

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 2757/2008 & CMs 21200, 21657/2010

Reserved on: December 22, 2010

Decision on: January 28, 2011

SARDA ENERGY AND MINERALS LTD. Petitioner
Through : Mr. Ratan Kumar Singh with
Ms. Jyoti K. Chaudhary, Mr. Vinod Chawala
and Mr. Prashant Kumar, Advocates.

versus

UNION OF INDIA AND ORS. Respondents
Through : Ms. Maneesha Dhir with
Ms. Preeti Dalal and
Mr. K.P.S. Kohli, Advocates for R-1/UOI.
Mr. Atul Jha, Advocate for R-2/State of
Chhattisgarh.
Mr. P.S. Patwalia and Mr. R.S. Jaiswal, Senior
Advocates with Mr. Devashish Bharuka, Advocate
for R-3.

CORAM: JUSTICE S. MURALIDHAR

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

J U D G M E N T
28.01.2011

1. The Petitioner Sarda Energy and Minerals Ltd. [(previously known as Raipur Alloys and Steel Ltd. (RASL)] is aggrieved by an order dated 5th February 2008 of the Mines Tribunal dismissing the Petitioner's revision application under Section 30 of the Mines and Minerals (Development and Regulation) Act, 1957 ('MMDR Act') and Rule 55 of the Mineral Concession Rules, 1960 ('MCR'). The Petitioner had, in the said revision

petition, challenged the decision of the Government of Chhattisgarh, Respondent No. 2, rejecting the Petitioner's application dated 25th April 1995 for grant of a prospecting licence ('PL') for iron ore over an area of 124.32 hectares (ha) in Boriatibbu in District Rajnandgaon. The rejection of the Petitioner's application for grant of PL on the ground that it had been sanctioned a mining lease ('ML') for iron ore in the same area, was communicated by a letter dated 3rd April 2003 of Respondent No.2.

Background facts

2. The Petitioner states that there exist in the Rajnandgaon District in Chhattisgarh iron ore deposits in compartment nos. 529 to 538 situated at Japdongri Hills, Khadgaon Range, Boria Tibbu, Forest Division of Panabaras Project Division. On 22nd May 1990, Jayaswal Neco Limited (JNL) [(previously known as Nagpur Alloys and Castings Limited (NASL)], Respondent No. 3 herein filed an application for PL over an area of 154.700 ha in compartment Nos. 534, 536 and 537 in the Boria Tibbu area. At that stage, the State of Chhattisgarh had not been formed and the application was, therefore, made to the Government of Madhya Pradesh (M.P.). In terms of Rule 11 (1) of the MCR, as it then stood, there was a deemed rejection of the application dated 22nd May 1990 filed by Respondent No. 3.

3. The Petitioner made an application on 25th November 1991 to the Government of M.P. for grant of PL over an area of 180 ha in Compartment No. 537 in village Dungarbore overlapping 68.32 ha out of the 154.7 ha

applied for by Respondent No.3. The Government of M.P. recommended the grant of PL. Prior approval of the Central Government was obtained on 10th August 1993. PL in respect of the said 180 ha in village Dungarbore was granted in favour of the Petitioner on 27th October 1994.

4. Meanwhile, against the deemed rejection of its first application dated 22nd May 1990 for grant of PL in Boria Tibbu, Respondent No. 3 filed a revision application on 29th August 1993 before the Mines Tribunal. While the said revision application was pending, Respondent No. 3 on 20th September 1993 made a second application to the Government of M.P. for grant of PL over the same area for which it had earlier applied on 22nd May 1990.

5. On 22nd October 1994, the Mines Tribunal allowed the revision application of Respondent No. 3 and set aside the deemed rejection of its application dated 20th May 1990 for grant of PL. The Mines Tribunal remanded the said application to the Government of M.P. for disposal on merits.

6. The Petitioner on 25th April 1995 filed an application for grant of PL over an area of 124.32 ha in compartment Nos. 534, 536 and 537(Part) in Japdongri Hills, Khadgaon Range, Boria Tibbu. This area was adjoining the area in Dungarbore village in respect of 180 ha of which the Petitioner had been granted a PL and later applied for ML over an extent of 100 ha.

7. On 4th October 1996, the Government of M.P. gave a hearing in respect of the applications received for the grant of PL in the Boria Tibbu area. The proceedings drawn up thereafter on 28th June 1997 noted that Respondent No. 3 (NASL) stated before the Government of M.P. during the course of the hearing that it was not interested in obtaining any PL for iron ore in Rajnandgaon District. It was further noted that Respondent No.3 (NASL) had already been granted PL in respect of around 800 ha of land in Bastar District. Accordingly, it was decided that the second application dated 20th September 1993 of Respondent No. 3 for grant of PL should be dismissed. As regards the Petitioner (RASL), it was noted that it had been granted PL in the Dungarbore area. It was noted that for meeting the raw material requirements of its sponge iron plant, RASL required an additional area. A consequential order was passed on 31st December 1997 by the Government of M.P. in the above terms allowing the application dated 25th April 1995 of the Petitioner for grant of PL over the area of 124.32 ha it comprised in compartment Nos. 534, 536 and 537 (Part) in Vilage Japdongari Boria Tibbu and rejecting the application of Respondent No.3 (NASL). The PL was for a period of two years. On 6th October 1998 the Central Government granted its prior approval under Section 5 (1) MMDR Act for the grant of PL. A letter was sent on 4th January 1999 by the Divisional Forest Officer, Rajnandgaon recommending to the Chief Conservator of Forest to extend necessary cooperation to the Petitioner for commencing the prospecting operations.

8. Meanwhile, against the rejection of its application dated 20th September

1993 by the order dated 31st December 1997 of the Government of M.P., Respondent No. 3 filed a revision petition before the Mines Tribunal. This revision petition was dismissed on 4th February 1999 by the Mines Tribunal on the ground that it was barred by limitation. There was no further challenge to this order dated 4th February 1999 by Respondent No. 3 and, therefore, the order dated 31st December 1997 of the Government of M.P. rejecting its second application dated 20th September 1993 for grant of PL became final.

9. Meanwhile, pursuant to the order of the Mines Tribunal dated 22nd October 1994, the Government of M.P. reconsidered the first application dated 22nd May 1990 of Respondent No.3 and rejected it by an order dated 12th April 1999. Against the said rejection, Respondent No. 3 in July 2000 filed a Revision application before the Mines Tribunal. The Mines Tribunal passed an order granting stay on 12th August 1999.

10. On 29th September 1999, the Petitioner applied to the Central Government in the Ministry of Environment and Forests ('MoEF') for grant of permission under Section 2 (3) of the Forest (Conservation) Act, 1980 ('FCA') to commence prospecting in the Boria Tibbu area. The Petitioner also wrote on 23rd September 2000 to the Divisional Manager, Panabaras Project Division, Rajnandgaon, for an early action on forest clearance.

11. The Madhya Pradesh Reorganisation Act, 2000 ('Reorganisation Act')

came into force with effect from 1st November 2000 whereby the State of Chhattisgarh was formed. On 11th June 2001, the Respondent No. 2 wrote to the Petitioner enquiring about the status of clearance from the MoEF. On 20th July 2001 and 28th July 2001 hearings were held by the Respondent No. 2 on an application made by M/s. HEG Limited for grant of PL in respect of iron ore in the forest area. The proceedings of the hearings held on 20th July 2001 show that the Respondent No. 2 took note of the fact that the erstwhile Government of M.P. had on 28th June 1997 taken a decision to grant PL to the Petitioner and that the permission of the Government of India had also been received on 6th October 1998. The proceedings dated 2nd August 2001 took note of the fact that Respondent No. 3 had filed a revision application before the Mines Tribunal challenging the rejection of its application dated 22nd May 1990 for grant of PL and that the Tribunal had granted a stay on 12th August 1999.

12. The Revision application filed by Respondent No.3 against the order dated 12th April 1999 of the Government of M.P. rejecting its first application dated 22nd May 1990 for grant of PL was dismissed by the Mines Tribunal on 31st December 2001. This order again was not challenged by the Respondent No. 3 and the said rejection of its first application for grant of PL also attained finality.

13. The proceedings of 1st February 2002 of Respondent No.2 reveal that Respondent No.2 took a decision for 'cancellation' of the Petitioner's

application dated 25th April 1995 for grant of PL. Simultaneously, a decision was taken to allow the application of Respondent No. 3 for grant of PL. The Respondent No.2, at this stage, took no note of the order dated 31st December 2001 of the Mines Tribunal rejecting the Revision Application of Respondent No.3 and the consequence thereof. On 4th March 2002, Respondent No. 2 wrote to the Collector, District Rajnandgaon conveying that the Petitioner's application dated 25th April 1995 for grant of PL was rejected and that the remaining applications were kept pending for consideration. The said communication noted the fact that the Petitioner had filed application for an ML in compartment No. 537 on which action was in progress. This decision was however not communicated to the Petitioner. On 5th March 2002, the Respondent No. 2 wrote to the Government of India in the Ministry of Mineral Resources seeking prior approval for grant of PL *inter alia* to Respondent No. 3 in compartment No. 534 to the extent of 70.300 hectares and compartment No. 536 to an extent of 16.080 hectares, thus totaling 86.380 hectares.

14. The Petitioner states that it was never communicated the above decisions and, therefore, had no knowledge of the fact that its earlier application dated 25th April 1995, which had already been allowed by the Government of M.P. on 31st December 1997 was rejected by Respondent No. 2. In the meanwhile, on 11th June 2001, Respondent No. 2 wrote to the Petitioner asking it to furnish information on obtaining the permissions from MoEF in relation to the PL compartment Nos. 534, 536 and 537 (Part). The Petitioner,

on 12th July 2002, sent a reminder to the Divisional Manager, Panabaras Forest Division, Rajnandgaon in that regard. The Petitioner also wrote on 23rd December 2002 to the Respondent No. 2 updating it on the steps taken to obtain forest clearance. A reminder was also sent by the Chief Conservator of Forest (CCF), Government of Chhattisgarh to the Secretary, Forest and Cultural Department, Raipur on 28th January 2003 agreeing with the proposal of the DFO Rajnandgaon and asking the Secretary, Forest and Cultural Department to take further action. A letter dated 10th March 2003 was sent by the office of the CCF, Chhattisgarh to the Petitioner asking it to clarify whether it would remove or collect the samples during the prospecting operation. The position was clarified by the Petitioner by its reply dated 21st March 2003 to the CCF, Chhattisgarh.

15. The Petitioner states that even while it was pursuing the matter to obtain forest clearance, it was surprised to receive a letter 3rd April 2003 from Respondent No.2 stating that since it had been sanctioned ML for iron ore “in this area”, its application dated 25th April 1995 for grant of PL had been rejected. On 15th April 2003, the Petitioner wrote to Respondent No. 2 pointing out that the application dated 25th April 1995 seeking PL had already been granted by the Government of M.P on 31st December 1997 and the Central Government had also granted its prior approval on 6th October 1998. The Petitioner also pointed out that the revision application of Respondent No. 3 had been rejected by the Tribunal on 31st December 2001. Further it was submitted that the Petitioner’s application could not have been

rejected without giving it an opportunity of being heard and therefore, the said order should be withdrawn.

16. On 22nd May 2003, the MoEF conveyed its approval under Section 2 of the FCA to the Petitioner for commencing prospecting over the area of 124.32 ha in the Boria Tibbu for a period of two years. The said letter of approval was addressed to the Secretary (Forests) of the Respondent No. 2. This, according to the Petitioner, made it clear that the decision of Respondent No. 2 to reject the Petitioner's application dated 25th April 1995 was not communicated to its own forest department or even the MoEF.

17. The Petitioner, on 6th June 2003, filed a revision application under Section 30 of the MMDR Act together with an application for stay before the Mines Tribunal challenging the rejection of its PL application dated 25th April 1995 communicated to it by Respondent No.2 by its letter dated 3rd April 2003. Along with the reply to the said application, the Respondent No. 2 enclosed copies of the orders dated 4th March 2002 rejecting the Petitioner's PL application and the letter dated 5th March 2002 from Respondent No. 2 to the Government of India seeking approval of its decision to grant PL to Respondent No. 3 and other applicants. According to the Petitioner, as on 4th March 2002 there was no pending application by Respondent No. 3 for grant of PL.

18. The Petitioner states that Respondent No. 2 did not inform the Central

Government of its decision to reject the Petitioner's application dated 25th April 1995 as was evident from the fact that on 25th July 2002 the Ministry of Coal & Mines, Government of India sought information from the Mineral Resources Department of Respondent No. 2 with regard to the application by the Petitioner for grant of ML in respect of 80.710 ha of land in the Dongarbore area. In response to the said letter, the Respondent No. 2 on 7th August 2002 forwarded to the Secretary, Ministry of Coal & Mines, Government of India a revised check list and confirmed that pursuant to the PL granted to the Petitioner in respect of an area of 180 ha in Compartment 537 in village Dongarbore, the Petitioner had completed the prospecting.

19. Although the Petitioner had filed an application for stay along with the Revision application, the Mines Tribunal twice rejected the stay application. The said orders of the Mines Tribunal were set aside by this Court in Writ Petition (Civil) No. 16216 of 2004 filed by the Petitioner. By an order dated 7th December 2004 in the said writ petition, this Court directed the Mines Tribunal to decide its revision application finally on merits within two months.

20. Meanwhile, Respondent No. 2 on 5th March 2002 forwarded a proposal to the Central Government for prior approval to the grant of PL to the Respondent No. The Central Government granted its approval on 8th August 2002. Thereafter, the PL was issued on 28th February 2003 to Respondent No. 3 by Respondent No. 2 and a PL agreement was also entered into by

them on 11th March 2003. According to Respondent No. 3, it completed its prospecting operation and submitted a report. Respondent No.3 filed an application on 7th April 2003 for grant of an ML. The said application for ML was forwarded to Respondent No.2 on 26th April 2003 by the Collector. Thereafter, on 4th June 2003 Respondent No.2 forwarded the proposal for grant of an ML in favour of Respondent No. 3 to the Central Government for its prior approval. On 30th June 2003, the Central Government granted its prior approval to the ML application of Respondent No.3.

21. According to the Respondent No. 3, on 28th July 2003, its mining plan was approved by the Indian Bureau of Mines ('IBM') and on 1st July 2004 in-principle approval for forest diversion was granted by the MoEF. The revision application of the Petitioner was then taken up for final hearing by the Mines Tribunal on 12th December 2007. By the impugned order dated 5th February 2008, the Mines Tribunal rejected the Petitioner's revision application.

Impugned order of the Mines Tribunal

22. The summary of the findings of the Mines was as under:

(a) The question whether the Petitioner's revision application was time barred under Rule 54 (1) of the MCR [Issue No. (i)], was answered in the negative.

(b) The question whether the Petitioner ought to have impleaded M/s. HEG

Limited as a Respondent [Issue No. (ii)] was also answered in the negative. The Mines Tribunal observed that even if M/s. HEG Limited was made a party, it might not affect the decision on merits. The Mines Tribunal took note of the submission of Respondent No. 3 (impleaded party) that it had already been granted ML for the area in question by Respondent No.2 and it had also been granted prior approval by the Central Government. The Petitioner had neither challenged the grant of ML in favour of Respondent No. 3 nor had itself filed any application for grant of an ML. The Mines Tribunal held that there was some force in the submission that the PL having been granted to the Respondent No. 3 followed by the ML, the revision application had become infructuous. Consequently it was held that the question whether M/s. HEG Limited ought to have been impleaded was an academic one.

(c) As regards the power of Respondent No.2 to review the decision of the Government of M.P. to grant the application of Respondent No. 3 for grant of PL [issue (iii)], the Mines Tribunal held that the order earlier issued by the Government of M.P. was an administrative and not a quasi-judicial one and, therefore, could be reviewed without there being any specific provision in the MMDR Act and/or the MCR to that effect. The only requirement was that such review by Respondent No.2 could not be against the provisions of the MMDR Act and the MCR. It was held that the second proviso to Rule 12 (2) of the MCR was not attracted in the facts of the case and, therefore, there was no illegality in the decision of the Respondent No. 2 to reconsider the

application filed by Respondent No. 3 for grant of PL along with the other applications.

(d) The question as to whether the Respondent No. 2 had validly reviewed the earlier decision of the Government of M.P. to grant ML to the Petitioner [issue (iv)] was answered in the affirmative. The Mines Tribunal negated the contention of the Petitioner that no notice was given to it prior to proposed rejection of its application for grant of PL. It was held that the notice of hearing dated 11th October 2001 issued by the Respondent No. 2 constituted such notice. It was held that the reasons disclosed by the Respondent No. 2 in its order dated 4th March 2002 could not be held to be malafide, unreasonable, arbitrary or unfair or against the law.

(e) The Mines Tribunal rejected the allegation that the forgery had been committed by Respondent No. 2 in connivance with Respondent No. 3. The Mines Tribunal held that there was clear inaction on the part of the Petitioner to pursue its own case. The failure of Respondent No.2 to notice in the impugned decision dated 4th March 2002 the rejection by the Government of M.P. of the earlier applications of Respondent No.3 for grant of PL, as affirmed by the Mines Tribunal, was held not to be an error/omission of a fundamental nature.

23. At the hearing of the present writ petition on 24th April 2008, this Court recorded the submission of learned counsel for Respondent No. 2 that till that date “no prospecting has been carried out in that area by Respondent

No. 3” and “the licence applied for by Respondent No. 3 has been rejected by the State Government.” After noting that Respondent No. 3 objected to the correctness of the above statement, this Court directed status quo to be maintained. Thereafter, the Respondent No. 3 filed two applications being CM Applications Nos. 8266 and 8267 of 2008 for vacating the stay granted on 24th April 2008. The Respondent No. 3 contended that both the above statements made by the Respondent No. 2 in this Court on 24th April 2008 were false. On 16th March 2010, this Court vacated the status quo after noting the fact that approvals for grant of ML had been given by both the Respondent No. 2 as well as the Central Government. It was observed that it is always open to the Petitioner to challenge the ML, if granted to Respondent No. 3, in accordance with law.

Submissions of counsel for the Petitioner

24. Mr. Ratan Kumar Singh, learned counsel appearing for the Petitioner submitted that the Tribunal erred in holding that a prior show cause notice had been issued to the Petitioner before Respondent No. 2 rejected, by the decision dated 4th March 2002, its application dated 25th April 1995 for grant of PL in the area. It is submitted that a perusal of the Minutes of the hearing that took place before Respondent No. 2 pursuant to the application made by M/s. HEG Limited revealed that those hearings were not pursuant to any show cause notice issued to the Petitioner about any proposed rejection or cancellation of the PL already granted to it. Secondly, it is submitted that Respondent No. 2 could not arbitrarily review the earlier decision dated 31st

December 1997 of the Government of M.P. pursuant to which the Central Government had granted prior approval on 6th October 1998. The Petitioner thereafter was pursuing the forest clearance which was granted to it on 22nd May 2003. Thirdly, it is submitted that as of 4th March 2002, there was no pending application of Respondent No. 3 for grant of PL and, therefore, its case could not be taken up for consideration by Respondent No. 2 on 4th March 2002. By that date, the Tribunal had dismissed the revision application filed by the Respondent No. 3 challenging the rejection of its first application for grant of PL dated 22nd May 1990. Fourthly, it is submitted that in the absence of a specific provision in the MMDR Act or the MCR permitting it, the decision of the Government of M.P. could not possibly be reviewed by the Respondent No.2. Fifthly, it is submitted that the grant of approval to the application of Respondent No. 3 for ML both by Respondent No.2 and the Central Government did not create equities in favour of the Respondent No. 3. These were subject to the result of the petition filed first before the Mines Tribunal and this Court. Mr. Singh submitted that in its revision application before the Mines Tribunal, the Petitioner challenged the grant of ML to Respondent No. 3. He pointed out that in its reply to the application filed by Respondent No. 3 for vacation of stay granted by this Court on 24th April 2008, Respondent No. 2 stated that no prospecting had in fact been carried out by Respondent No. 3. Therefore, no ML could have been granted in its favour. It is submitted that if the Petitioner's application for grant of PL could not have been rejected on 4th March 2002, then the consequent decision dated 5th March 2002 granting PL

in favour of Respondent No. 3 was also bad in law and all decisions taken thereafter would also not survive.

25. In support of the proposition that prior show cause notice was mandatory for the cancellation of the Petitioner's PL, Mr. Singh, learned counsel for the Petitioner relied upon the decisions in *State of Orissa v. Dr. (Miss) Binapani Dei* AIR 1967 SC 1269 and *Shivji Nathubhai v. Union of India* AIR 1960 SC 606. In support of the proposition that Respondent No.2 cannot review its own administrative decision, reliance was placed on the decision in *R.R. Verma v. Union of India* (1980) 3 SCC 402. Reliance was placed on the judgment of the Andhra Pradesh in *Nukala Seeta Ramaiah v. State of Andhra Pradesh* AIR 1963 AP 54 to urge that unless there is a pending application, no decision should have been taken to grant PL in favour of Respondent No. 3. Reliance is placed on the decision of the Supreme Court in *State of Assam v. Om Prakash Mehta* (1973) 1 SCC 584 to urge that powers of the State Government under Rule 54 of the MCR were quasi-judicial and could not be reviewed. In any event, such decision could not be varied without issuing the party, in whose favour the original decision was, a show cause notice followed by an opportunity of being heard. Reliance was placed on the recent judgment of the Supreme Court in *Sandur Manganese and Iron Ores Limited v. State of Karnataka* JT 2010 (10) SC 157 to urge that an illegal order would render void all subsequent actions and could not, therefore, create equities in favour of a party benefitting from such illegality.

Submissions of learned counsel for the Respondents

26. Appearing on behalf of the Respondent No. 2 Mr. Atul Jha, learned counsel produced the relevant records. It was submitted that there was no material to support the decision recorded in the proceedings dated 1st February 2002 and 4th March 2002 of Respondent No. 2 to reject the application of the Petitioner dated 25th April 1995 for grant of PL. He stood by the affidavit filed by the Respondent No. 2 in reply to the application filed by Respondent No. 3 for vacation of stay to the effect that no prospecting had in fact been carried out by the Respondent No. 3 pursuant to the PL granted to it. It was maintained that the prospecting report submitted by Respondent No. 3 was not a genuine document and that the Respondent No. 2 was proposing to issue a show cause notice to Respondent No. 3 for cancellation of the approval granted by Respondent No. 2 for issuance of an ML in favour of Respondent No.3.

27. Appearing for Respondent No. 3, Mr. P.S. Patwalia, learned Senior counsel first questioned the very maintainability of the petition under Article 226 of the Constitution. Relying on the judgment in ***Shalini Shyam Shetty v. Rajendra Shankar Patil (2010) 8 SCC 329*** he submitted that there was a distinction between a petition under Article 226 and one under Article 227 of the Constitution. Since the Mines Tribunal was a quasi-judicial authority, it came under the purview of the supervisory jurisdiction of the High Court under Article 227 of the Constitution. Reliance is placed on the decision in ***Jai Singh v. Municipal Corporation of Delhi 2010 (10) SCALE 209***. He

submitted that at best, the present writ petition can be treated as revision petition under Article 227 of the Constitution. Consequently, it was submitted that the scope of interference by this Court would be limited.

28. Mr. Patwalia next submitted that the present writ petition has been rendered infructuous as there was no challenge by the Petitioner to the grant of PL in favour of Respondent No. 3. He submitted that the PL had already been worked and Respondent No.3 had submitted a report of prospecting on the basis of which it had applied for an ML over an area of 47 ha in the Boria Tibbu region. Further, despite being aware of the fact that the application by Respondent No. 3 for an ML had already been recommended by the Respondent No.2 and had received the approval of the Central Government, the Petitioner has chosen not to challenge either decision. Relying on the decision in *Loknath Padhan v. Birendra Kumar Sahu (1974) 1 SCC 526* it is submitted that in view of the subsequent developments, which are not under challenge, the present petition raises only academic issues which the court will not examine. The Petitioner could, therefore, not seek to have the status quo restored ante the issuance of a PL in favour of Respondent No. 3. Referring to Sections 5 and 11 of the MMDR Act, it is submitted that the availability of iron ore in Boria Tibbu has been established on account of the prospecting report of Respondent No.3, as well as the statement of the Respondent No.2 in an earlier proceeding in W.P. (C) No. 78 of 2009, which was admissible against it. Reliance is placed on the decisions in *Thimmappa Rai v. Ramanna Rai (2007) 14 SCC 63* and

Nagindas Ramdas v. Dalpatram Icchram (1974) 1 SCC 242. There was no need for a party to again apply for a PL and in this case, therefore, no purpose would be served by reviving the PL granted to the Petitioner. Even if the Petitioner was held to hold a valid PL, no notification was required to be issued in terms of the third proviso to Rule 59 (1) MCR for grant of an ML to Respondent No.3. As far as the actual grant of an ML in favour of Respondent No.3, since the formal order was yet to be passed, the petition was premature. In any event, the Petitioner had not applied for an ML and, therefore, had no locus to challenge the grant of an ML in favour of Respondent No. 3.

29. As regards equities, Mr. Patwalia submitted that Respondent No. 3 had been granted PL only for an extent of 86.38 ha in Boria Tibbu and of this, it had applied for an ML for an extent of only 47 ha. It was open to the Petitioner to still seek ML in respect of the remaining area after making an application in accordance with law. The grants of PL or ML in respect of other areas in favour of Respondent No.3 were either under challenge before the Mines Tribunal or were located in naxal-hit areas which made the deposits unavailable to it. Respondent No.3 had established its sponge iron plant for which it needed raw material for captive consumption. Relying on the decision in *Reliance Energy Ltd. v. MSRDC Ltd. (2007) 8 SCC 1*, it is submitted that there had to be a 'level playing field' and an equitable distribution of mineral resources.

30. Mr. Patwalia took strong exception to the conduct of Respondent No. 2 in the present case. According to him, not only the statements made by learned counsel for Respondent No. 2 before this Court at the hearing of the present writ petition on 24th April 2008 were false, but statements in its affidavit by way of a reply to the application of Respondent No. 3 for vacation of stay were also false. As regards the annexures to the said reply affidavit of Respondent No. 2, Mr. Patwalia submitted that those documents were obtained by way of an application under the Right to Information Act, 2005 ('RTI Act') by some Advocate after hearing of the writ petition in this Court on 24th August 2008. He, accordingly, alleged that Respondent No. 2 was acting malafide and was in connivance with the Petitioner to somehow deprive Respondent No. 3 of its ML. Relying on the decisions in *Guruvayoor Devaswom Managing Committee v. Chairman, Guruvayoor Devaswom Managing Committee* (1996) 7 SCC 505, *M.C. Mehta v. Union of India* (2004) 12 SCC 118, *Hari Bansh Lal v. Sahodar Prasad Mahto* (2010) 9 SCC 655, *Supdt. of Taxes, Tezpur v. Bormahajan Tea Co* (1978) 1 SCC 513 and *Mamleshwar Prasad v. Kanhaiya Lal* (1975) 2 SCC 232 he submitted that Respondent No.2 cannot be permitted to "play fast and loose" with the Court and, therefore, no credence should be given to the changing stand of Respondent No. 2 in this Court. It was contrary to the stand it took before the Mines Tribunal where it fully supported the grant of PL as well as ML in favour of Respondent No. 3.

31. It was next submitted by Mr. Patwalia that there was, in fact, no formal

order in favour of the Petitioner for grant of PL. If indeed there was such an order, then it should have been followed by an appropriate agreement for prospecting entered into between Respondent No.2 and the Petitioner in terms of Rule 15 MCR, as was done in the case of Respondent No. 3. In fact, since there was no formal order granting PL in favour of the Petitioner, the Respondent No. 2 was justified in rejecting the application dated 25th April 1995 and revoking the earlier approval granted by it to the said application of the Petitioner. It is submitted that the earlier order dated 31st December 1997 of the Government of M.P. granting approval to the application of the Petitioner dated 25th April 1995 was a time-bound one and only for a period of two years. The failure of the Petitioner to take steps to obtain forest clearance within the said period meant that the PL granted to it had lapsed.

32. Mr.Patwalia further submitted that as on 20th/27th October 2001, by virtue of the stay granted by the Tribunal in the Revision Petition filed by Respondent No.3, its first application dated 22nd May 1990 was to be taken to be pending and, therefore, it could not be said that there was no application of Respondent No.3 which could be considered by Respondent No. 2. In the written submissions filed by Respondent No. 3, it is contended that it is its second application dated 20th September 1993 for PL which was granted by Respondent No.2 on 5th March 2002. Mr. Patwalia submitted that the order passed on 31st December 1997 by the Government of M.P. was an administrative order which could be reviewed. The dismissal by the Mines Tribunal, on 4th February 1999, of the Revision Petition of Respondent No.3

challenging the said order as being time-barred did not mean there was a merger of the order dated 31st December 1997 with the order of the Mines Tribunal. Reliance in this regard was placed on the decision in ***Chandi Prasad v. Jagdish Prasad (2004) 8 SCC 724***. The power to review an administrative order was available to the Respondent No.2 even under Section 21 of the General Clauses Act 1897. Reliance was placed on the decisions in ***Shivji Nathubhai v. Union of India AIR 1960 SC 606***, ***Harinagar Sugar Mills Limited v. Shyam Sunder Jhunjunwala AIR 1961 SC 1669***, ***Nukala Seeta Ramaiah v. State of Andhra Pradesh AIR 1963 AP 54***, and ***Andhra Cements Limited, Hyderabad v. Government of Andhra Pradesh 2000 (6) ALD 404***. It was submitted that the letters written to the Petitioner by Respondent No.2 on 31st March 2001 and 11th June 2001 enquiring about the stage of forest clearance and the notice of the hearings of the applications made for grant of PL on 29th September and 24th October 2001 constituted sufficient notice of the rejection of the Petitioner's application for grant of PL. Therefore, there was compliance with the rules of natural justice. The decision of Respondent No.2 to encourage new industries willing to invest in mines and industries in the State had to be seen in the light of the 1999 amendments to the MMDR Act which shifted the focus from 'regulation' to 'development'. This justified the decision of Respondent No.2 to review the previous orders.

Maintainability of the petition

33. The first issue to be considered is the maintainability of the present writ

petition under Article 226 of the Constitution. The question whether it ought to be a petition under Article 227 of the Constitution arises in the context of the contention of learned Senior Counsel for Respondent No.3 that since the Mines Tribunal is a quasi-judicial authority, it is under the supervisory jurisdiction of this Court. The present petition seeks a writ of certiorari to call for the records and quash the impugned order dated 5th February 2008 passed by the Mines Tribunal. This Court has been entertaining writ petitions filed under Article 226 of the Constitution challenging orders passed by the Mines Tribunal. The proceedings before the Mines Tribunal invariably involve a challenge to the decisions of the State Government and the Central Government under the MMDR Act. There can be no manner of doubt that the Mines Tribunal is discharging quasi-judicial functions while exercising its powers under Section 30 of the MMDR Act inasmuch as it is deciding disputes between two parties: one of whom is the challenger to the decisions of the Government and the other the defender of such decisions which are in its favour. The State Government is also a party to the revision petition before the Tribunal.

34. In *Shalini Shyam Shetty v. Rajendra Shankar Patil*, the proceedings arose out of a dispute between a landlord and a tenant, which did not involve any challenge to the decisions of government. It was a purely private dispute. The petition was a challenge to the decision of the Appellate Authority under the relevant local rent control legislation. It was in that context that the Supreme Court in *Shalini Shyam Shetty* drew a distinction

between proceedings under Article 226 and those under Article 227 of the Constitution. The Supreme Court referred to an earlier decision in ***Mohan Pandey v. Usha Rani Rajgaria (1992) 4 SCC 61*** where it was observed that Article 226 is not available to decide private disputes “unless there is violation of some statutory duty on the part of a statutory authority.” It referred to ***Mohd. Hanif v. State of Assam (1969) 2 SCC 782*** and ***T. C. Basappa v. T. Nagappa AIR 1954 SC 440*** which held that the jurisdiction under Article 226 is not meant for declaring the private rights of parties. The Supreme Court in ***Shalini Shyam Shetty*** concluded (SCC, p.351) that: “a private person becomes amenable to writ jurisdiction only if he is connected with a statutory authority or only if he/she discharges any official duty.” A landlord-tenant dispute, it was held, could not be the subject matter of a writ petition. It was observed that while exercising its power under Article 226 of the Constitution, the High Court exercises a public law function whereas the scope of its powers under Article 227 was supervisory, i.e. for keeping the subordinate courts within the bounds of their jurisdiction.

35. In the considered view of this Court, inasmuch as the correctness of the orders of the State Government and the Central Government under the MMDR Act and MCR are the subject matter of the revision petition before the Mines Tribunal and later before this Court, the disputes before the Mines Tribunal cannot be characterized as purely private disputes. The authorities whose orders are under challenge are undoubtedly performing statutory functions under the MMDR Act and MCR. Their orders are assailed

invariably on the ground that they are in violation of a statutory duty cast on these authorities to follow the provisions of the MMDR Act and MCR or that there has been an infraction of the procedure mandated by the MMDR Act and MCR. Applying the ratio of *Shalini Shyam Shetty* and the decisions referred to therein, it is plain that a writ petition challenging the decision of a Mines Tribunal would be maintainable as such under Article 226 of the Constitution.

36. Nevertheless, the scope of proceedings under Article 226 of the Constitution is very limited. It is well settled that the High Court would interfere only where (i) “the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.” (see *Surya Dev Rai v. Ram Chander Rai* (2003) 6 SCC 674 and *Hari Vishnu Kamath v. Ahmad Ishaque* AIR 1955 SC 233). This disposes of the preliminary objection raised by Respondent No.3 as to maintainability of the present petition as a writ petition under Article 226 of the Constitution.

Validity of the order dated 4th March 2002 of Respondent No.2

37. The central issue to be considered is whether the Respondent No. 2 could have, by its decision dated 4th March 2002, rejected the Petitioner’s application dated 25th April 1995 for grant of PL. The decision dated 5th March 2002 of Respondent No.2 granting prior approval for the grant of a

PL in favour of Respondent No. 3 was consequential thereto.

38. To briefly recapitulate the factual matrix, the subject matter of the present dispute is an area in the Boria Tibbu region in District Rajnandgaon involving Compartments 534, 536 and 537 (Part). While Respondent No. 3 made two applications for the grant of PL over this area on 22nd May 1990 and 20th September 1993, the Petitioner made an application for the same area on 25th April 1995. This was distinct from the application the Petitioner made on 25th November 1991 for grant of PL over an area of 180 ha in Compartment No. 537 (P) in village Dungarbore, which was granted on 27th October 1994, and in respect of which the Petitioner applied for ML over an area of 100 ha.

39. As regards the area in Boria Tibbu, the first application dated 22nd May 1990 of Respondent No.3 suffered a deemed rejection but this was set aside by the Mines Tribunal by its order dated 22nd October 1994 and the matter was remanded for a fresh consideration by the Government of M.P. On remand, it was again rejected by the Government of M.P. on 12th April 1999. The revision petition filed by Respondent No.3 against the said order was dismissed by the Mines Tribunal on 31st December 2001. This order was not further challenged by Respondent No.3. As regards the second application dated 20th September 1993 by Respondent No.3, for the grant of PL for the same area, it is not known how there could be two parallel applications by a party for the same area in terms of the MMDR Act and MCR. Nevertheless,

the said application was considered by the Government of M.P. along with the Petitioner's application at a hearing in terms of Rule 12 MCR on 4th October 1996. The statement of Respondent No.3 that it was not interested in a PL for the area was recorded. The reasons for the grant of PL in favour of the Petitioner and rejection of the application dated 20th September 1993 of Respondent No.3 were recorded. The consequential order granting the Petitioner PL in compartment Nos. 534, 536 and 537 (P) was issued by the Government of M.P. on 31st December 1997. The PL was for a period of two years but was subject to the Petitioner first obtaining forest clearance from the MoEF. The challenge by Respondent No.3 to the order dated 31st December 1997 failed by virtue of the order dated 4th February 1999 of the Mines Tribunal dismissing its Revision Petition on the ground that it was time barred. This order too was not challenged by Respondent No.3

40. Thus we have a situation where both the applications of Respondent No.3 for grant of PL for the area in question stand rejected by the Government of M.P. by two separate orders and both those orders have been affirmed by the Mines Tribunal dismissing the revision petitions of Respondent No.3. The orders of the Mines Tribunal were not challenged and the orders of the Government of M.P. dated 12th April 1999 and 31st December 1997, therefore, became final. The latter decision was followed by the prior approval of the Central Government on 6th October 1998 to the grant of PL in favour of the Petitioner. The consequence was that first, after 31st December 1997, when the Government of M.P. rejected the application

of Respondent No.3 and allowed the application of the Petitioner for grant of PL, and in any event after 31st December 2001 when the Mines Tribunal affirmed that order, there was no pending application of either the Petitioner or Respondent No.3 for grant of PL. The second consequence was that the orders dated 12th April 1999 and 31st December 1997 of the Government of M.P. became final with there being no challenge to the corresponding orders dated 31st December 2001 and 4th February 1999 of the Mines Tribunal affirming those orders. The submission of Respondent No.3 that there was no 'merger' of the order dated 31st December 1997 of the Government of M.P. with the order dated 4th February 1999 of the Mines Tribunal is devoid of merit as it defeats the very object of Section 30 of the MMDR Act, which permits a party aggrieved by a decision rejecting its application for grant of PL to challenge such rejection by way of a revision petition before the Mines Tribunal exercising quasi-judicial powers. The decision in *Chandi Prasad v. Jagdish Prasad* was in a totally different factual situation not arising under the MMDR Act at all.

41. Even assuming there was no merger, the decision dated 31st December 1997 of the Government of M.P., concurred with by the Central Government on 6th October 1998, held good as it was never formally overturned and in fact could not be overturned as will be seen presently. After the orders dated 31st December 2001 and 4th February 1999 of the Mines Tribunal, neither Respondent No.3 nor the Petitioner made any fresh application for grant of PL. Therefore, when the formation of the State of Chhattisgarh took place on

1st November 2000, there was no pending application before Respondent No.2 for grant of PL by either the Petitioner or Respondent No.3. The applications made by either party already stood disposed of by the Government of M.P. In terms of Section 79 of the Reorganisation Act, an Adaptation of Laws Order, 2001 effective 1st November 2000 was notified. In terms of Para 3 read with the Schedule thereof, any notification, order etc. made by the Government of M.P. under the MMDR Act or MCR “shall continue to remain in force in the State of Chhattisgarh.” Therefore, the legal position was that Respondent No.2 was bound by the decisions already taken by the Government of M.P. unless it was expressly stated to the contrary in terms of Section 79 of the Reorganisation Act. In this background, there was no legal basis for Respondent No.2 to issue a notice of hearing to the Petitioner and Respondent No.3 on the application filed by M/s. HEG for grant of PL in the area. No legal basis has been shown to this Court for the proceedings recorded on 20th July, 28th July, 29th September and 24th October 2001 and 1st February 2002, which proceed on the basis that there are pending applications of the Petitioner and Respondent No.3 for grant of PL. There were no such applications before Respondent No.2. In this context, it is important to note that the interim order passed by the Mines Tribunal on 4th August 1999 in the Revision petition of Respondent No.3 challenging the rejection by the Government of M.P. of its first application dated 22nd May 1990 did not amount to revival of the said application. In any event, that ‘stay’ came to an end with the dismissal of the revision petition of Respondent No.3 by the Mines Tribunal on 31st December 2001. Therefore,

when Respondent No.2 resumed its consideration of the question of grant of PL on 1st February 2002, it ought to have made note of the fact that as on that date not even the first application dated 22nd May 1990 of Respondent No.3 was pending. As is evident from the subsequent proceedings of 4th March 2002, Respondent No.2 failed to note the above facts and proceeded to 'reject' the Petitioner's application dated 25th April 1995, when that application already stood disposed of on 31st December 1997 by the Government of M.P. This Court has, therefore, no hesitation in holding that the said proceedings, which tantamounted to reopening the disposed of applications of the two parties was without the authority of law. As on 4th March 2002, without there being any application of either the Petitioner or Respondent No.3 pending before it for grant of PL, there was no question of Respondent No.2 rejecting the Petitioner's application and allowing the application of Respondent No.3.

42. The order dated 4th March 2002 suffers from other illegalities. It was, in effect, a reversal of the order dated 31st December 1997 of the Government of M.P. which, for reasons already noted, attained finality. That order was followed by the order dated 6th October 1998 of the Central Government granting its prior approval to the grant of PL in favour of the Petitioner. The approval of the Central Government is mandatory under the proviso to Section 5 (1) MMDR Act. Both exercises, i.e. the consideration of and decision on the applications in the first stage by the State Government and the concurrence of the Central Government cannot be characterized as

purely administrative functions. A hearing is envisaged under Rule 12 of the MCR. The relative merits of the applicants are evaluated and a decision is taken. Such decision is subject to judicial review under Section 30 by the Mines Tribunal. These factors render the exercise of consideration of an application for PL and the consequential grant or rejection of such application a quasi-judicial exercise and not merely an administrative exercise. This Court finds support for the aforesaid conclusion from the decisions of the Supreme Court in *Province of Bombay v. Khushaldas Advani AIR 1950 SC 222*, *Indian National Congress (I) v. Institute of Social Workers (2002) 5 SCC 685* and the recent decision in *Automotive Tyre Manufacturers Association v. The Designated Authority 2011 (1) SCALE 149*. In *Province of Bombay v. Khushaldas S. Advani*, it was explained in para 48 as under:

“(i) that if a statute empowers an authority, not being a Court in the ordinary sense, to decide disputes arising out of a claim made by one party under the statute which claim is opposed by another party and to determine the respective rights of the contesting parties who are opposed to each other, there is a *lis* and *prima facie*, and in the absence of anything in the statute to the contrary it is the duty of the authority to act judicially and the decision of the authority is a quasi-judicial act; and

(ii) that if a statutory authority has power to do any act which will prejudicially affect the subject, then, although there are not two parties apart from the authority and the contest is between the authority proposing to do the act and the subject opposing it, the final determination of the authority will yet be a quasi-judicial act provided the authority is required by the statute to act judicially.”

43. The above legal position has been reiterated in *Jaswant Sugar Mills Limited, Meerut v. Lakshmi Chand* 1963 Suppl 1 SCR 242. The determination that the order dated 31st December 1997 of the Government of M.P., as concurred with by the Central Government by its decision dated 6th October 1998, is quasi-judicial is relevant for two purposes. One is for determining whether it could be reviewed by Respondent No.2. As explained in *R.R. Verma v. Union of India*, unless the power of review is conferred expressly by a statute a decision by the government in exercise of quasi-judicial powers cannot be reviewed. Secondly, there can be no reversal of a decision taken in exercise of quasi-judicial powers, or for that matter even an administrative decision, without affording the party, in whose favour such decision is, an opportunity of being heard. In the context of the MMDR Act and the MCR, this position has been made clear by the Supreme Court in *Shivji Nathubhai v. Union of India*. In *State of Assam v. Om Prakash*, the Supreme Court explained that the MMDR Act and the MCR were a complete code. Recently, in *Sandur Manganese and Iron Ores Ltd.*, it was emphasised that (para 28): “It is not open to the State Government to justify grant based on criteria that are de hors the MMDR Act and the MCR. The exercise has to be done strictly in accordance with the statutory provisions and if there is any deviation, the same cannot be sustained.” The impugned order dated 4th March 2002 rejecting the Petitioner’s application for grant of PL and the consequential order dated 5th March 2002 granting PL to Respondent No.3 cannot be sustained with reference to any provision of the MMDR Act or MCR and are liable to be set aside on that score.

44. This Court is unable to accept the submission made on behalf of Respondent No.3 that notices were issued to the Petitioner by Respondent No.2 prior to rejecting its application dated 25th April 1995 for grant of PL. The letters written to the Petitioner by Respondent No.2 on 31st March 2001 and 11th June 2001 enquired about the stage of forest clearance. They made no mention whatsoever of any proposed 'cancellation' or rejection of the application. The notices of the hearings on 29th September and 24th October 2001 could by no stretch of imagination be construed as notices for cancellation or rejection of the Petitioner's PL application. In fact, as already noted, there was no such application pending at that point in time. Further, the conduct of Respondent No.2 in writing letters enquiring about the stage of forest clearance gave a contrary impression. Rule 12 MCR mandates a hearing before the rejection of an application for grant of PL. A fortiori, if an earlier decision granting PL is sought to be reversed for whatever reason, a prior notice setting out the grounds for the proposed 'cancellation', followed by a hearing of the party affected, is a must. There was no such notice issued by Respondent No.2 to the Petitioner in the instant case. This Court therefore holds that the impugned order dated 4th March 2002 is also unsustainable in law since it was passed in violation of the principles of natural justice.

45. The submission of learned Senior counsel for Respondent No. 3 that there was in effect no PL granted to the Petitioner since there was no agreement entered into by Respondent No.2 with it is also without merit.

The decision dated 31st December 1997 of the Government of M.P. was concurred with by the Central Government on 6th October 1998 and became effective thereafter. In the absence of an express decision revoking them, both those orders remained valid. In fact, the correspondence between Respondent No.2 and the Petitioner even subsequent to the order dated 4th March 2002 (which for some unexplained reason was not communicated to the Petitioner till 3rd April 2003) shows that Respondent No.2 considered the decision dated 31st December 1997 of the Government of M.P. to be subsisting. The CCF kept writing to the Petitioner asking about the progress in obtaining the forest clearance. The Central Government was also not informed about the rejection of the Petitioner's application. The reason stated in the impugned order dated 4th March 2002, communicated to the Petitioner on 3rd April 2003, that it had already been granted an ML in the same area was erroneous. The Petitioner had separately applied for and was granted a PL for an area of 180 ha in Compartment 537 (P) in village Dungarbore which was adjoining the Boria Tibbu area. After prospecting, the Petitioner applied for ML to an extent of 100 ha in village Dungarbore.

46. There is also no merit in the submission of Respondent No. 3 that the PL granted to the Petitioner by the order dated 31st December 1997 automatically expired on the completion of two years thereafter. In the first place, the order dated 31st December 1997 does not indicate that the grant would automatically lapse if MoEF clearance is not obtained within two years. Secondly, the Petitioner could not have taken any steps till the Central

Government gave its prior approval in terms of the proviso to Section 5 (1) MMDR Act on 6th October 1998. The grant of clearance by the MoEF is not a matter within the control of an applicant. The facts show that the Petitioner did take steps to obtain forest clearance. The Divisional Forest Officer, Rajnandgaon, by a letter dated 4th January 1999, recommended to the Chief Conservator of Forest to extend the necessary cooperation to the Petitioner and the application for forest clearance was thereafter made by the Petitioner on 29th September 1999. The Petitioner followed this up periodically and ultimately, the MoEF granted forest clearance on 22nd May 2003. However, in the meanwhile, the Respondent No. 2 took a decision on 4th March 2002 to reject the Petitioner's application. That order does not say that the application was rejected for not obtaining forest clearance within the time. Therefore, this cannot be put forth as one of the grounds for rejection of the Petitioner's application.

47. Turning to the impugned order dated 5th February 2008 of the Mines Tribunal, this Court finds that it suffers from grave errors of law. The conclusion of the Mines Tribunal that the orders passed by the State Government and Central Government under the MMDR Act and MCR are administrative and, therefore, can be reviewed is unsustainable in law in view of what has been held by this Court hereinbefore. Also, the conclusion of the Mines Tribunal that the Petitioner was issued a notice prior to the rejection of its PL application is contrary to the record and has resulted in a grave miscarriage of justice as far as the Petitioner is concerned. This is,

therefore, a case where this Court would, in exercise of its powers under Article 226 of the Constitution, set aside the impugned order of the Mines tribunal for the aforementioned reasons.

The question of equities

48. This brings the next issue of the effect of the developments that have taken place subsequent to the impugned orders dated 4th and 5th March 2002. The submission of Respondent No.3 that the Petitioner did not challenge the order dated 5th March 2002 granting PL in favour of Respondent No.3 is not entirely accurate. The prayers in the Revision Petition include one seeking invalidation of all orders passed consequent to the impugned order dated 4th March 2002. The order dated 5th March 2002 is certainly consequential to the order dated 4th March 2002. If the latter is held to be invalid, it will have the inevitable effect of invalidating the subsequent order dated 5th March 2002 of Respondent No.2.

49. After the order dated 5th March 2002, followed by the order dated 8th August 2002 of the Central Government conveying its approval, an order dated 28th February 2003 was passed by Respondent No.2 granting PL to Respondent No. 3. A prospecting licence agreement was entered into between Respondents 2 and 3 on 11th March 2003. What is significant is that the Petitioner was not aware of the rejection of its PL application till it received the letter dated 3rd April 2003 from the Respondent No.2 on 12th April 2003. It filed its Revision application before the Mines Tribunal on 6th

June 2003. The Petitioner was obviously not aware of any of the above developments concerning Respondent No.3 till then. It could not have challenged any of them earlier. It is only when the reply of the Respondent No.2 to the said application was filed that the aforementioned order dated 5th March 2002 came to the knowledge of the Petitioner.

50. The Petitioner's application seeking stay of the order dated 4th March 2002 was unable to be taken up by the Mines Tribunal and the Petitioner had to approach this Court time and again for that purpose. Meanwhile, Respondent No.3 applied for an ML in respect of 47 ha in Boria Tibbu area on 7th April 2003. Thereafter the order dated 4th June 2003 of Respondent No.2 and order dated 20th June 2003 of the Central Government conveying approval for grant of ML to Respondent No.3 were passed. Admittedly, no formal order granting ML in favour of Respondent No.3 has been issued as yet.

51. During the pendency of the Revision application of the Petitioner before the Mines Tribunal, the IBM on 28th July 2003 granted approval to the mining plan of Respondent No.3. However, a controversy has been raised in these proceedings, in view of the stand of Respondent No.2 in reply to CM No. 8266 of 2008 filed by Respondent No.3 for vacation of the stay order dated 24th April 2008 passed by this Court, whether in fact Respondent No. 2 had done the prospecting of the area in terms of the PL issued to it on 28th February 2003. Respondent No.3, however, vehemently denies this

allegation. It is contended that since there is an out crop of iron ore, there is no need to drill holes and that samples can be obtained by scraping the rock surface. Consequently, it is contended by Respondent No.3 that the formal clearance from MoEF was not necessary. Respondent No.3 takes exception to Respondent No.2 changing its stand before this Court and impliedly supporting the Petitioner. Documents have been placed on record by Respondents 2 and 3 respectively in support of their respective contentions in this regard. Among the documents is a show cause notice issued by the Central Government questioning the veracity of the prospecting report submitted by the Respondent No. 3.

52. This Court does not wish to express any view on the question of the veracity of the prospecting claimed to have been done by Respondent No.3. This aspect will be decided by the Central Government pursuant to the show cause notice issued to Respondent No. 3. It does appear that the question of an issuance of a formal order granting ML in favour of Respondent No. 3 will depend on the decision of the Central Government and any decision that Respondent No.2 may take hereafter on such issue since it has posed the whether an ML should at all be granted in favour of Respondent No. 3. Although it was argued on behalf of Respondent No.3 that Respondent no.2 should not be permitted to change its stand, it cannot be said that Respondent No.2 is totally precluded from re-examining the issue in light of the subsequent developments. The documents it has produced show that Respondent No.2 has, subsequent to the grant of approval for grant of an ML

to Respondent No.3, come across material that raises doubts about the prospecting done by Respondent No.3. This Court is, therefore, not persuaded to comment adversely on the conduct of Respondent No.2 for bringing these developments to the notice of this Court.

53. The question whether there is a case for balancing of equities in favour of Respondent No.3 has to be examined in the above background. It is but logical that the invalidation of the order dated 4th March 2002 of Respondent No.2 would have the inevitable effect of invalidating all developments consequent upon such order. However, those developments do not appear to have created in Respondent No.3 any indefeasible right as yet. The illegality vitiating the order dated 4th March 2002 and, therefore, the subsequent orders in favour of Respondent No. 3 cannot, in the circumstances noticed above, be set off by the steps taken by the Respondents consequent upon such a decision. Consequently, this Court is unable to find any equities in favour of Respondent No. 3.

Conclusion

54. For the aforementioned reasons, this Court sets aside the impugned order dated 5th February 2008 of the Mines Tribunal and allows the Revision application filed by the Petitioner before it. Consequently, the order dated 4th March 2002 and the consequential order dated 5th March 2002 passed by Respondent No. 2 are set aside. The order dated 31st December 1997 passed by the Government of M.P., as concurred with by the Central Government by its order dated 6th October 1998 granting PL in favour of the Petitioner in

respect of its application dated 25th April 1995 stands revived. Consequently, the approval granted by the MoEF on 22nd May 2003 to the Petitioner also stands revived. Respondent No.2 and the Central Government (Respondent No.1) will now issue consequential orders in terms of this judgment within a period of four weeks.

55. The writ petition is allowed in the above terms with costs of Rs. 10,000/- which shall be paid by the Respondent No. 3 to the Petitioner within a period of four weeks from today. The pending applications are disposed of.

S. MURALIDHAR, J.

JANUARY 28, 2011

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