
(2015) 05 CHH CK 0018
In the Chhattisgarh High Court
Case No : WPC Nos. 443 and 930 of 2012

Om Prakash Agarwal

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 227
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(2),
11(3), 11(4), 30

Citation : AIR 2015 Chh 140 : (2015) 3 CGLJ 578

Hon'ble Judges : Prashant Kumar Mishra, J.

Bench : Single Bench

Advocate : B.P. Sharma and Parag Kotecha, for the Appellant; Arun Sao, Dy. Advocate General, Gary Mukhopadhyay, Govt. Advocate, Saurabh Sharma, Shivraj Singh and Amrito Das, for the Respondent

Final Decision : Dismissed

Judgement

Prashant Kumar Mishra, J.—Petitioners have preferred these writ petitions challenging the common impugned order dated 12-1-2012 passed by the Revisional Authority i.e. Union of India dismissing their revision applications to affirm the order dated 4-2-2010 passed by the State of Chhattisgarh rejecting their applications for grant of prospecting licence and allowing the application of the respondent-Godawari Power Project and Ispat Limited (for short "the Godawari") grant of mining lease of iron ore over an area admeasuring 32.360 hectares comprising in forest compartment No. 139 (new forest compartment No. 608), village Kachche, forest range and forest division Bhanupratappur, District North Bastar, Kanker. Since both the writ petitions have thrown challenge to the same order and the application for grant of prospecting licence preferred by each of the petitioner was part of the same larger area, both the writ petitions are considered and disposed of by this common order.

2. Facts of the case, briefly stated, are that the area admeasuring 921.00

hectares bearing forest compartment No. 139 (new forest compartment No. 608), village Kachche, forest range and forest division Bhanupratappur, District North Bastar, Kanker, was initially allotted to the Bhilai Steel Plant for a period of 30 years ending on 17-3-1993. Bhilai Steel Plant surrendered the area on 22-12-1998. The State Government, thereafter, issued a notification under Rule 59(1)(ii) of the Mineral Concession Rules, 1960 (for short "the MCR, 1960") on 10-1-2003 throwing the said area open for award of mineral concession rights inviting applications after 30 days from the date of notification.

3. The respondent/Chhattisgarh Mineral Development Corporation Limited (for short "the CMDC") and the Godawari moved applications for award of mineral concession rights pursuant to which vide order dated 5-5-2005 the State Government recommended in favour of the CMDC for grant of prospecting licence over 664.654 hectares of land and similarly recommended in favour of the Godawari for grant of mining lease over an area of 106.60 hectares. Lease in favour of the Godawari has been executed on 30-9-2008.

4. By moving applications on 19-6-2007 petitioner Om Prakash Agrawal applied for grant of prospecting licence over an area of 195.00 hectares whereas petitioner Raj Kumar Dammani applied for prospecting licence for an area of 200.00 hectares. Godawari applied for grant of mining lease for an area of 32.360 hectares on 4-5-2009.

5. The State Government, after considering the applications of the petitioners and the respondent Godawari, passed an order dated 4-2-2010, inter alia, stating that by State Government's notification dated 2-2-1981 the State Government has reserved the area, however, it is also provided therein that the mineral concession rights can also be granted to such private institutions who have established iron ore based industry in the State of Chhattisgarh, but since the petitioner Om Prakash Agrawal has not established any iron ore based industry in the State nor the area applied for by him is contiguous, his application deserved to be dismissed. Similarly the area applied for by the petitioner Raj Kumar Dammani has already been awarded to the CMDC, thus, the area being not available for further consideration, his application also deserves to be dismissed. It was stated in the order that the Godawari has already established iron ore based DRI plant having annual capacity of production of sponge iron up to 4.95 lac tones, production of steel up to 4.00 lac tones together with captive power plant of 53 MW and the area applied for by the Godawari is encircled on 3 sides by the area admeasuring 106.60 hectares for which the mining lease has already been granted to it, therefore, the applied area being contiguous and the proposed user for its existing plant, the said respondent Godawari deserves to be granted mining lease with the condition that the Godawari shall use the iron ore for its plant located in the State of Chhattisgarh and shall not be entitled to sell the iron ore elsewhere.

6. Feeling aggrieved by the said grant in favour of the respondent Godawari, both the petitioners preferred revision applications under Section 30 of the Mines

and Minerals (Development and Regulation) Act, 1957 (for short "the MMDR Act, 1957") read with Rule 55 of the MCR, 1960 before the Central Government. The said revision applications preferred by both the petitioners have been dismissed by the impugned common order.

Rival contentions

7. Shri B.P. Sharma, learned counsel appearing for the petitioner Om Prakash Agrawal, would submit that the petitioner is also covered by the notification dated 2-2-1981 because he also intends to establish an iron ore based industry in the State of Chhattisgarh. Shri Sharma would further submit that the petitioner has not been afforded proper and effective opportunity of hearing and further that when the matter was under consideration before the State Government, petitioner was heard by some officer, but the order was passed by the some other officer, therefore, the order of State Government is vitiated. Shri Sharma would next submit that the State has passed an arbitrary order to benefit the respondent Godawari.

8. Shri Parag Kotecha, learned counsel appearing for the petitioner Raj Kumar Dammani, would reiterate the submissions already made by Shri B.P. Sharma.

9. Per contra, Shri Arun Sao, learned Dy. Advocate General appearing with Shri Gary Mukhopadhyay, learned Dy. Govt. Advocate, would support the impugned order on the submission that proper opportunity of hearing was provided by the State Government to both the petitioners and, thereafter, a reasoned order has been passed, therefore, principles of natural justice have not been violated. Shri Sao would further submit that the Government has taken a decision to grant mining lease to the Godawari for proper utilization of its resources to augment an industry established and functional in the State of Chhattisgarh, therefore, the same being in furtherance of its industrial policy, no case for inference is made out.

10. Shri Saurabh Sharma and Shri Shivraj Singh, learned counsel appearing for the respondent CMDC, would submit that the order passed by the State Government on 4-2-2010 was not at all concerned with the CMDC and moreover, the CMDC was never made a party by any of the petitioner in their revision applications before the Central Government, therefore, the writ petitions against the CMDC is not maintainable.

11. Shri Amrito Das, learned counsel appearing for the respondent Godawari, would refer to the provisions contained in Sections 6 & 11 of the MMDR Act, 1957 read with Rule 59 of the MCR, 1960 to submit that the Godawari having already established an iron ore based plant in the State of Chhattisgarh, its application has rightly been held more suitable for grant of mining lease. Shri Das would further submit that the petitioner Om Prakash Agrawal applied for mining lease in individual capacity although the company, which desires to establish plant in Chhattisgarh, was registered on 6-1-2006 i.e. much before the application filed by him on 19-7-2007. Shri Das would also submit that the area applied for by

the petitioner Om Prakash Agrawal is not contiguous and compact, therefore, his application has rightly been rejected by the State Government.

12. According to Shri Das, even the company of which Om Prakash Agrawal is a Director has its plant in the State of Andhra Pradesh and not in the State of Chhattisgarh, therefore, it is not covered within the notification dated 2-2-1981. Shri Das would strenuously urge that Godawari has rightly been recommended, in accordance with the provisions of the MMDR Act, 1957 and the MCR, 1960 and in furtherance of the industrial policy of the State Government of Chhattisgarh.

13. In support of his contention, Shri Das, learned counsel for Godawari, placed reliance upon the decisions of the Supreme Court in *Kalinga Mining Corporation Vs. Union of India (UOI) and Others*, . The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee, , P.D. Agrawal Vs. State Bank of India and Others, , State of Manipur and Others Vs. Y. Token Singh and Others, , Mohd. Sartaj and Another Vs. State of U.P. and Others, and State Bank of Patiala and others Vs. S.K. Sharma, .

14. Challenge thrown by the petitioners is to an order passed by the Central Government exercising its revisory power under Section 30 of the MMDR Act, 1957 read with Rule 55 of the MCR, 1960, therefore, before proceeding to deal with the grounds of challenge this Court deems it appropriate to remind itself as to the scope of interference in such a petition as laid down by the Supreme Court in *B.K. Muniraju Vs. State of Karnataka and Others*, , *Kalinga Mining Corporation (supra)* and *Tata Cellular Vs. Union of India*, .

15. In *B.K. Muniraju Vs. State of Karnataka and Others*, , para 14) (supra) the Supreme Court held thus :

"22. It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ."

16. In *Kalinga Mining Corporation (AIR 2013 SC (Supp) 905, para 44)* (supra) the Supreme Court held thus :

"62. It is by now well settled that judicial review of the administrative action/quasi-judicial orders passed by the Government is limited only to correcting the errors of law or fundamental procedural requirements which may lead to

manifest injustice. When the conclusions of the authority are based on evidence, the same cannot be reappreciated by the Court in exercise of its powers of judicial review. The Court does not exercise the powers of an appellate Court in exercise of its powers of judicial review. It is only in cases where either findings recorded by the administrative/quasi-judicial authority are based on no evidence or are so perverse that no reasonable person would have reached such a conclusion on the basis of the material available, that the decision. The scope of judicial review is limited to the decision-making process and not to the decision itself, even if the same appears to be erroneous.

63. This Court in *Tata Cellular Vs. Union of India*, upon detailed consideration of the parameters within which judicial review could be exercised, has culled out the following principles (SCC pp. 675 & 677-78, paras 70 & 77).

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

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

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

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

- (i) **Illegality** : This means the decision-maker must understand correctly the law

that regulates his decision-making power and must give effect to it.

(ii) Irrationality, namely, Wednesbury unreasonableness.

(iii) Procedural impropriety.

The above are only the broad grounds but it does not rule out addition of further grounds in course of time."

The aforesaid judgment has been followed again and again. It was clearly observed in the said judgment that where the Court comes to the conclusion that the administrative decision is arbitrary, it must interfere. However, the Court cannot function as an appellate authority substituting the judgment for that of the administrator.

17. In *Tata Cellular Vs. Union of India*, , para 91) (supra) the Supreme Court held thus :

"75. In *Chief Constable of the North Wales Police v. Evans* Lord Birghman said :

"Judicial review, as the words imply, is not an appeal from a decision, but a review of the manner in which the decision was made.

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Judicial review is concerned, not with the decision, but with the decision-making process. Unless that restriction on the power of the Court is observed, the Court will in my view, under the guise of preventing the abuse of power, be itself guilty of usurping power."

In the same case Lord Hailsham commented on the purpose of the remedy by way of judicial review under RSC, Ord. 53 in the following terms.

"This remedy, vastly increased in extent, and rendered, over a long period in recent years, of infinitely more convenient access than that provided by the old prerogative writs and actions for a declaration, is intended to protect the individual against the abuse of power by a wide range of authorities, judicial, quasi-judicial, and, as would originally have been thought when I first practised at the Bar, administrative. It is not intended to take away from those authorities the powers and discretions properly vested in them by law and to substitute the courts as the bodies making the decisions. It is intended to see that the relevant authorities use their powers in a proper manner (p. 1160)."

In *R. v. Panel on Take-overs and Mergers, ex p Datafin plc*, Sir John Donaldson, M.R. commented :

"An application for judicial review is not an appeal."

In *Lonrho plc v. Secretary of State for Trade and Industry*, Lord Keith said :

"Judicial review is a protection and not a weapon."

It is thus different from an appeal. When hearing an appeal the Court is concerned with the merits of the decision under appeal. In *Amin, Re.* Lord Fraser observed that :

"Judicial review is concerned not with the merits of a decision but with the manner in which the decision was made.....Judicial review is entirely different from an ordinary appeal. It is made effective by the Court quashing the administrative decision without substituting its own decision, and is to be contrasted with an appeal where the appellate tribunal substitutes its own decision on the merits for that of the administrative officer."

18. In view of the above-stated principles, this Court is required to examine the sustainability of the arguments raised by the petitioner. It has been stated that principles of natural justice have not been followed inasmuch as the petitioner Om Prakash Agrawal was issued a notice on 7-8-2007, whereupon his counsel appeared on 21-8-2007 and thereafter, next date of hearing was given on 3-9-2007. The petitioner was, thus, heard on this date and thereafter he submitted a detailed reply on 17-9-2007, however, the officer who afforded hearing to the petitioner did not pass any order, as the final order was passed after more than 2 years i.e. 4-2-2010. Thus, the submission is that the officer who heard the petitioner has not passed the order. It appears, the complaint is not about not being afforded any opportunity of hearing, but the same is about passing of an order by different officer than the one who heard the petitioner.

19. The above stated ground of challenge requires consideration with reference to the nature of authority and jurisdiction exercised by the State Government and Central Government. It is also to be seen as to whether the petitioner was given hearing proposing any adverse action or withdrawal of any right already conferred on him or it was a case of institutional hearing before proceeding to decide a claim or application made by the petitioner.

20. In this context, the observations made by the Supreme Court in *Kalinga Mining Corporation Vs. Union of India (UOI) and Others*, paras 37, 48 (supra) can be profitably referred. The following has been observed by the Supreme Court in paras 47, 70 & 71.

"47. The appellant now claims that Order dated 27-9-2001 is void as it has been passed in breach of the rules of natural justice. Mr. Krishnan Venugopal, Senior Advocate, appearing for the appellant has submitted that in pursuance of the order dated 2-7-2001 passed by the High Court in *Kalinga Mining Corporation Vs. Union of India (UOI) and Others*, parties were heard by Mr. S.P. Gupta, Joint Secretary for two days i.e. 28-8-2001 and 13-9-2001. However, the Order dated 27-9-2001 has been passed by Dr. R.K. Khatri, Deputy Secretary, who did not hear the parties at all. Mr. Krishnan submits that, by virtue of the orders passed by the High Court, the proceedings before the Central Government were quasi-judicial in nature. Therefore, it was necessary that the same officer who gave a hearing to the parties ought to have passed the order in relation to the

competing claims with regard to the grant of mining lease.

70. We also do not find much substance in the submission made by Mr. Krishnan that the Order dated 27-9-2001 is vitiated as it has been passed by an officer who did not give a hearing to the parties. This is clearly a case of an institutional hearing. The direction has been issued by the High Court for a hearing to be given by the Central Government. There was no direction that any particular officer or an authority was to give a hearing. In such circumstances, the orders are generally passed in the relevant files and may often be communicated by an officer other than the officer who gave the hearing.

71. The legality of institutional hearing has been accepted in England since *Local Govt. Board v. Arlidge*. The aforesaid judgment was quoted with approval by this Court in *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, . This Court approved the following passage from the speech of the Lord Chancellor in the aforesaid case. (*Arlidge case*, AC. p. 133).

"My Lords, I concur in this view of the position of an administrative body to which the decision of a question in dispute between parties has been entrusted. The result of its inquiry must, as I have said, be taken, in the absence of directions in the statute to the contrary to be intended to be reached by its ordinary procedure. In the case of the Local Government Board it is not doubtful what this procedure is. The Minister at the head of the Board is directly responsible to Parliament like other Ministers. He is responsible not only for what he himself does but for all that is done in his department. The volume of work entrusted to him is very great and he cannot do the great bulk of it himself. He is expected to obtain his materials vicariously through his officials, and he has discharged his duty if he sees that they obtain these materials for him properly. To try to extend his duty beyond this and to insist that he and other members of the Board should do everything personally would be to impair his efficiency. Unlike a Judge in a Court he is not only at liberty but is compelled to rely on the assistance of his staff."

In view of the aforesaid settled position of law, it is difficult to accept the submissions of Mr. Krishnan that the Order dated 27-9-2001 suffers from any legal or procedural infirmity."

(Emphasis supplied)

21. The Supreme Court in *Ossein and Gelatine Manufacturers Association of India Vs. Modi Alkalies and Chemicals Limited and Another*, , held thus :

"6. There was some discussion before us on a larger question as to whether the requirements of natural justice can be said to have been complied with where the objections of parties are heard by one officer but the order is passed by another. Shri Salve, referring to certain passages in *Local Government Board v. Arlidge*. *Ridge v. Baldwin*. *Regina v. Race Relations Board*. *Ex parte Selvarajan* and in *de Smith's Judicial Review of Administrative Action* (4th Edn., pp. 219-220)

submitted that this was not necessarily so and that the contents of natural justice will vary with the nature of the enquiry, the object of the proceeding and whether the decision involved is an "institutional" decision or one taken by an officer specially empowered to do it. Shri Divan, on the other hand, pointed out that the majority judgment in Gullapalli Nageswara Rao and Others Vs. Andhra Pradesh State Road Transport Corporation and Another, has disapproved of Alridge case and that natural justice demands that the hearing and order should be by the same officer. This is a very interesting question and Alridge case has been dealt with by Wade. We are of opinion that it is unnecessary to enter into a decision (sic discussion) of this issue for the purposes of the present case. Here the issue is one of grant of approval by the Government and not any particular officer statutorily designated. It is also perfectly clear on the records that the officer who passed the order has taken full note of all the objections put forward by the petitioners. We are fully satisfied, therefore, that the requirements of natural justice have been fulfilled in the present case."

(Emphasis supplied)

22. In the case in hand also, like in the case of Kalinga Mining Corporation Vs. Union of India (UOI) and Others, , the State Government was dealing with the application for grant of mineral concession. The provisions of the MMDR Act, 1957 or the MCR, 1960 confers power for a decision on application for mineral concession on the State Government and not on any specified officer, therefore, the decision was to be taken by the State Government. It is a case of institutional decision and, as such, merely because some officer other than one who heard the petitioner, has passed the order, would not render the decision illegal or vitiated. Moreover, the entire note sheet of the proceedings undertaken by the State Government have been placed on record, which would reveal that elaborate exercise has been undertaken by the State Government.

23. In view of the above, the first ground of challenge regarding violation of principles of natural justice fails to impress this Court and is, therefore, rejected.

24. The next ground of challenge revolves around the notification dated 2-2-1981 and the State's Industrial Policy dated 18-2-2002. It has been urged that since the petitioner also intends to establish its iron ore based plant in this State of Chhattisgarh, he is entitled to benefit of the said notifications and the preference conferred on the Godawari is illegal. In this connection, it is to be seen that the petitioner moved an application for grant of prospecting licence as an individual and not on behalf of VSG Industries or Maa Mahamaya Industries, with whom he is associated as Director. Both the companies were registered and incorporated prior to the date of moving of application by the petitioner for grant of prospecting licence, yet the application was not moved by the companies. Moreover, the said companies have their plants in the State of Andhra Pradesh and not in the State of Chhattisgarh, whereas the respondent Godawari has an operational DRI Plant with annual production capacity of sponge iron up to 4.95 lac tonnes, production of steel up to 4.00 lac tonnes together with captive power

plant of 53 MW in the State of Chhattisgarh.

25. The notification dated 2-2-1981 provides that grant of mineral concession of iron ore in Bastar and Durg Districts shall also be considered for such establishment/enterprise or industry, who have established their iron ore based industry in the State of Chhattisgarh. State Industrial policy dated 18-2-2001 has also to the effect that preferential rights for allotment of mineral concession in the State would be granted to those, who had established their plants/ Industries in the State of Chhattisgarh itself. Thus, the decision of the State Government holding Godawari, as more suitable than the petitioner, is in accordance with the Government policy.

26. Petitioner's application has also been rejected on the ground that the area applied for by the petitioner is not compact or continuous.

27. Section 6(1)(c) of the MMDR Act, 1957 reads thus :

"6(1)(c) any reconnaissance permit, mining lease or prospecting licence in respect of any area which is not compact or contiguous :

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

28. Keeping in view of the above provision of Section 6(1)(c) of the MMDR Act, 1957, it is to be seen that the area applied for by the petitioner was in two blocks being 171.25 hectares and 23.75 hectares. Thus, the area was not compact or contiguous. Moreover, the first applied block of 171.25 hectares covered the area, for which the mining lease has already been granted to the CMDC. The petitioner has neither challenged the mining lease awarded to the CMDC nor arrayed the said CMDC before the Central Government. As a matter of fact, the CMDC is not at all concerned with the State Government's order dated 4-2-2010 and its application was separately dealt with and mineral concession was already granted to it way back on 5-5-2005.

29. In the notice served by the State Government on 7-8-2007, it was informed to the petitioner that the area applied by him is overlapping with the area already granted to the CMDC and Godawari, however, while replying to the said notice, the petitioner stated that the area marked with red ink is neither applied nor allotted to anybody, however, the area applied by him and Rajkumar Dammani overlapped, therefore, both of them shall restrict their claim over one half area each. In the same reply, he further made a conditional offer that if the red ink area is granted to him, he shall leave his claim for the remaining applied part. Thus, the petitioner's application remained for both the blocks i.e. 171.25 hectares and 23.75 hectares.

30. Since, it is settled that this Court, while exercising jurisdiction under Article

226 /227 of the Constitution of India, cannot upset the findings or the reasons assigned by the administrative/statutory authority and the State Government having concluded that the area applied for by the petitioner is not compact or contiguous, this Court cannot take a different view of the matter, as the same would amount to interfere with the finding of the fact.

31. In the impugned order, the Central Government has also recorded a finding in a para 9 of the order that the area granted to Godawari is also surrounded from more than three-fourth of the perimeter by the area already granted to Godawari. Thus, the area becomes compact or contiguous for Godawari and not for the petitioner. The Central Government has rightly agreed with the submission of Godawari that the State Government's decision to grant mineral concession to Godawari is conducive to zero waste mining and it will obviate barrier losses. It was also informed in course of hearing that after recommendation made in favour of the Godawari, the mining plan submitted by it has been approved by the Indian Bureau of Mines (IBM) on 22-5-2011.

32. Petitioner Om Prakash Agrawal has also claimed preferential right on the ground that his application was prior to the application of Godawari. This preferential treatment has been claimed under Section 11(2) of the MMDR Act, 1957.

33. The respondents have contested this part of the petitioner's argument by taking recourse to sub-sections (3) & (4) of Section 11 of the MMDR Act, 1957, Provisions contained under Section 11 needs reference to dwell on the issue, therefore, the same is quoted below :-

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

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

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

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

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

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

(2) Subject to the provisions of sub-section (1), Where the State Government has not notified in the Official Gazette the area for grant of reconnaissance

permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later :

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

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

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

(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.

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 simultaneous as if all such applications have been received on the same day and the State Government, after taking into consideration the matters specified in sub-section (3), may grant the reconnaissance permit, prospecting licence or mining lease, as the case may be, to such one of the applicants as it may deem fit.

(5) Notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining

lease, as the case may be, to an applicant whose application was received later in preference to an application 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."

34. A reading of Section 11(2) of the MMDR Act, 1957 would make it apparent that the first part applies to non-notified area for according preferential right to the first in time applicant, however, where the State Government has invited applications by notification in the official gazette for grant of mineral concession, all the applications received pursuant to such notification shall be deemed to have been received on the same date and the State Government shall grant mineral concession to such one of the applicants as it may deem fit and this will be done after taking into consideration the matters specified in sub-section (3) and the provisions contained in Rule 35 of the MCR, 1960, wherein, it is provided that the State Government is to account for the factors in Section 11(3) and the "end-use" of the mineral by the applicant. Similarly, sub-section (4) of Section 11 provides that where the area has been notified in the official gazette, 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 mineral concession as the case may be, to such one of the applicants as it may deem fit. Sub-section (5) further provides that notwithstanding anything contained in sub-section (2), but subject to the provisions of sub-section (1), the State Government may, for any special reasons to be recorded, grant a reconnaissance permit, prospecting licence or mining lease, as the case may be to an applicant whose application was received later in preference to an application whose application was received earlier.

35. The State Government, while considering suitability of the applicants, has found that the respondent Godawari is more suitable for grant of mining lease on the basis of its net worth of Rs. 380 crores supported by its annual return and balance-sheet and the financial investment in contrast to the application moved by the petitioner in his individual capacity and his plant of two companies of which he is Director being situated in the State of Andhra Pradesh. It is also mentioned in the revisional order that the petitioner does not have any previous experience of carrying out prospecting/mining operation.

36. The Supreme Court in Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, , held thus :

"33. Apart from the above infirmity, the proceedings of the Chief Minister also violate Section 11(4) of the Act which reads thus:

"11. (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."

The above sub-section permits only the applications made pursuant to the notification to be taken into account and not applications made prior to the notification. The notification referred to in the first proviso to Section 11(2) is intended only to invite applications in respect of "virgin areas". In the case of previously held areas covered by the present Notification dated 15-3-2003, applications made prior to the notification cannot be entertained because they are premature.

51. It is also clear that the main provision in Section 11(2) gives preference to a prior applicant for grant of reconnaissance permit. prospecting licence or mining lease over later applicants where the State Government has not issued any notification. The analysis of the Report makes it clear that the main provision in Section 11(2) applies to "virgin areas". It further makes it clear that to the extent that an area that is previously held or reserved would require a notification for it to become available."

(Emphasis supplied)

Thus, the area being notified, inviting applications, the petitioner Om Prakash Agrawal was not entitled for any preferential treatment.

37. Insofar as the writ petition filed by the petitioner Rajkumar Dammani is concerned, it has been observed by the Revisory Authority that the entire area applied by him has already been granted to CMDC, therefore, the area was not at all available for grant of mineral concession. Moreover, CMDC has not been made a party before the Revisory Authority or in the writ petition filed by him before this Court. Thus, the application filed by the petitioner Rajkumar Dammani has rightly been rejected by the State Government. Consequently, both the writ petitions, being sans substratum, stand dismissed without any order as to costs.