

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P. (C) 5317/2003 and CM 9344/2003

Reserved on: March 16, 2011

Decision on: April 27, 2011

LARSEN & TOUBRO LTD. Petitioner

Through: Mr. S. Ganesh, Senior Advocate
with Mr. Ashish Wad, Mr. B. B. Sharma
and Ms. Dipti B., Advocates.

Versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. B. V. Niren, CGSC for
R-1/UOI.
Mr. Suresh Tripathy, Standing Counsel for
State of Orissa/R-2.
Mr. Sandeep Sethi, Senior Advocate with
Mr. Prashant, Advocate for the Intervener.

CORAM: JUSTICE S. MURALIDHAR

1. Whether Reporters of local papers may be
allowed to see the order? No
2. To be referred to the Reporter or not? Yes
3. Whether the order should be reported in Digest? Yes

JUDGMENT

27.04.2011

1. The Petitioner Larsen & Toubro Limited ('L&T') seeks the setting aside of an order dated 10th July 2003 of the Mines Tribunal dismissing its revision application challenging an order dated 27th September 2001 passed by the Government of Orissa ('GoO') (Respondent Nos. 2 to 4 herein) rejecting, *inter alia*, (i) its

application dated 5th November 1995 for a Mining Lease ('ML') for iron ore over an area of 611.58 hectares in Village Badamgarh Pahad, Sundergarh District (ii) its revision application dated 11th September 1997 for Prospecting Licence ('PL') over an area of 540.475 hectares in Village Khajuridihi Reserve Forest, Sundergarh District and (iii) a further revised application dated 11th September 1997 for a PL over an area of 475.955 hectares in Village Rakma & Marsuan, Keonjhar District.

Factual matrix

2. It is stated that sometime in 1995, the GoO made a promise to L&T that it would be allowed to use iron ore deposits for captive consumption for the proposed port-based steel plant to be set up by the L&T at Gopalpur, Orissa. Pursuant to the said promise, a Memorandum of Understanding ('MoU') was entered into between L&T and the GoO on 20th December 1995. The said MoU recorded that L&T required a quantity of approximately 5 million tonnes (MT) of iron ore to meet its annual requirement of the steel plant at Gopalpur during the first phase of production of 10 MT in the event of L&T achieving the ultimate capacity of 6 to 7 MT per annum (MTPA). In Clause II (d) of the MoU, it was stated as under:

“Badamgarh Pahad group of iron ore mines,

estimated to contain 275 million tonnes deposits can be considered by the State Government for recommending grant of PL/ML to L&T for the proposed Steel Plant Project.”

3. Further the MoU recorded that the GoO *inter alia* agreed to hand over to L&T land to the extent of 5000 acres between the National Highway No. 5 and the Howrah-Madras Railway main line, free from all encumbrances through the Orissa Industrial Infrastructural Development Corporation (‘IDCO’) for the steel plant and associated facilities. The allotment of another 1000 acres would be considered for the purposes of a township and a colony. The GoO was to ensure that the Gopalpur port would be ready by the time the steel plant commenced commercial production since an all-weather port was of vital importance to the steel plant. Further, the MoU recognized that the Banspani-Daitari Railway link “is the essential link for transportation of iron ore to the plant site and it is therefore necessary that this link is established before the Steel Plant goes into operation.” L&T and the GoO would “together/or separately pursue with the Government of India, Ministry of Railways for expeditious completion and commissioning of the Banspani–Daitari Railway link before 1999.”

4. On 15th November 1995, the L&T made three applications for grant of ML:

- (i) for iron ore over an area of 304.704 hectares in village Kansara and Batgaon in Sundergarh district;
- (ii) for iron ore over an area of 569.96 hectares in village Khajuridihi in Sundergarh district; and
- (iii) for iron ore over an area of 611.58 hectares in village Badamgarh Pahad, Sundergarh District.

5. In response to the last mentioned ML application, the GoO by a letter dated 28th July 1997 informed L&T that it had decided to recommend 754.50 hectares for mining of iron ore in village Badamgarh Pahad in Sundergarh and Keonjhar districts for the grant of PL in favour of the Petitioner. By the same letter, the GoO directed L&T to file two separate revised applications for PL over an area of 180 hectares in Keonjhar district and 574.50 hectares in respect of Sundergarh district. Pursuant thereto, L&T filed two revised PL applications on 11th September 1997 for mining over an area of 475.955 hectares in Keonjhar district and 540.475 hectares in Sundergarh district. It is stated that of the total area applied for by L&T under the two revised PL applications, an area of 17.50 hectares overlapped with an area recommended for ML to another

company. The Government of India ('GoI') in its letter dated 20th January 1987 recommended the exclusion of this overlapping area. Thus the total area applied for by L&T under the two revised PL applications was 998.93 hectares.

6. According to the L&T, a joint meeting was held on 23rd May 1997 between the GoO and the GoI to promote the establishment of steel plants in Orissa by TISCO Ltd., MESCO Ltd., L&T and Neelachal Ispat Nigam Ltd. According to L&T, it was decided that the ML applications to these parties for iron ore should be favourably considered. It is stated that such a decision giving preference and priority to the said parties was permissible under Section 11(5) of the Mines and Minerals (Development and Regulation) Act, 1957 ['MMDR Act']. L&T claims that the prior approval of the GoI as required under Section 11(5) of the MMDR Act, with iron ore being a major mineral, was obtained and the joint decision taken on 23rd May 1997 by the GoO and the GoI was implemented not only in the case of L&T but other parties as well.

7. L&T also claims that by a letter dated 13th December 1996, the GoO asked L&T to carry out reconnaissance/ prospective operations in the mining area in question, i.e., Badamgarh Pahad. L&T claims

to have carried out the prospective operations at a total cost of about Rs. 3 crores. It is stated that under Section 11(1) of the MMDR Act a person to whom the PL has been granted gets a preferential right for the purpose of grant of an ML.

8. According to L&T between 1995 and 2001 no steps were taken by the GoO to provide the essential infrastructural facilities which were vital for the establishment of the port-based steel plant at Gopalpur. This included development of the port at Gopalpur into an all-weather port for handling large vessels, construction of the Badamgarh Pahad Railway line, construction of broad roads and service roads and the construction of a dam and pipeline for uninterrupted water supply of 35 million gallons per day. When despite repeated attempts by L&T to get the GoO to honour its obligations under the MoU were unsuccessful, L&T informed the GoO at a meeting with the Chief Minister on 23rd May 1998 that it was left with no option “but to consider an alternative location to set up its steel plant”. It is stated that it was in this context that L&T on 26th May 1998 requested IDCO to suspend all further activities for acquisition of land and to freeze further expenditure with immediate effect. L&T had already deposited over Rs. 6 crores with IDCO to meet the cost of acquisition of land.

9. By a letter dated 3rd January 2000, the GoO, Department of Steel and Mines enquired from L&T whether it was withdrawing the proposed project at Gopalpur and whether it had any intention to set up the proposed steel plant. According to L&T, within three days thereafter, without waiting for a reply from the L&T, the GoO by a letter dated 6th January 2000 informed GoI that L&T had withdrawn from the proposal to set up an integrated steel plant at Gopalpur. Unaware of the above communication between the GoO and the GoI, L&T sent a reply to the GoO on 17th January 2000 stating that because there was no sign of the Gopalpur port being set up in time, L&T was evaluating alternative locations for setting up a plant which was port linked. L&T informed the GoO that after evaluating various locations it had decided Dhamra was a good alternative, which port was being constructed by L&T itself.

10. It is stated that on 17th January 2000, the Department of Steel and Mines, GoO (Respondent No. 3), wrote to L&T asking whether it still intended to implement the project since no progress had been made by the L&T in that regard. In reply, L&T wrote to Respondent No. 3 on 9th February 2000 stating that it was the GoO that had failed to set up the Gopalpur port and L&T was, therefore, considering shifting the location of the proposed steel plant to the Dhamra port.

A request was made to the GoO to allot an area of about 1500 acres at Dhamra for the proposed steel plant. L&T asked for adjustment of the amount already deposited towards cost of the proposed land to be allotted at Dhamra port.

11. On 9th March 2000, Respondent No. 3 wrote to L&T asking it “to submit the withdrawal proposal” for the land proposed to be acquired in 17 villages of Ganjam district for which proceedings had already been initiated under the Land Acquisition Act, 1894. L&T was asked to submit the withdrawal proposal so that necessary steps could be taken to drop the land acquisition proceedings and to refund to L&T the amount deposited by it. L&T replied on 24th March 2000 stating that since it was compelled to look for an alternative site for the steel plant “this should not be considered as a case of withdrawal”. L&T once again requested that an amount already deposited by it should be transferred to the account of Dhamra port project so that it could be adjusted against the cost of acquisition of the land at Dhamra port.

12. On 4th April 2000, Respondent No. 3 issued a notice to L&T under Section 12 (1) of the Mineral Concession Rules, 1960

(‘MCR’) asking it to appear for a personal hearing before the Special
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Secretary, Department of Steel & Mines on 17th April 2000 in connection with its application for grant of an ML for iron ore over an area of 611.58 hectares in village Badamgarh Pahad and its two revised PL applications dated 11th September 1997 for an area of 540.475 hectares in Village Khajuridihi and 475.955 hectares in Village Rakma & Marsuan, Keonjhar District. The notice stated that L&T was having second thoughts on setting up a steel plant at Gopalpur and, therefore, the revised PL applications were liable to be rejected.

13. It is stated that at the personal hearing on 17th April 2000, L&T submitted a project profile of the proposed steel plant at Dhamra port and handed over a feasibility study conducted by MECON Ltd. L&T explained that its joint venture partners were SMS-DEMAG of Germany and Indian Seamless Metal Tubes Limited. This was followed by a letter dated 16th June 2000 from Respondent No. 3 asking L&T to produce the project proposal and other documentary proof to substantiate its proposal to set up an integrated steel plant at Dhamra. In the said letter, it was stated that at the hearing on 17th April 2000 L&T had mentioned that “abandoned Gopalpur project for want of facilities like port, railways and other infrastructure, but have decided in particular to put up an integrated steel plant at

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Dhamra”. In response thereto on 18th July 2000, L&T explained that the proposed steel plant at Dhamra port has been conceptualised as a joint venture which was designed to produce specialized products of international quality. A project was expected to be completed by September 2004 by which the Dhamra port was also expected to be fully operational. The proposed alternative site was also based on the raw material to be supplied from the iron ore mines at Badamgarh Pahad.

14. On 27th September 2001, the GoO rejected the revised PL application dated 11th September 1997. The said order noted that the L&T could not show any progress in setting up the proposed steel plant at Gopalpur. There was no MoU signed for the alternative site for the steel plant.

15. Aggrieved by the aforementioned order dated 27th September 2001, the Petitioner filed revision petition under Section 30 of the MMDR Act read with Rules 54 and 55 of MCR. An order dated 4th February 2002 was passed by the Mines Tribunal to the effect that the area covered under the revised PL applications shall not be settled by the GoO with any third party till further orders in the revision application.

16. In its final impugned order dated 10th July 2003, the Mines Tribunal noted the contention of the GoO that although initially it had made a recommendation for grant of ML on account of the willingness of the L&T to set up an integrated steel plant, the applications were rejected after giving L&T a hearing and coming to the conclusion that it was not prepared to immediately set up a steel plant in Gopalpur. Although 196 applications had been filed for the very same area, there were no special reasons in terms of Section 11(5) of MMDR Act, to overlook the seniority of the applicants and grant ML to L&T. While dismissing L&T's revision application, the Mines Tribunal issued a direction that in the cases of all the 196 applications, the GoO should simultaneously consider all the applications filed for the notified area in terms of Section 11 MMDR Act after granting an opportunity to all the applicants including L&T.

Submissions of counsel

17. Appearing for L&T, Mr. S. Ganesh, learned Senior counsel first submitted that pursuant to the MoU, L&T had taken effective steps to perform its obligations which included incurring an expenditure of Rs. 3 crores in undertaking prospective activities as directed by the GoO and depositing over Rs. 6 crores with IDCO for acquisition of

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land to meet the expenses of acquisition of land at Gopalpur. He submitted that the letter dated 26th May 1998 written by the L&T to IDCO requesting it to temporarily suspend further activities in connection with the acquisition of land was necessitated on account of the failure of the GoO to perform its part of the obligation. He submitted that the proposed steel plant was a port-based one and without any progress in the setting up of the Gopalpur port, there was little purpose in the Petitioner going ahead with the steel plant. Referring to the reply dated 17th January 2000 where the Petitioner gave an alternative proposal for shifting the proposed steel plant to the Dhamra port, he submitted that the GoI never really responded to this alternative proposal and erroneously concluded that the Petitioner had altogether given up the project for which the MoU was entered into. Mr. Ganesh further submitted that the earlier order dated 21st October 1997 was issued pursuant to a joint decision taken by the GoO and the GoI at a joint meeting held on 23rd May 1997. This decision was relatable to Section 11 (5) of the MMDR Act. The said decision was acted upon and understood to be pursuant to the approval granted by the Central Government under Section 11(5) of the MMDR Act. He emphasized that the order dated 21st October 1997 imposed two conditions under Rule 27(3) MCR. One of them was that if the lessee, i.e., L&T failed to set up the steel plant at

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Gopalpur within a reasonable time “due to any default of its own” the lease could be terminated by the GoO by taking recourse to Rule 27(5) MCR. It is submitted that there was no default committed by the L&T and therefore, there was no question of termination of the lease. The default, if any, was entirely that of the GoO. He submitted that the order dated 27th September 2001 was bad in law, arbitrary and unjust since it was pre-determined and passed without application of mind to the relevant facts and circumstances. Since the decision taken at the meeting on 23rd May 1997 was a joint one of both the GoO and the GoI, it was not open to the GoO to unilaterally reverse the earlier order dated 21st October 1997 by its subsequent order dated 27th September 2001. Iron ore was a major mineral which was subject to and required the prior approval of the GoI. The GoO’s unilateral reversal of a decision which had the approval of the GoI would be contrary to Section 11(5) of the MMDR Act.

18. It was submitted by Mr. Ganesh that since L&T had undertaken reconnaissance/prospecting operations pursuant to a letter of the GoO dated 13th December 1996 and had spent Rs. 3 crores in the process, L&T had a preferential right over all other applicants for a

PL or ML under Section 11(1) MMDR Act. The other sub-sections

of Section 11 were made expressly subject to sub-section (1) MMDR Act. This, it was submitted, distinguished the present case from the decision in *Sandur Manganese & Iron Ores Ltd. v. State of Karnataka 2010 (9) SCALE 492* as in the latter case most of the applicants could not claim statutory priority or preference under sub-section (1) or (5) of Section 11 MMDR Act. It is further submitted that provisions of sub-section (5) prevail over sub-sections (2) and (3) and consequently at a decision made under sub-section (5) of Section 11 need not comply with all the requirements of sub-sections (2) read with sub-section (3) of Section 11 MMDR Act. In the present case the selection of L&T by the GoO as well as the GoI was in conformity with the criteria laid down in Section 11(3). Further in *Sandur Manganese* the State Government had first given its commitment to two parties and had thereafter issued a notification under Rule 59 throwing open the area to all applicants. However, in the present case, the selection of four parties including L&T by the GoO and the GoI was long after the issuance of the Rule 59 MCR notification.

19. Mr. Ganesh submitted that the amendment to Section 11 of MMDR Act, which introduced Section 11(4) and renumbered the previous Section 11(4) as Section 11(5), was with effect from 18th

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December 1999 whereas the letter from the GoO recommending the grant of ML and PL in favour to L&T was dated 21st October 1997. L&T's vested right to be considered in terms of the unamended Section 11 MMDR Act could not be taken away by the subsequent amendment. L&T's application could not be asked to be considered along with 196 other applicants. Reliance is placed on the decisions in *Municipal Corporation for the City of Poona v. Bijlee Products (India) Ltd. (1978) 4 SCC 214*; *Shyam Sunder v. Ram Kumar (2001) 8 SCC 24*; *Zile Singh v. State of Haryana (2004) 8 SCC 1* and *Union of India v. Martin Lottery Agencies Ltd. (2009) 12 SCC 209*. It was submitted that the doctrine of promissory and equitable estoppel are attracted in the present case. L&T had acted on the basis of the MoU and altered its position significantly. The GoO was, therefore, bound to honour the promise made by it in the MoU and make available the iron ore mines promised to L&T for its steel plant.

20. Mr. Suresh Tripathy, learned counsel for the GoO submitted that the MoU was only for setting up of an integrated steel plant at Gopalpur. Nowhere in the MoU was it stated that if the project did not materialize, an alternative project could be considered. Even the applications made by L&T for ML adverted to the fact that the

mineral, i.e., iron ore, was to be utilized “as a source for iron ore or iron ore and steel production through an integrated steel plant in Orissa”. Referring to the letter dated 26th May 1998, Mr. Tripathy submitted that there could be no manner of doubt that L&T had decided “to temporarily suspend the project activities till a more opportune moment”. It further requested that all further activities relating to land acquisition should be suspended and further expenditure frozen “with immediate effect”. Therefore, this was not a mere suspension but abandonment of the project. This is what prompted the letter dated 3rd January 2000 of the GoO asking L&T to indicate clearly its intention to implement the “steel project at Gopalpur”. It is submitted that there was no vested right in L&T to ask for the alternative project proposal to be accepted by the GoO. It is submitted that the order dated 21st October 1997 was not a formal order by the GoO and was not a decision within Section 11(5) MMDR Act.

21. Mr. BV Niren, learned counsel appearing for the GoI submitted that it accepted the decision of the Mines Tribunal directing the GoO to consider all the 196 applicants in terms of the MMDR Act.

22. Mr. Sandeep Sethi, learned Senior counsel appeared on behalf of

the Intervener, Geomin Minerals and Marketing (P) Ltd. ('GMMPL'), in CM APPL No. 13109 of 2008. GMMPL had filed two PL applications for an area of 147 hectares and 173 hectares in Badamgarh Pahad, an ML application for 75.4 hectares in village Rakma & Marsuan, Keonjhar District and a PL application for 75.4 hectares again in village Rakma & Marsuan, Keonjhar. It is submitted that Section 11 MMDR Act requires consideration of all the competing applications on merits after granting a personal hearing. This could not be bypassed only because an MoU had been entered into between L&T and GoO. He placed reliance on the judgment of the Supreme Court in *Sandur Manganese*. It is submitted that on account of the interim order dated 25th August 2003 passed by this Court subsequently confirmed on 8th July 2004 that applications overlapping the area for which L&T had applied were not being processed by the GoO and this was causing grave prejudice to all the other applicants including the GMMPL. As a consequence of the stay order passed by this Court, an estimated 275 MT of iron ore had been rendered unavailable to the mining industry. Mr. Sethi referred to Section 11(4) MMDR Act as it stood prior to the amendment and submitted that it did not envisage an order passed by the State government. The only order in terms of that provision was that of the central government granting approval.

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Consequently the communication dated 21st October 1997 was really not an order of the GoO under Section 11(4) MMDR Act.

23. The intervention application of GMMPL has been opposed by L&T by pointing out that it is seeking the grant of an ML for export of iron ore and not for captive use. Mr. Ganesh posed the question as to why the GoO should take the trouble of passing an order dated 27th September 2001 reversing the decision dated 21st October 1997 if in fact it was not an order under Section 11(4) of the un-amended MMDR Act. He submitted that both in terms of Section 11(4) of the un-amended MMDR Act as well as Section 11(5) of the amended MMDR Act, a decision had to be taken by the GoO and that was expressed in the form of the order dated 21st October 1997.

Issues that arise for consideration

24. On the submissions made by learned counsel for the parties, the following issues arise for consideration in the present case:

- (i) Is the communication dated 21st October 1997 from the GoO to L&T an order under Section 11(4) of the MMDR Act (prior to its amendment)? Does it create a vested right in L&T for the grant of an ML?

- (ii) Does L&T have an indefeasible right of priority for grant of

PL/ML in terms of Section 11(1) of MMDR Act?

- (iii) In the context of the MoU dated 20th December 1995, are the doctrines of promissory and equitable estoppel attracted in the facts and circumstances of the present case?
- (iv) Is the impugned order dated 27th September 2001 of the GoO bad in law on account of the non-application of mind and is it violative of Section 11(5) MMDR Act?

Issue (i): Did the communication dated 21st October 1997 create a vested right in L&T for the grant of ML?

25. The mineral in question in the present case is iron ore which is a major mineral in terms of the First Schedule to the MMDR Act. Consequently, in terms of the proviso to Section 5(1) MMDR Act, the previous approval of the central government has to be obtained before a State government can grant either a PL or ML to any person in respect of iron ore. Further, in terms of Section 5(2), no ML can be granted by a State government unless it is satisfied that there is evidence to show that the area for which the lease has been applied for has been prospected earlier or the existence of mineral content has been established otherwise by means of prospecting in such area. Even before the State government can grant an ML, the mining plan has to be duly approved by the central government or 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. Therefore, with reference to Section 5 when the mineral in question is iron ore, prior approval of the central government for the grant of ML or PL to any party becomes mandatory. The proviso to Section 11(5) requires prior approval of the central government before an order is made by the State government granting either a PL or ML to an applicant whose application is received later in time but is given preference over an earlier applicant.

26. The communication dated 21st October 1997 from the GoO to the GoI mentions that by a notification dated 23rd August 1991, the GoO had reserved “and thrown open iron ore/Gopalpur ore bearing concession to the extent of 282.46 sq. mines in 5 blocks located in Keonjhar and Sundergarh district”. Applications were invited from interested private parties with effect from 29th October 1991 in terms of Rule 59 MCR for grant of PL and ML. 196 applications were received pursuant to the said notification issued under Rule 59 MCR by the GoO for the area in question. In terms of Section 11(2) read with Section 11(4) of the MMDR Act as amended, the applications would have to be considered simultaneously as if all the applications

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were received on the same day and subject to the factors specified in Section 11(3).

27. The decision of the GoO to promote establishment of steel plants in Orissa by TISCO Ltd., MESCO Ltd., L&T and Neelachal Ispat Nigam Ltd. to ensure optimum utilization of mineral reserves was taken subsequently. The communication dated 21st October 1997 referred to “the interface held under the chairmanship of the Secretary, Ministry of Steel, GoI in Bhubaneswar on 23rd May 1997 to review the progress of steel plant in Orissa”. It adverted to the fact that “it was decided that the State Government should recommend the lease applications for iron ore in favour of the proposed steel plant”. The letter enclosed a copy of the minutes of the said joint meeting. The letter noted that the two revised PL applications filed by L&T overlapped partially/fully with 5 ML and 23 PL applications filed earlier by the private parties on 29th October 1991. However, as an MoU had been signed with L&T for establishment of a steel plant at Gopalpur, “in the larger interest of mineral development in that stage, it has been decided to consider for grant of PL over an area of 998.93 hectares for iron ore in favour of Larsen &Toubro Ltd. in terms of Section 11(3) and 11(4) of the MMDR Act, 1957 read with Rule 71 MCR”.

28. It is apparent that the decision to recommend the ML and PLs in favour of L&T in terms of Section 11(4) of the unamended MMDR Act [which corresponds to Section 11(5) of the MMDR Act (as amended)] was on account of the MoU entered into between the GoO and L&T. There was no other special reason why L&T was preferred over all the other applicants for grant of ML and PL.

29. At this stage the change brought about by the amended Section 11 may be noticed. Section 11(4) of the amended MMDR Act details the manner in which applications received pursuant to the notification by the State Government of an area under Rule 59 MCR should be dealt with. These applications, received during the period specified in a notification, “shall be considered simultaneously as if all such applications have been received on the same date”. Under the unamended Section 11(4), there was no such provision. The first proviso to Section 11(2) is another consequential amendment. What is clear from these amendments is that once an area is thrown open by the State government and applications are invited from all private interested parties, then the preferential right under Section 11(1) of MMDR Act (which has been substantially retained in the amended MMDR Act) can no longer be invoked by a party which may have had such preferential right prior to the throwing open of the area by

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the State government.

30. In the present case, even before the MoU was entered into with L&T on 20th December 1995, the area had been thrown open by the GoO. Notwithstanding this, the GoO decided to enter into MoUs with four parties to encourage the setting up of steel plants by them in the State of Orissa. If at all, the grievance ought to have been that of the applicants other than the aforementioned four entities. The other parties could well claim that since the area was already thrown open, their right to have their applications considered in terms of the unamended Section 11 of MMDR Act could not be taken away. In the context of the unamended Section 11 there was no vested right in L&T to have its applications decided irrespective of the other applications filed by other private parties pursuant to the area being thrown open by the GoO. It is not, therefore, possible to accept the contention that the recommendation made by the GoO on 21st October 1997 created an indefeasible vested right in L&T to have its applications for PL and ML granted notwithstanding the amendment made to Section 11 in 1999.

31. The right of L&T to have a preferential consideration of its application, as is plain from the order dated 21st October 1997, is

traceable to the MoU. There were no other special reasons mentioned in its favour. Even in the unamended Section 11(4) of MMDR Act, the State Government had to record special reasons but could grant a PL or ML to an applicant whose application was received later in preference to an applicant whose application was received earlier only with “the previous approval of the Central Government”. Section 11(4) necessarily envisages only one order being passed for grant of PL or ML as the case may be. In other words, there no order can be issued under Section 11(4) of the unamended MMDR Act unless both the stages are complete, i.e., the recommendation by the GoO followed by its approval by the GoI. In that sense, the letter dated 21st October 1997 cannot be held to be “an order” of the GoO under Section 11(4) of the unamended MMDR Act (relatable to the Section 11(5) of the MMDR Act after the amendment).

32. The portion of the proviso to the amended Section 11(5) of the MMDR Act was already part of the substantive Section 11(4) of the unamended MMDR Act in so far as it related to the previous approval of the central government. It reiterates the requirement of the prior approval of the central government in respect of minerals specified in the First Schedule to the MMDR Act. As far as L&T is

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concerned, the position remained unchanged since iron ore is a major mineral.

33. It is therefore not possible to accept the contention of the learned Senior counsel appearing for L&T that the recommendatory letter dated 21st October 1997 from the GoO to the GoI was an order of the State government and that the said letter created an indefeasible right in the L&T for its applications to be considered notwithstanding that the MoU was not acted upon by the parties. The amendments made in 1999 to Section 11 MMDR Act did not take away any such vested right of L&T.

34. Consequently this Court does not find the decisions in *Municipal Corporation for the City of Poona v. Bijlee Products (India) Ltd.* and *Shyam Sunder v. Ram Kumar* to be applicable or relevant in the facts of the present case. In any event, those decisions did not arise in the context of the MMDR Act. Likewise the decisions in *Zile Singh v. State of Haryana* and *Union of India v. Martin Lottery Agencies Ltd.* do not have any applicability to the facts of the present case.

Issue (ii): Did the prospecting operations by L&T entitle it to a preferential right under Section 11 (1)?

35. The contention of L&T that the prospecting operations undertaken by it pursuant to a letter dated 13th December 1996 of the GoO entitled it to a preferential right in terms of Section 11(1) of MMDR Act is required to be dealt with next. The admitted position is that no formal orders granting PL in favour of L&T were issued by the GoO pursuant to the letter dated 21st October 1997. In other words, there was no corresponding approval granted by the central government to the proposal made by the GoO on 21st October 1997. As already noticed, unless the central government granted such approval, there could not have been any valid order in favour of L&T granting a PL or ML for the area for which the applications had been made. Any prospecting by L&T pursuant to the letter dated 13th December 1996 of the GoO was *de hors* the grant of statutory PL in terms of Section 11 of the MMDR Act. In the considered view of this Court, such prospecting cannot be said to have vested any preferential right in L&T in terms of Section 11(1) of MMDR Act. The grant of a PL in favour of a party in relation to a major mineral is usually made conditional upon the obtaining of permissions to undertake prospecting under the forest laws. In fact, the order dated 21st October 1997 itself records “for the above forest land of 540.475

hectares situated in Khajuridihi R.F. of Sundergarh district prior clearance of MOEF, Govt. of India under Section 2 of Forest (Conservation) Act, 1980 is a mandatory pre-condition for sanction of P.L.” In the absence of a formal order granting the PL followed by an agreement and the obtaining of forest clearances, the prospecting work undertaken by L&T cannot be relied upon by it to claim a preferential right under Section 11 (1) of the MMDR Act. The second ground urged by L&T that notwithstanding the throwing open of an area by the GoO, L&T would still have a preferential right under Section 11(1) of the MMDR Act, cannot, in the facts and circumstances of the present case, be accepted.

Issue (iii): Promissory Estoppel

36. The next issue is whether the doctrines of promissory and equitable estoppel are attracted in the facts and circumstances of the present case. The MoU dated 20th December 1995 spells out the respective obligations of the GoO on the one hand and the L&T on the other. The assurance by L&T that it had performed its part of the obligations is disputed by the GoO. While it is not possible in the proceedings under Article 226 to render any finding on which of the parties is responsible for the MoU not being worked out, the fact remains that for about five years after it was entered into the parties

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have not moved forward in the matter. There is nothing to show that the GoO took steps to establish Gopalpur port. On the other hand, the L&T admittedly did not commence operations to set up its steel plant at Gopalpur. The MoU unfortunately does not spell out any time limits by which the parties have to take the respective steps. It is difficult, therefore, even from the perspective of the contractual obligations to infer that time was the essence of the MoU. In the absence of such time limits and particularly in the absence of any spelling out of the sequence in which the steps were to be taken by the respective parties, it is not possible to come to any definite conclusion that either of the parties was responsible for the breakdown of the MoU.

37. What is evident, however, is that by letter dated 17th January 2000, L&T had decided to not to go ahead with setting up a steel plant at Gopalpur. It had proposed an alternative site at Dhamra. Learned counsel for the GoO is right in his contention that the MoU did not contain any provision requiring the GoO to accept any alternative project proposal of L&T. Therefore, it cannot be said that the GoO was obliged in law to accept the alternative proposal suggested by the L&T. The effect of an MoU entered into by a State government with an applicant on the consideration of its application

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for grant of PL and ML was one of the issues that arose for consideration in *Sandur Mangnese & Iron Ores Ltd. v. State of Karnataka*. Issue (f) formulated by the Supreme Court in the said case reads as under:

“Whether factors such as past commitments made by the State Government to applicants who have already set up steel plants is not a relevant matter for consideration for grant of lease.”

38. On the above issue, the Supreme Court’s observations were as under:

“It is clear that the State Government is purely a delegate of Parliament and a statutory functionary, for the purposes of Section 11(3) of the Act, hence it cannot act in a manner that is inconsistent with the provisions of Section 11(1) of the MMDR Act in the grant of mining lease. Furthermore, Section 2 of the Act clearly states that the regulation of mines and mineral development comes within the purview of the Union Government and not the State Government. As a matter of fact, the respondents have not been able to point out any other provision in the MMDR Act or

MC Rules permitting grant of mining lease based on past commitments. As rightly pointed out, the State Government has no authority under the MMDR Act to make commitments to any person that it will, in future, grant a mining lease in the event that the person makes investment in any project. Assuming that the State Government had made any such commitment, it could not be possible for it to take an inconsistent position and proceed to notify a particular area. Further, having notified the area, the State Government certainly could not thereafter honour an alleged commitment by ousting other applicants even if they are more deserving on the merit criteria as provided in Section 11(3).”

39. Consequently in the present case the MoU dated 20th December 1995 cannot be relied upon by L&T to argue for any preferential right over the other applicants for grant of an ML or PLs. In light of the law explained in *Sandur Manganese & Iron Ores Ltd. v. State of Karnataka*, it is not open to L&T to contend that the GoO was bound to fulfil the promise made by it in the MoU to make available iron mining rights to L&T for its steel plant. The above narration of facts shows that the MoU dated 20th December 1995 was not acted

upon by both the L&T and the GoO. Enforcing any right of L&T to be granted a PL or ML on the basis of the said MoU at this stage does not arise.

Issue (iv): Validity of the order dated 27th September 2001

40. The order dated 27th September 2001 of the GoO rejects the applications for ML and PL made by L&T on the short ground that L&T could not show any progress in the proposed steel plant at Gopalpur. It records the submission of L&T that it requires the ML and PLs for another steel plant proposed to set up at Dhamra but that till that date no MoU had been signed nor any application had been filed for acquiring land for the said project at Dhamra. For the reasons already discussed, this Court is not persuaded to hold that the said order dated 27th September 2001 either suffers from non-application of mind or contradicts Section 11(5) of the MMDR Act. The said order dated 27th September 2001 cannot be said to be reversing the order dated 21st September 1997. As already held, the recommendation made on 21st October 1997 by the GoO was not “an order” under Section 11(5) of the MMDR Act. The proceedings dated 27th September 2001 cannot, therefore, be characterized as a review of the earlier decision dated 21st October 1997 which in its very terms was incomplete. It was only the first stage of the two

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stages that had to be crossed before an order could be passed under Section 11(5) of the MMDR Act. The impugned order dated 27th September 2001 simply records the fact that the main reason for which a preferential recommendation was made in favour of L&T no longer existed. That reason cannot be said to be arbitrary or irrational in light of the facts and circumstances discussed hereinbefore.

41. Having examined the impugned order of the Mines Tribunal in light of the facts and circumstances of the case, this Court does not find any grounds having made out for interference.

42. The writ petition is dismissed and the pending application is disposed of in the above terms. The interim order stands vacated.

S. MURALIDHAR, J

APRIL 27, 2011

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