent No. 3 or any of the companies in which the owner of the respondent No. 3 was a partner or a Director, at least no leniency was to be shown to respondent No. 3.

12. Precisely this was the stand taken by the respondent-State in the return when the same was filed in the appeal preferred before the Apex Court by the petitioner. These facts were categorically admitted that there were proceedings against the respondent No. 3 and, therefore, at least such a defaulting company was not to be given preferential right. These facts were categorically stated in the revision petition preferred by the petitioner before the Central Government but unfortunately the Central Government also did not consider these aspects in appropriate manner and instead holding that the application made by respondent No. 3 was invalid, held that the application of the respondent No. 3 was to be considered on merits and this was rightly done by the State Government. The arbitrary act of the respondent-State was not adjudicated upon by the revisional authority of Central Government as well. Thus, it has to be held that the application made by the respondent No. 3 was not valid one and was not to be considered for grant of mining lease in terms of the provisions of the Rules,

which were applicable on the date of consideration of the said application.

13. Question No. (II): Now it has to be seen whether the petitioner herein was entitled to grant of any preferential right over and above the other applicants, for the purposes of consideration of grant of mining lease over the land in dispute and whether in terms of the directives issued by the Apex Court, such a preferential right was available to the petitioner. As has been pointed out, it is the contention raised by learned senior Counsel for the petitioner that since the Notification was issued by the State Government in respect of grant of lease of the disputed land when the revision filed by the petitioner against the deemed rejection order of its renewal application was pending consideration before the Central Government, under the first proviso to sub-section (2) of section 11 of the Act, the petitioner would be having a preferential right over and above the others. To examine what is the specific provision and intention of the Act to give preferential right, it would be necessary to look into the provisions of section 11 of the Act, which are reproduced hereunder for convenience:

"11. Preferential right of certain persons. -- (1) Where a reconnaissance permit or prospecting licence has been granted in respect of any land, the permit holder or the licensee shall have a preferential right for obtaining a prospecting licence or mining lease, as the case may be, in respect of that land over any other person:

Provided that the State Government is satisfied that the permit holder or the licensee, as the case may be, --

(a) has undertaken reconnaissance operations or prospecting operations, as the case may be, to establish mineral resources in such land;

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

(c) has not become ineligible under the provision of this Act; and

(d) has not failed to apply for grant of prospecting licence or mining lease, as the case may be, within three months after the expiry of reconnaissance permit or prospecting licence, as the case may be, or within such further period as may be extended by the said Government.

(2) Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have a preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later:

Provided that where an area is available for grant of reconnaissance permit,

prospecting licence or mining lease, as the case may be, and the State Government has invited applications by Notification in the Official Gazette for grant of such permit, licence or lease, all the applications received during the period specified in such Notification and the applications which had been received prior to the publication of such Notification in respect of the lands within such area and had not been disposed of, shall be deemed to have been received on the same day for the purposes of assigning priority under this sub-section.

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

(3) The matters referred to in sub-section (2) are the following:--

(a) any special knowledge of, or experience in, reconnaissance operations, prospecting operations or mining operations, as the case may be, possessed by the applicant;

(b) the financial resources of the applicant;

(c) the nature and quality of the technical staff employed or to be employed by the applicant;

(d) the investment which the applicant proposes to make in the mines and in the industry based on the minerals;

(e) such other matters as may be prescribed.

(4) Subject to the provisions of sub-section (1), where the State Government notifies in the Official Gazette an area for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, all the applications received during the period as specified in such Notification, which shall not be less than thirty days, shall be considered simultaneously as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section(3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or a mining lease, as the case may be, to an applicant whose application was received later in preference to an applicant whose application was received earlier:

Provided that in respect of minerals specified in the First Schedule, prior approval of the Central Government shall be obtained before passing any order under this sub-section."

14. It is seen that section 11 of the Act was introduced by way of amendment made in the Act in the year 1999 by substituting the provisions of section 11 of the Act with effect from 18-12-1999. The consideration of all the applications was done after the incorporation of the provisions in the Act and therefore, it is the contention of learned senior Counsel for the petitioner that the proviso added to sub-section (2) would give a preferential right to the petitioner. A plain and simple reading of the said provision will make it clear that the scheme of giving preferential right is on certain stages. The first stage is, as is prescribed under sub-section (1) of section 11 of the Act, where a person who is already having a reconnaissance permit or prospecting licence, applies for grant of a prospecting licence or a mining lease, as the case may be, will be given preference over the other applicants in respect of the very same area. The other scheme under the aforesaid section of the Act as prescribed in section 11(2) is where the State Government has not notified any area in the official gazette for the purposes of grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, and two or more persons have made the application for the very same area for grant of reconnaissance permit, prospecting licence or a mining lease. The first preference is to be given to the applicant, who has made the application earlier than the person who has made the application later. The principle of first come first serve is made applicable in such a case. However, the proviso added to sub-section (2) of section 11 of the Act does not contemplate giving of weightage or preference to an applicant, who has applied in pursuance to a Notification issued by the State Government and the application, which has been made prior to the publication of the Notification in respect of the very same area, if has not been disposed of. The only thing provided is treating as if all the applications made either before Notification or after Notification are made on the same day for the purposes of assigning priority under this sub-section. The meaning of this would be that in case an applicant has made an application for grant of reconnaissance permit, prospecting licence or mining lease in respect of certain land, Notification of which is not issued at that time, the said application shall also be considered to be received on the very same day on which other applications are received, if a Notification is issued later on, with respect to the very same land by the State Government. The only purpose of making this provision is to protect those applicants who have applied for grant of reconnaissance permit, prospecting licence or mining lease in respect of land, Notification of which is necessary under Rule 59 of the Rules. Otherwise all such applications made prior to the Notification are to be treated as premature under Rule 60 of the Rules.

15. A conjoint reading of the provisions of sub-section (2) of section 11 of the Act and the proviso added therein with the provisions of Rule 59 and Rule 60 of the Rules, will make it clear that no specific priority was available to the petitioner merely because its application made for grant of renewal of the lease was directed to be treated as fresh application for grant of mining lease pursuant to the Notification issued by the State Government on 27-7-1984. That being so,

in fact the whole submissions made by learned senior Counsel for the petitioner are misconceived. The same are not to be accepted at all. Even otherwise, the second proviso added to sub-section (2) of section 11 of the Act authorizes the State Government to give preference to some other applicant ignoring the date of making of the application, in case of a notified area, for the purposes of grant of reconnaissance permit, prospecting licence or mining lease, as the case may be. This being so, the claim made by the petitioner that it has the right to be considered first is not made out. The Apex Court while dealing with such a situation, has considered the provisions of section 11 of the Act at length and has interpreted the same in the case of Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, . This Court, while looking to such interpretation in the case of Manglam Cements Ltd. vs. State of M. P. and others, 2012(3) MPLJ 146, has categorically held that a preferential right would be available only if a virgin area has been notified for the purposes of grant of mining lease. Here in the case in hand, the lease was already granted to the petitioner herein in respect of the very same area on 31-7-1951 for a period of 30 years. Wrongly application of the petitioner for renewal of lease was deemed rejected. Under the orders of the Central Government and now under the orders of the Apex Court, the said application of the petitioner is treated to be one made for the purposes of fresh grant of lease, for the very same area, which cannot be termed to be a virgin area. In terms of provisions of sub-section (2) of section 11 of the Act, if an area is not notified then only proviso added to sub-section (2) of section 11 would be applicable. In case of Notification of an area, which is not virgin, the said provision would not be applicable. This particular aspect was elaborately considered by the Apex Court in Sandur Manganese and Iron Ores Limited (supra) and discussed in Manglam Cements Ltd. (supra) by this Court. Therefore, such submission of learned senior Counsel of the petitioner cannot be accepted. It is, thus, held that no preferential right was available to the petitioner nor an error was committed by the State by not conferring the said right to the petitioner while considering the claim for grant of mining lease in terms of the directives of the Apex Court. This question is answered in this manner.

16. Question No. (HI) : This led this Court to consider whether application of the petitioner, though was not to be given any preference, was rightly considered by the respondents or not. Admittedly the applications for renewal of the lease made by the petitioner on 30-9-1980 and 30-7-1981/1-8-1981 treating them as fresh application for grant were rejected on the ground that the petitioner was not successfully excavating the minerals and for that reason, it was decided not to grant any renewal of the lease to the petitioner. It was further held that the petitioner has not made any attempt to extract the minerals in scientific manner so that the same could be utilized for the purposes of development. This being so, the applications submitted by the petitioner were rejected. The earlier order of rejection of grant of renewal of lease was called in question and the said order was set aside. The action was not initiated by any of the respondents against the said order. Even the orders passed by the State Government in this respect were

put at naught by the Apex Court ultimately holding that application was to be reconsidered as an application for fresh grant. The previous conduct of the petitioner for not extracting the minerals from the leased area could not be taken into consideration as on the date of consideration of the application, it was to be assessed whether the petitioner was capable of extracting the minerals or working out the mining activities on the leased area or not. Not a single word is said in this respect except that the office bearers of the petitioner Company are having no experience of mining. It is a fact that though the office bearers may be expert in their own field but the mining is always done by the persons, who are having experience in such activities. Whether the petitioner was capable of engaging such persons for mining activities or not, whether the petitioner has made any scheme for the said purposes or not and whether the petitioner would be in a position to extract the minerals from the leased area, if a lease is granted, or not, all these aspects were neither considered nor taken note of by the respondent-State. Apparently this was not done only because the respondent-State was interested in granting lease at any rate to respondent No. 3 despite the fact that the application of respondent No. 3 was in fact an invalid application. This being so, the order passed on the application of the petitioner cannot be said to be in terms of the directives of the Apex Court as the fresh consideration means in all respect, as on the date of consideration with adjudgment of the capability of mining. This being so, the order passed by the respondent-State in respect of petitioner cannot be sustained. This aspect was neither considered by the revisional authority nor any discussion in this respect in detail has been done. Therefore, the order of the revisional authority is also non-speaking in this respect and cannot be given a stamp of approval by this Court.

17. Lastly it has to be seen whether all such applications were properly considered by the respondent-State or not and whether only the application of the petitioner alone was to be considered as valid application. In some of the revisions preferred by the persons, who have applied for grant of lease and whose applications were rejected by the State Government, the order passed by the State Government was put at naught and in some of the applications direction was given to reconsider, though it was done in respect of the earlier order issued by the respondent No. 2 whereby all such applications were said to be rejected on 22-1-1997. However, these orders have been revived by the Apex Court in the order passed in appeal of the petitioner and these applications were also to be considered keeping in view the provisions of law, the status of the applicants in those applications as on the date of consideration. Again in cases of those persons also, the consideration has been done as if the applications were being considered on the date of making of the applications. This being so, it is to be held that the entire consideration by the respondent-State in terms of the orders of the Apex Court was not in accordance to the directions of the Apex Court and, therefore, the order of the State Government as a whole is liable to be quashed.

18. Question No. (IV) : A very important aspect was not specifically dealt with when the matter was agitated before this Court or even before the Apex Court on earlier occasion. Admittedly the land when was allotted to the petitioner way back in the year 1951, certain laws were not made with respect to the protection of the forest land and, therefore, when a lease of total 147.35 acres land was granted to the petitioner on 31-7-1951, a big area of forest land was also included. The said lease was to remain in operation up to 31st July, 1981. However, the Parliament enacted the law in respect of conservation of the forest land and the forest areas and the Forest (Conservation) Act, 1980 (herein after referred to as "1980 Act") was promulgated. The purpose of enacting the said 1980 Act was for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. The 1980 Act was published and made in force with effect from 25-10-1980. A specific restriction is prescribed under section 2 of the 1980 Act on the dereservation of forests or use of forest land for non-forest purpose. The said provision reads thus:

"2. Restriction on the dereservation of forests or use of forest land for non-forest purpose. -- Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing --

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

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

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

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

Explanation. -- For the purpose of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for --

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

(b) any purpose other than reafforestation,

but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams, water holes, trench marks, boundary marks, pipe lines or other like purposes."

Even if the subsequent additions of proviso were to be ignored, it was very specifically provided that except with the prior approval of the Central Government, any order directing that any forest land or any portion thereof may be used for any non-forest purpose would not be issued by the State. The issue came up before the Apex Court whether such a provision is retrospective in operation, i.e. to say, applicable qua any action which State Government could take with reference to activities undertaken for reserved forest or reserved land prior to the date of enforcement of the Act aforesaid. In the case of *Nature Lovers Movement Vs. State of Kerala and Others*, , discussing at length the requirement of law and the purpose and the object of the Act aforesaid, the Apex Court categorically held that the action even subsequent to coming into force of the Act aforesaid, with respect to extension of time, renewal of lease etc. in all the cases of leases granted prior to coming into force of the Forest (Conservation) Act would be subject to the provisions of section 2 of the 1980 Act aforesaid. Discussing the various decisions and summarizing the same in paragraphs 40 to 46 of the report, the findings are given by the Apex Court in paragraph 47 of the report, which read thus:

"47. The ratio of the above noted judgments is that the 1980 Act is applicable to all forests irrespective of the ownership or classification thereof and after 25-10-1980 i.e. the date of enforcement of the 1980 Act, no State Government or other authority can pass an order or give a direction for de-reservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or grant any lease, etc. in respect of forest land to any private person or any authority, corporation, agency or organization which is not owned, managed or controlled by the Government."

19. An exhaustive reading of the above will make it clear that when the lease granted in favour of the petitioner expired on 31st July, 1981 and was not renewed and application for renewal was rejected, litigation in which respect was initiated, the State Government could not have issued any Notification for putting the said land including the forest land open for allotment on lease for mining purposes by Notification dated 27-7-1984 without the prior approval of the Central Government. Nothing has been stated in the return whether such a Notification was issued by the State Government after obtaining prior approval of the Central Government or not in terms of the provisions of section 2 of the 1980 Act. Thus, in case it is found that no such sanction was obtained prior to publication of the said Notification, the said Notification itself is liable to be cancelled and no action is required to be taken on the basis of the said Notification. However, as has been stated hereinabove, while disposing of the appeal filed by the petitioner, the Apex Court has issued direction to consider those applications, which were made pursuant to the said Notification dated 27-7-1984 and in respect of whom the orders were passed by the Central Government in revision. This particular aspect is clear from Direction No. 3 of the Apex Court in the case of the petitioner, reproduced hereinabove in paragraph 4 of this order. The order impugned nowhere indicates that this aspect was also

taken note of and any prior approval of the Central Government was obtained before issuing the Notification. Only this much is said that the area in dispute was declared as open area under Rule 59 of the Rules and a Notification in this respect was issued. The provisions of section 2 of the 1980 Act makes it incumbent on the part of the State Government or other authority to obtain prior approval before changing use of forest land for any non-forest purpose. Therefore, the lame excuse that any of the applicants have not obtained prior approval from the Central Government and therefore their applications were rejected, cannot be accepted nor the State can be absolved of its liability of obtaining prior approval of the Central Government. In view of this also, the impugned order is bad in law and is, thus, liable to be quashed.

20. Consequently, these writ petitions are allowed. The impugned order of the Central Government as also the order dated 13-9-2004 passed by the respondent-State are hereby quashed. The matter is remitted back to the respondent-State to ascertain whether prior approval of Central Government was obtained under section 2 of the Forest (Conservation) Act, 1980 before issuance of the Notification dated 27-7-1984 in respect of the land in dispute in these writ petitions and after completing the aforesaid formality, to consider the applications of all those, who have made the applications and whose applications were rejected, including the application of the petitioner, strictly in terms of the orders of the Apex Court and to adjudge the feasibility of grant of mining lease to any of such applicant on the basis of status of their applications, as on the date of consideration. It is made clear that no preferential right would be available to the petitioner to claim allotment of lease under the provisions of section 11 of the Act. The application of the petitioner is also to be considered only in terms of the feasibility of said application, as has been described hereinabove. This exercise be done expeditiously. The writ petitions are accordingly disposed of. However, looking to the peculiar facts and circumstances of the case, parties to the writ petition to bear their own costs.