

(2013) 04 DEL CK 0062

In the Delhi High Court

Case No : LPA 592 of 2010

Pushp Steels and Mining Pvt. Ltd.

APPELLANT

Vs

S.K. Sarawagi and Co. Ltd. and Others

RESPONDENT

Date of Decision : 05-04-2013

Acts Referred:

Companies Act, 1956 — Section 3

Constitution of India, 1950 — Article 226

Mines and Minerals (Development and Regulation) Act, 1957 — Section 11, 11(1), 11(2), 11(4), 11(5)

Citation : (2013) 5 AD 464

Hon'ble Judges : S.P. Garg, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : Gopal Subramaniam, with Mr. Tejas Karia, Mr. Devansh Mohta, Mr. Nitesh Jain and Ms. Bahaar Dhawan, in LPA 592/2010 and Mr. Atul Jha with Mr. Sandeep Jha and Mr. Mehernaz Mehta, in LPA 181/2011, for the Appellant; Sandeep Sethi with Mr. Rishi Agrawal, Akshay Ringe, Ms. Malvika Lal and Mr. Nikhil Rohatgi, Advocate for Resp-1, Mr. Rakesh Tiku with Ms. Sapna Chauhan and Ms. Anjana Gosain, Advocates for UOI in LPA 592/2010 and in LPA 181/2011 and Mr. Atul Jha with Mr. Sandeep Jha and Mr. Mehernaz Mehta, Advocates for State of Chhatisgarh/Resp-3 in LPA 592/2010, for the Respondent

Judgement

S. Ravindra Bhat, J.—This common judgment will dispose of two Letters Patent Appeals which challenge the impugned judgment of this Court in W.P. No. 9120/2008, by which a learned Single Judge partially set aside the recommendation dated 5.5.2005 made by the State Government of Chhattisgarh ("State Government") for the grant of prospecting licence ("PL") to Pushp Steel & Mining Pvt. Ltd. ("Pushp"), and has also set aside the order dated 19.10.2005 passed by the Central Government. Briefly the facts are that in November 2003, S.K. Sarawagi & Co. Pvt Ltd. ("Sarawagi") had submitted five applications for grant of PLs in respect of iron-ore in Compartment Nos. 369(P) and 370(P), on one hand, and Compartment Nos. 371, 372 and 373, on the other. Pushp submitted two applications on 2.6.2004 for grant of PL in respect of iron-ore

Compartment Nos. 366, 369 to 375 and for Compartment Nos. 355 to 358. Pushp was incorporated as a company and came into existence the same day, i.e. the date it made the application. Later, on 27.12.2004, it filed another application for mining lease (ML) in respect of Compartment Nos. 366, 369 to 375 and for Compartment Nos. 355 to 358. The overlapping area in respect of which both Sarawagi and Pushp applied for PL was 705.33 hectares.

2. On 7.1.2005, Pushp entered into a Memorandum of Understanding (MoU) with the State Government for setting up a sponge iron unit with an investment of Rs. 380 crores. It was agreed that Pushp would set up the projects in the state for which the State Government would "extend all necessary assistance and fullest cooperation for successful implementation of the projects". Pushp was to commence implementation of the project not later than two years from the date of the MoU. On its part, the State Government was to facilitate, through the Chhattisgarh State Government Industrial Development Corporation (CSIDC) the procuring of optimum land free from encumbrances. Moreover, the State Government was to undertake making recommendations "to the concerned Ministry of the Government of India for coal linkage/allotment of suitable captive coal mine in Chhattisgarh subject to availability," and "for linkage/allotment of captive iron-ore mines in Chhattisgarh subject to availability".

3. On 9.3.2005, the State Government issued notice under Rule 12 of the Mineral Concession Rules, 1960 (the Rules) to four parties, including Sarawagi for consideration of their applications. It is an admitted fact that the four parties were not told who the other applicants for the same area were. On 5.5.2005, the State Government issued an order granting PL in Compartment No. 364, 365, 366, 355-358, 369, 370, 371, 372, 373, 374 and 375 in favour of Singhal Enterprises and Pushp. The order mentioned that 26 parties had applied for PL and that a decision had been taken that units that had already set up their iron ore based industries and/or those which had already been given a mineral concession were not to be granted such concessions for the areas under consideration (first category). The only two categories considered for grant of PL were (i) those applicants who had established iron ore based industry and had not been given a mineral concession earlier (second category) (ii) and applicants who intended to set up an iron ore based industry and had initiated "effective steps" for setting up industries which had not been given any mineral concessions earlier (third category). Sarawagi was considered as having fallen in the category of applicants in respect of whom a decision had already been taken to grant mineral concession; Singhal Enterprises fell in the second category, and Pushp fell in the third.

4. On the same date, the State Government sent a letter to the Central Government seeking its approval u/s 5(1) of The Mines and Minerals (Development and Regulation) Act, 1957 ("the Act") for grant of ML in respect of iron-ore in favour of Pushp, of 215 hectares out of Compartment Nos. 355, 356, 357 and 358 and PL for 705.33 hectares out of Compartment Nos. 366, 369,

370, 371, 372, 373, 374 and 375. On 19.10.2005, the Central Government granted approval to the PL to be issued to Pushp, and on 12.5.2006, it granted approval to Pushp, for the Mining License. Sarawagi filed a revision petition against the order dated 5.5.2005 passed by the State Government.

5. The Mines Tribunal by order dated 16.12.2008 dismissed the revision application. Sarawagi preferred a writ petition, which was allowed. Pushp, as well as the State Government, challenge the correctness of the impugned judgment by separate appeals.

6. In the impugned judgment, the first issue considered by the learned Single Judge was whether in relation to minerals specified in the First Schedule to the Act, for the purposes of grant of a PL, can there be a composite approval by the Central government or are two separate approvals required, i.e. one u/s 5(1) and another u/s 11(5) of the Act. The learned Single Judge was of the opinion that nothing in the Act, or the provisions, i.e. Sections 5 (1) and 11 (5) directed separate approvals or prevented the grant of a composite approval. Consequently, it was held that such composite approvals could be granted. That finding has become final. Sarawagi is not in appeal against such opinion; even during the hearing, its learned senior counsel did not contest the view of the Single Judge. The second issue was whether each applicant for PL should be informed about the other applications made to the State, in terms of Rule 12 of the Mineral Concession Rules, 1960. The impugned judgment found such an obligation saying that:

An applicant may be able to provide to the State Government valuable information about its competitor which may not otherwise be easily forthcoming from such competitor. It would be in the best interests of the State Government that it has the entire facts concerning all the applicants. Considering that this is an activity involving distribution of public largesse, greater transparency would ensure that the decisions to be taken in the first stage by the state government and the next stage by the Central Government are not arbitrary and are based on valid and relevant materials.

Pushp and the State Government, in their appeal, fault this view stating that no such obligation has been cast on the State in any provision of law. The third question considered by the Single Judge was the correctness of the policy of the State for appraising rival applications for PL, especially if it was rational. The impugned judgment held, on this score, that.

such a policy, on the basis of which the applications for grant of PL were to be evaluated, had to be made known in advance to the applicants. In other words, it would not be a fair or just procedure for an applicant not to know of the criteria on the basis of which its application is going to be examined. In the present case, the policy of the State Government, even if taken to be valid, could not have been suddenly conceived at the time of examination of the applications. It is like setting the rules of the game after the game has commenced. The fairness

of the procedure adopted is very much a part of the whole exercise. Examined from that perspective, the impugned decision of the State Government must be held not to satisfy the criteria of procedural fairness. The State Government could have told the applicants even at the oral hearing that it proposed to apply such a policy. There is nothing to indicate that it did.

30. This Court therefore holds that although the State government's policy, on the basis of which the impugned decision dated 5th May 2005 was arrived at, may be valid, it was necessary for such policy to have been made known to all the applicants prior to inviting applications or even at the time of the hearing.

On the basis of these findings, the Court proceeded to discuss the legality of the decisions made by the State Government in rejecting Sarawagi's application and granting PL to Pushp, as well as the Central Government's approval to such decisions.

7. The learned Single Judge noticed that the decision of the State Government with respect to Pushp was based on the following reasons:

(1) MoU entered into with the State Government undertaking to invest a sum of Rs. 380 crores.

(2) Allotment of land by CSIDC to Pushp, in Borai Industrial area of District Durg for setting up a sponge iron plant with an annual production capacity of 400,000 MT.

(3) Steps for setting up the industry were underway.

He noted that out of these, only the land allotment had been done by/before the date of the application i.e. 5.5.2005. It was further reasoned that:

[T]he order dated 5th May, 2005 passed by the State Government does not make any mention of the fact that respondent no. 3 was incorporated on 2nd June 2004 with a share capital of Rs. 1,00,000/-. The persons who promoted the company in New Delhi were businessmen with absolutely no previous experience in the field of mining or setting up any sponge iron steel plant. On that very day i.e. 2nd June 2004, Respondent No. 3 (Pushp) filed the two applications for grant of PL in Chhattisgarh over a thousand miles away from Delhi. This Court has been shown the record of the State Government containing the original application filed by Respondent No. 3. What is significant is that the date of the application is itself left blank. The application required Respondent No. 3 to clearly indicate the status of its Income Tax returns and the particulars of the mobilization of the funds. For this purpose, the application had to be accompanied by affidavits. Obviously these affidavits, one of which had to state that "updated Income Tax returns have been filed", could not have been filed on 2nd June 2004. It is inconceivable that a company which came into existence that very morning could furnish any information about its income tax returns or its experience. In fact, the other affidavits as required in Column 6A and 6B were also dated subsequently. It beats imagination how a company which was

incorporated in New Delhi on 2nd June 2004 could have on that very day submitted an application in Chhattisgarh for grant of PL. Secondly, it is inconceivable how such a company could be considered for grant of PL when the criteria laid down, as reflected in the form prescribed for the purpose by the State Government, indicates that the applicant should have some prior experience in mining. Significantly, in response to the question in Column 16 - whether the applicant intends to supervise the work and his previous experience of prospecting mining, Respondent No. 3 merely indicated: "technical personnel shall be employed." There is no denying the fact that as on the date of making of the application, i.e., on 2nd June 2004, there was no question of Respondent No. 3 having had any previous experience of mining since in fact Respondent No. 3 was incorporated on that very day, i.e., 2nd June 2004. No satisfactory explanation has been offered either by the State Government or by the Respondent No. 3 itself in this regard. In the above circumstances, its application made on 2nd June 2004 for grant of FL over an area of 974 hectares could not have been entertained at all.

The learned Single Judge further rejected Pushp's contentions challenging Sarawagi's standing to question the validity of grant of PL to it (Pushp). It was reasoned that Sarawagi's ineligibility, at best, negated the case for grant of PL to it, but that did not establish the propriety in the grant of PL to Pushp nor take away Sarawagi's standing to challenge the same; furthermore, that all applicants were unaware of the State Government's new policy. It was also held that the Central Government's approval of the State's decision to grant PL was a mechanical one, without any application of mind, and that the requirements u/s 11(5) to accord special reasons for deviating from the rule of seniority could not have been held to be satisfied. The order of the Mines Tribunal dated 16.12.2008 was therefore set aside, as it had not taken into consideration the peculiar facts which created doubt as to the eligibility of PSM to get PL, further holding that the Tribunal had wrongly formulated a question whether Sarawagi was entitled to any priority since it already had an iron-ore plant elsewhere. The Single Judge therefore held the decision of the State Government to grant PL to Pushp, in respect of "354 hectares which is overlap portion for which the Petitioner (Sarawagi) also applied, to be unsustainable in law and to that extent sets it aside". The subsequent orders of the Central Government, dated 19th October, 2005, and of the Mines Tribunal too were set aside.

Appellants' submissions

8. It was argued on behalf of the State by learned senior counsel Mr. Soli J. Sorabjee that learned Single Judge's conclusion with regard to granting information about rival applicants' particulars to each other applicant, is erroneous. Learned counsel pointed out to Rules 11 and 12 of the Minerals Concessions Rules, 1960 and stated that the responsibility cast upon the State Government is only to consider the application and record reasons in writing if it decides to reject. It also has to record reasons, in accordance with rule 11(3) for

altering or reducing area which is subject of prospecting licence. Learned senior counsel submitted that if the legislature or rule making authority had intended that a particular procedure, adversarial in nature were to be adopted, the same would have been clear in explicit terms. However, by not providing for such matters, the State Government and the Central Government were invested with degree of latitude or flexibility in their functioning. Moreover, argued counsel, if trappings of Court procedure were to be tailored into the decision making process of the State Government, when it considers applications for grant of prospecting licence there would be inevitable delays, which would cause injury to public interest. Having regard to these, submitted counsel for the State Government, the conclusions arrived at by the learned Single Judge with regard to the information to be imparted as regards each application or request pending in respect of one block for the grant of prospecting licence, would be unworkable, cumbersome and entail delay. These findings therefore are not justified and in any event without any legal foundation. This submission was adopted by Mr. Gopal Subramaniam, learned senior counsel for Pushp Steel.

9. Counsel for Pushp argued that the impugned judgment is in error in so far as it holds that the prospecting licence issued to that concern was by adoption of unfair procedure. It was submitted that the materials placed on record especially the applications of the parties and the relevant notings of the State Government reveal that after making the application for prospecting licence on 02.06.2004 Pushp had entered into an MoU with CSIDC on 07.07.2005. Pursuant to the MoU, a lease for 30 hectares had in fact been secured by Pushp to set up the sponge iron plant with 4 lakhs tonnes annual production capacity. The assumption by the learned Single Judge of the criteria applied for rejecting the application of Sarawagi was erroneous. Learned counsel submitted that the material on record, in the form of note sheets prepared at the time of lease and when the prospecting licence was to be granted as well as the consultation that took place between the Central Government and the State Government, reveals that a pre-existing policy in the form of Gazette Notification of 1981 had existed which was in force (hereafter "the 1981 policy"). That policy declared that preference in the matter of grant of prospecting licence would be given to those units who set up the plant for industrial development within the State. Since Pushp had taken effective steps in this regard, including the execution of MoU, and the subsequent leasing of land for setting up of Rs. 380 crore iron plant within the State, the grant in its favour was justified. It was emphasised here that the Court should not enter into the decision making process and weigh the merits as if it were the Appellate body; instead, it merely has to be satisfied that considerations weighing with the Government are germane, relevant to the matter at hand and the procedure adopted is fair and regular. Of course all this has to be within the framework of the law and the decision maker should not display any bias or be motivated by mala fides.

10. Learned senior counsel for both the appellants argued in the present case that besides the 1981 policy, the State Government was also aware that it had

also decided on 30.03.2005, to grant 347 hectares in another area as prospecting licence in favour of M/s. Sarawagi. This aspect was specifically mentioned in the order dated 05.05.2005 and communicated to the Central Government. As a result, the State Government was of the opinion that the application of Sarawagi so far as it overlapped with that of Pushp, in regard to prospecting licence for the lands in question, should not be entertained. That apart, submitted learned senior counsel, the State was clearly justified in recording u/s 11(5) as a special reason the fact that it preferred or chose to grant the prospecting licence to Pushp since the latter was intending to use the extracted ore as raw material for an iron ore based industry within the State. This was the most relevant material and constituted a sustainable special reason for the State to override the earlier application made by the Sarawagi. In this context, reliance was placed upon the decision reported as Sandur Manganese and Iron Ores Ltd. Vs. State of Karnataka and Others, . In that case the observations in question were made in the context of proceedings u/s 11(3). The learned senior counsel for the State also relied upon an order dated 27.11.2004, made u/s 11(5) of the Act in the case of another applicant i.e. M/s. Akshay Investment Pvt. Ltd. In that case too, an earlier rival application had been overridden and the successful applicant's claim for the prospecting licence was upheld on the basis of its willingness to set up iron ore based industry in the State. The 1981 policy was relied upon. It was submitted that these facts and the expressed decision of the State Government clearly showed that it consistently took into account the pre-existing policy and did not view out a new impediment especially to ensure that Sarawagi's application would be rejected.

11. Learned senior counsel for Pushp additionally submitted that this Court should be conscious of the circumstance that weighed with the State Government was the prospect of the concern putting up an industry with substantial investment which in turn would have led to economic prosperity and generation of employment, besides revenue to the State. As opposed to this, Sarawagi merely intended to export the iron ore extracted by it. Counsel submitted that even if these were to be taken independently, by no stretch of the imagination can the grant of the prospecting licence to Pushp be characterized as arbitrary.

12. Mr. Subramaniam, learned senior counsel specifically referred to para 3 of the detailed order 05.05.2005, which stated that apart from M/s. Singhal Enterprise, other applicants, particularly Sarawagi were beneficiaries to the extent the decision "for granting permission of mineral concession" had been taken. This clearly meant that Sarawagi could not claim to be hostilely discriminated or arbitrarily dealt with as all relevant circumstances had been taken into consideration. The State Government, as the only responsible body for administering the Act and the Rules, felt that three pronged categories, as noted earlier, were to be adopted. It was further stressed that nothing in the Act or the Rules oblige that such criteria should be evolved in a particular manner notified to all and thereafter administered. Counsel for the State Government supported the submission that decision making is a continuous process which requires

dispatch as well as refinement. If the State were to be hampered by requiring it to comply with specially directed procedures, that are not spelt out in the Act or the Rules, the inevitable result would be delays. The State can also benefit from the past experience, having regard to those considerations, and spell out the broad parameters it would adopt for considering each application. As long as the policy is not unfair and is consistent with the provisions of the Act, and its application is also shown to be consistent and uniform, the mere circumstance that it was made and applied from a particular date, cannot vitiate the entire proceeding. In other words if the Government has to decide the set of applications for prospecting and mining licence in respect of a common or overlapping area, the fact that it adopts a policy created, at that time having regard to various peculiar features cannot be a ground for judicial review under Article 226 of the Constitution.

13. Mr. Soli Sorabjee appearing on behalf of the State also urged the principle that courts must show greater deference to the executive in matters concerning economic policies. In this regard, he placed reliance on the Supreme Court decision in *BALCO Employees Union (Regd.) Vs. Union of India and Others*, . Pointing out the policy decision of giving preference to those applicants who had not been granted PL earlier, and who had taken effective steps to set up a plant, it was further urged that the learned Single Judge committed an error in law by going into the "effectiveness" of the steps taken. Counsel urged that since the policy was upheld by the learned Single Judge, and there was no allegation of discriminatory application, it meant that when the policy was valid in law, there was no impropriety in the grant of PL. It was submitted on behalf of both the appellants that the requirement of prior mining experience as a necessary criterion, when the Act or the Rules thereunder provided none, was wrongly imposed by the learned Single Judge.

14. Pushp argued that as regards the reasons (i.e. application for grant of PL being made on the same day as PSM's incorporation) that weighed with learned Single Judge for setting aside grant of licence by the State to Pushp, there is no requirement under law that a new company cannot make an application on the day it comes into existence. It was further submitted that reliance in the impugned judgment on the meagre (Rs. 1 lakh) amount as paid-up share capital of Pushp, to set aside grant of licence to them was also incorrect, as the learned Single Judge should also have considered the financial net-worth of the promoters also. Learned senior counsel for Pushp also relied on the Project Profile of the company, and based on it, the MoU entered into with the State Government. It was argued that the learned Single Judge erred in interfering with the Recommendation letter when Sarawagi had never incorporated any challenge to the same in the writ petition. The conclusion of the learned Single Judge that the policy, even though based on an intelligible differentia, was not rightly applied was incorrect as all the applicants had been considered and allocated mining concessions in accordance with the clearly stated policy that had been in effect since early 2004. Learned Single Judge ignored, in this context,

several prior decisions based on such policy that had been brought to his notice.

15. Pushp further argued that the learned Single Judge erred in superimposing a subjective determination on the issue of "effective steps", in place of reasoned executive decisions which was based on the following two factors: (a) entering into the MoU with the State Government, committing to invest Rs. 380 crores to set up integrated steel plant; (b) acquiring land to establish a plant by paying in excess of Rs. 1.10 crores.

16. Lastly, counsel for Pushp submitted, without prejudice to the other contentions presented, that Pushp was willing to face fresh consideration for allotment of PLs, if the observations against it were to be set aside.

17. Learned senior counsel Mr. Sandeep Sethi, appearing for Sarawagi, contended that what is on record are not "reasons" in terms of Section 11(5) of the Act. It was submitted that the mere purchase of land and procuring water connection were not "effective steps". Moreover, both of these were subsequent to the application for grant of PL. The MoU was entered into with the CSIDC, on 7.1.2005 and the agreement to purchase land, was entered into later. It was submitted that the State could not have, consistent with its policy, given preference to an applicant whose financial credibility or background was unknown, merely on the strength of a proposal that it would set up a Rs. 380 crore sponge iron plant with a 400000 ton annual capacity. The Project Report relied on by Pushp was bereft of any financial details about its source of funding; even the income tax details of the two directors who had signed on its Memorandum of Association were not on the record of the State, for it to validly hold that the concern had taken effective steps to be entitled to consideration for the PL.

18. It was submitted that the requirement of recording special reasons, to give a go-bye to the statutorily mandated scheme which prescribed the procedure to be followed for grant of ML and PL, meant that the State had to be satisfied that there were some special and overriding reasons to ignore a prior applicant's claim. Such special reasons had to be germane, and also genuine. In the present case, apart from showing that Pushp would, on some future date set up a sponge iron plant, there was no material on record. On the other hand, Sarawagi itself had set up a plant at Raipur and the policy relied on by the State nowhere debarred someone who had an existing industry from applying, and on the basis of valid considerations, being granted the PL.

19. Learned senior counsel submitted that the impugned judgment, to the extent it directed the disclosure of information relating to each applicant to the other, cannot be faulted, as it amounts to directing the State and other agencies to follow a transparent and non-discriminatory procedure. Counsel highlighted the fact that such procedure would, besides promoting transparency, also facilitate an efficient decision making process that would assess the worth of each applicant's claim. Besides, the possibility of an arbitrary decision or one based

on extraneous consideration would be minimized. The State cannot, argued Sarawagi, possibly oppose such directions.

20. It was submitted that the State's contention regarding Sarawagi having been issued a PL earlier to the impugned order (of 5.5.2005) is mischievous and baseless. Counsel submitted that the so-called decision (of 30.3.2005 to grant PL for 182 hectares in another area, to Sarawagi) was not even communicated to it. Counsel submitted that even on 5.5.2005, i.e. the date of the impugned order, the State had not written to the Central Government, seeking approval. Furthermore, this decision was approved, and communicated to Sarawagi, only by a letter of 14-11-2005. Therefore, as on 5-5-2005, the reasons given, i.e. that Sarawagi was a beneficiary and had been granted a PL, was only a tentative decision, and could not have been validly invoked by the State, in the absence of the Central Government's nod; even the letter seeking it was written later. The rejection of its application for PL through the impugned orders was therefore unjustified and illegal.

21. It was argued by Mr. Sandeep Sethi, learned senior counsel that even though Section 11(5) requires only the recording of special reasons, that by itself cannot make irrelevant the conditions prescribed in the Act for considering the claims of the applicants which have to be evaluated on first-come-first-serve basis. The impugned judgment passed by the learned Single Judge, therefore, is sound in its reasoning and cannot be faulted. Furthermore, supporting his submission and finding of the learned Single Judge that mere execution of MoU did not invest the applicant with greater claim for consideration u/s 11(5), learned counsel relied upon the decision reported as India Thermal Power Ltd. Vs. State of M.P. and Others, . It was argued that absolutely nothing was brought on record and no material was shown to exist to support Pushp's plea that it could hire technical expertise at the relevant time. Learned counsel sought to place reliance on a document brought on record in the course of the appeal to say that Pushp has not been able to secure allotment of coal; there was no document showing its ability or that of its Directors to attract investors or the commitment of any bank to fund the sponge iron plan project. The only asset the company was shown to possess was the lease, procured pursuant to the MoU in January 2005. Furthermore, the financial health and asset particulars of Pushp's Directors were never disclosed. Taking all these into consideration, the learned Single Judge correctly deduced that the pre-condition of "special reasons" mandated by Section 11(5) had not been fulfilled and that Pushp had not taken any effective steps in regard to its claim to be entitled to over-riding consideration of its application for PL.

22. Learned senior counsel for Sarawagi submitted that Sarawagi, in its writ petition, had sought for quashing of the PL to the extent of over-lapping area, the findings based on the material on record justified a direction quashing the entire process. It was submitted that even though Sarawagi had not preferred an appeal, yet applying the principles applicable to appeal in civil proceedings, it

was questioning the decision not to strike down the entirety of the impugned order of the State Government. He submitted that in writ proceedings, the Court can appropriately mould the relief having regard to the materials and circumstances placed before it. Thus, at the stage when writ petition was preferred Sarawagi was unaware of the extent of illegality; upon the true picture emerging, the learned Single Judge should have taken suitable steps to give full and effective relief in securing public interest. Therefore, Sarawagi urged to set aside and quash the order of the State Government in entirety granting 703 hectares PL and the ML in respect of the entire area claim to Pushp.

23. Replying to the last submission of Sarawagi, learned counsel on behalf of the State and Pushp argued that without preferring an appeal, it is not open to challenge the decision of the learned Single Judge. Sarawagi was fully aware of the extent of land in respect of which Pushp had been granted ML and PL. It chose not to challenge the entire grant but confined its grievance only in respect of the area overlapping between its application and that of Pushp. Having consciously elected not to challenge the grant in respect of other areas, Sarawagi cannot now without appealing to the Court, enlarge the scope of the original claim under guise of the Court's power to do complete justice or mould the relief. By confining its challenge to the extent of the over-lapping area, Sarawagi gave up the right to challenge the grant in respect of other areas. Likewise, Pushp was entitled to the left out area as undisputed area and one beyond any controversy. It would therefore be inequitable and contrary to all canons of justice if the Court were to now, in appeal, set aside the entirety of the grant of PL and ML.

24. The provisions relevant for the determination of the issues at hand are reproduced hereunder:

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

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

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

(b) satisfies such conditions as may be prescribed:

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

*** Explanation ***

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

(a) there is evidence to show that the area for which the lease is applied for has been prospected earlier or the existence of mineral contents therein has been

established otherwise than by means of prospecting such area; and

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

Section 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.

Section 12 of the Act, reads as follows:

12. Registers of reconnaissance permits, prospecting licences and mining leases

(1) The State Government shall cause to be maintained in the prescribed form -

(a) a register of applications for prospecting licences;

(b) a register of prospecting licences;

(c) a register of applications for mining leases;

(d) a register of mining leases;

(e) a register of applications for reconnaissance permits; and

(f) a register of reconnaissance permits;

in each of which shall be entered such particulars as may be prescribed.

(2) Every such register shall be open to inspection by any person on payment of such fee as the State Government may fix.

Rule 12 of the Mineral Concession Rules, states that:

12. Refusal of application for a prospecting licence: - (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 prospecting licence over the whole or part of the area applied for.

25. As observed earlier in this judgment, none of the parties to these appeals objected to the learned Judge's holding on Issue (a) as framed by him. As regards the second question, the Court notices that Rule 12(1), as it reads, imposes only two conditions on the State Government before refusing an application for grant of prospecting licence, viz. (i) giving an opportunity of being heard to the applicant, (ii) reasons must be recorded and communicated to the applicant. The Single Judge has, read into Rule 12(1) the requirement that each applicant must be informed who the other or rival applicants for the same block of land, for PL/ML are. No doubt, there is no express provision on this aspect. The power vested in the State Government, is therefore, in the nature of a discretion, which has to be exercised in tune with the objectives of the Enactment.

26. An applicant seeking grant of a prospecting license, in respect of a non-notified area, has the undoubted statutory expectation that it would be considered and the claim would be determined in a fair, objective and rational manner; ordinarily, the applicant has the expectation that if its claim fulfils the prescribed parameters, it would be decided or determined on the basis of the statutory first come first served principle. Yet, an overriding discretion vests with the State, which can for special reasons, give a go-bye to that principle and says that it would nevertheless give the license to a later applicant. The observations in *Indian Metals and Ferro Alloys Ltd. Vs. Union of India* and others, the Supreme Court emphasized that.

But what we wish to point out here is that the statute must lay down clearer guidelines and procedure. Having regard to the new avenues for vast industrial development in the country, the more workable procedure would be for the S.G. to call for applications in respect of specified blocks by a particular date and deal with them together, other later entrants not being permitted in the field. Otherwise only confusion will result, as here.

It is manifest, therefore, that the S.G. is not bound to dispose of applications only on a "first come, first served" basis. It will be easily appreciated that this

should indeed be so for the interests of national mineral development clearly require in the case of major minerals, that the mining lease should be given to that applicant who can exploit it most efficiently. A grant of ML, in order of time, will not achieve this result.

The court also directed the State - since the rules and guidelines were silent in that regard, to take up applications for grant PL/MLs area-wise rather than application wise, as that would lead to consideration of the merits of rival applicants, and sub-serve the object of optimum utilization in a scientific manner, from a better perspective. *Tata Iron and Steel Co. Ltd. etc. Vs. Union of India and others and Industrial Development Corporation of Orissa Ltd.*, was an instance where all the parties were directly or indirectly affected. The Supreme Court while confirming the order of a Division Bench of the High Court, held as follows:

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

27. A concern that all parties should be heard, even if the hearing could be regulated in a convenient manner, was voiced by the Karnataka High Court, in *Jindal Vijayanagar Steels Ltd., Now known as JSW Steel Ltd. and Others Vs. MSPL Limited, The State of Karnataka and Union of India (UOI) and Others*, in the following manner:

But the Rule does not say that opportunity should be given comprehensively to all the applicants, which, in our considered opinion, is impermissible, impossible and impracticable, when more than hundred applications were received pursuant to the impugned notification dated 15th March, 2003. Where more than one applications are made by the same party and the sister concern for the same area, and where more than one application are made for the same area by individuals, what is required is, whether each of the applicants were given opportunity of being heard before refusing grant or renew of mining lease over the whole or the part of the area applied for.

28. The considerations which weigh with every authority while granting a PL or ML, under the Act have to be in tune with the objectives of the Act. At the same time, the discretion to grant or refuse a particular applicant the benefit, vests with the State Government, again subject to provisions of the Act. There is no denial that the law, as existing, obligates the State to consider applications for grant of ML/PL on the basis of areas/ blocks. Thus, the authorities have to

evaluate the applications on the basis of the rival claims and who, in their assessment are the best applicants suited for the grant of the license in question. Also, it cannot be denied that the State must adopt a fair procedure - pursuant to this, it did, in fact, in this case, grant a hearing to the concerned applicants. No doubt, the hearing was spread over different periods; the State appears to have adopted a convenient method in calling applicants on different dates, and heard each of them comprehensively. Whilst this by itself can subserve the fairness standard, the direction of the Single Judge is certainly in consonance with fair play and reasonableness. "Giving an opportunity of being heard" to each applicant would certainly become more meaningful if the applicant who is being heard is aware of his opponents/competitors for the license/lease, as the case may be, and takes the same into consideration while making his presentations before the State Government. If an applicant is aware of some limitations about its competitors, it will convey the same to the government while making its representation. It will also attempt to put up a case for itself indicating why preference should be given to it over other specific players in the fray. It is quite possible that some of this information may not reach the State Government through its own sources, or through the application. Thus, the applicants' representations, taken collectively, would definitely provide relevant material for the decision making by the government, which but for this requirement, could possibly be ignored. Therefore, since the question is of distribution of public resources (grant of prospecting licence also being a step in the same) the Government must follow a fair procedure most capable of furthering public interest. This Court has no doubt that the procedure is in consonance with the objectives of the Act and the directions of the learned Single Judge cannot be faulted. However, the Court is of opinion that the further requirement of furnishing all particulars of the rival applicants' claims would be cumbersome and might lead to complications, which may introduce a rigid adversarial process. Instead, the State should furnish a fact sheet, in a brief manner, highlighting the salient features of the claims made by each applicant, to all of them, reasonably in advance, so that they are able to make their presentations objectively before a decision is taken. This court modifies the judgment and order of the learned Single Judge to that extent.

Whether the criteria should have been made known before the impugned order?

29. The nature of discretion vested in the State and Union authorities, vis-à-vis the preferential right of a previous applicant, was emphasized by the Supreme Court, in *Dharambir Singh Vs. Union of India (UOI) and Others*, , in the following manner:

3. Sub-section (1) of Section 11 envisages grant of a prospecting licence in respect of a land and a prospecting licensee has a preferential right for obtaining a mining lease in respect of the land over any other person; provided, however, that the conditions enumerated in clauses (a) to (c) in proviso thereto are satisfied. Further, sub-section (2) states that subject to the provisions of sub-

section (1), where two or more persons have applied for a prospecting licence or a mining lease in respect of the same land, the applicant whose application was received earlier, shall have a preferential right for the grant of the licence or lease, as the case may be, over an applicant whose application was received later. It is also, again, subject to the conditions enumerated in the proviso. Sub-section (3) is not material for the purposes of this case. Sub-section (4) 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 and with the previous approval of the Central Government grant a prospecting licence or a mining lease to an applicant whose application was received later in preference to an applicant whose application was received earlier.

4. Thus it would be seen that while granting a prospecting licence or mining lease, the area of discretion has been circumscribed by several factors enumerated in Section 11. In grant of mining lease of a property of the State, the State Government has a discretion to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place within the State. But the State Government is required to exercise its discretion, subject to the requirements of the law. Therefore, the Tribunal of the Central Government has rightly held that it being in the area of discretion of the State Government, merely because the applicant had applied for, the State Government was not enjoined to grant the mining lease. The petitioner had taken the plea that since he alone had discovered the mines, he has got a preferential right over any other person. The Tribunal of the Central Government and the High Court rightly rejected that contention of the petitioner....

One has to therefore, consider the application of the prior applicant (i.e. preference of a prior applicant) rule, in its perspective. Normally, the rule of seniority has to be applied; however, the rule is not invariable; if the State Government considers that a later applicant has the ability and capability to subserve the goals of the Act, better than a previous applicant, it can override the rule of preference. However, while doing so, it has to record "special reasons" which are germane to the situation at hand. The question here is whether the reasons or considerations which weighed with the State are relevant, and are genuine, and also can be considered sufficient, under the Act. The decision in Sandur is an authority on the proposition that only considerations that are consistent with the Act, can be taken into account. It is from this stand point that this Court has to see whether the learned Single Judge's finding that the procedure adopted in this case, of appraising or assessing applications, without first declaring the three pronged categories to be adopted, was unfair. The State and Pushp argue that there was, in fact, no challenge by the writ petitioner to the policy itself, which showed that it contained relevant criteria and the learned Single Judge therefore should have refrained from returning findings based on standards of fairness based on a procedure that is not part of the Act or Rules.

They argued that directing the State to spell out its policies on the basis of which it would consider the applications is unwarranted and trenches on an undoubted policy arena, which the courts should desist from entering, in the absence of any vitiating factor that calls for judicial review.

30. A reading of Section 11(1) limits its scope of applicability to cases where the subject matter of permit/license is the same piece of land in respect of which a reconnaissance permit or prospecting license had already been granted. It provides that in such cases, the holder of such permit or license, as the case may be, shall have a preferential right over other applicants to obtain prospecting license or mining lease in respect of the same land. Section 11 (2), which like all other sub-clauses of Section 11 is subject to sub-section (1), provides that where the State Government has not notified in the Official Gazette the area for the grant of RP or PL or ML, as the case may be, then in cases of more than one applicants preference shall be given to the applicant whose application was received earlier. The first Proviso to Section 11 (2) clarifies that in cases where the State Government has invited application by notification in the Official Gazette, then all applications received during the period specified in such notification (and even applications received prior to the publication of such notification, which had not been disposed of) shall be deemed to have been received on the same day. This mandates the treatment at par of all applications which are received during (or before, in cases where the applications have still not been disposed of) the period specified in the notification. The second Proviso (to Section 11 (2)) clarifies that for applications received on the same day, the factors listed in sub-clause (3) must guide the State Government in grant of RP/PL/ML. Section 11 (4) states that in cases where the State Government notifies any area in the Official Gazette, all applications received during the period specified (which cannot be less than thirty days) have to be considered simultaneously. Section 11 (5) which overrides Section 11 (2), but not Section 11 (1), stipulates that the State Government may, for special reasons to be recorded, deviate from the rule of preference to application with priority in time, provided it has obtained the prior approval of the Central Government in respect of minerals specified in the First Schedule.

31. In the present case, the mineral involved is iron-ore, which is listed in the First Schedule. Therefore, if the State Government had to deviate from the rule of preference to prior application, it had to, according to Section 11(5), record special reasons. The policy devised by the State of Chattisgarh, was not to give preference to such applicants who had set up steel plants and who had been already granted a PL in respect of an area elsewhere in the State, but to prefer those who had not been granted PL yet, and were in the process of setting up and had taken "effective steps" to set up a steel plant. Grant of PL in iron-ore in favour of Pushp, pursuant to this policy is an order passed u/s 11 (5), and since it is in respect of iron-ore, prior approval of the Central Government was obtained.

32. When the State or its agencies has to deal with public resources, or enter into a contract, the primary objective which should inform all stages of the decision making process is public good and not furtherance of private ends. Therefore, Courts have time and again emphasized that while considering challenges to State action - be they in the form of contracts, policies, guidelines, or the like - the procedure adopted in arriving at a decision, rather than the merits of the decision would be scrutinized; at the same time, if the policy is unexceptionable and conforms to standards of fair-play and non-arbitrariness, the court can yet be justified in interfering with a particular decision if it is based on irrelevant considerations, or is vitiated by mala fides, or is contrary to the terms of the governing policy or Statute. This, in turn, implies that discretion can be exercised, bona fide, for valid and relevant considerations and in consonance with the objects of the underlying executive principles or policies, or statutes. [Ref. Jamshed Hormusji Wadia Vs. Board of Trustees, Port of Mumbai and Another, Intellectuals Forum, Tirupathi Vs. State of A.P. and Others, and Fomento Resorts and Hotels Ltd. and Another Vs. Minguel Martins and Others, . Yet, the Courts have also recognized that acting within the bounds of discretion, the public agency has undoubted "free play in the joints" depending upon the circumstances of the case. As long as the procedure adopted is fair, reasonable, the courts would refrain from directing on such policy issues.

33. In the present case, this Court notices that statutory considerations have been spelt out in the Act, in respect of what is expected of the applicants. Likewise, the procedure (first come first served principle) is also unalterable, in respect of lands that are notified. However, an overriding discretion to grant PL to an applicant for "special reasons" has been given. The safeguards which exist, to prevent abuse of that discretion are two fold - (i) spelling out what are special reasons; and (ii) requirement of approval by the Central Government. The third and an extremely important safeguard, is availability of judicial review.

34. If one recognises the fact that all the applications have to be processed together, and having regard to the objectives and express provisions of the Act, the direction to the State to nevertheless spell out its priorities, before it actually decides on the application, by giving prior publicity, would hamper its discretion. Whilst the merit in spelling out and making known the criteria which the State would follow is undeniable, the Court is conscious of the fact that no guidelines of uniform applicability existed at that time. Furthermore, guidelines or policies - even within the constrained space available with the State, may shift and vary depending upon time and circumstance. What is deemed relevant at one point of time, say, equitable distribution of mineral resources to all applicants, who are eligible, and a proportionate allocation on that basis, may be irrelevant at another - such as for instance, giving weightage to those promising investment within the State, and generating employment, or producing power, or setting up an infrastructural network, along with extracting minerals, etc. Yet again, the needs of those outside the State, for whom too these national resources have to be made available, are to be kept in mind; at times of fiscal crises or national

balance of payment concerns, the need to allocate some part of the minerals which would be extracted for export purposes, can be deemed relevant. Therefore, when the State evaluates the applications made to it, the criteria it has to apply has to be objective, germane to the enactment, and applied in a fair and non-arbitrary manner. The availability of new and efficient technology, or access to it, with promise of less environmental adverse impact, might in another case be a clincher. It could arguably be said that spelling out the criteria would limit and curtail the discretion, which is of wide amplitude and possibly also impel applicant to tailor make their claims, somewhat complicating the decision making process.

35. This Court notices that even when tenders or other forms of public responses for awarding contracts are called, detailed scrutiny takes place, at different stages. No applicant can claim that it has a right to be considered for award of contract at all stages; its claim has to be evaluated objectively, and dealt with. Thus, a bona fide evaluation resulting in the rejection of an application for valid considerations cannot be attacked on the ground that the rival-but successful-applicant has less experience, or is not as sound financially. In *P.T.R. Exports (Madras) Pvt. Ltd. and others Vs. Union of India and others*, it was held, in the field of executive decision making that:

...The court leaves the authority to decide its full range of choice within the executive or legislative power. In matters of economic policy, it is a settled law that the court gives a large leeway to the executive and the legislature. Granting licences for import or export is by executive or legislative policy. Government would take diverse factors for formulating the policy for import or export of the goods granting relatively greater priorities to various items in the overall larger interest of the economy of the country

It was remarked in *Union of India and others Vs. Hindustan Development Corpn. and others*, - in a somewhat different (though related) context that the doctrine of legitimate expectation is "not the key which unlocks the treasury of natural justice and it ought not to unlock the gates that shuts the court out of review on the merits." The superimposition of a condition of requiring to publish criteria, that would be made applicable, having regard to the legislative scheme of Section 11, therefore, in the opinion of this Court, would limit the scope of the State's legitimate discretion. Acting within that discretion, the State can apply all relevant criteria, having regard to its past experience, and present needs. Such criteria might be evolved after considering the nature of the applications received; as long as it fulfills the objectives of the Act and is applied without discrimination, or unfairness, the same cannot be faulted merely because it is not given publicity earlier to the point in time of its consideration.

Whether the grant of PL to Pushp was valid?

36. The Central Government's opinion was that Pushp "had taken a number of initiatives for establishment of plant." Its order of 19th October, reiterated the

State Government's reasons in the impugned letter dated 5th May 2005. Discussing the effect of that order, the learned Single Judge said that:

36. That takes us to the state government's order dated 5th May 2005. The translated copy of the letter dated 5th May 2005 of the State Government merely states in para 7 that "in view of the facts mentioned in paragraphs 4, 5 and 6 above, by invoking provisions of Section 11(5) of the M.M.D.R. Act, it has been decided to grant permission to M/s. Singhal Enterprises" in respect of the area measuring 159 hectares out of Compartment Nos. 364 to 366. Similarly a "decision has also been taken to grant M.L. of iron-ore in favour of M/s. Pushp Steel & Mining Pvt. Ltd., on 215 Hectares of compartment Nos. 355 to 358 ". A decision "has also been taken to grant P.L. in favour of M/s. Pushp Steel & Mining Pvt. Ltd., on 703.33 hectares"

37. In para 6, the factors that weighed with the State Government as regards Respondent No. 3 are stated as under:

6. Whereas M/s. Pushp Steel & Mining Pvt. Ltd., has executed an MOU with the State Government that this company will invest a sum of Rs. 380 Crores in the State and the said company has already taken lands from Chhattisgarh State Industrial Development Corporation in Borai Industrial area of District Durg and setting up of industry on the said lands is underway. Apart from this, this Company in its MOU has also proposed to set up a 4 Lakh tonne annual capacity sponge iron/integrated steel plant which will manufacture special steel. This company has desired that since they will be needing iron ore within next 15 months, therefore, their M.L. on 215 Hectares of compartment Nos. 355, 356, 357 and 358 may kindly be sanctioned and P.L. be also sanctioned on the other area applied for by them.

38. An analysis of the above reasons shows that the fact that the MoU entered into with the State Government in which Respondent No. 3 undertook to invest a sum of Rs. 380 crores was considered. Second, the fact that the Respondent No. 3 had already got land from the CSIDC was another central factor. The third was that the steps for setting up the industry were "underway". The fourth was that the Respondent No. 3 had proposed to set up the 4 lakh ton annual capacity sponge iron integrated steel plant. However, the policy of the State Government as explained in para 4 required Respondent No. 3 to have already taken "effective steps" by 5th May 2005. The only effective step which para 6 talks of is the fact that the Company had already taken land from the CSI DC.

39. The affidavit of Respondent No. 3 listing out all the steps taken by it shows that as on 5th May 2005 the only step taken till that date was the purchase of land from the CSI DC. According to Mr. Lalit the Respondent No. 3 had also got the water connection as on 9th January 2005. However, the other steps were all taken subsequently. This Court is unable to appreciate how the State Government could have on 5th May 2005 concluded that the above two steps were "effective steps" towards establishing a sponge iron and steel plant.

However there is an even more serious problem with the decision of the state government.

40. What is really striking is that the order dated 5th May 2005 passed by the State Government does not make any mention of the fact that Respondent No. 3 was incorporated on 2nd June 2004 with a share capital of Rs. 1,00,000/-. The persons who promoted the company in New Delhi were businessmen with absolutely no previous experience in the field of mining or setting up any sponge iron steel plant. On that very day i.e. 2nd June 2004, Respondent No. 3 filed the two applications for grant of PL in Chhattisgarh over a thousand miles away from Delhi. This Court has been shown the record of the State Government containing the original application filed by Respondent No. 3. What is significant is that the date of the application is itself left blank. The application required Respondent No. 3 to clearly indicate the status of its Income Tax returns and the particulars of the mobilization of the funds. For this purpose, the application had to be accompanied by affidavits. Obviously these affidavits, one of which had to state that "updated Income Tax returns have been filed", could not have been filed on 2nd June 2004. It is inconceivable that a company which came into existence that very morning could furnish any information about its income tax returns or its experience. In fact, the other affidavits as required in Column 6A and 6B were also dated subsequently. It beats imagination how a company which was incorporated in New Delhi on 2nd June 2004 could have on that very day submitted an application in Chhattisgarh for grant of PL. Secondly, it is inconceivable how such a company could be considered for grant of PL when the criteria laid down, as reflected in the form prescribed for the purpose by the State Government, indicates that the applicant should have some prior experience in mining. Significantly, in response to the question in Column 16 - whether the applicant intends to supervise the work and his previous experience of prospecting mining, Respondent No. 3 merely indicated: "technical personnel shall be employed." There is no denying the fact that as on the date of making of the application, i.e., on 2nd June 2004, there was no question of Respondent No. 3 having had any previous experience of mining since in fact Respondent No. 3 was incorporated on that very day, i.e., 2nd June 2004. No satisfactory explanation has been offered either by the State Government or by the Respondent No. 3 itself in this regard. In the above circumstances, its application made on 2nd June 2004 for grant of FL over an area of 974 hectares could not have been entertained at all.

41. None of the above factors are reflected in the nothings on the file as contained in the records produced by the State Government. On what basis the State Government concluded that a company incorporated on 2nd June 2004 and which had entered into an MoU on 7th January 2005 could be stated to have already taken "effective steps" is not clear. Although Mr. Lalit argued at length to show the steps that Respondent No. 3 had taken "after" 5th May 2005, he did not have any answer to the obvious question: how could a company within a few hours of being incorporated in New Delhi on 2nd June 2004 submit an application

in Chhattisgarh on that very day for grant of FL and also satisfy the criteria for grant of FL? And then within a few months thereafter an MoU is signed by Respondent No. with Respondent No. 3 assuring it that Respondent No. 2 will make every effort to ensure that a PL is granted to it. These questions do not have convincing answers and whatever explanation has been offered does not satisfy the judicial conscience. It does not lend the needed assurance that the decision dated 5th May 2005 of the State government was taken in a just and fair manner and for valid and relevant reasons.

37. To satisfy itself, this Court had called for the file from the State of Chhattisgarh; the files relating to the entering into of the MoU with the CSIDC too were produced. They disclose that the Memorandum and Articles of Association of Pushp were prepared, and the company incorporated, on 2-6-2004; the affidavit affirmed in support of the application for the license was dated 1-6-2004. The total authorized capital of the company as on the date of its application was Rs. 50 lakhs; its paid up and subscribed capital was Rs. 1 lakhs; it had only two directors, based in Delhi. Neither of the directors' financial statements or income tax returns was on the record. Though the application of the company (Pushp) is at pages 7 to 57 of the relevant file of the State - and it contains a Project Profile - yet, there is complete lack of any details about the funding of the proposed Rs. 380 crore sponge iron plant and how a company with a paid up capital of Rs. 1 lakh could plan to raise such resources. Furthermore, Pushp was not shown to own any assets. The CSIDC file revealed that Pushp even sought for refund of stamp duty from the State.

38. The requirement of the applicant having taken "effective steps", spelt out in the impugned order of 5-5-2005, should be seen in its context. The term "effective" has been defined in the "FREE DICTIONARY" (<http://www.thefreedictionary.com/effective> accessed at 13:03 on 29th March, 2013) as follows:

- a. Having an intended or expected effect.
- b. Producing a strong impression or response; striking: gave an effective performance as Othello.
2. Operative; in effect: The law is effective immediately.
3. Existing in fact; actual: a decline in the effective demand.
4. Prepared for use or action, especially in warfare.

In the present case, in the absence of any financial details of either Pushp, or its directors, any credit extending facilities or documents, issued by the Bank, or involvement of any technical expert, or access to technology, the mere filing of a Project Profile, by a company with a subscribed capital base of Rs. 1 lakh was, at best, a pipe dream, shown to the State Government. If any other document or materials were taken into consideration by officials of the Chhattisgarh Department of Mines, they kept it to themselves. At any rate, there is absolutely

no material for any reasonable man to conclude that any steps were taken for setting up an iron ore based industry. This was a clear case where the unreasonableness of the action was writ large on the record. The findings and conclusions of the learned Single Judge therefore, are justified.

39. As far as Sarawagi's argument that the entire impugned order to the extent it granted areas other than 354 hectares too had to be quashed goes, the Court is of opinion that since the challenge in the writ petition is to the extent that Sarawagi's application overlapped with that of Pushp, such a course of action would not be warranted. The Court, in judicial review, doubtless is concerned with the decision making process and not the merits of the decision. Yet the limited nature of the challenge should not enlarge this Court's power into one of public interest jurisdiction. Instead, the court would rest its conclusions, and direct the respondents, i.e. the State of Chhattisgarh and Government of India to review the matter vis-à-vis the said balance area, and issue orders, after considering the submission of the parties. As far as the findings in the impugned judgment with regard to the overlapping area which (354 acres) are concerned, the conclusion and directions of the learned Single Judge are upheld. In the light of the above discussion, both appeals have to fail; LPA 592/2010 and LPA 181/2011 are accordingly dismissed, but subject to the directions in the preceding paragraph. There is no order as to costs.