

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 25.01.2012

% Judgment delivered on: 15 .02.2012

+ W.P.(C.) Nos. 520/2012 & 521/2012

M/S. INFRASTRUCTURE LOGISTICS PVT. LTD..... Petitioner

**Through: Mr. Dhruv Mehta, Senior Advocate,
with Ms. Ekta Kalra, Ms. Linette,
Ms. Sriram Krishna & Mr. Prannoy
Dey, Advocates.**

versus

UNION OF INDIA & ORS. Respondent

**Through: Ms. Sapna Chauhan, Advocate for
the respondent No. 1/UOI.**

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

J U D G M E N T

VIPIN SANGHI, J.

1. These two writ petitions, namely W.P(C) 520/2012 and 521/2012 have been preferred by M/s. Infrastructure Logistics Pvt. Ltd (for short-Infrastructure) to assail the two orders dated 18.11.2011 passed by the Mines Tribunal, whereby the revision applications preferred by M/s. Aakash Universal Limited (for short-Aakash-respondent no.3 in W.P(C) 520/2012) and M/s Ashapura Minechem Limited (for short-Ashapura-respondent no.3 in W.P(C) 521/2012) have been allowed, and the Mines Tribunal has set aside the order dated 29.08.2009, passed by the State of Maharashtra, recommending the grant of the mining lease

of the area in question for bauxite ore admeasuring 192.28 hectares in favour of the petitioner. The Mines Tribunal has remanded the case back to the State Government to decide the applications made by the applicants for obtaining the mining lease on merits afresh.

2. Learned senior counsel for the petitioner has been heard at length and, as I find no merit in these petitions, I proceed to dispose them of.

3. On 12.10.2006, the Government of Maharashtra issued a notification under Section 11(2) and (4) of the Mines and Minerals (Development and Regulation) Act, 1957 (for short, the 'Act') notifying the areas mentioned in the Schedule as being available for grant of mining leases/prospecting licenses for bauxite ore and calling for applications from general public for being considered for such grant. The State Government extended the period for filing of applications upto 31.01.2007. Apart from the petitioner, various other applicants submitted their applications, including Akash and Ashapura. The Chief Minister of Maharashtra granted hearing to the applicants on 07.05.2009 and passed the order dated 29.08.2009 recommending the grant of mining lease for bauxite order over an area of 192.28 hectares in favour of the petitioner.

4. In respect of the petitioner, the details noted by the State Government in its order dated 29.08.2009 read as follows:-

“(10) **M/s. Infrastruture Logistic Pvt. Ltd**, Goa has applied for grant of ML over an area of 201.22.10 H/R on 18.01.2007. It is observed from their submissions that:-

- (i) It is Private Limited Company and Promoters are engaged in Iron Ore mining and export.
- (ii) Applicant has the expertise in Mining, logistic and Value addition to Mineral ore. They are expertise to operate across the full value chain and are operating Mines in Karnataka, Maharashtra and Goa and they do have experience of Mining.
- (iii) They have qualified technical staff and modern equipment for mining.
- (iv) It is proposed to establish a Benefication/value addition Plant with investment upto Rs.200.00 crore.
- (v) Applicant will participate in local area development like construction of roads, plantation, education, health services, etc.
- (vi) Applicant will take adequate care of Environment Protection.”

5. I may also at this stage itself take notice of the observations made by the State Government in respect of Akash and Ashapura which read as follows:-

“(15) **M/s. Akash Universal Ltd.**, Mumbai has applied for grant of ML over an area of 201.22.10 H/R on 24.01.2007. It is revealed from their submissions that:-

- (i) It is Limited company and is engaged in mining business for last 15 years.
- (ii) Applicant does not hold any ML/PL. Technical experts will be appointed. However, Group Companies do have experience of mining.
- (iii) Their share capital is Rs.2.00 crores.
- (iv) They have submitted audit Report as on 31.03.2007.
- (v) Company will invest Rs.500.00 crores for mining.
- (vi) Applicant intends to set up Alumina Plant. But project report is not given.”

“(1) **M/s. Ashapura Minechem Ltd.**, Mumbai has applied for grant of ML over an area of 201.22.10 HR on 12.09.2003. It is seen from their submissions that:-

- (i) It is Private Limited company engaged in mining, processing of the minerals.
- (ii) They do hold ML/PL in Maharashtra and have pretty good experience of mining activities. They are well equipped with technically qualified personnel.
- (iii) It is proposed to make investment of Rs.30/- lakhs for mining. Their financial position is sound.
- (iv) So far they have made investment of Rs.641.00 lakhs in the State. It is also proposed to set-up Alumina Refinery/Smelter Plant with investment of Rs.4232.00 crores and project report is submitted."

6. The observations made by the State Government in its order dated 29.08.2009 read as follows:-

"1. After going through the records and taking into consideration the oral and written submissions of applicants and going through the provisions of the Act and Rules, I have made the following observations:-

- (i) At Muaze Ambivali and Mauze Kante the area available to be recommended for grant of M.L is 192.28.10 H/R only.
- (ii) In all 17 applicants have made 23 applications for grant of mining lease.

2. The said area has been notified under Section.11(2) and (4) of the Act. Hence selection of applicant/s to be recommended for grant of P.L. will be governed as per relevant Rules and Regulations.

3. The Inter-se-Merit Chart is enclosed herewith as Exhibit 'A', it may be noted that it is a vital part of this Order. It also indicates reasons for acceptance/rejection of the application.

4. This order is restricted to the compartment number and area thereof already notified only. However, some of the applicants have applied over other areas also. It may be noted that such area is not the subject matter of this order.

5. Applicants who do have experience of mining operations, well equipped with technical expertise and are financially sound are as follows:-

- (i) M/s. Ashapura Minechem Ltd., Mumbai.
- (ii) M/s. Ramgad Minerals and Mining Pvt. Ltd., Hospet.
- (iii) M/s. P.Z. Gawade, Vengurla.
- (iv) M/s. Gimpex Metal Ltd., Chennai.
- (v) M/s. Core Minerals, Chennai.
- (vi) Maharashtra State Mining Corporation Ltd., Nagpur.
- (vii) M/s. Infrastructure Logistic Pvt. Ltd., Goa.

Rest of the applicants either intends to set-up mineral based industry or utilize the mineral for trading.”

7. The inter se merit of Ashapura, the petitioner and Akash noted in the merit chart, Ex. 'A' to the order dated 29.08.2009 reads as follows:-

Sr. No.	Name of the applicant	Date of application	Areas applied(in Hec.)		Special Knowledge or experience possessed by the applicant	Financial resources of the applicants	The Nature & quality of the technical staff employed or to be employed by the applicant	Proposed Investment for mines or the Industry based on the Minerals	Reasons for Acceptance/ Rejection
			S.No	Area in Hect.					
1	2	3	4	5	6	7	8	9	10
	M/s Ashapura Minechem Ltd, Mumbai.	<u>12/09/03</u> ML	Ambivali 13 to 16,50,63,65 Kante 3,4,10 to 15,18 to 25,28	42.35	Holding mining leases in Maharashtra & Gujarat.	Share Capital Rs.6,38,27,000/-	Technical Staff available	Rs.4232.00	Application is rejected for reasons mentioned in para 2 (a) of the Conclusion of this Order.
10	M/s Infrastructure Logistics Pvt. Ltd, Goa.	<u>18/01/07</u> ML	Kante	158.87.10 42.35	NIL	Share Capital Rs.1 crore	Technical Staff available	Rs.10 crore	Application is accepted for reasons mentioned in para 3 (c) of Conclusion of this Order.
15	M/s Akash Universal Ltd.Mumbai	<u>24/01/07</u> <u>M.L.</u>	Ambivali Kante	201.22.1	NIL	Solvency Certificate of Rs.50 Lakh.	Technical Staff not available. Propose to appoint.	Rs.50 crore	Application is rejected for reasons mentioned in para 3 (d) of the Conclusion of this Order.

8. The conclusion drawn by the State Government in its order read as follows:-

“1. Bauxite Ore reserves in Maharashtra are limited and that too concentrated in Kolhapur district and two coastal districts viz. Ratnagiri and Sindhudurg. It is also pertinent to note that the available Bauxite reserves are meagre and it is not sufficient to establish a major industry like Alumina Refinery. Further the Bauxite Ore available in the area is in the form of boulders and is of Float type.

2. In the light of prevailing circumstances, it is evident that the applicant's mentioned in para 5 under caption “Observations” prevails over all other applicants. This means that there are number of eligible applicants. Therefore, it has become difficult to choose one of them. In such case I have taken into consideration the contentions made in para 8.8 of Guidelines issued by the Government of India, Ministry of Mines vide their letter No.F.No.7/60/2006-MIV, dated 24.06.2009. wherein it is also stated that section 11(3) mentions various criteria for selection from amongst applications received on same day (actual or deemed) but the inter-se-weightage of these criteria is not defined. Thus, applicants having adequate technical support and financial capacity to implement the mining operations (RP/PL/ML) and who comply the other parameters laid down in Guidelines, dt. 24.06.2009 issued by Govt. of India do come in consideration zone for to be recommended for mineral concession.

3. In view of above, the eligible applicant's are analysed as follows:-

(a) As regards applicants mentioned in “Para-5 of the “Observation” of this Order, following applicants have been granted/recommended for grant of mineral concession so far. Thus their cases has been considered to the extent possible on the basis of their merits. Further they can procure mineral from other sources. Therefore, I do not recommend them for grant of ML over the area under consideration.

- (i) M/s. Ashapura Minechem Ltd.
- (ii) M/s. P.Z. Gawade.

- (iii) M/s. Gimpex Metal Ltd.
 - (iv) M/s. Core Mineral.
 - (v) Maharashtra State Mining Corporation Ltd.
- (b) As regards M/s. Ramgad Minerals and Mining Pvt. Ltd., it seems that they will utilize the mineral for trading. However, State prefer captive use of mineral, hence I reject their application.
- (c) As regard M/s. Infrastructure Logistic Pvt. Ltd., Goa, they are eligible in all respects as per Rules and Regulations. Qualified technical staff is available. They will execute Mining in scientific manner utilizing modern techniques and equipments. Their financial position is strong. They will take adequate care of Environment Protection. Applicant will also participate in social-economic development of local area. In view of this, I am satisfied that they are most eligible applicant to be recommended for grant of M.L. for Bauxite Ore over the area applied by them.
- (d) Rest of the applicants are also otherwise eligible. But since better option is available as mentioned above hence I reject their application.
4. In view of above I pass the following Order in the matter:-

Order

Under Section. 11(2) and 11(4) of the Act I recommend to grant Mining Lease for Bauxite Ore over an area of 192.28 H/R situated at Mauze Ambivali Kante, Tal, Madangad, District Ratnagiri to M/s. Infrastructure Logistic Pvt., Ltd, Goa as per MAP (Annexure 'B') appended herewith. All NOC's from the central Government, State Government and Local Authorities be obtained by the applicant."

9. Akash and Ashapura preferred revision applications under Section 30 of the Act read with Rule 55 of the Mineral Concession Rules, 1960 (for short 'MCR') before the Mines Tribunal.

10. The grievance of the revision applicants Akash and Ashapura was that their applications were not considered on merits, and on comparison with the petitioner, they were more deserving candidates for grant of mining leasing over the area of 192.28 hectares of land situated at Mauze, Ambivali & Kante villages in Mandangad Taluk, Ratnagiri District upon application of the criteria prescribed under Section 11(3) of the Act.

11. The case of Akash was that it had entered into and executed an agreement in respect of a mega project of integrated steel plant and aluminium refinery with captive power plant of 25 MW with the Government of Maharashtra. The Government of Maharashtra had already granted approval in respect of the said project. The value of the project was 2200 crores. Loan of Rs.300 crores had been sanctioned by Dena Bank. The land in respect of the said project had been purchased/acquired. The company had acquired mining rights in respect of bauxite in Maharashtra. Akash produced with its revision application, documents in support of the aforesaid claims. It was also claimed that Akash had already appointed a team of technical staff consisting of 2 Geologists, 1 Plant Consultant and 1 Mining Engineer and it had experience in mining business for the last 15 years. It had been carrying on mining operation in Orissa for the last two years. Akash also pointed out that it had submitted solvency certificate of Rs. 15 crores at the time of hearing, but the State Government had

erroneously considered the solvency certificate of Rs. 50 lakhs which was submitted at the time of application. It was contended that the petitioner Infrastructure had share capital of only Rs.1 crore. It did not hold any mining lease or prospective licence in any State, whereas Akash had already acquired a good reputation in the mineral industry. It was claimed that as opposed to the plan of the petitioner to establish a beneficiation/value additional plant with an investment of upto 200 crores, Akash was in the process of installing an integrated steel plant of 1 lakh MT capacity and aluminium refinery and manufacturing plant with a capacity of 2 lakhs MT at Ratnagiri, Maharashtra. The proposed investment to be made by Infrastructure of Rs.200 crores was miniscule as compared to the investment of Rs.2200 crores proposed by Akash.

12. Akash also claimed that since bauxite ore was available in limited and scarce quantities in the State of Maharashtra, the claims of all persons involved in, and concerned with the business relating to the industry should have been considered, where the raw material may be required by them. Akash also contended that over a span of three days, the State Government had prepared three different comparison charts with different investment valuation. These charts contradicted each other. It was claimed that, whereas, others had no plant established or developed in the State of Maharashtra, the revisionist Akash had already undertaken the process of installation of the

integrated steel plant of Rs. 1 lakh MT, and aluminium refinery and manufacturing plant of capacity of 2 lakh MT at Ratnagiri, Maharashtra. It was claimed that Akash's said plant would not survive without the raw material.

13. Aakash claimed that on the one hand, the Govt. of Maharashtra had entered into a Memorandum of Understanding for a mega project with it of the value of Rs.2,200 crores, on the other hand, the entire area measuring 192.21 hectares had been solely awarded to Infrastructure for the purposes of mining. Aakash contended that, whereas, it has already appointed a team of technical staff consisting of two geologists, 1 plant consultant and 1 mining engineer, Infrastructure had merely stated that they had qualified technical staff without furnishing details of the same.

14. Ashapura in its revision petition submitted that the State Government had ignored the fact that it had 30 years of extensive experience in mining, processing and marketing on industrial minerals. Ashapura claimed itself to be the world's largest producer of bentonite, and also the largest producer, processor and exporter of bauxite in India. It claimed to have significant presence in the field of various minerals including barite, feldspar, bleaching clay and kaolin. Ashapura also claimed that it had been awarded various awards by the Government Organisations/Corporations including Export Promotion Council and Ministry of Commerce, Government of India. Ashapura

also claimed that it had plans of investing Rs.4500 crores in a mega project already sanctioned by the Government of Maharashtra for setting up an Alumni Refinery and Smelter Plant of 0.5 million tonnes in Ratnagiri District.

15. Ashapura contended that it has vast experience of mining operations and its financial position was acknowledged by the State Government in the impugned order itself. The applicant had a share capital of over 4.38 crores, available technical staff and it proposed investment of Rs.4232 crores. In all parameters, Ashapura claimed that it was superior to Infrastructure. Ashapura claimed that the order of the State Government was not based on the guidelines issued by the Government of India, Ministry of Mines in their letter dated 24.06.2009, and it was arbitrary and subjective. Ashapura contended that there was no bar in considering its application for grant of further leases merely because it had earlier been granted bauxite leases. It claimed that the selection of the petitioner was not done in a transparent manner. Ashapura also claimed that no special reason was disclosed to favour the petitioner for grant of mining lease, and prior approval of the Central Government was not sought for the said purpose. The order of the State Government was attacked on the ground of it being patently perverse, arbitrary and discriminatory.

16. The Mines Tribunal in its order dated 18.11.2011 passed in the revision preferred by Aakash has observed that on an examination of

the inter se merit chart enclosed with, and forming part of the impugned order passed by the State Government, it is seen that in the inter se merit chart the proposed investment of Aakash has been shown as Rs.50 crores, whereas in the body of the order the same had been noted as Rs.500 crores. This, apparently, shows non application of mind on behalf of the State Government. In comparison, the petitioner had proposed investment of Rs.10 crores (as noted in the inter se merit chart), whereas in the body of the order of State Government, the same had been noted as Rs.200 crores, which, again showed non application of mind by the State Government.

17. The Tribunal also observes that some other applicants have proposed more investment than both Aakash and the petitioner, and there were other applicants with stronger credentials, who scored over the petitioner on the basis of parameters contained in Section 11(3) of the Act, namely, special knowledge and experience, financial resources, availability of technical staff and proposed investment. The Tribunal holds that the argument that more deserving applicants had been considered to the extent possible, and that they can procure mineral from other resources, could not be sustained in the facts of the case. The Tribunal concluded that the State Government had not made proper analysis of the case with reference to the provision of Section 11(3) of the Act.

18. In the impugned order dated 18.11.2011 passed in the revision preferred by Ashapura, the Tribunal observes that Ashapura had shown financial resources of more than Rs.6 crores, and proposed investment of Rs.4232 crores towards setting up of Alumina Refinery/Smelter Plant for which it had submitted a project report. In comparison, the petitioner had shown financial resources of Rs.1 crore share capital and proposed investment of Rs.10 crores. Though the petitioners proposed investment had been shown as Rs.200 crores in applicant wise details (which was noted as Rs.10 crores in the inter se merit chart prepared by the State Government), it was less meritorious in comparison with Ashapura. Ashapura had stronger credentials and scored over the petitioner on the basis of parameters contained in Section 11(3) of the Act, namely, special knowledge and experience, financial resources, availability of technical staff and proposed investment. In this case as well, it was observed that the ground taken by the State Government that the requirement of Ashapura had been considered to the extent possible, and that it can procure material from other resources, do not stand scrutiny in the facts of the case, and that the State Government had not made a proper analysis of provision of Section 11(3) of the Act in the impugned order.

19. At the outset, I may note that while exercising the extraordinary writ jurisdiction under Article 226 of the Constitution of India, this Court does not sit in appeal over the decision of the Mines Tribunal. All that

is being undertaken is judicial review of the said decisions. Therefore, unless the petitioner can show either the breach of the procedural requirements, or establish that the impugned orders passed by the Mines Tribunal are illegal and contrary to the provisions, inter alia, of the Act, or otherwise perverse, this Court would normally not interfere with the decision of the Mines Tribunal.

20. The tribunal, in both the cases, takes note of the serious discrepancy in the noting of the material facts and figures by the State Government. These have already been noted herein above. For instance, in the body of the order passed by the State Government in relation to Aakash, it is noticed that they proposed to invest Rs.500 crores for mining. Whereas, in the inter se merit chart, which forms an integral part of the order, the proposed investment for mines or industries based on the minerals is to the tune of Rs.50 crores only. Similarly, the State Government has proceeded on the basis that Aakash had submitted solvency certificate of Rs.50 lacs, whereas they had supplied solvency certificate of Rs.15 crores.

21. The tribunal has held that the scale of investment proposed by Aakash was to the tune of Rs.500 crores as opposed to the investment proposed by the petitioner Infrastructure of Rs.200 crores. There were other applicants who had proposed more investment than the Infrastructure and Aakash, such as Ashapura. The tribunal holds that there were other applicants who had stronger credentials and scored

over and above Infrastructure on the basis of parameters contained in Section 11(3) of the Act, namely, special knowledge and experience, financial resources, availability of technical staff and proposed investment. Consequently, the tribunal has concluded that the State Government has not made proper analysis of the case with reference to provision of Section 11(3) of the Act in its order dated 29.08.2009.

22. The submission of learned senior counsel for the petitioner, Mr. Dhruv Mehta, firstly, is that the State Government had duly applied its mind and evaluated all the applications on the basis of the criteria set out in the Act. He submits that equitable distribution of the resources weighed heavily with the State Government while passing the order dated 29.08.2009, and since both Aakash and Ashapura had been granted mining leases within the State for the same ore, the State Government observed that their cases had been considered to the extent possible on the basis of their merit. He submits that the Supreme Court in ***Tata Iron & Steel Company Limited v. Union of India & Another***, (1996) 9 SCC 709, has upheld the policy of equitable distribution of the mineral resources.

23. He further submits so far as Aakash is concerned, the State Government had noted that though it had proposed investment of Rs.500 crores for mining, and it had also proposed setting up of an Alumina Plant, but no project report had been given. For this reason, Aakash was not even considered as an eligible applicant in para 3 of

the order passed by the State Government and in the conclusion drawn by it in its order.

24. A perusal of the order of the State Government does not reveal that the submission of the project report, according to the State Government, was an eligibility requirement, without which the application of an applicant was liable to be rejected at the threshold. There is no observation made in its order by the State Government, that Aakash cannot be considered to be eligible, because it has not submitted the project report with regard to the setting up of the Alumina Plant. If the contention of Aakash - that it was in the process of installing an integrated steel plant of 1 lakh MT capacity and aluminium refinery and manufacturing plant with a capacity of 2 lakhs MT at Ratnagiri, Maharashtra, for which the Govt. of State of Maharashtra had already approved a captive power plant of 25 MW, is correct, then that may be an even more credible information than what a project report may provide to the State Government for assessing the seriousness of commitment of Aakash to make the investments in future, as proposed by it. Therefore, no conclusion can be drawn that the Government did not consider Aakash because it did not provide the project report. The fact that the project report has not been supplied by Aakash is noted in the order of the State Government as a matter of fact, but there is no observation that, for that reason Aakash is being considered ineligible.

25. So far as reliance placed on **Tata Iron & Steel Co.** (supra) is concerned, that decision was rendered in a completely different set of circumstances. That was a case relating to renewal of a mining lease over a large area which was held by TISCO, whose needs were limited, while several needy manufacturers were deprived of adequate raw material. It had, therefore, been observed by a committee referred to as "Rao Committee" that the grant of renewal of mining lease over an area as large as that held by TISCO, in favour of a single applicant whose own needs are limited, while several needy manufacturers were deprived of adequate sources of raw material, would be to promote monopolistic tendencies which cannot be allowed. This committee was of the view that the concept of "mineral development" under Section 8(3) of the Act requires the assessment of the captive mining requirement of different industries as also the application of the principle of equitable distribution of mining leases. After perusing the report of the Rao Committee, the Supreme Court observed that:

"63. On the issue of the application of the principle of equitable distribution, we are of the view that the Committee had, after having taken note of the prevailing situation and the problems faced by needy manufacturers, taken the correct view in recommending its implementation.

64. We are, therefore, of the view that the Committee had correctly interpreted the relevant material for appreciating the concept of "mineral development" and adopting the stance that it encompassed the concept of captive mining as well as the principle of equitable distribution".

26. The concept of equitable distribution, in my view, cannot become a tool in the hands of the State Government to give a go to the criteria statutorily provided in Section 11(3) of the Act. The State Government cannot override the said criteria in the name of “equitable distribution”. Equitable distribution in **Tata Iron & Steel Co.** (supra) was approved in the context of the renewal of the mining lease of a very large area in favour of TISCO, when their need was small compared to others, and others were facing problems of shortage. The argument of equitable distribution was, therefore, advanced to say that the concept of mineral development would not be advanced by creation of such unequal and monopolistic distribution. I do not appreciate how the concept of equitable distribution approved in the context of the facts in **Tata Iron & Steel Co.** (supra) can be applied in the facts of the present case, which are entirely different.

27. The observation of the State Government that the case of Ashapura and other eligible applicants has been considered to the extent possible, and that they could procure mineral from other sources, is in the teeth of the provisions of the Act, as the Act does not seek to prioritize those applicants who have not been granted mining leases, vis-à-vis, those who have earlier being granted mining leases.

28. The limitation with regard to grant of mining leases is contained in Section 6 which, inter alia, provides that no person shall acquire in respect of any mineral or prescribed group of associated minerals in a

State, one or more mining leases covering a total area of more than 10 sq. kms. It is not the case of the petitioner that, either Aakash, or Ashapura have been granted mining leases by the State of Maharashtra for bauxite ore to the extent of 10 sq. kms. Rejection of the application of Ashapura on this basis is clearly beyond the provisions of the Act.

29. The submission of Mr. Mehta that others had not even approached the Mines Tribunal by filing a revision and, therefore, the order dated 29.08.2009 could not be disturbed by the tribunal on the strength of the case of other applicants has no merit, since the petitioners case, on merits, prima facie, does not appear to match up with the case of either Akash or Ashapura.

30. In ***Sandur Manganese & Iron Ores Ltd. v. State of Karnataka & ors.***, JT 2010 (10) SC 157, the Supreme Court has held that *"It is not open to the State Government to justify grant based on criteria that are de hors to the MMDR Act and the MC Rules. The exercise has to be done strictly in accordance with the statutory provisions and if there is any deviation, the same cannot be sustained. It is the normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. This principle has been reiterated in C.I.T. Mumbai v. Anjum M.H. Ghaswala & Ors., [JT 2001 (9) SC 61 : (2002) 1 SCC 633] at*

644, *Captian Sube Singh & Ors. v. Lt. Governor of Delhi & Ors.* [JT 2004 (Suppl.1) SC 413: (2004) 6 SCC 440] and *State of U.P. v. Singhara Singh & Ors.* [1964 (4) SCR 485].”

31. It is not for this Court to assess the comparative merit of the various applicants. The petitioner has not been able to show as to how the observations of the Mines Tribunal, that the cases of Aakash and Ashapura stand on a stronger wicket, on the basis of the parameters prescribed in Section 11(3) of the Act, namely, special knowledge and experience, financial resources, availability of technical staff and proposed investment, are ex-facie erroneous. The observation made by the tribunal that the State Government has not made proper analysis of the case with reference to the provisions of Section 11(3) of the Act, therefore, appears to be well founded.

32. Reliance placed by learned senior counsel for the petitioner on the guidelines regarding submission of mineral concession proposals under Section 5(1) of the Act dated 24.06.2009, and in particular clause 8.8 thereof, does not advance the case of the petitioner either.

Clause 8.8 of these guidelines reads as follows:

*“8.8 Section 11(3) mentions various criteria for selection from amongst applications received on the same day (actual or deemed) but the inter-se weightage of these criteria is not defined. Further, if more than one applicant has the capabilities as mentioned in Section 11(3) the choice of applicant becomes difficult. Since all the eligible applicants are co-equal in terms of chronology, the choice has to be made on objective selection criteria in a transparent manner. **Normally, the recommendation of a State Government in this regard is acceptable if***

a comparative chart (as per proforma attached) of all the applicants on the criteria enumerated in Section 11(3) of MMDR Act is available and the State Government has passed reasoned orders on file for recommending acceptance of case of a particular applicant and for not recommending the acceptance of the remaining applicants. The State Governments should, therefore, while sending the proposal to the Ministry, not only enclose the comparative chart based on the provisions of Section 11(3) of the MMDR Act but should furnish a self-contained speaking order duly signed by the competent authority." (emphasis supplied)

33. Even though the State Government has referred to the said guidelines in its order dated 29.08.2009, it appears that it has rendered lip service to the aforesaid guidelines, as it has not prepared a comparative chart on the basis of the criteria enumerated in Section 11(3) of the Act, and the reasons adopted by it in its order do not have relevance to the said criteria contained in Section 11(3) of the Act.
34. For all the aforesaid reasons, I do not find any merit in these petitions and dismiss the same.
35. However, I may observe that observations made by me in this order have been made only for the purpose of consideration of the petitioner's present writ petitions, and the same shall not come in the way of the petitioner in the remanded proceedings before the State Government or any subsequent proceedings arising therefrom, if any.
36. Petition stands disposed of in the aforesaid terms.

VIPIN SANGHI, J

FEBRUARY 15, 2012

sr/'BSR'