

IN THE HIGH COURT OF DELHI AT NEW DELHI

W. P. (C) 4723/2010 & CM APPL 9368/2010 (for stay)

Reserved on: May 24, 2011

Decision on: July 6, 2011

REAL ISPAT & POWER LIMITED

..... Petitioner

Through: Mr. Sridhar Potaraju with
Mr. Gaichangpou Gangmei and
Ms. Tatni Basu, Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Sandeep Sethi, Senior Advocate with
Mr. Ajay Bhargava, Mr. Naveen Kumar,
Mr. A. S. Mathur and Ms. Shruti Verma, Advocates for
SKS Ispat Ltd.
Mr. Avi Singh with Mr. Shreya Dharmadhikari, Advocates
for Kalindi Ispat Pvt. Ltd.

AND

W. P. (C) 6212/2010 & CM APPL 12285/2010 (for stay)

KALINDI ISPAT PVT LTD

..... Petitioner

Through: Mr. Avi Singh with Mr. Shreya Dharmadhikari,
Advocates.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Ruchir Mishra, Advocate for R-1.
Mr. Sandeep Sethi, Senior Advocate with Mr. Ajay
Bhargava, Mr. Naveen Kumar,

Mr. A. S. Mathur and Ms. Shruti Verma, Advocates for
SKS Ispat Ltd.
Mr. Sridhar Potaraju with Mr. Gaichangpou Gangmei and
Ms. Tatni Basu, Advocates for Mr. Real Ispat Ltd.
Mr. Manoj Sharma with Mr. Sumit Bhardwaj, Advocates
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 judgment should be reported in Digest? | Yes |

JUDGMENT
06.07.2011

1. Real Ispat & Power Limited ('RIPL') challenges, in W.P. (C) 4723 of 2010, an order dated 31st May 2010 passed by the Mines Tribunal setting aside the order dated 7th April 2007 passed by the State of Chhattisgarh ('SOC') in the Department of Mineral Resources (Respondent No. 2 herein) to the extent that it had recommended the grant of prospecting licence ('PL') for iron ore in favour of RIPL for an area of 235.03 hectares in part of the forest compartment Nos. 112 and 179 under Core Forest Region situated in Forest Division, Kabirdham, District Kabirdham (Kawardha), Chhattisgarh.

2. Kalindi Ispat Private Limited ('KIPL') challenges, in W.P. (C) 6212 of 2010, the aforementioned order dated 31st May 2010 to the extent that it maintained the recommendation made by Respondent No. 2 SOC by its order dated 7th April 2007 for grant of PL in favour of M/s. SKS Ispat Private Limited ('SIPL') ['Respondent No. 3'] for an extent of 876.71 hectares. The prayer of KIPL is that the entire area applied for by KIPL should have been granted to it.

3. The facts are that in the year 2001 the SOC formulated a mineral policy. It received several applications for grant of PL for iron ore in the area of Forest Compartment Nos. 112, 179, 180, 259, 260 fn 245 (Part) in the Khara Forest Area, Chhattisgarh. Admittedly, the area

was a non-notified area. Applications were *inter alia* made for grant of PL by Chhattisgarh Minerals Development Corporation ('CMDC') on 1st May 2006 for an area of 2500 hectares, by KIPL on 27th May 2006 for an area of 1300 hectares, by RIPL on 4th July 2006 for an area of 300 hectares in Compartment Nos. 112, 179 and 180 and by SIPL on 26th September 2006 for an area of 1125.68 hectares in the aforementioned compartments as well as Compartment No. 245. The applicants were given a hearing by the SOC on 7th August 2006. During the course of hearing and thereafter, the applicants were asked by the SOC to provide the following information in terms of Section 11 (3) of the Mines and Minerals (Development and Regulation) Act, 1957 ['MMDR Act']:

- “(a) Net worth of the company at the end of Financial Year 2005-2006;
- (b) Experience in mining and prospecting of iron ore and other minerals;
- (c) Production capacity and investment of industry based on established iron mineral;
- (d) Proposed projects and investment for industry based on iron ore, and
- (e) Effective steps taken for execution of proposed projects.”

4. In its subsequent decision dated 7th April 2007, the SOC recommended to the central government in terms of Section 5 (1) and Section 11 (5) MMDR Act grant of PL in respect of iron ore in favour of KIPL over an area of 196.84 ha (in Compartments 112 Part and 179 Part), in favour of RIPL over an area of 235.03 ha (in Compartments 112 Part and 179 Part) and in favour of SIPL over an area of 876.71 ha (in Compartments 180, 259, 260 and 245 Part) for a period of two years. SOC noted in the aforesaid decision that as regards the CMDC, the grant of PL for iron ore in its favour over an extent of 586.24 ha in District Kanker, 1913 ha in Sehaspur-Lohara forest region took its overall allocation in excess of 2500 ha the maximum permissible under Section 6 (1) (a) MMDR Act. The SOC considered the applications of those applicants who had established a sponge iron factory based on iron ore but had not been sanctioned/recommended mineral concessions of iron ore or where recommendations had been made in respect of an area where availability of mineral was very scarce keeping in view the plant capacity. KIPL had a functioning sponge iron plant of a capacity of 0.30 LTPA. Its net worth was Rs. 9.05 crores for the year ending 31st March 2005 and 31st March 2006 and had made an investment of Rs.28 crores. The net worth of the RIPL for the same period was Rs.21.49 crores. RIPL had a sponge iron plant of 0.60 LTPA capacity and had invested Rs. 70 crores. SIPL's net worth was Rs. 198.88 crores for the same

period. Its plant capacity was 2.70 LTPA and investment was Rs. 295.47 crores. It was further noticed that on 6th October 2006 the SIPL signed memorandum of understanding ('MOU') with SOC for investment of Rs. 1470 crores for increasing the capacity of the existing plant. Further, although SIPL had been recommended the grant of PL for an area of 750.30 hectares in Halbibinapal in District Kanker there was no possibility of permission being received for diversion of the land under the Forest (Conservation) Act, 1980. In terms of Section 11 (5) of the MMDR Act keeping in view the above factors the SOC decided to give preference to the above three entities.

5. Aggrieved by the above decision, KIPL filed a revision application No. 12(19)/2007-RC-II before the central government under Section 30 of the MMDR Act. In the said revision application, RIPL and SIPL were impleaded as Respondents 1 and 2 respectively. During the pendency of the revision application before the Mines Tribunal on 25th June 2008 the central government granted provisional approval under Section 5 of the MMDR Act in terms of the recommendation made by the SOC on 7th April 2007. On 8th August 2008 RIPL entered into an MOU with the SOC with proposed investment of Rs. 720 crores. On 16th December 2008 the MOEF, Government of India granted RIPL permission under Section 2 of the Forest Conservation to drill five bores of four inches width. This order was communicated to RIPL by a letter dated 30th April 2009. On 16th February 2009 forest clearance was granted to KIPL subject to the condition of digging 5 bore holes only 4 inches thick for prospecting in terms of the PL granted to it. On 18th November 2009 the KIPL and the State Government entered into PL agreement. Meanwhile, by an order dated 8th May 2009 the High Court of Chhattisgarh directed the Mines Tribunal to dispose of the revision application within eight weeks.

6. By the impugned order dated 31st May 2010 the Mines Tribunal held that the mere comparison of 'net worth' of the applicants could not furnish the 'special reasons' or justify the grant of PL in favour of a later applicant in terms of Section 11 (5) of the MMDR Act read with Rule 35 MCR Rules. Further, the SOC had considered the production capacity, status of other pending applications of the parties and the signing of MOUs which were not

factors envisaged in either Section 11 of the MMDR Act or Rule 35 MCR. The Mines Tribunal noted that the MMDR Act provided for two distinct concession regimes: one for 'non-notified' areas where an applicant earlier in point of time would have preference; the second was for 'notified' areas where the relative merits of the different applicants would determine the manner of equitable distribution of resources. The Mines Tribunal also referred to guidelines issued by the Ministry of Mines ('MOM') on 24th June 2009 and 9th February 2010. The Mines Tribunal noted that the MOU between the SOC and SIPL was signed on 6th October 2006. SIPL had established its plant and invested Rs. 700 crores as on 7th April 2007. These constituted special reasons in favour of SIPL for the purposes of Section 11 (5) MMDR Act. On the other hand, the MOU with RIPL was entered into after 7th April 2007. In the absence of any special reason, the criteria spelt out in Section 11 (3) of the MMDR Act could not be used to justify the grant of PL in favour of RIPL. Consequently, the Mines Tribunal modified the order dated 7th April 2007 of the SOC only to the extent of recommendation in favour of RIPL. The recommendation for grant of PL in favour of KIPL and SIPL was left undisturbed. A direction was issued by the Mines Tribunal to the SOC to re-examine the issue to the extent of the recommendation made for grant of PL to RIPL with reference to the MOM guidelines dated 9th February 2010. Further the Mines Tribunal directed that while considering the set aside part of impugned order and any balance free area available, the SOC should consider the case of RIPL "keeping in view their claim to installed capacity as 0.60 LTPA instead of 0.30 LTPA before passing a fresh order."

7. Mr. Sridhar Potaraju, learned counsel appearing for RIPL first submitted that the interpretation placed on Section 11 (2) and Section 11 (3) read with Section 11 (5) of the MMDR Act by the Mines Tribunal was erroneous. Although KIPL which had applied for PL on 27th May 2006 was an earlier applicant within the meaning of Section 11 (2) MMDR Act, KIPL had only the right to be considered for grant of PL. In other words, being an earlier applicant did not give KIPL an indefeasible right to be granted the PL. It still had to satisfy the basic norms for grant of PL which although not spelt out expressly could be inferred from Section 11 (3) of the MMDR Act read with Rule 35 of the MCR. It is submitted that there was a discretion in the SOC not to recommend the grant of PL for the entire area as applied

for by KIPL. According to Mr. Potaraju, the special reasons in Section 11 (5) MMDR Act to justify a grant in favour of a later applicant was required to be shown only where the application of an earlier applicant was rejected in its entirety and not where it was accepted in part. In the instant case it was evident from para 12 of the decision dated 7th April 2007 of the SOC that it was only after KIPL's application was first considered and recommended in part that the subsequent applicants were considered in the order of their relative seniority. The decision dated 7th April 2007 of the SOC was also consistent with the mineral policy of the SOC announced in 2001 which stipulated that preference would be given in sanction of ML/PL to those who are seriously interested in establishing mineral based industry in the State. Finally it was submitted that the decision dated 7th April 2007 was also consistent with the MOM guidelines dated 24th June 2009 and 9th February 2010 which envisage that the special reasons to be adduced by the state government to justify the recommendation of the PL in favour of a later applicant in terms of Section 11 (5) of the MMDR Act should be in public interest for economic development. The criteria of investments already made, the net worth of the applicant and the capacity of the functioning sponge iron plants were 'special reasons' for the purposes of Section 11 (5) MMDR Act. It is submitted that in any event the MOM guidelines were prospective and could not be invoked to invalidate the impugned decision dated 7th April 2007 of the SOC. On equities it is submitted that RIPL had already completed its prospecting work in four out of the five permitted holes permitted to be drilled and it had incurred an expenditure of Rs. 9.2 lakhs. Therefore, this area was no longer available for prospecting and no purpose would be served by remitting the matter back to the SOC. Lastly it is submitted that the decision dated 7th April 2007 of the SOC ought not to have been interfered with by the Mines Tribunal in exercise of its revisional jurisdiction merely because two reasonable views were possible.

8. Mr. Avi Singh, learned counsel appearing for the KIPL submitted that there were no special reasons given by the SOC in its decision dated 7th April 2007 for recommending the grant of PL in favour of SIPL. According to him, the reasons that weighed with the Mines Tribunal for setting aside the recommendation in favour of RIPL equally applied to SIPL. It is submitted that the observations in the impugned decision dated 7th April 2007 of the SOC that forest clearance may not be able to be obtained in regard to the PL granted in favour of

SIPL over an area of 752.32 hectares in Halbibinapal of District Kanker was based on surmises and conjectures. In any event, that would not constitute the special reasons for the purpose of Section 11 (5) of the MMDR Act. The criteria of Section 11 (3) of the MMDR Act applied only to notified areas and could not be extended to non-notified areas. As long as KIPL was the first in order of seniority after CMDC, its indefeasible right for the grant of PL for the entire area applied for could not be taken away. Mr. Singh pointed out that KIPL had initially applied for a PL over an area of 7000 ha which was later reduced to 1300 ha. Referring to the proviso to Section 6 (c) of the MMDR Act, it is submitted that no PL can be granted in favour of SIPL in respect of an area which was “not compact or contiguous”. Referring to para 8.17 of the MOM government guidelines Mr. Singh submitted that the central government would not grant prior approval to proposals for accommodating “multiple applicants at the cost of the ‘first-in-time principle’ or the ‘capacity and capability’ principle as the case may be.” The ‘special reasons’ for the purposes of Section 11 (5) MMDR Act had to be something more than the matters referred to in Section 11 (3) of the MMDR Act. He pointed out that there was no basis for restricting the PL to an area far less than what was applied for and this rendered the decision arbitrary. Mr. Singh placed reliance on the observations of the Supreme Court in *Sandur Manganese and Iron Ores Limited v. State of Karnataka (2011) 13 SCC 1*.

9. Appearing for the SIPL, Mr. Sandeep Sethi, learned Senior counsel first submitted that prior applicant did not have any indefeasible right for the grant of PL for the entire area applied for. It is submitted that the SOC was within its rights, consistent with its obligation under Article 39 (b) (c) of the Constitution of India, to exercise its discretion under Section 11 (2) of the MMDR Act and not grant PL to the prior applicant in respect of the entire area applied for. In particular, he placed reliance upon the observations of the Supreme Court in *Indian Metals and Ferro Alloys Ltd. v. Union of India 1992 Supp 1 SCC 91* and *Dharambir Singh v. Union of India (1996) 6 SCC 702* and of this Court in *Prism Cements Limited v. Union of India 2010 (9) AD (Delhi) 88*. Those who did not have established steel plants were adversely affected by the policy of the SOC as revealed in its decision dated 7th April 2007 and yet none of them had challenged the said decision. The parties before the

Mines Tribunal knew of the policy priorities of the SOC and information was also sought from each of them on that basis. On merits it is submitted that the decision to recommend grant of PL in favour of the SIPL was just and equitable although it was not for the entire area applied for. Although the basis for restricting the grant of PL to areas less than what was applied for was not spelt out in the impugned decision dated 7th April 2007, a broad correlation could be drawn between the area available for allocation for PL and the respective plant capacities of the applicants eligible for such grant. Mr. Sethi also referred to para 2 of the impugned decision order dated 7th April 2007 of the SOC which noted that the Directorate of Geology and Mining, SOC had carried out a geological survey confirming the formation containing iron ore in the area but that the detailed prospecting work for computation of stock of iron ore was yet to be conducted. This meant that KIPL could seek the grant of ML in respect of an area notwithstanding that it had not been granted PL in that area.

10. The first issue concerns the interpretation of Section 11 (2) of the MMDR Act which reads as under:

“11(2). Subject to the provisions of sub-section (1), where the State Government has not notified in the Official Gazette the area for grant of reconnaissance permit or prospecting licence or mining lease, as the case may be, and two or more persons have applied for a reconnaissance permit, prospecting licence or a mining lease in respect of any land in such area, the applicant whose application was received earlier, shall have the preferential right to be considered for grant of reconnaissance permit, prospecting licence or mining lease, as the case may be, over the applicant whose application was received later.

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

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

11. There are two distinct parts to Section 11 (2) MMDR Act. The substantive part applies to non-notified areas. It states that where two or more persons have applied for a reconnaissance permit (‘RP’), PL or ML in respect of a non-notified area, the earlier applicant will have a preferential right over the later applicant. Where the area is notified and the state government invites applications for RP, PL or ML all the applications received during the period specified in such notification as well as the applications received prior to the publication of such notification shall be deemed to have been received on the same date. The second proviso to Section 11 (2) states that “where any such applications are received on the same day” meaning application that has been made under Section 11 (2) in respect of non-notified area and applications received on the same day in respect of notified area (in terms of first proviso), then the State Government shall grant a PL or ML, “to such one of the applicants” as it may deem fit. This it will do “after taking into consideration the matter specified in sub-section (3).” Thus the factors listed out in Section 11 (3) of the MMDR Act would have to be taken into account by the State Government in respect of a non-notified area only where all the applications for grant of PL in respect of such non-notified area “are received on the same day”. This has to be read along with Rule 35 of the MCR, which reads as under:

“35. Preferential rights of certain persons – Where two or more persons have applied for a reconnaissance permit or a prospecting licence or a mining lease in respect of the same land, the State Government shall, for the purpose of sub-section (2) of Section 11, consider besides the matters mentioned in clauses (a) to (d) of sub-section (3) of Section 11, the end use of the mineral by the applicant.”

12. Rule 35 refers to a situation where the State Government has to account for the factors in Section 11 (3). It requires the State Government to take into account another factor in addition to the factors enumerated in clauses (a) to (d) of sub-section (30 of Section 11 MMDR Act. This is the “end use of the mineral by the applicant.” However, this again

would apply where two or more applicants have in respect of a non-notified area applied on the same day.

13. The resultant position on a collective reading of Section 11 (2), its second proviso and Section 11 (3) of the MMDR Act along with Rule 35 MCR in respect of non-notified areas is that the priority accorded to an applicant who applies first-in-time remains undisturbed. The only exception is envisaged by sub-section (5) of Section 11 of the MMDR Act. A departure from the first-in-time principle is possible where the State Government records in writing special reasons under Section 11 (5) of the MMDR Act. As regards the case on hand, the area was a non-notified area and after the elimination of the CMDC, KIPL was the first-in-time applicant. Subject to satisfying the basic eligibility conditions, KIPL's right to be considered for grant of PL as a first-in-time applicant could be overlooked only if the SOC was able to record special reasons for not according to KIPL that priority.

14. Unlike a notified area where the departure from the first-in-time principle as envisaged in the first proviso to Section 11 (2) read with the second proviso is made conditional upon the State Government having to account for the factors spelt out in clauses (a) to (d) of Section 11 (3), in respect of a non-notified area, there is no such requirement. The discretion vested in the State Government under Section 11 (5) MMDR Act to depart from the first-in-time principle appears prima facie to be a wide one, not controlled by any other provision of the MMDR Act. However, from a legal and constitutional perspective the discretion is not unfettered. The requirement that reasons must be recorded in writing to justify the departure indicates that the State Government has been made accountable for the exercise of such discretion. The reasons have to be germane to the exercise of the power. They have to be in conformity with the object and purpose of vesting such wide discretionary power in the State Government. The decision of the State Government, in exercise of such discretion, would obviously be justiciable and judicially reviewable on the Article 14 standards of reasonableness and fairness. Thus while the 'special' reasons' have to be precisely that: "special", what should constitute "special" will depend on the facts and circumstances and will have to be tested on a case to case basis for their reasonableness and fairness. In a given

case, where the area is a notified one, these 'special' reasons could be a greater degree of the factors outlined in clauses (a) to (d) of Section 11 (3) read with Rule 35 MCR. But in another case, they by themselves may not be sufficient. "Special" reasons in such cases would have to be something other than the factors outlined in Section 11 (3) read with Rule 35 MCR. For a non-notified area, while the factors in Section 11 (3) MMDR Act read with Rule 35 MCR need not determine the 'special' reasons, some guidance could be had from the said provisions. Precisely for the reason that these 'special' reasons cannot be straitjacketed, it is not possible to accept the contention that they need not be shown to exist as long some part of the area applied for by the earlier applicant, which in this case is KIPL, has been granted to it. Every exercise of discretionary power has to be held accountable in law and this case is no exception to that broad overarching principle.

15. Given the scheme of Section 11 MMDR Act it is difficult to accept the extreme proposition advanced on behalf of KIPL that, subject to it being otherwise eligible for grant of PL, its right as a first-in-time applicant to be granted a PL to the entire extent applied for in a non-notified area is absolute and cannot be taken away except for special reasons to be accorded under Section 11 (5) MMDR Act. A more reasonable interpretation would be that in a non-notified area while there is certainly a right in an earlier applicant to be considered for the grant of PL, it need not be for the entire area applied for as long as the reasons adduced under Section 11 (5) MMDR Act are 'special' and satisfy the test of reasonableness and non-arbitrariness. Conversely, the provision does not prohibit a State Government, for valid reasons, deciding to recommend grant of PL in respect of an area in favour of more than one applicant. On this yardstick, the impugned decision dated 11th April 2007 of the SOC cannot on that score be held to be unreasonable, arbitrary or contrary to law.

16. Although extensive reliance was placed by learned counsel for KIPL on the MOM guidelines, there is merit in the contention of RIPL and SIPL that those guidelines were not in vogue when the impugned decision of the SOC dated 11th April 2007 was taken and it would not be proper to determine the validity of the said decision with reference to those guidelines. Even otherwise, the MOM guidelines are supplemental to the statutory

provisions and are not to be read in substitution thereof. Para 8.17 of the guidelines dated 24th June 2009 of the MOM acknowledges that the statutory scheme applicable to notified and non-notified areas is not the same. Para 8.13 which concerns non-notified areas states that “first-in-time principle must be the norm” and that “the central government would normally not favour an exception to this principle”. It emphasizes that “conditions under Section 11 (3) are not the same as the ‘special reasons’ mentioned in Section 11 (5)” of the MMDR Act and that ‘special reasons’ have to be stronger than the matters referred to in Section 11 (3) of the MMDR Act. These guidelines further states that “special reasons have to be exceptional by their very nature and not routine or obvious.” Para 8.14 of the MOM guidelines acknowledges that “special reasons would be those which form part of the State Mineral Policy or other duly notified policy document, so that the ‘special reasons’ are objectively founded and are not perceived as being formulated to suit requirements on a case by case basis. Since these would be State-specific, those guidelines cannot exhaustively define ‘special reasons’. However, the special reasons should be in the public interest and the economic development and must be capable of withstanding legal scrutiny.” Although Para 8.17 of the MOM guidelines states that dividing an area amongst more than one applicant “would be against the provisions of Section 11 (2)” it appears to permit it if “there is a clear reasoned finding that the capacity or capability of the earlier applicant is not commensurate with the area applied for.” That the MOM guidelines are meant to be prospective is made clear from the sentence which reads: “The Central Government will **henceforth** not give prior approval to proposals for accommodating multiple applicants at the cost of the ‘first-in-time’ principle or the ‘capacity and capability’ principle as the case may be.”

17. The above guidelines were further elaborated in the MOM guidelines of 9th February 2010 in which it was recommended that the following ‘special reasons’ may be adopted and applied by the state government while recommending mineral concession proposals under Section 11 (5) of the MMDR Act:

“(1) Exhaustion of captive capacity

(2) Special technology

(3) Ownership of the land of the recommended area

(4) Considering an adjoining area for mining in the interest of scientific and systematic mining and reduction in barrier loss provided they are used consistently in all cases.

(5) MOU cases, where a plant/industry has already been set up on the basis of an MOU but mineral concession not yet granted as per the MOU, provided that all such MOUs will be treated as a single class (without distinction of size, quantum of investment etc.) and the first-in-time within the class will be accorded the first right.”

18. As already observed the above guidelines of the MOM are prospective and cannot be made applicable to the decision dated 7th April 2007 of the SOC. Secondly, they are at best recommendatory and supplemental to the statutory provisions. Thirdly, the mineral policy of the SOC was already announced in 2001 and was available in the public domain. It clearly spelt out that “preference would be given in sanction of ML, PL to those who are seriously interested in establishing mineral based industry in the State.” There was no illegality in the SOC applying such criterion as spelt out in its mineral policy of 2001. Fourthly, the decision to apportion the area appears to have some correlation to the respective plant capacities and the availability of iron ore. Fifthly, the factors cited in the impugned decision dated 7th April 2007 cannot be said to be irrelevant even in the context of those factors outlined in the MOM guidelines extracted hereinbefore. The additional factor as far as the SIPL was concerned was that it had entered into an MOU with the SOC for investment of Rs. 12.82 crores on 6th October 2006 for increasing its plant capacity. Further, the earlier recommendation in its favour for grant of PL in the Halbibinapal part area was not likely to materialize since it was unlikely that clearance under the FCA would be granted. When the case was heard before the Mines Tribunal it was disclosed that SIPL had in fact surrendered the area which fact was acknowledged by the SOC.

19. In *Sandur Manganese and Iron Ores Limited v. State of Karnataka* the Supreme Court was considering the case of grant of ML in a notified area. Several applications had been received prior to the notification by the state government which had in terms of the first proviso to Section 11 (2) of the MMDR Act be considered along with applications received pursuant to the notification as if they had all been received on the same date. The observations in para 20 and para 37 of the judgment make it clear that Section 11 (5) would have no application to notified areas because “in such a case both the first proviso to Section 11 (2) and Section 11 (4) make it clear that all applications will be considered together as having been received on the same date.” The judgment further noticed that Rule 35 only requires fulfillment of one additional factor apart from the factors as set out in Section 11 (3) of the MMDR Act i.e. of the ‘end use’ of the minerals and “not the existing investments made by the applicants.” It was in the context of the above facts that it was held that the State of Karnataka had 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.” Further it was held that having notified the area, the State Government certainly could not thereafter honour an alleged commitment by ousting other applicants even if they were more deserving on the merit criteria as provided in Section 11(3). It is clear that all the above observations were made in the context of notified areas. It would therefore not be appropriate to extend the ratio of the judgment in *Sandur Manganese and Iron Ores Limited ipso facto* to a decision concerning grant of PL in a non-notified area.

20. In *Dharambir Singh v. Union of India* the Petitioner had applied for ML and PL claiming that he had discovered limestone minerals in Bhemdenti Dostpur, Mohindergarh District, Haryana. Subsequently, the Government of Haryana notified that area under Rule 59 MCR. The Petitioner contended that as an earlier applicant he was entitled to the grant of ML. The Supreme Court explained that while granting a PL or ML the State Government has a discretion “to grant or refuse to grant any prospective licence or licence to any applicant. No applicant has a right, much less vested right, to the grant of mining lease for mining operations in any place with the State.” The above

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observations were relied upon by this Court in *Prism Cements Limited v. Union of India*. It was observed that “normally the rule of seniority has to be applied; however, the rule is not invariable; if the State Government considers that a later applicant has the ability and capability to sub-serve the goals of the Act, better than a previous applicant, it can override the rule of preference. However, while doing so, it has to record “special reasons” which are germane to the situation at hand. The question was “whether the reasons, of considerations which weighed with the State are relevant, and are genuine, and also can be considered sufficient.” It was pointed out that in exercise of the power of the Constitution of India the scope of judicial review was limited. “The higher investment, existence of power plant and employment generated, cannot be considered irrelevant, as long as it subserves the larger purpose of the Act.”

21. Viewed in light of the law explained in the decision in *Dharambir Singh v. Union of India* this Court is unable to find any perversity in the decision dated 7th April 2007 of the SOC, as affirmed by the Mines Tribunal insofar as the grant of PL in favour of SIPL to an extent of 876.71 hectares is concerned. However, as regards the recommendation made in favour of RIPL the impugned decision dated 7th April 2007 of the SOC fails to indicate the special reasons for such recommendation. It only refers to the fact that RIPL has a functional plant with a capacity of 0.670 LTPA. This by itself cannot possibly constitute the ‘special’ reason for the purposes of Section 11 (5) MMDR Act. The MOU with the RIPL was entered into subsequently on 8th August 2008 and therefore was not a factor that could sustain the decision of the SOC dated 7th April 2007. The Mines Tribunal therefore correctly distinguished the grant of PL in favour of SIPL from that in favour of RIPL. The purported investment made by RIPL to work out the PL granted to it does not create any special equities to sustain the grant in its favour. In any event, a direction has been issued in the impugned order by the Mines Tribunal to re-examine the question of grant of PL to the extent that it has been set aside with reference to the MOM guidelines. The claim of RIPL will also be re-examined in the process. In the circumstances, this Court is not inclined to interfere with the impugned order dated 31st

May 2010 of the Mines Tribunal to the extent it sets aside the recommendation of the SOC in favour of RIPL.

22. For the aforementioned reasons, this Court declines to interfere with the impugned order dated 31st May 2010 of the Mines Tribunal. Both writ petitions and pending applications are hereby dismissed but in the facts and circumstances, with no orders as to costs. The interim orders stand vacated.

S. MURALIDHAR, J

JULY 6, 2011

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