
(2009) 02 JH CK 0033

In the Jharkhand High Court

Case No : Writ Petition (C) No. 7640 of 2006

Pawanjay Steel and Power Ltd.

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 04-02-2009

Acts Referred:

Mineral Concession Rules, 1960 — Rule 15, 26, 26(1)
Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(1),
11(2), 11(3), 11(4)

Citation : AIR 2009 Jhar 105 : (2009) 57 BLJR 1437

Hon'ble Judges : D.G.R. Patnaik, J

Bench : Single Bench

Advocate : Md. Mokhtar Khan, S.C.C.G, S.K. Kapoor, Pandey Neeraj Rai and R.R. Sinha, for the Appellant; P.K. Prasad, A.G., Sumir Prasad, Raju Ram Chandran, N.K. Agrawal and B.P. Pandey, M. Rohatgi and Alok Kumar, for the Respondent

Final Decision : Dismissed

Judgement

D.G.R. Patnaik, J.—Challenge in this writ application is to the letter No. 5/40/2004-MIV dated 24.08.2006 (Annexure-10), issued by the Respondent No. 6 whereby approval was granted by the Central Government to the proposal for grant of mining lease of iron ore in favour of the private Respondent No. 7 and also against the recommendation made by the Respondent-State Government on the basis of which the Central Government had granted the approval. The petitioner has further prayed for issuance of a direction to the Respondents to reconsider the application of the petitioner for grant of mining lease of iron ore and manganese ore. An alternative prayer has also been made for a direction to the concerned Respondents-authorities to reconsider the grant of mining lease to at least half of the area applied for by the petitioner.

2. The facts of the petitioner's case in brief are as follows:

The petitioner being a Company registered under the Companies Act and

engaged in the business of manufacturing Sponge iron, had applied to the Respondents-State Government of Jharkhand for grant of mining lease for the specified area of land, way back on 08.01.2003 alongwith the prescribed fees and other requirements.

Besides the petitioner-Company, three other applicants, including the Respondent No. 7, had also applied for the grant of mining lease for the same area comprising of 922.30 acres of mining area identified by the State Government.

Out of the total four applicants, two had withdrawn, leaving the petitioner and the Respondent No. 7 only in the fray.

In response to the applications, the Respondent No. 3, namely, the Director, Department of Mines & Geology, Mines Directorate, Ranchi invited the petitioner and the other applicants for granting hearing to them under the provisions of Rule 26 of the Mineral Concession Rules, 1960 fixing 12.03.2004 as the date for hearing. Though the hearing was conducted but no further action was taken by the Respondent No. 3. In the meantime, the petitioner-Company entered into a memorandum of understanding on 01.06.2004 for establishing an iron ore manufacturing industry in the State of Jharkhand.

The petitioner's grievance is that though at the time of hearing, the Respondent No. 3 had assured the petitioner-Company of granting mining lease of 50 per cent of the applied area but ultimately the entire area was sanctioned to the Respondent No. 7 without giving the petitioner any further opportunity of being heard or for negotiation.

The petitioner's further contention is that vide letter No. 2531 dated 08.12.2005, Respondent No. 4, namely, the Deputy Secretary to the Government, Department of Mines & Geology, Jharkhand, Ranchi had forwarded a misleading comparative chart containing particulars of the petitioner's application and that of the Respondent No. 7 to the Respondent No. 6, namely, the Under Secretary to the Government of India, Ministry of Mines, New Delhi alongwith the State Government's recommendation approving the grant of mining lease to the Respondent No. 7.

Being aggrieved by such conduct of the Respondent-State Government, the petitioner filed a representation on 27.07.2005 before the Respondent No. 4 followed by another representation on 20.12.2005 to the Respondent No. 5, namely, the Secretary, Ministry of Mines, Union of India, New Delhi.

On receipt of the petitioner's representation, the Respondent No. 6 forwarded the same to the Respondent No. 2, namely, the Secretary, Department of Mines and Geology, Jharkhand, Ranchi alongwith a covering letter asking the Respondent No. 2 to send his reply to two queries, namely the date of the application of each of the applicant over the area and to clarify as to whether the Respondent No. 7 is the first applicant or a later applicant and also to submit his

comments on the representation of the petitioner.

In the meanwhile, the petitioner also filed a fresh representation dated 28.02.2006, praying for recommending the petitioner's name to the Central Government for approval and also praying for allotment of the above iron ore mines to the petitioner-Company.

However, while the petitioner was eagerly waiting for a positive response, the Central Government vide its impugned letter No. 5/40/2004-MIV dated 24.08.2006, under the signature of Respondent No. 6, conveyed to the State Government its approval for the grant of mining lease of the same area comprising of 922.30 acres, in favour of the Respondent No. 7.

The petitioner filed a fresh representation before Respondent No. 3 for reconsideration of the matter pointing out that certain relevant and material facts were not taken into consideration while granting the mining lease in favour of the Respondent No. 7. The petitioner had also tried to point out that on proper and rational comparison, the petitioner certainly stands superior in all respects to the Respondent No. 7 and that the petitioner-Company was eligible in all respects for the grant of mining lease.

3. Assailing the impugned approval of the Central Government, Mr. S.K. Kapoor, learned senior Counsel appearing for the petitioner, submits the following grounds:

(i) That the impugned approval of the Central Government dated 24.08.2006 is founded upon the recommendation of the State Government dated 29.06.2004 is wholly without due application of mind and based entirely on misrepresentations made by the State Government and also without considering the superior merit of the petitioner's eligibility vis-a-vis the Respondent No. 7, in proper perspective.

It is explained that even as admitted by the Respondents, the State Government's recommendation dated 29.06.2004 was treated by the Central Government as incomplete and insufficient requiring further informations from the State Government on certain relevant issues. The subsequent recommendation of the State Government dated 08.12.2005 was also bad in law, as because it was based partly upon irrelevant, incorrect, misconceived and absurd considerations and was reached leaving out all material and relevant considerations qua Pawanjay Steel & Power Ltd. (the petitioner).

(ii) The records, including the notes maintained on the basis of the correspondences exchanged between the State Government and the Central Government, would reveal that the information sought for by the Central Government by its letter dated 17.01.2006, in response to the State Government's letter dated 29.06.2004 was never furnished by the State Government and even in absence of the requisite information, the Central Government had abruptly proceeded to grant the impugned approval of the State

Government's recommendation in favour of the private Respondent No. 7. Learned Counsel refers in this context to the office notes of several dates in between 20.12.2005 to 24.08.2006.

(iii) That the action of the State Government is against the provisions of Rule 26 of the Mines and Minerals (Development & Regulation) Act, 1957 as because the concerned authorities of the Respondent-State have totally ignored the fact that all the conditions mentioned under the provisions of Rule 26 of the Act were in favour of the petitioner and not in favour of the Respondent No. 7.

(iv) That while making the recommendation in favour of the Respondent No. 7, the Respondents-State authorities have not assigned any reason whatsoever as to why the petitioner has been refused the grant of lease.

(v) That the State Government has with mala fide intentions, ignored certain vital facts, particularly that the State Government had itself entered into a memorandum of understanding with the petitioner-Company for establishing an Iron and Steel Manufacturing Plant in the State of Jharkhand and also the fact that the petitioner-Company has substantial experience in the business of manufacturing Sponge iron at its established plant at Rourkela (Orissa) and has its associated ancillary industries, some of them having long been established in the State of Jharkhand itself.

(vi) That the correspondences exchanged by and between the State and the Central Government, were in the context of the provisions of Section 11(5) of the M.M.D. & R. Act and Section 5(1) of the Act. Since this was so, the Respondents could not have decided on the basis of the provisions of Section 11(2) of the Act, since the provisions of Section 11(2) of the Act is not conclusive where the provisions of Section 11(5) and its proviso, has been considered as invokable. In this context, learned Counsel refers to and relies upon a judgment of the Supreme Court in the case of Indian Metals and Ferro Alloys Ltd. Vs. Union of India and others, . Learned Counsel argues that the principle of first come first serve does not conclude the issue and it is the party best suited as per the criteria laid down under the provisions of Section 11(3) of the Act that deserves to be granted the mining lease in the interest of the National Mines and Mineral Development.

(vii) That the impugned recommendation of the State Government is violative of the Rules of Executive Business since the procedure as laid down in Rule 15 of the Rules regarding taking of a decision on the grant of mining lease has not been followed. Therefore, the decision taken by the State Government culminating in the recommendations made in favour of the Respondent No. 7, is ultra vires, the statutory rules. Learned Counsel refers in this context to the judgment of the Supreme Court in the case of Indian Charge Chrome Ltd. and Anr. v. Union of India and Ors. reported in 2006 (12) SCC 331.

4. Counter affidavit has been filed on behalf of the Respondent-State. Denying and disputing the entire claims advanced by the petitioner. The stand taken by

the Respondent-State is as follows:

The Respondent No. 7 had submitted an application for grant of mining lease for Iron ore and Manganese ore over an area of 922.30 acres of land at Mauza Lapunga and Thakura, in the District of West Singhbhum, Jharkhand on 23.10.2002.

Subsequently on 08.01.2003, the petitioner had also submitted its application for grant of mining lease for the same area. Apart from these two applicants, two other applicants, namely M/s. Usha Martin Limited and M/s. Sun Bio Technology had also submitted their respective applications on 10.02.2003 and 27.06.2003 respectively.

All the applicants were given opportunity of hearing before the Secretary of Mines in terms of Rule 26(1) of the Mineral Concessions Rules, 1960 on different dates.

The State Government after hearing the applicants and after recording its satisfaction, had recommended for grant of mining lease in favour of the Respondent No. 7 and had forwarded its letter dated 29.06.2004 to the concerned Department of the Central Government for its approval for grant of the mining lease for Iron ore and Manganese ore to the Respondent No. 7 under the provisions of Section 5(1) and Section 11(5) of the M.M.D. & R. Act, 1957. The chart containing the comparative merits of each of the applicants was also enclosed with the forwarding letter. Correspondences were exchanged by and between the State and the Central Governments giving the details of the informations, called for by the Central Government.

While recommending the case of the Respondent No. 7, the State Government has taken into consideration the fact that the Respondent No. 7 is financially strong and a leading industry in the State of Jharkhand with an annual turn over of Rs. 110 crores and has already established a sponge iron plant of a capacity of 300 tonnes per day and a ferro alloy manufacturing plant of a capacity of 9 M.V.A. in the State of Jharkhand and further, that the Respondent No. 7 had proposed to invest Rupees 121 Crores and in future they have a plan to invest 500 Crore rupees, which is more than the proposed Rs. 200/- crores investments of the petitioner in the State of Jharkhand. The other considerations were that the Respondent No. 7 required 13.5 million tonnes of iron ore for a period of 50 years in its existing plant of 300 TDP Sponge iron and have further proposed to expand their existing industry to a capacity for manufacture of 900 TDP Sponge iron plant.

5. Mr. P.K. Prasad, learned Advocate General would explain that the petitioner cannot raise any grievance against the State Government's recommendation made in favour of the Respondent No. 7 personally because the petitioner was granted adequate opportunity of being heard in the matter of its claim and secondly, because on comparative assessment and considering the industrial policy of the State Government, the Respondent No. 7 was found to be

preferable as compared to the petitioner. Furthermore, the Respondent No. 7 was the first applicant and in terms of provisions of Section 11(2) of the M.M.D. & R. Act, the Respondent No. 7 did have the right to claim preference. Notwithstanding such claim, the State Government had allowed all the applicants including the petitioner, opportunity of being heard and a comparative chart was prepared on the basis of the criteria as laid down under the provisions of Section 11(3) of the Act. Such exercise was undertaken to enable the petitioner and the other rival claimants to establish their superior claims which, as the facts would indicate, the petitioner-Company could not establish.

Refuting the allegations of the petitioner that the State Government had never replied to the Central Government's queries contained in its letter dated 17.12.2006 (Annexure-8), learned Counsel explains that the informations sought for by the Central Government vide its aforementioned letter was only in respect of the date of application of each of the applicants over the two area. This information was already conveyed by the earlier correspondence made by the State Government. Even, by way of repetition, the informations on the queries were communicated to the Central Government vide its letter dated 08.12.2005. After considering the fact that the Respondent No. 7 was the first applicant and after considering the merit wise chart and the reasons assigned by the State Government for preferring the Respondent No. 7, the Central Government had accorded its approval for the grant of the mining lease in favour of the Respondent No. 7.

Learned Counsel explains that though the petitioner-Company in the memorandum of understanding with the State Government had offered for setting its plant in the State of Jharkhand but the memorandum of understanding was valid for a period of one year only and it has lost its force thereafter and the petitioner-Company cannot therefore base its claim on the memorandum of understanding.

6. The Respondent-Central Government and the private Respondent No. 7 have also submitted their respective counter affidavits. Both these Respondents have adopted the same stand as taken by the Respondent-State Government, while denying and refuting the claim of the petitioner.

7. Mr. Md. Mokhtar Khan, learned Counsel for the Respondents-Central Government would explain that the State Government on 29.06.2004 had submitted its proposal for grant of mining lease for iron ore over an area of 922.30 acres in Mauza Lapunga and Thakura in the district of West Singhbhum in favour of the Respondent No. 7 seeking approval of the Central Government under the provisions of Section 5(1) and Section 11(5) of the M.M.D. & R. Act, 1957. On receipt of the proposal, certain clarifications were sought for from the State Government, along with the State Government's comments on the representation of the petitioner. The State Government submitted its detailed comments on the petitioner's representation, vide its letter dated 13.09.2005, alongwith the other informations sought for under a comparative chart specifying

the details concerning each of the items as per criteria laid down under the provisions of Section 11(3) of the Act.

Learned Counsel explains that after going through all the relevant informations including the clarifications submitted by the State Government, the Central Government was satisfied that the Respondent No. 7 was the first applicant and that it does possess a comparatively better merit than the petitioner-Company. The Central Government was also satisfied that adequate opportunity of being heard was accorded to all the applicants including the petitioner-Company under the provisions of Rule 26 of the Mineral Concession Rule and under the provisions of Section 11(3) of the Act, has been duly and meticulously applied. Learned Counsel explains that the Central Government is satisfied that in the facts and circumstances of the case and as per the provisions of Section 11(2) of the Act, the Respondent No. 7 has a right of preference, since it was the first applicant and the petitioner has not brought on record any such material to establish that its claim stood on a better footing from the Respondent No. 7. It is further explained that the query relating to the date of filing of the application by the individual applicants, were already available on record and as such, the query made by the Central Government was only a repetition and was not necessary.

8. Submitting arguments on behalf of the private Respondent No. 7, Mr. Raju Ram Chandran, learned senior Counsel would support the stand taken by the Respondent-State Government and the Respondents-Central Government. Refuting the petitioner's grounds and arguments, learned Counsel would refer to the comparative chart prepared by the concerned authorities of the State Government based on the informations supplied by the individual applicants. Learned Counsel would explain that undisputedly the Respondent No. 7 was the first applicant in terms of Section 11(2) of the Act, who had a preferential right of consideration over the other applicants. The Respondent No. 7 has an existing Iron Ore Plant and the Manganese ore Plant (Ferro Plant) located at Giridih in the State of Jharkhand, whereas the petitioner-Company does not have any such industry in the State of Jharkhand. The petitioner's plant having an installed capacity of 300 TDP requires Iron and Manganese ore, which at present is purchased from the open market, raising thereby the cost of production. The Respondent No. 7 has already made investment of about Rs. 73 crores and is further expanding its industry by making further investment of Rs. 500 crores, whereas the petitioner had made a proposal for investment of Rs. 200 crores only and has not taken any further steps in this regard. The Respondent No. 7 has already taken steps for further expansion of its existing industry in the State of Jharkhand.

Adverting to the legal aspects of the dispute, learned Counsel would explain that the provisions of Section 11(2) of the Act only provides that an earlier applicant shall have the preferential right to be considered for grant of a mining lease over the later applicant. The use of the word "shall" in the Section, cannot according to the, learned Counsel, be construed as "May" as it can otherwise defeat the

clear intention of Parliament, which has chosen to grant a limited preferential right, namely the right "to be considered".

Learned Counsel explains further that the provisions of Section 11(2) had no application whatsoever to the facts of the present case. The provisions of Section 11(2) are attracted only in two specific situations, and neither of which obtains here. The first situation contemplated by the second proviso to Section 11(2) of the Act, is in the context of a situation when more than one application is received on the same day. The second situation, contemplated in Section 11(4) of the Act require all applications to be considered simultaneously, because they have been made in response to a notification, specifying a date for receiving such notification. Learned Counsel explains that in the present case, admittedly none of the applications were received on the same date nor was there any Government Notification published in advance inviting such applications and admittedly, the Respondent No. 7 was the first applicant for the Respondent No. 5.

Learned Counsel explains further, that the only situation in which a departure can be made from the normal rule of preferential consideration enacted by Section 11(2) of the Act, is the situation as contemplated u/s 11(5) of the Act in order to enable a later applicant to persuade the State Government with special reasons for granting the lease to him instead of to the earlier applicant. Even if the subsequent applicant succeeds to persuade the State Government to record special reasons, the Central Government would still have to be satisfied with such special reasons before it accords its approval u/s 5(1) of the Act. If however, the State Government itself does not find material to record any special reasons in favour of a later applicant, the Central Government has no further role in the matter. Learned Counsel explains that in other words, the Central Government, before according prior approval u/s 5(1) of the Act, is not required to ask the State Government as to why special reasons for a later applicant under the provisions of Section 11(5) of the Act is not made.

To further explain the legal position, learned Counsel refers to the correspondence exchanged by and between the State and the Central Government. Learned Counsel refers first to the letter dated 29.06.2004, received by the Central Government from the State Government seeking approval for granting mining lease u/s 5(1) and Section 11(5) of the Act. Learned Counsel next refers to the State Government's letter dated 13.09.2005, addressed to the Central Government in reply to the later's letter dated 03.02.2005, mentioning therein that in terms of the industrial policy of the State, there is provision to give the benefit to the mineral based industry so that employment and revenue can be generated. In its letter dated 13.09.2005, the State Government has categorically mentioned that the Respondent No. 7 has an existing Sponge Iron industry in the State of Jharkhand itself, which has been established on and from 31.08.2001 and has paid Rs. 6 Crores 30 Lakhs as excise duty and about 250 men are employed in it. Learned Counsel submits that

as would appear from the counter affidavit of the Respondent-Central Government, the above facts regarding the Respondent No. 7 being an established industry in the State of Jharkhand, has been taken note of by the Central Government. Furthermore, while according the approval, the Central Government had noted down the various points, explained and clarified by the State Government in its comparative chart which confirm a greater balance in favour of the Respondent No. 7. Learned Counsel argues that the recommendation made by the Central Government did not suffer from any infirmity whatsoever and there being no arbitrariness in the decision of the State Government to recommend the grant of the mining lease in favour of the Respondent No. 7, neither the State Government's recommendation nor the approval of the Central Government be challenged as improper, illegal or arbitrary. Learned Counsel argues further, that the submissions made on behalf of the petitioner with reference to the Rules of Executive Business, is misleading and as a matter of fact, as would appear from the nothings on the files maintained by the State Government, the provisions of Rule 15 of the Rules of Executive Business have been duly applied and it was only after the Chief Minister's approval and the approval by the council of ministers, that the decision to grant the mining lease to the Respondent No. 7 was finalized and thereafter forwarded for approval to the Central Government.

9. From the rival submissions, the controversy raised by the petitioner is regarding the merits of the impugned decision taken by the State Government and the approval thereof by the Central Government, by which the mining lease is proposed to be granted to the Respondent No. 7. In challenging the decision, the petitioner apparently seeks for a judicial review of the decision making process as adopted by the Respondent-State and the Central Government.

10. It is by now well-settled by a catena of decisions of the Supreme Court that the Courts cannot interfere with the Government's freedom of contract and Government's decisions, which pertain to matters of policy. Such decisions may invite judicial intervention only if it is established that it suffers from procedural impropriety and is vitiated by arbitrariness, unfairness, illegality, irrationality, without application of mind and is unreasonable. The scope and meaning of each of these terms, has been elaborately explained by the Supreme Court, in the case of *Tata Cellular v. Union of India and Ors.* reported in (1994) 6 SCC 651.

11. The thrust of the arguments of the learned Counsel for the petitioner is primarily based on the purported procedural impropriety, arbitrariness, irrelevant considerations, lack of fairness and reasonableness and violation of the principles of natural justice on the part of the State Government and the Central Government in taking the impugned decision.

12. To buttress his arguments, Mr. S.K. Kapoor adverts to the correspondence exchanged by and between the State Government and the Central Government. Referring to the letter of the Central Government, issued soon after receipt of the State Government's impugned proposal dated 29.06.2004, learned Counsel

argues that the Central Government had found the proposal as insufficient and defective lacking information on certain details and particulars including statement of comparative statements of all the applicants. Query was therefore made by the Central Government on relevant issues in the context of the provisions of Section 11(3) and Section 11(5) of the M.M.D. & R. Act. In response, the State Government sought to justify its earlier recommendations in favour of the Respondent No. 7 by referring to some provisions of the Industrial Policy of the State Government and enclosing therewith a fresh comparative statement, claiming that the same was prepared after obtaining informations from the petitioner as well as from the Respondent No. 7.

Reading out the comparative statement, learned Counsel would explain that the statements in respect of the petitioner in the various columns of the comparative chart do not furnish the complete informations which the petitioner had furnished to the State Government and such comparative statement being not a true and correct representation of the petitioner's comparatively superior status, clearly indicate absence of application of mind, free from bias and the same ought not to have been accepted by the Central Government.

Learned Counsel explains further that in making the comparison of the petitioner with the Respondent No. 7, the State Government has deliberately ignored certain important and relevant facts, in particular, the facts that the State Government had earlier entered into a memorandum of understanding with the petitioner on its proposal to set up an integrated Steel Plant in the State of Jharkhand and the fact that the petitioner has vast experience in mining and has also a battery of qualified mining personnel and possess adequate financial soundness, capable of making heavy investments on a large scale. Learned Counsel argues that in the light of the above facts, as also the fact that the petitioner has its existing Sponge iron plant at Rourkela and is already carrying out mining operations of Bauxite and manganese at Gumla within the State of Jharkhand, the petitioner is certainly qualified for consideration since, according to the learned Counsel, it has a better edge over the Respondent No. 7.

Learned Counsel argues further that in taking the impugned decision, the Respondent-State Government and the Central Government have committed a serious error in law by confining its considerations only to the fact that the Respondent No. 7 was the first applicant and only on such basis, had extended the benefit of preference to the Respondent No. 7 over the petitioner. Referring in this context to the judgment of the Supreme Court in the case of Indian Metals and Ferro Alloys Ltd. (Supra), learned Counsel argues that the provisions of Section 11(2) of the Act, cannot be read in isolation, since the provisions of Section 11(4) completely override the provisions of Sub-section 2 of Section 11. Learned Counsel would explain that the provisions of Section 11(4) preserves the right to the State Government to grant lease to an applicant out of turn, albeit subject to two conditions, namely, (i) recording of special reasons and (ii) previous approval of the Central Government. Learned Counsel submits that the

State Government is therefore not bound to dispose of the applications on the basis of first come first serve and has the right to exercise its option in favour of any later applicant, who is better suited amongst the rival applicants and would promote the interests of National mineral development particularly of major minerals. Learned Counsel submits further that the impugned recommendation of the State Government is based on considerations, which are totally irrelevant in the context of the provisions of Section 11(3) of the Act and on this ground also, the impugned recommendation suffers from being irrational and invalid and cannot be acted upon.

13. For better appreciation of the arguments of the learned Counsel, reference to the provisions of law under the M.M.D. & R. Act, may be had. In the present case, the mineral for which the mining lease is sought for, falls in the category of a major mineral.

Section 11(1) of the Act provides for preferential rights of certain persons in the grant of prospecting licence or mining lease and reads, as under:

11. Preferential right of certain persons. - (1) Where a reconnaissance permit of 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.

14. Section 11(2) of the Act also provides a preferential right to an applicant in the following terms:

11. (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.

15. On a plain reading of the provisions of Section 11(2) it is manifest that it applies to different situations. The first being that the State Government issues a prior notification in the Official Gazette, the area for grant of reconnaissance permit or prospecting lease or mining lease and it is in response to such Notification that applications are received from applicant for mining lease in respect of any land in such area and the applicant whose application is received earlier shall have the preferential right to be "considered" for grant of the mining lease over the applicant whose application was received later.

The other circumstance, is that where the applications from the several applicants in response to the Government Notification are received within the time stipulated in the Notification, they shall be deemed to have been received on the same day for the purposes of assigning priority under this Sub-section and the State Government after considering the applications, may decide upon granting the mining lease to anyone of such applicants as it may deem fit.

16. Section 11(3) of the Act lays down the criteria and the relevant particulars for consideration for the purposes of deciding upon the grant of the mining lease to any one applicant.

17. Section 11(4) of the Act reads as follows:

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.

It is manifest that the provisions of Section 11(4) of the Act, would apply in a

situation where the State Government notifies in the Official Gazette an area for the grant of reconnaissance permit, prospecting license or mining lease and all the applications received during the specified period in the Notification shall be considered simultaneously as if received on the same date. This provision has however, been made subject to the provisions of Section 11(1) of the Act. In other words, where no such prior Notification has been issued by the State Government in advance and yet applications are received from the several applicants for grant of mining lease in respect of any particular area, then the procedure as contained in Section 11(1) of giving the preferential right to the first applicant is reserved.

18. Section 11(5) of the Act would appear to make an exception to the earlier provisions under the Sub-section 1 of Section 11 of the Act as it reads as follows:

11. (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 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.]

19. By introducing the non-obstante clause, the provisions u/s 11(5) of the Act reserves to the State Government the right to grant the mining lease to an applicant, whose application was received later in preference to an applicant whose application was received earlier but in doing so, the State Government is required to record special reasons. Where the recommendation on the basis of special reasons, made by the State Government in favour of the later applicant, is in respect of any major mineral, the Central Government's approval on the recommendation shall have to be taken before granting the mining lease to the later applicant.

20. On a collective reading of the provisions of each of the Sub-sections of Section 11 of the Act, it would be clear that while the provisions of Section 11(1) reserve a preferential right of obtaining a mining lease to an applicant who has already been granted earlier a reconnaissance permit or prospecting licence and such grant of licence by the State Government is subject to the conditions laid down in the proviso to Sub-section 1 of Section 11, the provisions of Sub-section 2 of Section 11 applies in cases where the State Government had not notified in the Official Gazette the area for grant of mining lease and when two or more persons have applied for the grant of mining lease in respect of any land in such area and in such a situation, the applicant whose application was received earlier shall have a preferential right to be considered for grant of mining lease over the applicant whose application was received later.

The provisions of Sub-section 4 of Section 11 would apply only in a situation

where the State Government notifies in the Official Gazette, an area for grant of mining lease and all the applications received during the period as specified in the Notification, shall be considered simultaneously as if received on the same date.

Sub-section 5 of Section 11, by making out an exception to the provisions of Sub-section 2 of Section 11 reserves the right of the State Government to grant mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier but in doing so, the State Government has to record special reasons for denying the benefit of preferential consideration to the first applicant.

21. The Rules, which govern the procedure of application of the provisions of Section 11 are laid down in Chapter IV of the Mineral Concession Rules, 1960.

22. Rule 26 of the Mineral Concession Rules, 1960 reserves the right of the State Government to refuse to grant or renew a mining lease to an applicant. Rule 26 reads as follows:

[26. Refusal of application for grant and renewal of mining lease.-

[(1) [The State Government may, after giving an opportunity of being heard and] for reasons to be recorded in writing and communicated to the applicant, refuse to grant or renew a mining lease over the whole or part of the area applied for.]

23. In the present case, admittedly, no prior notification was issued by the State Government inviting applications for grant of mining lease over an specified area. The applications were received from as many as four applicants, out of whom the Respondent No. 7 was the first applicant.

Admittedly, each of the four applicants, were given opportunity of being heard as per the Rule 26 of the Mineral Concessions Rules, 1960. Thereafter, out of the four applicants, two had withdrawn themselves leaving the petitioner and the Respondent No. 7 were the only applicants left in the fray. The informations, as required under the Rules, were furnished by both the petitioner as well the Respondent No. 7. The State Government made a comparative study of both the applicants in terms of the criteria laid down under the provisions of Section 11(3) of the Act and the corresponding Rules. After considering the merits of both the applicants and also on consideration of the fact that according to the State Government's Industrial Policy, the Respondent No. 7 by virtue of its having already established an Sponge Iron Manufacturing Industry in the State of Jharkhand, has a superior merit over the petitioner, the State Government had decided to grant the mining lease to the Respondent No. 7. The State Government appears, however, to have preferred to obtain the prior approval of the Central Government on its recommendation in favour of the Respondent No. 7 and had therefore, forwarded its recommendation, by its impugned letter dated 24.08.2006.

The provisions of Sub-section 5 of Section 11, as observed above would be

applicable only where the State Government proceeds to grant the mining lease to a later applicant instead of the first applicant and in such event, the State Government would have been obliged to record special reasons for the grant of mining lease to the later applicant and forward its recommendation to the Central Government for its approval.

It further appears that even though the Central Government had received the State Government's recommendation made in favour of the Respondent No. 7, but had sought for certain further informations before deciding upon the grant of approval on the State Government's recommendation. The information sought for, was as to which of the two applicants, was the first applicant. Comments of the State Government on the representation made by the petitioner for reconsideration of its case was also called for. The information regarding the first query, as has been pointed out by the learned Counsel for the Respondent-State, was already available with the Central Government on the basis of the statements as contained in the accompanying comparative chart to the State Government's letter of recommendation. Subsequently, a second chart was prepared with further details of information and the same was forwarded to the Central Government. On being satisfied with the informations furnished and the reasons assigned for the State Government's recommendation made in favour of the Respondent No. 7, the Central Government had accorded its approval to the State Government's recommendation in favour of the Respondent No. 7.

24. It is apparent from the above that the final decision of the Central Government on the State Government's recommendation made in favour of the Respondent No. 7, was taken after the Central Government had obtained satisfaction in respect of all necessary particulars and had conveyed its approval of the State Government's recommendation accordingly. The informations sought for and consequently conveyed to the Central Government were only supplemental to the informations conveyed in the original recommendation. It cannot be said therefore that the Central Government's approval was founded on an incomplete and insufficient materials, shorn of the necessary details and particulars.

25. The petitioner in my opinion, cannot find fault with the decision of the State Government, on its reference to the Government's Industrial Policy and claiming the same to be irrelevant the Industrial Policy of the State assumes relevance since it lays down the manner in which the State decides to promote industrial development in the best interests of the State and its people.

26. Considering the manner in which the applications of the individual applicants including the petitioner and the Respondent No. 7 was addressed by the State Government and considering the fact that each of the applicants were given opportunity of hearing as per the provisions of Rule 26 of the Mineral Concession Rules and also considering the fact that the details of the informations furnished by the individual applicants were duly considered and a statement of comparative merit was prepared and the reasons assigned for preferring to grant

the mining lease to the Respondent No. 7, I do not find any procedural irregularity or illegality or any act of arbitrariness or irrationality on the part of the State Government in recommending for the grant of mining lease in favour of the Respondent No. 7. Under such circumstances, the decision of the State Government on the basis of its discretion does not call for any interference by this Court.

27. In the light of the above discussions, I do not find any merit in this writ application. Accordingly, this writ application is dismissed.